**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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

**SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

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## INTRODUCTION

Children continue to experience prolonged detention in the custody of the Office of Refugee Resettlement ("ORR") and separation from their families due to ORR's unlawful proof of identification and proof of income policies, as well as its Interim Final Rule ("IFR") that authorizes the disqualification of sponsors based on immigration status. The new named plaintiffs and putative class representatives are in the same factual position as the original named plaintiffs: their reunification cases were blocked or delayed because their sponsors or sponsors' household members cannot produce the newly required documentation because of their immigration status, which has been the central issue in this case from the filing of the original complaint.

Each of the newly named child Plaintiffs has standing for the same reasons as the previously named children. Defendants do not dispute the common facts that, without the newly required documents, a sponsor cannot proceed with their application. *See, e.g.,* Defendants' Separate Concise Statement of Genuine Issues ("DSCSGI") ¶¶ 14, 19-22, 37, 40-41, 61-62, 66, ECF 72-1. The sole exception available applies to parents only, is limited to the identification requirement, and is fully at ORR's discretion with no timeline or decision criteria. *Id.* ¶¶ 40-41, 47, 66. None of the child Plaintiffs' sponsors were provided the opportunity to fill out a sponsorship application that complies with the Paperwork Reduction Act ("PRA").

ORR's IFR and document policies must be vacated because they did not go through required notice and comment and are plainly arbitrary, capricious, and contrary to law. Even if the new Plaintiffs are released by ORR during the litigation, exceptions to mootness would apply to their claims, as they do the released child Plaintiffs' claims.

## BACKGROUND

The Second Amended Complaint ("SAC") includes three new named child Plaintiffs: Esmeralda C., Lorenzo V., and Brian G. SAC, ECF No. 104, ¶¶ 20-22. All three plaintiffs are in

ORR custody. Plaintiffs' Supplemental Separate Statement of Undisputed Material Facts ("Supp. PSSUMF") ¶¶ 382, 403, 417. The SAC also adds a paragraph clarifying the status of Office of Management and Budget ("OMB") approval for ORR's sponsorship application form. SAC ¶ 76.

Esmeralda is 17 years old and entered ORR custody in September 2025 with her baby son. Supp. PSSUMF ¶¶ 382-83. Esmeralda's mother, who was previously approved by ORR to care for Esmeralda's sister, promptly initiated the sponsorship process for Esmeralda and her baby. *Id.* ¶¶ 385-86. Her mother was unable to move forward with the process for two primary reasons. First, she lacked the identification and income documents newly required by ORR after March 2025. *Id.* ¶¶ 387-92. Second, she feared that participation in the sponsorship process would lead to immigration enforcement action against her. *Id.* ¶¶ 393-94. As a result, she withdrew her application. *Id.* ¶ 394. Esmeralda's now-adult sister Elizabeth then attempted to sponsor her, but ORR considered her too young. *Id.* ¶ 395. In addition, Esmeralda's mother is Elizabeth's household member, so her lack of accepted identification would still be a bar to sponsorship. *Id.* ¶ 396. Each subsequent potential sponsor faced similar challenges because they or their household members lacked newly required identity documentation or income documentation to complete the sponsorship process. *Id.* ¶¶ 397-98. Without sponsorship options, Esmeralda entered long-term-foster care and remains in ORR custody with her infant son, separated from her family. *Id.* ¶ 400.

Lorenzo is 15 years old, and he entered ORR custody in September 2025. *Id.* ¶ 402. Lorenzo's brother initiated the sponsorship application for Lorenzo, but ORR refused to accept his foreign passport as proof of identification. *Id.* ¶¶ 406-07. When Lorenzo's sister-in-law attempted to sponsor him instead, she faced the same problem as Elizabeth had faced for Esmeralda; her husband (Lorenzo's brother) did not have a form of identification newly required by all sponsors and household members after March 2025. *Id.* ¶¶ 410-11. As a result, Lorenzo lost the opportunity for prompt release to his family and remains in ORR custody. *Id.* ¶ 415.

Thirteen-year-old Brian entered ORR custody in May 2025. *Id.* ¶ 416. Multiple sponsors have been unable to complete the application process because, again, they or their household members lack the form of identification documentation newly required by ORR after March 2025. *Id.* ¶¶ 420-21, 23-26. First, Brian's uncle was unable to begin the sponsorship process because he lacked newly required identity documentation and his immigration status prevented him from obtaining it. *Id.* ¶¶ 419-21. As a result, Brian's cousin became his sponsor. *Id.* ¶ 422. To proceed with sponsorship, Brian's cousin had to move her parents out of her home because, as household members, they did not have a form of identification that would satisfy ORR's new requirements. *Id.* ¶¶ 423-25. When reunification delays and the stress of her parents living separately from her and her siblings became too difficult, Brian's cousin had to withdraw her sponsorship application, leaving Brian without a sponsor. *Id.* ¶ 426.

Each of the child Plaintiffs has spent over eight months detained in ORR custody. *Id.* ¶¶ 383, 402 (Sept. 2025 ORR entries); 416 (May 2025 ORR entry). Their lengthy detention is typical of the experience of many other putative class members detained by ORR. As of May 2026, children spent on average over 200 days in ORR custody. *Id.* ¶¶ 370-71.

Between March 2025 and February 2026, ORR lacked any OMB approval for its new information collection requirements related to identification and proof of income. *Id.* ¶ 375. Each child Plaintiff had sponsors disqualified during this period because they could not meet the unapproved information collection requirements. *Id.* ¶¶ 383, 386-94 (Esmeralda arrived in September 2025 and her mother became her sponsor soon afterward but lacked required identification and proof of income documents); *id.* ¶¶ 406-07 (Lorenzo's brother became his sponsor soon after he arrived in September 2025 but could not meet identification requirements); *id.* ¶¶ 416, 420 (Brian arrived in May 2025, and his uncle was his first potential sponsor but could not meet identification requirements).

