

**SUPERIOR COURT OF THE [INSERT STATE/JURISDICTION]
FAMILY COURT**

IN THE MATTERS OF :

CHILD #1 : **[INSERT Case No.]**
: **[INSERT Social File No.]**
: **[INSERT Date of Birth]**

CHILD #2 : **[INSERT Case No.]**
[If involving multiple children] : **[INSERT Social File No.]**
: **[INSERT Date of Birth]**

:
:
: **Magistrate Judge (Name)**

**MOTION OPPOSING TERMINATION OF THE PARENT AND CHILD
RELATIONSHIP**

[THE FOLLOWING IS A SAMPLE OF A MOTION USED WHERE A PARENT IS IN DETENTION, BUT CAN ALSO BE ADAPTED AND USED WHERE PARENT HAS RISK OF DETENTION, THREAT OF DETENTION, THREAT OF DETENTION, OR HAS BEEN].

In the best interest of Child #1 (and Child #2) (hereinafter “Child(ren)”) by and through its attorneys, [INSERT ATTORNEY NAME HERE] on behalf of [INSERT ORGANIZATION NAME HERE] hereby opposes the motion set forth by Petitioner for an order terminating the parent and child relationship between Respondents and their natural Mother and Father. In opposition of this motion, Respondent states the following:

1. Child #1 was born on MM DD YYYY and is # years old. [INSERT INFO FOR ADDITIONAL CHILDREN IF APPLICABLE]

2. Before Child(ren) was removed, Child(ren) resided with her birth Mother, [INSERT NAME HERE & WHERE CHILDREN AND FAMILY RESIDED], in Washington, D.C. [OR APPLICABLE STATE/JURISDICTION]
3. Birth Mother, [hereinafter referred to as “Mother”] is actively involved in the lives of her Child(ren) and has lived together at the same physical address with her child(ren) for [INSERT TIME DURATION HERE].
4. Natural Father of Child(ren), [INSERT NAME HERE; IF UNKNOWN INSERT UNKNOWN], is/is not (DEPENDING ON CASE FACTS) involved in Child’s life or in the planning for permanency. His address is [INSERT IF KNOWN].
5. Mother does not have a history with the Child and Family Services Agency (the “Agency”) until the case at hand arose on MM YYYY when Mother was detained based on her immigrant status.
6. Mother does not have any current or former issues with substance abuse [INSERT RELEVANT CASE FACTS WHERE APPLICABLE]
7. The Agency received a child neglect referral in MM YYYY asserting that Mother had abandoned/neglected her child(ren) on [INSERT DATE].
8. The abandonment [INSERT SPECIFIC CLAIM] referral to the “Agency” derived from the fact that Mother was placed in detention and was unable to physically care for her Child(ren) while in the detention facility. [INSERT FACTS that demonstrate immigrant parents efforts before being detained and/or while in detention to arrange for the care of children].

9. Between MM DD YYYY and MM DD YYYY, Mother contacted [or attempted] to contact Child(ren) via telephone, written form and visitation while in the detention facility. [INSERT ALL METHODS OF ATTEMPTED COMMUNICATION].
10. The Agency did not make reasonable efforts towards family reunification prior to pursuing an adoption plan.
11. The Mother wants to be reunited with Child(ren), therefore, a permanency or reunification plan, accessible in her native language and feasible given her detention facility location and rules, would have been followed by the Mother if such a plan was made available to her. [INSERT FACTS AS RELEVANT TO INDIVIDUAL CASE]
12. A termination of the parent and child relationship between Child(ren) and natural mother is contrary to the desire of both the Mother and the child(ren).
13. D.C. Code § 16-2353 [INSERT APPLICABLE STATUTE FROM STATE/JURISDICTION] provides for termination of the parent and child relationship when the termination is in the best interest of the child(ren).
14. It is not in Child(ren)'s best interest to have the relationship with his Mother severed.
15. It is in Child(ren)'s best interest that this Motion for the termination of the parent and child relationship be denied.

WHEREFORE, for the foregoing reasons, the Respondent urges that the Order terminating the parent and child relationship and such other and further relief as may be requested in the Motion be denied by the Court.

