UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANGELICA S., *et al.*, Plaintiffs, v. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	No. 1:25-cv-01405 (DLF)

REPLY IN SUPPORT OF CLASS CERTIFICATION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES, REGULATIONS, AND RULES

OTHER AUTHORITIES

**indicates authority which counsel chiefly relies*

INTRODUCTION

On June 9, 2025, this Court provisionally granted class certification in the course of granting in part and denying in part Plaintiffs' motion for a preliminary injunction. Mem. Op. on Prelim. Inj., ECF No. 35 ("PI Op."). Class treatment of all Plaintiffs' claims—including the claim on which the preliminary injunction is based and the other claims in the Complaint—is similarly appropriate as this case progresses toward final judgment. Contrary to Defendants' contentions, the proposed class meets the commonality and typicality requirements of Rule 23. Plaintiffs challenge generally applicable policies of the Office of Refugee Resettlement (ORR), allege common legal claims that will require common proof, and seek common relief that will resolve the issues in this case for all class members. Defendants concede that the proposed class is sufficiently numerous and that the class representatives are adequate. Defs.' Opp'n to Class Certification at 19 n.2, ECF No. 31 ("Opp'n").

Furthermore, most of Plaintiffs' legal claims—including their claims against the Interim Final Rule (IFR) and the claim that ORR's new proof of identification and proof of income requirements are contrary to multiple federal statutes and regulations—do not depend on whether children entered custody before the new documentation requirements were imposed. The class representatives are therefore typical of *all* children in the proposed class as to these claims. Children continue to be transferred to ORR custody from the U.S. border as well as internal immigration enforcement actions, where they are subject to Defendants' unlawful policies and separated from their families.

Nonetheless, if the Court determines that the timing of entry into ORR custody prevents Plaintiffs' typicality for the legal theories related to reliance interests, Plaintiffs request the Court certify a full class that mirrors the Court's provisional certification definition without the limiting

date of April 22, 2025, and a "reliance" subclass identical to the provisional class certified by the Court on June 9, 2025. Consistent with the Court's "discretion to redefine and reshape the proposed class," including to "divide the proposed class into subclasses," *Wagner v. Taylor*, 836 F.2d 578, 589-90 (D.C. Cir. 1987), Plaintiffs propose the following definitions:

> **Class:** All unaccompanied children who are or will be in the custody of HHS and who (a) have or had a potential sponsor who has been identified; and (b) the sponsor's family reunification application has been denied, closed, withdrawn, delayed, or cannot be completed because the sponsor is missing documents newly required on or after March 7, 2025.
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> **Reliance subclass:** All unaccompanied children who were in or transferred to the custody of HHS on or before April 22, 2025, and who (a) have or had a potential sponsor who has been identified; and (b) the sponsor's family reunification application has been denied, closed, withdrawn, delayed, or cannot be completed because the sponsor is missing documents newly required on or after March 7, 2025.

Certification of both a class and subclass can resolve any typicality concerns regarding Plaintiffs' claim that ORR's new documentation policies failed to consider reliance interests while preserving the option for generally applicable relief to address Plaintiffs' other legal claims and the ongoing harm the policies create. Importantly, certifying both a class and subclass would preserve the benefits of class certification by permitting efficient resolution of all Plaintiffs' legal claims and avoiding the risk of inconsistent judgments as to whether ORR's documentation policies are contrary to applicable regulations and statutes. Additionally, Plaintiffs respectfully maintain that they will be able to establish standing to challenge the IFR because the IFR is critical to their claim that the documentation requirements violate ORR's pre-IFR regulations.

The current named Plaintiffs are adequate to represent both the class and the subclass for the reasons explained in Plaintiffs' prior briefing and because their interests do not conflict. However, if the Court requires a class representative who entered ORR custody after April 22,

2025, Plaintiffs should be permitted to amend their Complaint to include such a plaintiff without prejudice to their pending class certification motion.

RELEVANT BACKGROUND

As relevant to this litigation, all children in ORR custody are subject to the same generally applicable statutes, regulations, policies, and procedures. This is true regardless of whether a child has a parent in the United States,[1] and regardless of whether the child was taken into custody at the border or detained by interior immigration enforcement actions. *See, e.g.*, Declaration of Toby Biswas ¶¶ 2, 25, ECF No. 21-1 ("Biswas Decl."); Declaration of Leo B. ¶¶ 3, 6-9, ECF No. 9-10 ("Leo B. Decl."); *see also* Priscilla Alvarez, *Trump administration takes hundreds of migrant children out of their homes, into government custody*, CNN (June 4, 2025), www.cnn.com/2024/06/04/politics/migrant-children-families-government-custody (describing, among other things, unaccompanied children being transferred back into ORR custody following immigration enforcement action against previously approved sponsors).