Although OMB approved ORR's August 2025 Sponsor Application Packet on February 27, 2026, ORR has not yet implemented this information collection and is continuing to use an unapproved form. *Id.* ¶¶ 374, 376. The Sponsor Application currently in use by ORR (Version 18) purports to bear an OMB Control Number (OMB 0970-0278) with an expiration date of February 28, 2029, but it differs in material respects from the form OMB actually approved (Version 19). *Id.* ¶¶ 376-78. For example, the OMB-approved form allows sponsors to establish proof of income through a recent bank statement, an Affidavit of Financial Support, or documentation of income from assets, public assistance, or other sources. *Id.* ¶ 377. The form currently in use by ORR, which mirrors ORR's current Policy Guide Section 2.2.4, does not permit sponsors to use these types of documents to establish proof of income. *Id.* ¶ 378.

## ARGUMENT

### I. Plaintiffs' Paperwork Reduction Act-related claim remains live

Congress enacted the Paperwork Reduction Act ("PRA") "to 'minimize the paperwork burden for individuals'" and other entities required to respond to information collection requirements from federal agencies. *Saco River Cellular, Inc. v. FCC*, 133 F.3d 25, 32 (D.C. Cir. 1998) (quoting 44 U.S.C. § 3501(1)); *see also* 44 U.S.C. §§ 3506(c)(2), 3507(a). The PRA requires agencies to solicit public comment regarding proposed information collections and obtain approval from OMB *before* adopting or revising an information collection. 44 U.S.C. §§ 3506(c), 3507(a). "[T]o fulfill [its] purpose, the PRA must protect a member of the public when the agency imposes the paperwork burden upon it, not merely when the agency relies upon the paperwork in making a decision" and "an agency may not, having belatedly gotten OMB approval of an information collection requirement, punish a respondent for its faulty compliance while the collection was still unauthorized." *Saco River Cellular*, 133 F.3d at 32.

In imposing highly burdensome proof of identification and proof of income information collection requirements without required OMB-approval, ORR plainly acted contrary to the PRA. It is undisputed that ORR's proof of identification and proof of income policies are "information collection" requirements subject to the PRA, that ORR submitted proposed revisions to these requirements to OMB in August 2025, and that ORR did not receive OMB approval until February 27, 2026. *See* DSCSGI ¶¶ 20, 88-90, ECF 72-1; Supp. PSSUMF ¶ 374. Even if ORR were now using an approved form—which it is not—it cannot lawfully penalize sponsors who applied prior to February 27, 2026, by disqualifying them for "faulty compliance while the collection was still unauthorized." *Saco River Cellular*, 133 F.3d at 32. Each child Plaintiff was affected by the unauthorized information collection before February 2026. Supp. PSSUMF ¶¶ 386 (Esmeralda), 406 (Lorenzo), 418, 420 (Brian); DSCSGI ¶¶ 128-29, 159-60 (Rosa M. and Ximena L. unable to provide specific proof of income newly required by ORR); *id.* ¶¶ 109, 122, 136, 146, 156-57, 172-74, 180-81 (all prior plaintiffs affected by unauthorized proof of identification requirements).

Compounding these violations, ORR *continues* to use an unauthorized form even after receiving OMB approval of its proposed revisions. Defendants concede the OMB-approved form provides a "more expansive" list of proof of income documentation options than the form currently in use by ORR. Supp. PSSUMF ¶ 377-78. These inconsistencies are central to Plaintiffs' claim in this litigation and the purposes of the PRA. As Plaintiffs alleged, ORR's Policy Guide Section 2.2.4 as revised on March 7, 2025, and April 15, 2025, requires sponsors to provide particular types of documentation that differ from the options provided in the OMB-approved Sponsor Application. *See* SAC ¶¶ 69-76, 200; *see also* Mem. in Support of Pls.' Mot. for Summ. J. at 12, 38-39, ECF No. 58-1 ("Pls.' MSJ"). This makes it substantially more difficult and burdensome for Plaintiffs' sponsors to successfully complete the sponsorship application, leading Plaintiffs to remain in custody longer. Pls.' MSJ 12, 38-39.

Defendants' contention that ORR has complied with the PRA even though its current form is substantially more difficult for sponsors to complete than the OMB-approved form "loses sight of the Congress's purpose in enacting the PRA—to 'minimize the paperwork burden'" on respondents. *Saco River Cellular*, 133 F.3d at 32 (quoting 44 U.S.C. § 3501(1)); 44 U.S.C. §§ 3506(c)(2), 3507(a). OMB's role is to protect the public from unnecessarily burdensome paperwork requirements, not, as Defendants assert without support, merely to approve a "universe of information" from which an agency can later eliminate options. Defs.' PRA Resp. 4.

Allowing sponsors to establish their financial stability through bank statements or an affidavit makes it easier to complete the sponsor application form, thereby reducing its burden, and is directly relevant to OMB's consideration of the burden imposed by the information collection. *See* 44 U.S.C. § 3507(a)(1)(D)(V). Indeed—consistent with the purposes of the PRA—ORR expanded its list of proof of income documentation in the OMB-approved application form in response to public comments that highlighted the burdens the more restrictive list placed on sponsors. *See* Supp. PSSUMF ¶ 381. ORR now inexplicably refuses to implement the form the agency itself submitted for approval.

Having represented to OMB that it would provide sponsors additional options to establish proof of income in response to public comments and having obtained OMB approval *only* of the expanded list of options, ORR cannot lawfully limit sponsor's options in a manner directly contrary to OMB's approved form. *See* 44 U.S.C. § 3507(h)(3) (prohibiting agencies from making substantive or material modifications to a collection of information after OMB approval without obtaining approval of the modification); *Saco River Cellular, Inc*, 133 F.3d at 33 (holding that agency violated PRA when it refused to accept a letter of credit as sufficient proof of firm financial commitment without an OMB-approved information collection).

ORR continues to violate the PRA and Plaintiffs have not "obtained all the relief that [they] sought" on their PRA claims. *Schmidt v. United States*, 749 F.3d 1064, 1068 (D.C. Cir. 2014) (quoting *Conservation Force, Inc. v. Jewell*, 733 F.3d 1200, 1204 (D.C. Cir. 2013)). Plaintiffs' PRA-related claim thus remains live.