Respectfully submitted,

[INSERT ATTORNEY NAME]
[INSERT ATTORNEY ADDRESS]
[STATE BAR #]

Attorney Name, Bar #
[INSERT FIRM NAME]
[INSERT FIRM ADDRESS]
[INSERT FIRM PHONE]

Date: MM DD YYYY

**SUPERIOR COURT OF THE [INSERT STATE/JURISDICTION]
FAMILY COURT**

IN THE MATTERS OF	:	
	:	
CHILD #1	:	[INSERT Case No.]
	:	[INSERT Social File No.]
	:	[INSERT Date of Birth]
	:	
CHILD #2	:	[INSERT Case No.]
	:	[INSERT Social File No.]
	:	[INSERT Date of Birth]
	:	
	:	
	:	Magistrate Judge (Name)

**MEMORANDUM OF POINTS AND AUTHORITIES OPPOSING MOTION FOR
TERMINATION OF THE PARENT AND CHILD RELATIONSHIP**

**I. This Court has Jurisdiction Over Termination of the Parent
and Child Relationship**

D.C. Code § 16-2354(b) provides that a Motion for the Termination of the Parent and Child Relationship may be filed six months after an adjudication of neglect and when the child(ren) is in the court-ordered custody of a department, agency, institution, or person other than the parent. [SUBSTITUTE RELEVANT STATE/JURISDICTIONAL LAW].

Child(ren) was placed in foster care on MM DD YYYY. More than six months have passed since an adjudication of neglect in this case, and the Respondent [hereinafter “Mother”] continues to reside in detention/has been released from detention/has been deported [INSERT CASE SPECIFIC FACTS] and is affirmatively seeking reunification with her child(ren). Therefore, the Court has jurisdiction to hear this Motion for the Termination of the Parent and Child Relationship.

II. The Family Court Should Not Terminate the Parent and Child Relationship When Termination Is Not In the Best Interest of the Child(ren).

The Mother asserts that termination of the parent and child relationship is not appropriate in this case. Child(ren) has been placed in a group home or foster care due to the Mother being detained for her immigration status. There is no relationship between Mother's immigrant detention and Mother's ability to adequately parent. Mother has been and is planning to continue to be involved in Child(ren)'s life and in the planning for permanency and reunification.

[INSERT FACTS ABOUT FATHER AS APPROPRIATE] Natural Father of Child(ren), [INSERT natural father's name here] is not involved in Child(ren)'s life or in the planning for permanency. His address is [INSERT HERE IF KNOWN]. He is believed to be currently residing in [INSERT STATE/JURISDICTION]. To the extent that the mother's abuser participated in having her detained that should be discussed as well.]

Child(ren) deserves an opportunity to grow up in a stable, permanent, and loving environment with Child(ren)'s biological parent absent any indication of suspected abuse. All of Child(ren)'s needs were being met in the home prior to Mother being detained. The state concedes and has not alleged or proven any facts or signs of abuse by Mother to Child(ren) and that the only reason for Child(ren)'s removal is Mother's confinement in immigration detention. It is conceded that there are no signs of abuse by Mother to Child(ren) and that the only reason for Child(ren)'s removal is Mother's confinement in detention. Mother has consistently provided a nurturing and healthy environment in the past, and has asserted that she can continue to provide such an environment in the future. Furthermore, the Mother and Child(ren) both are being

adversely affected by the separation from one another and desire to be back together subsequent to Mother's release from detention. The termination of parental rights is therefore not in the best interests of the child(ren).

III. Mother Did Not Abandon Child(ren) When She Was Detained

Mother did not abandon Child(ren) or her legal parental rights to Child(ren) when she was involuntarily placed in detention due to her immigrant status.

Abandonment is defined as a settled purpose to forego all parental duties and to relinquish all parental claims to a child. The abandonment must be willful in order to constitute a ground for involuntary termination of parental rights. D.C. Code § 16-304(d); *Petition of C.E.H.*, 391 A.2d 1370 (1978). The Mother did not choose to forego her legal parental rights to her child(ren); it was a consequence of being detained. There was no willful act on the part of Mother to separate herself from Child(ren) and therefore, there was no act of abandonment.