The ORR Foundational Rule codifies ORR's general "policies and requirements concerning the placement, care, and services provided to unaccompanied children in Federal custody by reason of their immigration status and referred to ORR." 89 Fed. Reg. 34384, 34384 (2024). It requires ORR to "release a child from its custody without unnecessary delay," with

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[1] By default, U.S. Customs and Border Protection typically first designates a child as an unaccompanied child upon apprehension when a child enters the United States without a parent or legal guardian, even if a child's parent(s) are already in the United States. *See, e.g.*, William Kandel, Cong. Rsch. Serv., R 43599, *Unaccompanied Alien Children: An Overview* 1 (last updated Sept. 2024). For various legal and logistical reasons, once a child is designated as an unaccompanied child, they have typically maintained that designation following release from ORR custody to a sponsor—including to a parent or guardian—throughout their immigration proceedings. *See, e.g.*, *J.O.P. v. U.S. Dep't. of Homeland Sec.*, 409 F. Supp. 3d 367, 372-74 (D. Md. 2019).

preference to a parent, legal guardian, or adult relative. 45 C.F.R. § 410.1201(a). It also requires ORR to "adjudicate the completed sponsor application of a parent or legal guardian" or other close relative within 10 or 14 days, depending on the closeness of the relationship, absent an unexpected delay. 45 C.F.R § 410.1205(b). Until the promulgation of the Interim Final Rule (IFR), it also prohibited ORR from denying sponsors based solely on immigration status. 45 C.F.R. § 410.1201(b) (2024).

Contrary to Defendants' implication that the Foundational Rule itself must lay out specific document requirements and reunification details in order for plaintiff children to rely on it, Opp'n at 26, the Foundational Rule does not purport to "govern or describe the entire [ORR] program." 89 Fed. Reg. 34390. ORR made clear the Foundational Rule sets out general requirements and "[w]here the regulations contain less detail, subregulatory guidance will provide specific guidance on requirements." *Id.* at 34391; *see also id.* at 34390. Although the Foundational Rule does not specify the particular types of documents that sponsors must provide, it establishes the basic framework for which sponsor requirements are necessary, discretionary, or impermissible. And the basic framework set forth in the Foundational Rule as it existed before the publication of the IFR is inconsistent with ORR's new identification and proof of income policies.

ARGUMENT

I. The Proposed Class Presents Common Issues of Law and Fact

The commonality requirement of Rule 23 requires there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Rule 23(a)(2) is satisfied if *resolution of each plaintiff's claim* turns on a common *question* (or questions) and if common *proof* leads to a common *answer* (or answers) to that question for each plaintiff." *Brown v. District of Columbia*, 928 F.3d 1070, 1080 (D.C. Cir. 2019) (emphasis in original).

Here, the common questions are whether the IFR and ORR's new identification and proof of income requirements violate the Administrative Procedure Act. Compl. ¶¶ 110-158, ECF No. 1. Plaintiffs seek common answers as to the legality of the IFR and new documentation requirements; these answers do not depend on child-specific proof. Compl. at 47-48 (Prayer for Relief). The final judgment will determine for *all* class members what requirements their potential sponsors must satisfy to be eligible for sponsorship and what risks their potential sponsors, household members, and alternate caregivers must take to apply to sponsor them.

Defendants' arguments against commonality fail to grapple with the relief Plaintiffs actually request in this litigation, instead pointing to the need for fact-specific determinations as to an individual child's release to a sponsor. Opp'n at 24-25. But, as this Court has explained, PI Op. at 21, 23-24, Plaintiffs do not seek an order of release, and the resolution of Plaintiffs' *legal claims* in this matter does not require a positive release determination from ORR. *See Brown*, 928 F.3d at 1082-83. The key questions in this case are whether ORR's new IFR regulation and its new identification and proof-of-income policies are lawful, such that ORR is permitted to rely on them in adjudicating sponsorship applications. That there may be individual differences in the downstream results of the Court's common answers to these common questions does not defeat commonality. *See, e.g.*, *Davis v. U.S. Parole Comm'n*, No. 24-1312, 2025 WL 457779, at *4, *6-8 (D.D.C. Feb. 11, 2025).

Similarly, that some children are in different stages of the sponsorship process or are potentially eligible for an exception does not undermine commonality. The IFR and documentation requirements are generally applicable policies that have significant consequences for all proposed class members, and any individual differences in procedural posture do not affect the common questions or common answers in this case. *See Davis*, 2025 WL 457779, at *5-6; *Ramirez v. U.S.*

Immigr. & Customs Enf't, 338 F. Supp. 3d 1, 45-46 (D.D.C. 2018). Even children in the most favorable position—whose parents are eligible for an exception—are significantly affected by Defendants' policies. Eduardo M. and his 7-year-old brother, for example, were detained for two and a half additional months because of the new identification and proof of income policies before their mother was granted an exception. Reply Supp. Mot. for Prelim. Inj. at 4 n.1, ECF No. 27 ("PI Reply"). Liam W. remains detained because his mother was not given an exception. Declaration of Sofia W. ¶ 7, ECF No. 9-14 ("Sofia W. Decl."). "[T]he Government's divide-and-conquer approach will not do . . . 'where the lawsuit challenges a system-wide practice or policy that affects all the putative class members.'" *Davis*, 2025 WL 457779, at *5 (quoting *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001)).

