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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

R.M.L., a minor; V.M.L., a minor; by and through Erica Santamaria as Guardian Ad Litem,

Petitioner,

v.

RUBY HERNANDEZ, Federal Field Specialist, Office of Refugee Resettlement; NIKY HYMEL, Federal Field Specialist Supervisor, Office of Refugee Resettlement; ALEX J. ADAMS, Assistant Secretary of the Administration of Children and Families; ANGIE SALAZAR, Acting Director of the Office of Refugee Resettlement; and ROBERT F. KENNEDY, Secretary of the U.S. Department of Health and Human Services,

Respondents.

Case No. 2:26-cv-08585

Hon. Monica Ramirez Almadani
United States District Judge

Hon. Douglas F. McCormick
United States Magistrate Judge

PETITIONERS' RESPONSE TO ORDER [Dkt. 14]

INTRODUCTION

Respondents unlawfully held Petitioners, 15-and 13-year-old unaccompanied minors, for **212 days** before releasing them from ORR custody to their mother on August 21, 2026. Petitioners submit this Response in accordance with the Court's August 24, 2026 Order. ECF No. 14.

DISPUTED MATERIAL FACTS AND RESPONDENTS' VIOLATION OF 45 C.F.R. §§410.1203, 410.1205, OR 410.1207.

I. 45 C.F.R. §410.1203

Petitioners dispute that Respondents conducted the release approval process pursuant to 45 C.F.R. § 410.1203. Under this regulation, "ORR shall conduct a sponsor suitability assessment consistent with the requirements of § 410.1202." 45 C.F.R. § 410.1202 references the steps that ORR shall take to assess a sponsor's suitability. It only requires that a potential sponsor's identity be verified,[1] not obtaining a waiver for not possessing a policy-compliant proof of identification.

Furthermore, 45 C.F.R. § 410.1202 states that "ORR may consult with the issuing agency (e.g., consulate or embassy) of the sponsor's identity documentation to verify the validity of the sponsor identity document presented." On August 5, 2026, the Mexican consulate confirmed that the sponsor's documents[2] were valid and current. ECF No. 10-1 at 18.

It is a foundational principle of administrative law that agency statements, manuals, and guidance "do not have the force and effect of law" and cannot create new rights or obligations. *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 97 (2015). *See also Fargo v. Comm'r*, 447 F.3d 706, 713 (9th Cir. 2006) (explaining that internal

[1] 45 C.F.R. §1202(b)

[2] The document that was verified was sponsor's passport, which respondents have had in their possession since March 31, 2026. ECF No. 10-1 at 17.

agency manuals, guidelines, and policy statements "do[] not have the force of law and do[] not confer rights" or impose mandatory prerequisites); *Moore v. Apfel*, 216 F.3d 864, 868–69 (9th Cir. 2000) (same).

By withholding release until Petitioners' sponsor obtained a policy-compliant waiver, after the sponsor's identity was fully verified under the plain text of 45 C.F.R. § 410.1203, Respondents abandoned the regulatory process in favor of an unenforceable internal policy. As such, they did not conduct the release approval process in accordance with the law.

II. 45 C.F.R. § 410.1205

Respondents assert that, after approval of the Category 1 waiver on August 20, 2026, the sponsorship applications for both Petitioners became complete under 45 C.F.R. § 410.1205. ECF No. 13-1 at ¶ 6. Petitioners dispute that assertion and maintain that the sponsor application was completed on May 26, 2026, when the ORR subcontracted case manager indicated mother had completed the sponsorship application, or, at the latest, on July 9, 2026, when ORR received a positive home study report.[3] ECF Nos. 1 at ¶25, 10-1 at ¶ 56.

Concerningly, Respondents admit that ORR submitted the waiver request on August 11, 2026, and those requests are "reviewed on a case-by-case basis upon receipt of a completed sponsor application and once sponsor vetting is completed." ECF No. 10-1 at 18. This directly contradicts their assertion that the sponsorship application became complete only after approval of the Category 1 waiver on August 20, 2026. ECF No. 13-1 at ¶ 6.