Mother's temporary detained state is not sufficient to constitute grounds for a termination of parental rights. Although there is currently no available binding law that governs the specific facts at issue, the case at bar is relatable to cases involving incarcerated parents whose parental rights are the subject of litigation. *In the Matter of W.T.L.*, 825 A.2d 892 (2002), an incarcerated mother, battling substance abuse issues, made no effort to contact her child during period of incarceration including not notifying caretaker of child that mother would not be returning to pick up her child because she was incarcerated. The Court terminated parental rights but did so because the mother was not diligent in her efforts to communicate with the child, not because the mother was incarcerated. The Court further stated, "An incarcerated parent alone is not sufficient

grounds for terminating a parent's legal rights to their child." Id. at 894. The Court based its conclusion on the surrounding factors in addition to incarceration, such as; mother's substance abuse issues, other forms of neglect at home and incarceration with out communication to child.

Here, Mother was detained and alleged to have abandoned Child(ren), however, according to In the Matter of W.T.L., incarceration, or in the case at issue, detention, alone is not sufficient to constitute grounds for termination of parental rights. In considering the totality of the circumstances, Mother has no substance abuse history, Child(ren) was not neglected and Mother consistently communicated with Child(ren) during period of detention. Since an individual's immigrant status does not hinder a parent's ability to parent or render a parent negligent or abusive, Mother's detained state should be outweighed by Mother's proven ability to effectively parent. Mother's parental rights should not be terminated based on Mother's detention status.

IV. Consideration of the Factors in D.C. Code § 16-2353 [INSERT STATUTE FROM RELEVANT STATE/JURISDICTION] Compels a Finding that Termination of the Parent and Child Relationship Is Not in Child(ren)'s Best Interest

In determining whether termination of the parent and child relationship is in the child(ren)'s best interests, the Court is required to consider the following factors:

- (1) The child's need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;
- (2) The physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child; the decisive consideration being the physical, mental and emotional needs of the child;
- (3) The quality of the interaction and interrelationship of the child with his or her parent, siblings, relative[s], and/or caretakers, including the foster parent;

(3A) The child was left by his or her parent, guardian, or custodian in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child was ready for discharge from the hospital, and the parent, guardian, or custodian of the child has not taken and action or made and effort to maintain a parental, guardianship or custodial relationship or contact with the child;

(4) To the extent feasible, the child's opinion of his or her own best interests in the matter; and

(5) Evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided pursuant to section 106(a) of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; Section 4-1301.06(a)). Evidence of continued drug activity shall be given great weight.

D.C. Code § 16-2353(b) (2001).

This is a case that involves a loving family who were separated not because of abuse or neglect but because of Mother's immigrant status, which led to detention and thus the child(ren)'s placement in foster care. Mother has never conceded or demonstrated that she is unable to effectively provide care for Child(ren), nor have Mother's actions demonstrated that she is anything less than a nurturing parent. [INSERT FACTS THAT DEMONSTRATE THE MOTHER'S ROLE IN CARING AND NURTURING HER CHILD(REN)]. From the date the Mother was placed in detention in MM YYYY, she made virtually every effort to communicate with Child(ren) or otherwise be involved in Child(ren)'s life. [INSERT FACTS THAT DEMONSTRATE SUCH EFFORTS] In short, the alleged abandonment/neglect claim is based on Mother being involuntarily placed in detention and forced to separate from Child(ren). The alleged abandonment claim is a result of Mother's confinement and not Mother's desire or willful acts. When the Court considers the totality of the

circumstances, based on an analysis of the above factors, it can reach no other conclusion but that the termination of parental rights is not in Child(ren)'s best interests.