II. Named Plaintiffs' Claims Are Typical of the Class and Any Typicality Concerns Can Be Resolved Through Creation of a Subclass

Defendants present four arguments in an attempt to attack typicality. First, Defendants assert that because every individual putative class representative does not have a live claim against all of the challenged regulations and policies, named Plaintiffs' claims are not typical. Opp'n at 26. Second, Defendants further assert that the timing of named Plaintiffs' entry into custody undermines the typicality of their claims. *Id.* at 27. Third, Defendants also challenge the justiciability of the class representatives, claiming that none of the named plaintiffs have standing to challenge the IFR. And fourth, Defendants argue that the release of a named Plaintiff renders that Plaintiff's claim moot and therefore not typical of the class. *Id.* at 26-27. None of these arguments prevent class certification.

Rule 23(a)(3)'s typicality requirement "is ordinarily met 'if the claims or defenses of the representatives and the members of the class stem from a single event or a unitary course of

conduct, *or* if they are based on the same legal or remedial theory.'" *J.D. v. Azar*, 925 F.3d 1291, 1322 (D.C. Cir. 2019) (quoting 7A Wright et al., *Federal Practice and Procedure* § 1764) (emphasis added). Like the commonality requirement, the typicality requirement serves "to determine whether a class action is practical and whether the representative plaintiffs' claims are sufficiently interrelated with the class claims to protect absent class members." *Black Lives Matter D.C. v. United States*, No. 20-cv-1469, 2025 WL 823903, at *14 (D.D.C. Mar. 14, 2025) (quoting *Damus v. Nielsen*, 313 F. Supp. 3d 317, 331 (D.D.C. 2018)). Here, the class representatives and all proposed class members are subject to the IFR and ORR's new documentation policies. Defendants have not identified any feature of the class representatives that would pose any conflict with the interests of absent class members or otherwise undermine their representation of absent class members.

A. Named Plaintiffs Collectively Present Typical Claims

As explained as to commonality, the IFR and ORR's new proof of identification and proof of income policies are generally applicable to all putative class members and determine the risks and requirements of sponsorship for all children in ORR custody.

Although it is possible that not every single putative class member has standing as to every challenged policy, this does not defeat class certification. "[A]ny suggestion that absent class members (unlike joined plaintiffs) must themselves demonstrate standing is belied by the accepted understanding that only one of the class *representatives* needs standing." *J.D.*, 925 F.3d at 1324. "Even if some class members are uninterested in the claims because they are not among the 'members of the class' against whom the challenged policy 'has taken effect' in a way that matters to them, the class definition need not exclude them." *Id.* at 1315 (citing Notes of Advisory Committee on Rules—1966 Amendment, 28 U.S.C. App. at 812 (2012)); *see also D.L. v. District*

of Columbia, 302 F.R.D. 1, 14 (D.D.C. 2013) ("The Rule requires that the named plaintiffs' claims be typical, not identical, and as such, this Court has found the typicality requirement satisfied where 'at least one named plaintiff has a claim relating to each challenged practice for which relief is [sought].'") (internal citation omitted).

B. Named Plaintiffs' Claims Are Typical Regardless of Their Date of Entry into ORR Custody

Defendants challenge typicality based on the timing of each class representative's entry into ORR custody. Opp'n at 27. Their argument focuses exclusively on the portions of Plaintiffs' claims that relate to reliance and impermissible retroactivity. Opp'n at 27. However, all class members in the general class raise additional legal claims as to the lawfulness of the IFR and the new proof of identification and proof of income requirements that do not rely on either retroactivity or reliance interests. *See, e.g.*, Compl. ¶¶ 110-128, 133-140, 142-147, 153-158; Mem. Supp. Pls.' Mot. for Prelim. Inj. at 15-37, ECF No. 10-1 ("PI Mem.") (excepting one paragraph on page 36). With regard to these legal theories, the class representatives and putative class members have the same legal claims regardless of what date the child enters ORR custody.