Under 45 C.F.R. § 410.1205(b) ORR is required to "adjudicate the completed

[3] Petitioners concede under 45 C.F.R. §410.1205 (b), the completion of a home study may be an unexpected delay.

sponsor application of a parent or legal guardian; [...] within 10 calendar days of receipt of the completed sponsor application, absent an unexpected delay (such as a case that requires completion of a home study)." That did not happen here.

Respondents failed to comply with the strict Regulatory timelines of 45 C.F.R. § 410.1205(b) by failing to adjudicate the petition within 10 days of May 26, 2026, when the sponsor application was submitted, or at the latest, July 9, 2026, when the home study was completed.

III. 45 C.F.R. §410.1207

ORR must conduct "automatic review of all pending sponsor applications . . . within 90 days of an unaccompanied child entering ORR custody." 45 C.F.R. § 410.1207(a). This review is not cursory. ORR supervisory staff must timely resolve the reasons that a release application remains pending and determine possible steps to accelerate the child's safe release. *Id.* ORR must further update potential sponsor *and* child, explain why the process is incomplete, and work with potential sponsors, relevant stakeholders, and ORR to address unresolved portions of the FRP. *Id.*

Respondents contend that they conducted reviews under 45 C.F.R. § 410.1207. but their supplemental declarations and records[4] do not support that assertion. Rather, the documents submitted demonstrate that a Federal Field Specialist ("FFS") participated in ordinary weekly case staffing, between April and July 2026, during which case the cases of all detained minors are discussed. The 90-day review process requires more. First, it requires that *supervisory* ORR staff, not field staff, complete the review. 45 C.F.R. § 410.1207(a). Respondents' materials do not indicate that an *independent supervisor* conducted a review. Further, a case manager must explain to the sponsor *and* child why the process is incomplete and work with sponsor and

[4] ECF Nos. 13-1, 15.

relevant stakeholders to *accelerate* release. 45 C.F.R. § 410.1207(a) (a)-(b). There is no indication in Respondents declaration or records that this type of comprehensive explanation was afforded to either sponsor or Petitioners, other than a mention of a single conversation with the sponsor on April 12, 2026. ECF No. 15.

Additionally, even though Respondents identify "deficiencies" in the sponsor application that needed to be addressed, many of these "requirements" are *ultra vires* and not required under the TVPRA or Regulations. For example, Respondents assert that the sponsorship application was delayed due to lack of an ITIN for an alternate caregiver and by pending DNA testing and results. ECF Nos. 13-1, 15. Neither of these "requirements" are contained in law.

ORR failed to comply with 45 C.F.R. § 410.1207 by not conducting review by a supervisory staff member, failing to fully explain to sponsor and child what steps were still pending, and *creating additional barriers to release.*

PETITION AND REQUESTED RELIEF REMAINS JUSTICIABLE

Respondents released Petitioners, however, their tardy conduct in response to litigation does not eliminate this Court's ability to grant meaningful relief. In addition to a request for immediate release, the petition challenged Respondents' violations of the Fifth Amendment and the TVPRA and expressly requested declaratory relief establishing that Petitioners' prolonged detention in ORR custody was unlawful.[5] ECF No. 1. The Court therefore retains the power to grant "effectual relief" because the controversy remains live.

I. This Court Can Still Grant Effectual Relief

The Supreme Court has long held that a case "becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party".

[5] Petitioners also seek attorneys' fees and further relief as appropriate. *Id.*

Knox v. Serv. Emps. Int'l Union, Loc. 1000, 567 U.S. 298, 307, (2012). And a case is not moot "as long as the parties have a concrete interest, however small, in the outcome of the litigation." *Id.* Even where the plaintiff's immediate injury has abated, courts may decide the legality of past conduct to define constitutional boundaries going forward. *Super Tire Eng'g Co. v. McCorkle*, 416 U.S. 115, 122–23 (1974). District courts in this Circuit routinely retain jurisdiction in immigration and detention cases where petitioners seek declaratory relief for completed statutory or constitutional violations. *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 991 (C.D. Cal. 2018) (finding petitioners claims were not moot because he did "not seek release from detention alone . . . [he also sought] declaratory relief.")

Here, declaratory relief resolves a concrete dispute about whether ORR violated federal law and the Constitution by holding Petitioners in their custody for months without decision, findings, or justification. That question remains unanswered and squarely before the Court.