## II. Newly added child Plaintiffs have standing to assert each of their claims

For the same reasons each of the previously named child Plaintiffs has standing to challenge ORR's March and April 2025 policy changes and IFR, the newly added child plaintiffs also have standing to challenge these policies. *See* Pls.' MSJ 11-14; Pls.' Opp. to Defs.' MSJ 6-11, ECF No. 73; Mem. Op. on Prelim. Inj. ("PI Op.") 8-9, ECF No. 35. Family separation and institutional custody are injuries sufficient to establish standing. *See, e.g.*, *J.E.C.M. v. Lloyd*, 352 F. Supp. 3d 559, 579 (E.D. Va. 2018); *Jacinto-Castamon de Nolasco v. ICE*, 319 F. Supp. 3d 491, 502 (D.D.C. 2018). These harms are immediate, concrete, and traceable to Defendants' actions. *Centro de Trabajadores Unidos v. Bessent*, 2025 WL 1380420, at *4 (D.D.C. May 12, 2025).

First, Esmeralda's, Lorenzo's, and Brian's continued detention is actively causing them injury. *See* Declaration of Esmeralda C. ¶ 9, ECF 105-3 ("Esmeralda Decl.") ("It is hard to [raise my son] alone and far away from people who know me and love me."); Declaration of Lorenzo V. ¶¶ 8-13 ("Lorenzo V. Decl.") (In ORR custody, "I [can't] go to a real school. . . We were not allowed to leave the little campus" . . . ORR custody is "like living with strangers who you see every day. . . I want to live with my family."); Declaration of Brian G. ¶¶ 6-10 ("Brian Decl.") ("I wish I could live with family instead of be in government custody.").

Second, Esmeralda, Lorenzo, and Brian's injuries are traceable to ORR's conduct because their release processes were blocked or significantly delayed by ORR's new documentation requirements. Esmeralda's mother did not have the right kind of identity document, and she could not provide the right kind of proof of income documentation to sponsor Esmeralda. Supp. PSSUMF ¶¶ 387-92, 394. A family friend was unable to sponsor Esmeralda because of the restrictive proof of income requirements, which did not allow him to include alternative sources of financial support. *Id.* ¶ 397. Another family friend could not proceed with sponsorship because his wife (and household member) lacked required identification. *Id.* ¶ 398.

Lorenzo's brother was unable to sponsor him because his foreign passport lacked accompanying immigration documentation, and Lorenzo's sister-in-law was unable to move forward with sponsorship because her husband and Lorenzo's other brother are household members who lack required identification. *Id.* ¶¶ 407-08, 411. Brian's uncle was prevented from applying to be Brian's sponsor because he did not have the newly required identification documents. *Id.* ¶ 420. Then, Brian's cousin had to delay the sponsorship process while her parents—who did not have the newly required forms of ID—moved out of their shared home so that all her household members had the newly required documentation. *Id.* ¶¶ 423-25. This forced move was difficult on the family, and after multiple reunification delays his cousin withdrew as his sponsor. *Id.* ¶¶ 425-26. Just as with the previously named Plaintiffs, each of these children's reunifications with loved ones were obstructed by the challenged document requirements. *See also* Pls.' MSJ 11-14; Pls.' Opp. to Defs.' MSJ 6-11.

As to the PRA claim, the newly added Plaintiffs have standing to challenge the policies because, like existing child Plaintiffs, they cannot be released until their sponsors successfully fulfill the unauthorized information collection requirements. *See* Pls.' Opp. to Defs.' MSJ 10-11;

*Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 112, 116-17 (2025) (unregulated third parties have standing if they are likely to suffer predictable downstream injury from government action).

As to the IFR, Plaintiffs' sponsors were disqualified based on their immigration status because they lacked work authorization and could thus not provide the type of identification ORR required. *See* DSCSGI ¶ 21 (foreign passport acceptable only if accompanied by "an endorsement to work" or permanent resident status); Supp. PSSUMF ¶¶ 405, 412 (Lorenzo's brothers' passports were not accepted by ORR without evidence of work authorization and South Carolina requires proof of lawful status to obtain state identification), ¶¶ 384, 88-89 (Esmeralda's mother lacked required identification documents because she does not have a work permit and Iowa requires proof of lawful status to obtain state identification), ¶¶ 418-21(Brian's uncle lacks acceptable identification because he lacks a work permit or visa and Mississippi requires proof of lawful status to obtain state identification). Absent the IFR, ORR would be prohibited from disqualifying sponsors based on their immigration status. Unaccompanied Children Program Foundational Rule; Update To Accord With Statutory Requirements, 90 Fed. Reg. 13554 (Mar. 25, 2025).

Additionally, Esmeralda's mother understood that ORR's policy had changed, and as a result there was a significantly higher likelihood that her information would be shared with immigration enforcement agencies and used for enforcement against her. Supp. PSSUMF ¶¶ 393, 401. Therefore, in addition to the disqualification provision of the IFR authorizing the disqualification of each child's sponsors, the information sharing provision of the IFR had a further serious deterrent effect on Esmeralda's sponsor completing the sponsorship application process. Esmeralda's mother's fear caused Esmeralda's prolonged custody and separation from her family in significant part and further establishes standing to challenge the IFR.

In short, because the IFR and ORR's new policies continue to deprive Plaintiffs of the opportunity for release and family reunification, Plaintiffs' injuries are redressable by an order vacating the new policies. *Ctr. for Biological Diversity v. EPA*, 861 F.3d 174, 183 (D.C. Cir. 2017). While Plaintiffs and putative class members remain detained, their injuries are "ongoing" and establish standing for injunctive relief. *Centro de Trabajadores*, 2025 WL 1380420, at *4.