Even if the Court finds that the date on which a child entered custody *could* affect typicality, if the Court is not yet certain about the effect of the date of entry, then exclusion from the class based on this uncertainty is unnecessary. *See* PI Op. at 22 (noting the Defendants' acknowledgement "that arriving 'around the time' of the new policy, even if slightly after, would engender reliance interests."); *Thorpe v. District of Columbia*, 303 F.R.D. 120, 141 (D.D.C. 2014) (approving proposed class despite the fact that Defendants argued it "'could include a substantial number of people who have no claim under the theory advanced by the named plaintiff'"). As the Court notes in its recent Order, it may revisit the issue of class certification "as the record

develops." PI Op. at 22; *see also* Fed. R. Civ. P. 23(c)(1)(C); *In re Brentwood Assocs. Ltd. P'ship*, No. 18-8001, 2018 U.S. App. LEXIS 13044, at *1 (D.C. Cir. May 16, 2018).

Although reliance interests are one aspect of Plaintiffs' claim that ORR's new documentation requirements are arbitrary and capricious, this claim does not depend exclusively on reliance interests or retroactivity. For example, Plaintiffs also allege that the documentation requirements are arbitrary and capricious because they "relied on factors that Congress did not intend the agency to consider, failed to articulate a reasoned explanation for their decision, failed to consider reasonable alternatives to the new requirements . . . and offered explanations for their decisions which run counter to the evidence before the agency." Complaint ¶ 151; *see also* PI Mem. at 33-35. Even as to the Plaintiffs' reliance argument, it is unnecessary for every class member to establish that ORR's failure to consider reliance interests is "directly tied to the members' specific injuries." *Sierra Club v. FERC*, 867 F.3d 1357, 1366 (D.C. Cir. 2017). It is sufficient that class members are injured by ORR's new documentation policies, and their injuries would be redressed by vacatur of those requirements "on the basis of *any* defect" in the policies. *Id.*; *see also Dep't. of Homeland Sec. v. Regents of Univ. of Cal.*, 591 U.S. 1, 8, 30-33 (2022) (vacatur of DACA rescission memorandum was necessary because memorandum was arbitrary and capricious).

To the extent the Court remains concerned that reliance and retroactivity related arguments upset typicality, that concern can and should be addressed by creating a reliance subclass limited to children who entered ORR custody on or before April 22, 2025, specifically to address their temporal claims. *See, e.g.*, *D.L. v. District of Columbia*, 860 F.3d 713, 724-25 (D.C. Cir. 2017) (finding no error in district court finding of typicality after court certified subclasses and found "a

'sufficient nexus' between the claims of the named plaintiffs and the claims of the members of their respective subclasses.").

For Plaintiffs' other legal claims, however, a broader class is justified and necessary because the legal arguments of the class representatives and the proposed class members are identical. Furthermore, limiting the whole of the class to children who entered custody before April 22, 2025, will leave children who later enter ORR custody from the border or interior suffering from the same injuries as the class, due to the same unlawful policies. It will furthermore lead to bifurcated policies and rules in an already complex nation-wide system even as to claims that do not raise or rely exclusively on reliance concerns. Finally, it could result in children who are taken back into ORR custody in the future—such as Leo B.—being prevented from reunifying with their otherwise suitable sponsors with whom they had previously been living. *Cf.* PI Op. at 15-16.

C. Plaintiffs Can Establish Standing to Challenge the IFR

Defendants argue that Plaintiffs lack standing to challenge the IFR and therefore do not meet the typicality requirement. Opp'n at 26. Although the Court preliminarily agreed that the Plaintiffs lack standing as to the IFR, PI Op. at 11-12, this did not defeat provisional class certification. *Id.* Plaintiffs respectfully maintain that they can establish standing to challenge the IFR, especially with regard to their claim that the new documentation requirements violate the Foundational Rule's pre-IFR prohibition on sponsor disqualification based solely on immigration status. *See* Compl. ¶¶ 137-139.

"To establish Article III standing, a plaintiff must show '(i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief.'" *Pietersen v. U.S. Dep't of State*, No. 24-5092, 2025 WL 1536434, at *5 (D.C. Cir. May 30, 2025). Courts

must assume that Plaintiffs' claims are "correct on the merits . . . for standing purposes." *Sierra Club v. EPA,* 699 F.3d 530, 533 (D.C. Cir. 2012).

As the Court preliminarily determined, the named class representatives have established ongoing injury from ORR's new proof of identification and proof of income policies. *See* PI Op. at 8-9. Plaintiffs have also established injury traceable to the IFR. ORR was required to follow its own regulation in the Foundational Rule prohibiting ORR from disqualifying sponsors based solely on immigration status. Plaintiffs allege that, under the Foundational Rule, ORR was not permitted to adopt its new proof of identification and proof of income policies because the documentation required is inaccessible to sponsors without certain types of lawful immigration status. *See* Compl. ¶¶ 137-139 (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)); PI Mem. at 28-30. If Plaintiffs are correct on the merits that the documentation policies violate the pre-IFR Foundational Rule, then the only obstacle to relief on this claim is the unlawful IFR.