A. The Birth Mother Is Able to Meet The Child's Need for Continuity of Care in a Stable and Permanent Home

From the Child(ren)'s birth until the date Mother was detained and separated from her Child(ren) against her will, Mother has demonstrated a strong ability to provide the Child(ren) with a stable and loving home and permanent environment. The only instance where the Mother was unable to provide this type of lifestyle for her Child(ren) has been while she has been detained and not physically near her child(ren) to care for the day-to-day care and routine tasks. Upon being released from detention, Mother's ability to care for Child(ren) remains as it was prior to Mother's confinement and Child(ren)'s removal. [INSERT SPECIFIC FACTS SUPPORTING STABILITY THE MOTHER PROVIDED FOR CHILD PRIOR TO REMOVAL AND INCLUDE STEPS MOTHER TOOK TO SET UP PROVISIONS TO CARE FOR HER CHILDREN SHOULD SHE EVER BE DETAINED].

Although Child(ren) is presently residing with [INSERT FOSTER FAMILY/INSTITUTION] in a safe environment, Child(ren) is emotionally better off to be united with Child(ren)'s natural Mother as Mother is a loving and nurturing parent. [INSERT ANY FACTS DEMONSTRATING THAT MOTHER HAS EITHER; 1) APPLIED FOR IMMIGRATION STATUS OR 2) HAS MADE ARRANGEMENTS TO TAKE CHILD(REN) WITH HER IF DEPORTED].

B. The Child(ren)'s Birth Mother Is Able to Meet The Child(ren)'s Physical, Mental, and Emotional Needs

Mother has demonstrated (prior to detention) that she is more than able to meet the needs of Child(ren)'s physical, mental and emotional needs. First and foremost,

Mother provided a safe and permanent environment for Child(ren) prior to being detained. There is no evidence of Mother willfully abandoning her parental responsibilities or permissively accepting the temporarily relinquishment of parental responsibilities while in detention. Indeed, Mother is pursuing reunification and seeks to have her parental responsibilities affirmatively restored subsequent to her release from detention. Moreover, Mother provides emotional and mental nurturing for Child(ren), which is a stronger bond than would develop between a Child and foster parent. Terminating the parent and child relationship would further emotionally and mentally harm Child(ren) and thus, it is not in the best interest of Child(ren) to terminate the relationship between Child(ren) and Mother.

C. The Presence of Consistent and Reliable Interaction or Relationship Between Child(ren) and Mother Demonstrates a Lack of Support for Terminating the Parent and Child Relationship.

Mother has had consistent contact with Child(ren) since MM DD YYYY the date Mother was detained. [INSERT RELEVANT FACTS OF MOTHER'S CONTINUED COMMUNICATION OR EFFORTS TO COMMUNICATE WITH CHILD] The presence of all consistent and reliable interaction or relationship between Child(ren) and Mother provides another reason for the Court to deny this motion.

D. The Child(ren) Wants to Remain with Birth Mother.

The statute requires the Court give consideration to the child's opinion to the extent feasible. [INSERT SPECIFIC FACTS DEPENDING ON CHILD'S AGE] In this case, Child(ren) is [above/under] the age of consent and is [likely/unlikely] to understand this concept sufficiently to offer an opinion. Child(ren) wants to be reunited with Mother and would be emotionally distraught if the relationship between Mother and Child(ren) was severed.

E. There is No Evidence of Continued or Past Drug-Related Activity in the Home.

Mother does not have substance abuse problems. In addition, Child(ren) has not been subjected in either the past or present to any drug related behavior in the home. [If Mother has a history of drug abuse problems, discuss efforts to remedy problem.]

CONCLUSION

The Respondent respectfully submits that, based on the above factors, the Court should not terminate the parent and child relationship between Child(ren) and Mother.

WHEREFORE, the Respondent hereby moves this Court to enter the following order:

1. That the parent and child relationship between Child and Child's birth mother, Mother, is not terminated; and
2. That such other and further relief as may be just and proper be granted.

Respectfully submitted,

[INSERT ATTORNEY NAME]
[INSERT ATTORNEY TITLE]
[DIVISION]

[INSERT ATTORNEY NAME] Bar #
[INSERT POSITION TITLE]
[INSERT FIRM NAME]
[INSERT ATTORNEY ADDRESS AND TELEPHONE]

Dated: MM DD YYYY

CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of Respondents Motion Opposing Termination of Parent and Child Relationship. Petitioner [INSERT ADDRESS] with proper affixed postage on [INSERT DATE].

[INSERT ATTORNEY NAME]

[STATE BAR #]