### III. Exceptions to mootness apply to released children's claims

Although three new Plaintiffs have been added to the case, the nature of the instant litigation is such that child Plaintiffs may be released from ORR custody before the litigation is complete. As Plaintiffs previously argued, the inherently transitory exception to mootness and the relation back doctrine establish that the class claims in this action are not moot even if Plaintiffs are released from custody. *See* Pls.' Opp. to Defs.' MSJ 6; *J.D. v. Azar,* 925 F.3d 1291, 1308, 1311 (D.C. Cir. 2019).[1] Additionally, the provisionally certified class is neither closed nor empty. *See* Pls. Second Supp. Class Cert. MPA 4-5, ECF No. 105. With leave of the Court, Plaintiffs submitted declarations showing that there continue to be provisional class members in custody, and that children originally detained by ORR prior to April 22, 2025 continue to be referred back to ORR custody because of interior immigration enforcement and transfer. *Id.*; *see also* Declaration of G.B.J. ¶¶ 3, 9, 15-17, 19-21, ECF 105-6; Declaration of Q.A.P.V. ¶¶ 2-8, ECF 105-7; Declaration of Y.R.M. ¶¶ 2-6, ECF 105-8; Declaration of Benito S. ¶¶ 2-7, 10, ECF 105-9.

Further, the voluntary cessation and capable of repetition doctrines would also permit released child Plaintiffs to continue pursuing their individual claims.

[1] Angelica S., Leo B., Eduardo M., Xavier L., Liam W., Mateo N., and Yair G. thus continue to have standing as class representatives despite their release from ORR custody. *See* Reply in Supp. of Class Cert. 13-15, ECF 37; Pls.' Opp. to Defs.' MSJ 6.

*A. The government's voluntary cessation of detention does not moot Plaintiffs' claims*

Typically, a case becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome" of the litigation. *Powell v. McCormack*, 395 U.S. 486, 496 (1969). The "heavy burden of demonstrating mootness" falls to the party asserting it. *Doe v. Harris*, 696 F.2d 109, 112 (D.C. Cir. 1982); *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (the party asserting mootness bears the burden of meeting this "stringent" standard). Mootness often arises in later stages of litigation; "to abandon the case at an advanced stage may prove more wasteful than frugal" if the parties maintain "a continuing interest" in the claims. *Id.* at 191-92.

When the government voluntarily ceases allegedly illegal conduct, it "does not deprive the tribunal of power to hear and determine the case." *Los Angeles Cty. v. Davis*, 440 U.S. 625, 631 (1979) (citing *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953)). A defendant's voluntary action moots a plaintiff's claim only when it is "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth*, 528 U.S. at 189. The voluntary cessation doctrine applies equally when the defendant complies with a court's order, such as a preliminary injunction, particularly where, as here, the defendant continues to "defend the legality" of the challenged conduct. *See, e.g.*, *Knox v. Service Employees Int'l Union, Local 1000*, 567 U.S. 298, 307 (2012); s*ee also, e.g. Doe*, 696 F.2d at 112 (holding that defendants had failed to show mootness because "Defendant[s] maintain adamantly that the [challenged actions] were lawful" and reserved the possibility of repeating the action in the future).

Defendants voluntarily released each of the previously named Plaintiffs after the filing of this litigation, and in some cases as a direct result of this Court's Preliminary Injunction. It is far from clear "that the allegedly wrongful behavior could not reasonably be expected to recur" because Defendants continue to assert the legality of their actions and apply them to all children who enter—or re-enter—ORR custody. *Friends of the Earth*, 528 U.S. at 189; *see also* Part III.B., *infra* (describing the reasonable likelihood of Plaintiffs' re-referral to ORR custody). Therefore, the released child Plaintiffs maintain a "continuing interest" in their claims, and their claims are not moot. *Friends of the Earth*, 528 U.S. at 192. Similarly, any future release of the newly added child Plaintiffs from custody at a later stage of litigation is unlikely to moot their individual claims.

### *B. Placement in ORR custody and application of the challenged policies is an action capable of repetition yet evading review*

The Supreme Court recognizes an exception to the mootness rule in individual plaintiffs' cases where the challenged action is "capable of repetition yet evading review." *Southern Pacific Terminal Co. v. Interstate Commerce Com.*, 219 U.S. 498 (1911). Plaintiffs must show: "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." *Murphy v. Hunt*, 455 U.S. 478, 482 (1982). The challenged action need only be "capable" of repetition; there is no need for "a recurrence of the dispute [to be] more probable than not." *Honig v. Doe*, 484 U.S. 305, 320 n.6 (1988).

Where re-detention is possible, an individual "'continue[s] to have a personal stake in the outcome.'" *Clark v. Martinez*, 543 U.S. 371, 376 n.3 (2005) (quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477–78 (1990)); *see also Turner v. Rogers*, 564 U.S. 431, 438 (2011) (completion of 12-month civil contempt sentence did not moot petitioner's appeal). Where, as here, a complaint challenges an acknowledged government policy, the government cannot prevail by arguing that the controversy became moot when a particular situation at issue resolved itself. *Ukrainian-American Bar Ass'n v. Baker*, 893 F.2d 1374, 1377 (D.C. Cir. 1990).

Here, the claims brought by unaccompanied children in ORR custody are inherently transitory because of the child Plaintiffs' ages and the relative lengths of their detention compared to the time required to complete litigation. *See* Pls.' Op. to Defs.' MSJ 6, Pls.' Reply in Support of Class Cert. 13-15, ECF 37; *J.D.*, 925 F.3d at 1308, 1311. Plaintiffs' claims are likely to evade review for the same reason. *See Kingdomware Techs, Inc. v. United States*, 579 U.S. 162, 170 (2016) (holding that a process taking two years was short enough to evade review). Plaintiffs' detention has lasted from a period of months to approximately a year – a period demonstrably too short to complete judicial review even at the district court level.

Unfortunately, the government's unlawful actions in this case are also capable of repetition. While five of the 11 child plaintiffs have now turned 18 and cannot be transferred into ORR custody in the future, six are still minors and can therefore be re-referred to ORR custody, including the new named Plaintiffs and David, Liam, and Eduardo. They range in age from 13 to 17 years old.[2] There is a "reasonable likelihood" that child Plaintiffs who have not yet reached the age of 18 may again be arrested and transferred to ORR custody, as was Leo B. *See* DSCSGI ¶¶ 141-43.