A court order vacating the IFR as procedurally and substantively invalid would remedy Plaintiffs' injuries. Without the IFR, ORR would still be bound by the Foundational Rule, and vacatur of the challenged documentation policies would also be required. *See, e.g.*, *Int'l Primate Prot. League v. Admins. of Tulane Educ. Fund*, 500 U.S. 72, 77 (1991) (holding that plaintiffs' "injury is likely to be redressed if petitioners prevail on their claim because, if removal is found to have been improper under § 1442(a)(1), the federal courts will lose subject matter jurisdiction and the 'case shall be remanded.' 28 U.S.C. § 1447(c)") (internal quotation marks omitted); *Pietersen*, 2025 WL 1536434, at *4-5 (holding that plaintiff had standing to challenge State Department Manual under "relaxed" redressability standard for procedural violations because Manual's standards were applicable to his case, even if plaintiff did not show likelihood of obtaining visa).

On the other hand, if the IFR remains operative, Plaintiffs cannot prevail on their *Accardi* claim that the documentation requirements unlawfully deny sponsors based solely on immigration status, contrary to the agency's own regulations (the pre-IFR Foundational Rule). For this reason, Count V in Plaintiffs' Complaint cites back to the prior counts challenging the IFR. Compl. ¶ 137. That the class representatives could obtain the same relief (vacatur of the documentation policies) through alternative legal claims against ORR's documentation requirements does not undermine redressability for the specific claim at issue here. "[A] plaintiff's standing must be analyzed with reference to the particular claim made." *Cath. Soc. Serv. v. Shalala*, 12 F.3d 1123, 1125 (D.C. Cir. 1994); *see also Int'l Primate Prot. League*, 500 U.S. at 77 ("[T]he standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication *of the particular claims asserted.*") (internal citation omitted). There is no guarantee that Plaintiffs will ultimately prevail on their alternative legal theories challenging the documentation requirements and Plaintiffs maintain a concrete interest in adjudication of *each* of their legal claims.

Because Plaintiffs have a concrete interest in vacatur of the IFR, they have standing as to all their legal claims against the validity of the IFR. *See Sierra Club v. FERC*, 867 F.3d at 1366; *Ascendium Educ. Solutions, Inc. v. Cardona*, 78 F.4th 470, 478 (D.C. Cir. 2023) ("Ascendium thus has standing to bring any claims that could lead to the Rule's vacatur, like the ones it raises here."); *Mozilla Corp. v. FCC*, 940 F.3d 1, 46-47 (D.C. Cir. 2019) ("When a party alleges concrete injury from promulgation of an agency rule, it has standing to challenge essential components of that rule, invoked by the agency to justify the ultimate action, even if they are not directly linked to Petitioners' injuries.").

Furthermore, Defendants should not be able to insulate themselves from legal challenges by flouting administrative law rules and promulgating policies in the wrong order. That ORR changed its subregulatory policy by requiring documents only available to individuals with certain lawful immigration status *before* it made any change to the regulation forbidding it from doing just that simply shows that the identification policy was unlawfully promulgated. It is not an indication that the IFR and the new document requirements are unrelated. Rather, for all children in ORR custody, the same common questions, proof, and answer regarding the legality of the IFR can resolve issues of the class. *Brown*, 928 F.3d at 1080.

D. A Plaintiff's Release from Custody Does Not Impede Them from Serving as a Class Representative

Defendants incorrectly claim that Eduardo M.'s [2] claims are moot and therefore neither common nor typical. Opp'n at 26. Under well-established precedent, Eduardo M. continues to have standing as a putative class representative. Eduardo M. and his brother's release to their mother following the filing of this litigation and Plaintiffs' motions for class certification and preliminary injunction does not undermine his standing as a putative class representative.

First, as with all named plaintiffs, the claims of released class representatives are "so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires[,]" triggering the "'relation back' doctrine . . . to preserve the merits of the case for judicial resolution." *Cty. Of*

[2] Plaintiffs' counsel learned on June 10, 2025, that Xavier L. has also been released from custody to his aunt, with whom he sought release after his mother had been disqualified due to lack of newly required identity and income documentation. Declaration of Ximena L. ¶¶ 9-11, ECF No. 9-15 ("Ximena L. Decl."); Declaration of Xavier L. ¶ 6, ECF No. 9-11 ("Xavier L. Decl."). These arguments also apply to him, and to any named class representative who is released to a sponsor.

Riverside v. McLaughlin, 500 U.S. 44, 52 (1991) (internal citations omitted). "[T]he 'inherently transitory' exception to mootness requires [the court] to determine (i) whether the individual claim might end before the district court has a reasonable amount of time to decide class certification, and (ii) whether some class members will retain a live claim at every stage of litigation." *J.D.*, 925 F.3d at 1311. "An affirmative answer to both questions ordinarily will suffice to trigger relation back." *Id.*; *see also id.* at 1308 (inherently transitory claim "may 'relate back' to the filing of the complaint") (internal citation omitted).