II. COLLATERAL CONSEQUENCES PRESERVE A LIVE CONTROVERSY

Subsequent release of Petitioners does not erase the completed constitutional injuries inflicted by Respondents' conduct nor does it moot this case. A habeas petition remains live where "collateral consequence[s]" of unlawful detention persists after release and is redressable by the Court. *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007). Those consequences must be actual or imminent, not conjectural or hypothetical. *Id.* Prolonged civil detention, particularly of a child, inflicts completed injuries to liberty and family integrity interests that survive release.

That is what occurred here. Petitioners were detained in ORR custody for 212 days at a young age despite the efforts of their mother to become their sponsor

without any formal finding justifying continued detention. ECF No. 1 at ¶21. For over six months, while ORR delayed reunification for months without explanation, Petitioners spent the better part of a year without their mother. *Id.* Those injuries are concrete, completed, and not remedied by release alone.

Petitioners prolonged detention in ORR custody also constitutes a grave deprivation of liberty with enduring consequences. Freedom from physical restraint is the core protection of the Due Process Clause, and its violation is most acute when imposed on a minor without justification or process. Months of confinement during adolescence disrupts development, education, and emotional stability, while undermining the children's ability to participate in their own case. Release does not repair that harm. The injury flows directly from unlawful detention and remains redressable through declaratory relief.

III. RESPONDENTS' CONDUCT IS CAPABLE OF REPETITION YET EVADES REVIEW

A case is not moot where "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again." *Spencer v. Kemna*, 523 U.S. 1, 17 (1998). This exception applies with particular force where the government's conduct predictably ceases only after litigation begins, preventing judicial review while leaving the underlying practice intact. Here, the challenged conduct, prolonged detention of a child without decision while a sponsor application remains pending, is inherently time-limited in a way that makes full judicial review difficult before the government acts to moot the case through release.

Furthermore, Respondents retain both the authority and demonstrated practice of re-detaining children and re-adjudicating sponsor determinations while immigration

proceedings remain ongoing.[6] Here, Petitioners remain in immigration proceedings and continue to be designated as unaccompanied children ("UC"). As a result, they remain subject to the federal statutory scheme governing the care and custody of UCs, including Respondents' authority over placement, transfer, and custody determinations while those proceedings are pending. Respondents' representation of their present "intent" does not eliminate that legal authority.

IV. THIS COURT HAS RECOGNIZED THAT SUBSEQUENT RELEASE DOES NOT MOOT PETITIONERS'S CLAIMS AND DECLARATORY RELIEF IS APPROPRIATE

In *C.S.M. v. Hernandez*, this Court rejected a mootness argument after ORR released a child petitioner under court order, holding that release did not extinguish the controversy because the child faced future immigration proceedings and retained a concrete interest in habeas relief. No. 5:26-cv-01144-JWH-ACCV, R&R at 2-6 (C.D. Cal. May 13, 2026). The court reasoned that release did not prevent it from granting prospective relief regarding the legality of the detention, and recommended a writ prohibiting re-detention without due process. *Id.* at 3, 9.

The same reasoning applies here. Petitioners seek more than immediate release; they demand a determination that Respondents' prolonged detention violated the TVPRA and the Fifth Amendment, alongside attorneys' fees and other appropriate relief. ECF No. 1 at 28-29. These claims do not disappear upon a strategic post-litigation release, as release alone neither resolves the legality of the challenged conduct nor protects against future unlawful detention.

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[6] Under the Homeland Security Act and the TVPRA, the federal government retains ongoing authority over unaccompanied children while their immigration proceedings remain pending, including authority to take them back into custody and place them with ORR. 6 U.S.C. § 279(a), (b)(1); 8 U.S.C. § 1232(b)(3), (c). The TVPRA expressly contemplates that children may cycle through custody, transfer, and placement decisions while proceedings are ongoing. *Id.*

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court find this matter remains justiciable, find petition is not moot, and grant the declaratory and further relief requested in the Petition.

Dated: August 27, 2026

Respectfully Submitted,

/s/Stephanie Periban Palacios
Stephanie Periban Palacios
Attorney for Petitioner