Unaccompanied children who first entered ORR custody prior to April 22, 2025, continue to be re-detained and re-referred to ORR custody, where they are subjected to the very policies challenged in this case. *See* Supp. PSSUMF ¶ 431; Hr'g. Tr. at 63:5-6, *Diego N. v HHS*, No. 26-cv-577, ECF No. 40 (D.D.C. March 24, 2026) ("ORR based on its tracking believes that there were about 500 UAC re-referred since January of 2025"); *see also E.F.E.L. v. Noem*, No. 26-cv-02507, 2026 WL 1045550, *2, 4-5 (N.D. Ill. Apr. 17, 2026) (granting habeas petition of 15-year-

[2] Esmeralda C., Lorenzo V., and Brian G. are less than 18 years of age and in ORR custody. David D., Liam W., and Eduardo M. have been released from ORR custody and will not turn 18 for at least two years. DSCSGI ¶¶ 117, 187 (Eduardo and David were 14 years old at time of filing); 131 (Liam was 15 years old at time of filing).

old child released from ORR in March 2025, re-referred to ORR custody in December 2025 with "zero justification," and release blocked because of new identification requirements); *A.N.P.S. v. Salazar*, No. 25-cv-14778, 2025 WL 3707333 (N.D. Ill. Dec. 22, 2025) (child released from ORR custody in December 2022 and re-arrested and re-referred to ORR custody in November 2025 with "no justification (or even explanation)"); *M.A. v. Molina*, No. 26-cv-415, 2026 WL 741623, at *1 (N.D. Ohio March 17, 2026) (child released from ORR custody in November 2022, re-referred to ORR custody in July 2025, and required to repeat sponsorship process).

For David, Liam, and Eduardo, who were released to their sponsors after the initiation of this litigation and remain minors, there is a reasonable likelihood they could again end up in ORR custody subjected to the same unlawful policies they challenged while detained. *See C.S.M. v. Hernandez*, 26-cv-1144-JWH-ACCV Slip Copy p. 6 (C.D. Cal. May 13, 2026) (holding that a child's release from custody does not render the habeas case moot given that ORR "appear[s] to acknowledge that re-detention could occur," and upon re-referral to ORR, "ORR will perform a *de novo* consideration of whether the minor should be released") (citations omitted).

This reasonable likelihood of repetition satisfies the "capable of repetition" prong of the exception to mootness. *See Honig*, 484 U.S. at 318; *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 594 n.6 (1999); *Vitek v. Jones*, 445 U.S. 480, 487 (1980); *L.A. v. Davis*, 440 U.S. at 631; *W.T. Grant Co.*, 345 U.S. at 633. The released Plaintiffs' claims are therefore capable of repetition yet evading review, and the Court should find an exception to mootness for their claims and the claims of all released plaintiffs who are still minors.

## IV. The Court may vacate the challenged policies based on individual claims

Whether or not the Court certifies an expanded class, vacatur of ORR's unlawful policies is required. *See* Pls.' MSJ 40-41; Pls.' Opp. to Defs.' MSJ 35-36. "[V]acatur is the normal remedy when a rule is found unlawful." *Am. Pub. Gas Ass'n v. U.S. Dep't of Energy*, 72 F.4th 1324, 1342

(D.C. Cir. 2023). In the D.C. Circuit, "when a regulation is declared unlawful, 'the ordinary result is that the rule[ ] [is] vacated—not that [its] application to the individual petitioner is proscribed.'" *Id.* (citations omitted); *see also Cabrera v. Dep't of Labor*, 792 F. Supp. 3d 91, 105-06 (D.D.C. 2025) (APA remedy "provisions specify what courts are authorized to do with respect to *agency actions*, not parties").

Here, individual child Plaintiffs, the certified class, and the putative class seek vacatur of the IFR as well as ORR's documentation policies, which apply nationwide and are resulting in predictable irreparable harm to unaccompanied children across the country. *See* PI Op. 17; Pls.' MSJ 42-43; Pls.' Opp. to Defs.' MSJ 35-36; *cf. U.S. Ass'n of Reptile Keepers, Inc. v. Jewell*, 106 F. Supp. 3d 125, 128-29 (D.D.C. 2015) (limiting injunction scope "because there is no evidence of irreparable harm to persons others than Plaintiffs or members of USARK before the Court"). Even if the Court declines to grant certification of an expanded class, it should vacate the unlawful policies challenged by the named child Plaintiffs and members of the provisional class who have, continue to be, and may in the future again be harmed by them.

## CONCLUSION

Plaintiffs respectfully request that the Court vacate the IFR and ORR's new proof of identification and proof of income policies and issue declaratory relief and a permanent injunction requiring ORR to promptly adjudicate sponsorship applications without regard to these policies.

Date: June 15, 2026

Respectfully submitted,

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**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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

**<u>Plaintiffs' Supplemental Separate Statement of Undisputed Material Facts</u>**

Plaintiffs submit this supplemental statement of material facts as to which there is no genuine issue, in support of their Supplemental Memorandum of Law in Support of Summary Judgment. This statement supplements Plaintiffs' prior Statement of Undisputed Material Facts filed in support of Plaintiffs' Motion for Summary Judgment (ECF 58-2).