The D.C. Circuit has previously held that children in ORR custody satisfy the first criteria because their length of time in custody "is uncertain and unpredictable," children generally remain in custody for only a few months, the government could release the child to a sponsor at any time, and a child could turn 18 or seek voluntary departure. *Id.* (internal citation omitted). As to the second question, it is clear that at least some members of the proposed class will retain live claims throughout the litigation because thousands of children remain in ORR custody. *See, e.g.*, Compl. ¶¶ 54-55; Mem. Supp. Pls.' Mot. for Class Certification at 3-4, 11-13, ECF No. 9-1 ("Class Certification Mem."). This Court, like other courts in this circuit, should relate released child plaintiffs' standing back to the filing of the Complaint on May 8, 2025, and/or the Motion for Class Certification on May 9, 2025, and permit each one to continue to represent the proposed class. *See, e.g.*, *R.I.L.-R. v. Johnson*, 80 F. Supp. 3d 164, 183 (D.D.C. 2015); *Thorpe*, 916 F. Supp. 2d at 66-67; *D.L.*, 302 F.R.D. at 20.

Second, "[g]ranting relief to individual plaintiffs does not moot [] a class action claim" challenging systematic policies that create class-wide harm. *Samuels v. District of Columbia*, 770 F.2d 184, 193 n.5 (D.C. Cir. 1985). The Supreme Court recognizes that "[r]equiring multiple plaintiffs to bring separate actions, which effectively could be 'picked off' by a defendant's tender

of judgment before an affirmative ruling on class certification could be obtained, obviously would frustrate the objectives of class actions." *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 339 (1980); *see also A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1369-70 (2025) ("[W]e reject the proposition that a class-action defendant may defeat class treatment, if it is otherwise proper, by promising as a matter of grace to treat named plaintiffs differently.").

For these reasons, any named plaintiff who is ultimately released from custody continues to share sufficient commonality and typicality with the class to serve as a class representative.[3]

III. The Proposed Class is Appropriately Defined and Not Overbroad

In challenging the definiteness and ascertainability of the proposed class, Defendants argue the class is overbroad under Rule 23(b)(2) because "it includes, or potentially includes" class members "who have not suffered, or will not suffer," the same injury or who "will not suffer any injury" from the new documentation requirements. Opp'n at 20-23. Defendants are mistaken on both the law and the definition of Plaintiffs' proposed class.

Defendants' overbreadth argument[4] asserts a more "stringent version of the definiteness requirement" than what has been considered necessary for Rule 23(b)(2) certification. *See Thorpe*, 303 F.R.D. at 141 (rejecting defendant's argument that proposed class was "fatally overbroad" where it "'could include a substantial number of people who have no claim under the theory

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[3] If the Court determines that additional class representatives are needed to meet the requirements of class representation, Plaintiffs' counsel must be provided with a "reasonable time" to find new plaintiffs with live claims to amend their complaint and to continue to pursue class certification. *See In re Thornburgh*, 869 F.2d 1503, 1510 (D.C. Cir. 1989).

[4] Notably, at least one court in this district has found that whether a class definition "is 'overbroad' is not a criteria considered" when determining whether the class is sufficiently definite. *Brewer v. Lynch*, No. 08-1747-BJR, 2015 WL 13604257, at *6 n.5 (D.D.C. Sep. 30, 2015) (declining to address argument on overbreadth of proposed class).

advanced by the named plaintiff'" (quoting *Vigus v. S. Ill. Riverboat/Casino Cruises, Inc.*, 274 F.RD. 229, 235 (S.D. Ill. 2011)). As Defendants' own authorities recognize, Opp'n at 21, a class definition is only overbroad if it includes "'persons who *could not have been* injured by the defendant's conduct.'" *Ross v. Lockheed Martin Corp.*, 267 F. Supp. 3d 174, 191 (D.D.C. 2017) (quoting *Kohen v. Pac. Inv. Mgmt. Co. LLC*, 571 F.3d 672, 677 (7th Cir. 2009) (emphasis added)). The "possibility or indeed inevitability" that a class "include[s] persons who have not been injured by the defendant's conduct . . . does not preclude class certification." *Kohen*, 571 F.3d at 677. In any event, Defendants do not provide any examples or evidence showing that Plaintiffs' proposed class includes children in Defendants' custody "who could not have been injured by" Defendants' conduct. *Ross*, 267 F. Supp. 3d at 191.

Defendants' assertion that the proposed class is overbroad "by operation" because it is "temporally imprecise" and "would include[] all UACs for part of the time they are in ORR custody" is plainly wrong. *See* Opp'n at 21. The class includes only those children who "have not been released to a sponsor . . . because they [the sponsor] are missing documents *newly* required on or after March 7, 2025." *See* Pls.' Mot. for Class Certification at 1, ECF No. 9 (emphasis added). This would not include children whose sponsor has all the necessary documents but has not yet filled out the sponsorship application that ORR has always required. Moreover, any concern in this respect has been addressed by some of the Court's provisional revisions to the class definition. PI Op. at 21. The Court's language clarifies that the missing documents refer to what *the sponsor* is able to provide, and not what ORR has or has not yet been able to collect on any given day. *See also* § II.B, *supra* (explaining why an ORR entry date is not required, and if needed, a reliance subclass addresses typicality concerns).

Replacing Plaintiffs' previously proposed "in whole or in part" language with the Court's wording of "denied, closed, withdraw, delayed, or cannot be completed" further clarifies the class definition. PI Op. at 21. The current proposed class definition appropriately encompasses children in various factual situations that are experiencing the same injury arising from the same policies, that would be addressed by the same relief. And though Defendants imply that the potential availability of an exception to the ID requirements renders the class overbroad, that exception is not guaranteed for any sponsor and is considered only at the end of the process. *See, e.g.* Sofia W. Decl. ¶ 7; Biswas Decl. ¶¶ 23-24, 26; *see also* PI Reply at 4 n.1. Additionally, the eligibility of some parent sponsors for an exception does not eliminate delay caused by the newly required documentation. *See, e.g.*, Declaration of Rosa M. ¶¶ 4-10, ECF No. 9-10. The proposed definition would also appropriately include children in ORR custody whose sponsors are prohibited outright from beginning or continuing the sponsorship process when their case managers determine their sponsors will not be able to provide the newly required documentation. *See, e.g.*, Leo B. Decl. ¶ 9; Declaration of Deisy S. ¶ 25, ECF No. 9-12 ("Deisy S. Decl."); *see also* Opp'n at 22 ("failure to submit the required documents alone would be a reason [for an ORR case manager] not to proceed with the evaluation").

Finally, Defendants state the class is overbroad because it would include children "who do not share in the claimed class injury resulting from the updated document requirements" because "some sponsors would not submit the required documents because they lack the documents, not because they fear any consequences from submitting them." Opp'n at 22. But Plaintiffs' class injuries are not limited to sponsors who are afraid to submit documents. To the contrary, Plaintiffs have alleged their sponsors are unable to submit the newly required documents. *See, e.g.*, Compl. ¶¶ 48-54, 70, 75-77, 83, 88, 94-95, 139. Regardless, that some sponsors are unable to provide the

new documents and other sponsors are too afraid to provide the new documents does not change the fact that all proposed class members suffer the same injury from the new documentation requirements—loss of opportunity for release—and would benefit from a court order enjoining those requirements.

IV. Certification is Appropriate under Rule 23(b)(2)

Certification is appropriate under Rule 23(b)(2) because Plaintiffs challenge generally applicable policies and "a single injunction or declaratory judgment would provide relief to each member of the class," *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011), by permitting their sponsorship applications to move forward without the application of unlawful policies. Plaintiffs do not seek individualized relief. *Cf. id.* (Rule 23(b)(2) "does not authorize class certification when each individual class member would be entitled to a *different* injunction or declaratory judgment against the defendant").

Defendants' argument against Rule 23(b)(2) certification appears to rely mainly on a disagreement about the *value* of the relief Plaintiffs seek rather than the general nature of the relief. Defendants suggest that because not all class members would be released due to the requested relief, not all class members would benefit. Opp'n at 28-29. But there is no requirement that an injunction solve all problems for all class members. *See Brown*, 928 F.3d at 1082 ("Although the injunction must provide relief to each member of the class, the perfect need not be the enemy of the good."). Here, an injunction would redress the specific injury Plaintiffs have identified—the lost *opportunity* at release to a sponsor because of Defendants' unlawful policies. Defendants' suggestion that some class members released as a result of the requested relief might later come to harm is highly speculative, especially given all the vetting tools ORR has to avoid this outcome. Opp'n at 29. This argument primarily goes to the merits, not to class certification.

Where a Rule 23(b)(2) action challenges an unlawful policy that makes it more difficult for class members to reach a downstream benefit, there is no requirement that every class member in fact achieve the desired downstream benefit. *See, e.g.*, *J.D.*, 925 F.3d at 1315 (noting that "(b)(2) classes challenging voter-qualification laws often include anyone disenfranchised by the challenged laws . . . regardless of whether class members ultimately intend (or are even registered) to vote"); *Davis*, 2025 WL 457779, at *7 ("The operative harm alleged here is the *failure to offer reasonable accommodations*, not the later ramifications."); *see also id.* at *8 (certifying Rule 23(b)(2) class).