| No. | Undisputed Material Fact | Administrative Record and/or Evidentiary or Other Support |
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| | **I. UPDATED AVERAGE LENGTH OF CARE STATISTICS** | |
| 370 | In May 2026, the average length of care for children discharged from ORR was 206 days. | Fact Sheets and Data, Office of Refugee Resettlement, *Average Monthly Data*, https://perma.cc/D8JX-SD6J (current as of June 12, 2026). |
| 371 | In May 2026, the average length of care for children who remain in ORR custody was 205 days. | Fact Sheets and Data, Office of Refugee Resettlement, *Average Monthly Data*, https://perma.cc/D8JX-SD6J (current as of June 12, 2026). |
| | **II. STATUS OF PLAINTIFFS RELEASED FROM ORR CUSTODY SINCE COMPLETION OF SUMMARY JUDGMENT BRIEFING** | |
| 372 | Plaintiff Mateo N. was released to his brother Steven on January 23, 2026. | Second Amended Complaint ¶¶ 17, 117, ECF 104. |
| 373 | Plaintiff Yair G. was released from ORR custody on his 18th birthday. | Second Amended Complaint ¶¶ 18, 124, ECF 104. |
| | **II. OMB APPROVAL AND ORR'S CONTINUED USE OF MORE BURDENSOME SPONSOR APPLICATION FORM** | |
| 374 | On February 27, 2026, ORR received OMB approval of the Sponsor Application Packet originally submitted to OMB in August 2025 under the Paperwork Reduction Act and updated in January 2026. | Defendants' Status Report in Response to the Court's Order of February 24, 2026, ECF 81 ("Defs.' Feb. Status Report"). |
| 375 | Between March 2025 and February 2026, ORR lacked OMB approval for its revised information collection requirements related to proof of identification and proof of income set out in the March 2025 and April 2025 revisions of ORR Policy Guide Section 2.2.4, respectively. | Defendants' Separate Concise Statement of Genuine Issues ("DSCSGI") ¶¶ 20, 88-90, ECF 72-1; Defs.' Feb. Status Report, ECF 81. |
| 376 | The Sponsor Application Form currently provided by ORR to potential sponsors (Version 18) is not the Sponsor Application that was | Currently Used Sponsor App. (Version 18), ECF 85-4; *see also* Notice of Filing, ECF 85; OMB-approved Sponsor App. (Version |

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| | approved by OMB (Version 19), despite displaying an OMB control number (OMB 0970-0278) with an expiration date of February 28, 2029. | 19), ECF 91-1; Defs.' Resp. to March 25, 2026 Court Order 2-3 ("Defs.' PRA Resp."), ECF 91. |
| 377 | The OMB-approved Sponsor Application (Version 19) provides a "more expansive" list of proof of income documentation than ORR's currently operative form, including allowing sponsors to establish proof of income through a recent bank statement, an Affidavit of Financial Support, or documentation of income from assets, public assistance, or other sources. | Defs.' PRA Resp. at 2-3, ECF 91 ("ORR concedes that the list of documents in the Information Collection request that OMB approved on February 27, 2026, is more expansive than the list on Version 18 of Form SAP-3."); OMB Approved Sponsorship App. (Version 19) 9–10, ECF 91-1; Proof of Income Comparison, ECF 91-2; Affidavit of Financial Support, attached as Ex. 1-B to Declaration of Diane de Gramont ("de Gramont Decl."), ECF 92-1 at 7-11. |
| 378 | The Sponsor Application form currently provided to sponsors by ORR (Version 18) mirrors ORR's current Policy Guide Section 2.2.4 and limits acceptable proof of income documentation to the previous year's tax return, a copy of paystubs for at least 60 days continuously, or an original letter from an employer on company letterhead verifying their employment and salary information. | Currently Used Sponsor App. (Version 18), 7, ECF 85-4; ORR Policy Guide § 2.2.4, https://perma.cc/X59L-TEWH (June 12, 2026). |
| 379 | ORR has not updated Policy Guide Section 2.2.4 to conform to the broader proof-of-income options permitted by the OMB-approved Sponsor Application. | Defs.' PRA Resp. 2–3, ECF 91; Currently Used Sponsor App. (Version 18), ECF 85-4; OMB-approved Sponsor App. (Version 19) at 9–10, ECF 91-1; ORR Policy Guide § 2.2.4, https://perma.cc/X59L-TEWH (June 12, 2026). |
| 380 | The version of the Sponsor Application in effect when this litigation was filed was Version 15 and ORR subsequently issued several versions of this application prior to receiving OMB approval. | Ex. 1-A to Declaration of Diane de Gramont, May 9, 2025, ECF 10-5; Defs.' Unopposed Mot. for Leave to Move Out of Time for a One-Day Extension at 2, ECF 88 ("ORR has issued several versions of the forms at issue in this litigation"). |
| 381 | ORR expanded the list of proof of income documentation in the OMB-approved Sponsor Application form in response to public comments that highlighted the burden that the more restrictive list placed on sponsors. | Unaccompanied Alien Children Sponsor Application Packet, OMB Information Collection Request 0970-0287, Attachment A – Summary of Public Comments and ORR Responses at 5-6, July 2025, Ex. 1-C to de Gramont Decl., ECF No. 92-1 at 17-18 |

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| | | (noting that ORR "expanded the list of acceptable proof of income documentation to include other alternatives" in response to comments describing difficulties faced by sponsors in providing required information); Unaccompanied Alien Children Sponsor Application Packet, OMB Information Collection Request 0970-0287, Attachment B – Summary of Public Comments and ORR Responses at 4–5, January 2026, Ex. 1-D to de Gramont Decl., ECF No. 92-1 at 26-27 (explaining changes to improve clarity of Affidavit of Financial Support in response to public comments). |
| | **IV. NEW INDIVIDUAL PLAINTIFF — ESMERALDA C.** | |
| 382 | Plaintiff Esmeralda C. is 17 years old and is currently detained by ORR in long-term foster care in Connecticut. | Declaration of Esmeralda C. ("Esmeralda Decl.), ¶ 2, ECF 105-3. |
| 383 | Esmeralda entered ORR custody in September 2025 with her infant son. | Esmeralda Decl. ¶ 2. |
| 384 | Esmeralda and her son seek to reunite with Esmeralda's mother and adult sister, Elizabeth C., who live together in Iowa. | Esmeralda Decl., ¶ 4, ECF 105-3; Declaration of Elizabeth C. ("Elizabeth Decl.") ¶¶ 2-3, ECF 105-4. |
| 385 | ORR previously approved Esmeralda's mother as a sponsor for Esmeralda's older sister, Elizabeth C., in 2022. | Esmeralda Decl. ¶ 3; Elizabeth Decl. ¶ 2, ECF 105-4. |
| 386 | Esmeralda's mother initiated the sponsorship process to sponsor Esmeralda and her grandson soon after they entered ORR custody in September 2025. | Esmeralda Decl. ¶ 4, ECF 105-3; Elizabeth Decl. ¶ 3, ECF 105-4. |
| 387 | Esmeralda's mother lacks a form of identification newly required by ORR Policy Guide § 2.2.4 after March 2025. | Esmeralda Decl. ¶ 4, ECF 105-3; Elizabeth Decl. ¶ 3, ECF 105-4. |