Defendants' speculation that the requested relief would be unlikely to change the release outcome for Angelica S. and Xavier L. is thus irrelevant to the issue of class certification. Their suggestion that ORR has already pre-judged the suitability of these sponsors is also both inappropriate and unsupported by the record. Opp'n at 28-29. The arrested household member is no longer living in Angelica's sister Deisy S.'s home—as ORR's home study confirmed. *See* Biswas Decl. ¶ 22; Deisy S. Decl. ¶ 16. Defendants have pointed to no child welfare concerns related to Deisy's own suitability to sponsor her sister and baby niece. Similarly, although Ximena's arrest record appeared on her background check, ORR conducted a home study and Ximena was informed the results were positive. Ximena L. Decl. ¶ 6. Under ORR policy, an arrest record in and of itself is not a basis for denial of sponsorship, especially to a parent. *See* ORR Policy Guide § 2.7.4. Neither Deisy nor Ximena were told they were disqualified as sponsors because of these concerns. To the contrary, both were encouraged to try to obtain new documents to continue the sponsorship process. Ximena L. Decl. ¶¶ 7-8, 10; Deisy S. Decl. ¶¶ 22-25. Xavier decided to pursue release to his aunt only because his mother's application process was blocked by ORR's new documentation requirements. Xavier L. Decl. ¶ 6. Despite Defendants' litigation

position, Plaintiffs trust ORR will give careful and holistic consideration to Deisy's suitability as she continues the sponsorship process. If she is denied, she will also be entitled to an appeal. 45 C.F.R. §§ 410.1205(c), 410.1206.

V. Certification is Alternatively Appropriate under Rule 23(b)(1)(A)

Certification also is appropriate under Rule 23(b)(1)(A) because there is a risk of inconsistent adjudications as to the legality of the IFR and to ORR's documentation and proof of income policies. Given the undisputedly large number of children affected by ORR's challenged policies and the serious consequences of these policies for children's release options, ORR is likely to face multiple independent lawsuits regarding their legality in the absence of a class action that covers all affected children. If the IFR or documentation policies are held unlawful by one court and lawful by another, ORR would face incompatible standards of conduct. For example, ORR would not know whether it could deny sponsors based on immigration status or require the specific identification and proof of income documentation in the revised policy guide.

In opposing Rule 23(b)(1)(A), Defendants argue that inconsistent adjudications are not a problem because it may deny release for multiple different reasons. Opp'n at 31. But Defendants again focus on the wrong step in the process. The issue is not ORR's ultimate release decision in any given case, but rather what generally applicable policies and requirements ORR can apply to the sponsors of all children in its custody.

CONCLUSION

For these reasons, and the reasons explained in Plaintiffs' Reply in Support of Provisional Class Certification (ECF No. 32), Plaintiffs respectfully request that the Court certify the following class or classes:

Class: All unaccompanied children who are or will be in the custody of HHS and who (a) have or had a potential sponsor who has been identified; and (b) the sponsor's family reunification application has been denied, closed, withdrawn, delayed, or cannot be completed because the sponsor is missing documents newly required on or after March 7, 2025.

Reliance subclass: All unaccompanied children who were in or transferred to the custody of HHS on or before April 22, 2025, and who (a) have or had a potential sponsor who has been identified; and (b) the sponsor's family reunification application has been denied, closed, withdrawn, delayed, or cannot be completed because the sponsor is missing documents newly required on or after March 7, 2025.

June 11, 2025

Respectfully submitted,

/s/ *Rebecca Wolozin*

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANGELICA S., *et al.*, Plaintiffs, v. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	)	No. 1:25-cv-1405

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

Upon consideration of all briefing and evidence set forth by the Parties, Plaintiffs' Motion for Class Certification and Appointment of Class Counsel is GRANTED, and it is hereby ORDERED that the following class and subclass be certified under Fed. R. Civ. P. 23(b):

Class: All unaccompanied children who are or will be in the custody of HHS and who (a) have or had a potential sponsor who has been identified; and (b) the sponsor's family reunification application has been denied, closed, withdrawn, delayed, or cannot be completed because the sponsor is missing documents newly required on or after March 7, 2025.

Reliance subclass: All unaccompanied children who were in or transferred to the custody of HHS on or before April 22, 2025, and who (a) have or had a potential sponsor who has been identified; and (b) the sponsor's family reunification application has been denied, closed, withdrawn, delayed, or cannot be completed because the sponsor is missing documents newly required on or after March 7, 2025.

ORDERED that the National Center for Youth Law and Democracy Forward Foundation are appointed as class counsel for the classes described above.

ORDERED that Angelica S., Eduardo M., Liam W., Leo B., and Xavier L. are appointed class representatives for the classes described above.

SO ORDERED this _____ day of_____, 2025.

_____
DABNEY L. FRIEDRICH
United States District Judge