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| 388 | Esmeralda's mother was unable to obtain a form of identification newly required by ORR after March 2025 because she is not a legal permanent resident and does not have a work permit. | Esmeralda Decl. ¶ 4, ECF 105-3. |
| 389 | Iowa requires proof of lawful immigration status to obtain a state ID card or driver's license. | Iowa Department of Transportation, Immigrant & Refugee Process, https://iowadot.gov/drivers-licenses-ids/new-iowa/immigrant-refugee-process ("Licenses and ID cards issued to temporary foreign nationals must be limited to the period of time the foreign national is authorized by the United States Citizenship and Immigration Services (USCIS) to stay in the country, not to exceed two years."). |
| 390 | ORR did not immediately offer Esmeralda's mother a parental exception to the identification requirement. | Esmeralda Decl. ¶ 4, ECF 105-3; Elizabeth Decl. ¶ 3. |
| 391 | When Esmeralda's mother was applying to sponsor her daughter and grandson, she lacked proof of income documentation newly required by ORR after April 2025. | Esmeralda Decl. ¶ 4, ECF 105-3; Elizabeth Decl. ¶ 3, ECF 105-4. |
| 392 | Esmeralda's mother was not offered an exception to the proof of income documentation requirements. | Esmeralda Decl. ¶ 4, ECF 105-3; Elizabeth Decl. ¶ 3, ECF 105-4. |
| 393 | Despite successfully sponsoring Esmeralda's sister in 2022, Esmeralda's mother was aware that the process is different now and was afraid that proceeding with sponsorship for Esmeralda would result in ORR sharing her information with immigration authorities and immigration enforcement action against her. | Esmeralda Decl. ¶ 5, ECF 105-3; Elizabeth Decl. ¶¶ 4–5, ECF 105-4. |
| 394 | Because she did not have the required documents and because she feared that continued participation in the sponsorship process would lead to immigration enforcement action against her, Esmeralda's mother withdrew her application. | Esmeralda Decl. ¶ 5, ECF 105-3; Elizabeth Decl. ¶¶ 4–5, ECF 105-4. |
| 395 | After Esmeralda's mother withdrew, Esmeralda's adult sister Elizabeth attempted to start the application process but was informed that she | Elizabeth Decl. ¶ 6, ECF 105-4; Esmeralda Decl. ¶ 6, ECF 105-3. |

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| | could not sponsor Esmeralda and Esmeralda's son because Elizabeth was too young. | |
| 396 | In addition, Esmeralda's mother was a member of Elizabeth's household and lacked the required form of identification as a household member. | Elizabeth Decl. ¶ 6, ECF 105-4. |
| 397 | A family friend then attempted to sponsor Esmeralda, but was told he would be denied because he had insufficient income, by himself, to support both Esmeralda and her son and he could not include alternative sources of support, such as contributions from Esmeralda's mother. | Elizabeth Decl. ¶ 7, ECF 105-4; Esmeralda Decl. ¶ 7, ECF 105-3. |
| 398 | Next, a family friend from church attempted to sponsor Esmeralda. The sponsor had the required form of documentation but he was unable to complete the sponsorship process because his wife, with whom he lives, lacks the required identity documents as a household member. | Elizabeth Decl. ¶ 8, ECF 105-4. |
| 399 | None of Esmeralda's potential sponsors were provided the opportunity to complete an OMB-approved Sponsor Application. | Defs.' PRA Resp. 2–3, ECF 91 (confirming continued use of Sponsor Application Version 18). |
| 400 | With no additional sponsorship options, Esmeralda and her son entered ORR long-term foster care, where they are currently placed. | Esmeralda Decl. ¶ 8, ECF 105-3; Elizabeth Decl. ¶ 9, ECF 105-4. |
| 401 | Esmeralda and her son lost the opportunity for release from ORR custody because her mother and her family friends and their household members lack identification and/or income documentation newly required after March 2025, and because of her mother's understanding that participating in the sponsorship process could place her at heightened risk of immigration enforcement. | Esmeralda Decl. ¶¶ 4–5, 7; ECF 105-3; Elizabeth Decl. ¶¶ 3–5, 7-8. ECF 105-4. |
| | **V. NEW INDIVIDUAL PLAINTIFF — LORENZO V.** | |
| 402 | Plaintiff Lorenzo V. is 15 years old and entered ORR custody for the first time in September 2025. | Declaration of Lorenzo V. ("Lorenzo Decl.") ¶ 2, ECF 105-2. |

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| 403 | Lorenzo is currently detained in ORR custody at a shelter in Virginia, having previously been held at a shelter in Georgia. | Lorenzo Decl. ¶ 3, ECF 105-2. |
| 404 | Lorenzo's oldest brother lives with his wife and Lorenzo's middle brother in South Carolina. | Lorenzo Decl. ¶ 3, ECF 105-2. |
| 405 | South Carolina does not provide state IDs or drivers' licenses to individuals who lack lawful immigration status. | South Carolina Department of Motor Vehicles, Designated Branches for People Who are Not US Citizens, https://dmv.sc.gov/driver-services/lawfully-present-non-us-citizens (last visited June 15, 2026); *see also* South Carolina Department of Motor Vehicles, International Customers' Checklist, https://dmv.sc.gov/sites/scdmv/files/media/Forms/MV-94.pdf (last visited June 15, 2026) (requiring documentation regarding immigration status and authorized length of stay). |
| 406 | Lorenzo's oldest brother attempted to sponsor Lorenzo soon after he arrived in ORR custody in September 2025. | Lorenzo Decl. ¶¶ 2, 4, ECF 105-2. |
| 407 | Lorenzo's brother was unable to sponsor him because ORR refused to accept his foreign passport as verification of his identity and demanded proof of identification that complied with ORR's new requirements after March 2025. | Lorenzo Decl. ¶ 4, ECF 105-2. |
| 408 | Lorenzo's middle brother and household member of his sponsor brother also had a foreign passport but did not have a form of identification compliant with ORR's new requirements after March 2025. | Lorenzo Decl. ¶ 4, ECF 105-2. |
| 409 | Lorenzo's oldest brother withdrew as Lorenzo's sponsor because he did not have the required form of identification to proceed. | Lorenzo Decl. ¶ 5, ECF 105-2. |

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| 410 | Lorenzo's sister-in-law, Lucy V., is a U.S. citizen and therefore had the requisite identification documentation. | Lorenzo Decl. ¶ 5, ECF 105-2. |
| 411 | ORR informed Lucy that her sponsorship could not proceed until Lorenzo's brothers provided a form of identification acceptable under ORR's post-March 2025 rules because they are adult household members. | Lorenzo Decl. ¶ 5, ECF 105-2. |
| 412 | Lorenzo's brothers' passports are not an acceptable form of identification under ORR's post-March 2025 Policy Guide Section 2.2.4 because Lorenzo's brothers lack proof of work authorization or other lawful immigration status. | Lorenzo Decl. ¶¶ 4, 6, ECF 105-2; ORR Policy Guide § 2.2.4. |
| 413 | A different sister-in-law has begun the process to sponsor Lorenzo. It is unclear how long her sponsorship process will take or whether she will be approved. | Lorenzo Decl. ¶ 6, ECF 105-2. |
| 414 | None of Lorenzo's potential sponsors were provided the opportunity to complete an OMB-approved Sponsor Application. | Defs.' PRA Resp. 2–3, ECF 91 (confirming ORR's continued use of Sponsor App. (Version 18), ECF 85-4. |
| 415 | Lorenzo lost the opportunity for earlier release to his family because his brothers cannot obtain the documentation newly required under ORR Policy Guide Section 2.2.4 after March 2025. | Lorenzo Decl. ¶¶ 3-5, ECF 105-2. |
| | **VI. NEW INDIVIDUAL PLAINTIFF —BRIAN G.** | |
| 416 | Plaintiff Brian G. is 13 years old and entered ORR custody for the first time in May 2025, when he was 12 years old. | Declaration of Brian G. ("Brian Decl.") ¶ 2, ECF 105-5. |
| 417 | Brian was held at a shelter in Georgia for almost a year before being transferred to a long-term foster care program in Illinois, where he is currently placed. | Brian Decl. ¶ 2, ECF 105-5. |
| 418 | When Brian first arrived in ORR custody, he planned to live with his uncle, who lives in Mississippi. | Brian Decl. ¶ 3, ECF 105-5. |

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| 419 | Mississippi does not provide state IDs or drivers' licenses to individuals who do not have lawful immigration status. | Mississippi Department of Public Safety Driver Service Bureau, Non-US Citizen Driver's License or Identification Card, https://www.driverservicebureau.dps.ms.gov/Drivers/Non_Citizen (last visited June 15, 2026) ("A driver license or identification card applicant is required to provide documentation of their legal status in the US."). |
| 420 | Brian's uncle spoke with his case manager about the application process but was unable to complete the process because he lacked a form of identification newly required after March 2025. | Brian Decl. ¶¶ 3–4, ECF 105-5. |
| 421 | Brian's uncle lacks a work permit or visa to establish lawful presence in the United States. | Brian Decl. ¶ 3, ECF 105-5. |
| 422 | Brian's cousin became Brian's next sponsor and had the form of identity documentation required by ORR. | Brian Decl. ¶ 5, ECF 105-5. |
| 423 | Brian's cousin's parents, with whom she lived, did not have the required form of identification as household members. | Brian Decl. ¶ 5, ECF 105-5. |
| 424 | Brian's cousin's parents moved out of their home so that she could complete the sponsorship process without them as household members and only with household members who could meet ORR's new document requirements. | Brian Decl. ¶ 5, ECF 105-5. |
| 425 | To comply with ORR's requirements, Brian's cousin lived with her two younger siblings and without her parents and this situation was difficult for the whole family. | Brian Decl. ¶ 5, ECF 105-5. |
| 426 | Ultimately, because of the significant demands of the reunification process, Brian's cousin withdrew her sponsorship application. | Brian Decl. ¶ 5, ECF 105-5. |
| 427 | Brian decided to apply for long-term foster care to protect his family members and gain a bit more freedom. | Brian Decl. ¶ 6, ECF 105-5. |

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| 428 | None of Brian's potential sponsors were provided the opportunity to complete an OMB-approved Sponsor Application. | Defs.' PRA Resp. 2–3, ECF 91 (confirming ORR's continued use of Sponsor App. (Version 18)), ECF 85-4. |
| 429 | Brian's custody lost opportunities for release to family because his family members seeking to sponsor and care for him and/or their household members could not satisfy the documentation requirements in ORR Policy Guide Section 2.2.4. | Brian Decl. ¶¶ 3-6, ECF 105-5. |
| | **VII. RE-REFERRAL OF CHILDREN TO ORR CUSTODY** | |
| 430 | Children who first entered ORR custody prior to April 22, 2025 have been re-arrested and re-referred to ORR custody after April 22, 2025. | Declaration of Benito S. ("Benito Decl.") ¶¶ 2-3, 7, ECF 105-9; *E.F.E.L. v. Noem*, No. 26-cv-02507, 2026 WL 1045550, *2 (N.D. Ill. Apr. 17, 2026); *A.N.P.S. v. Salazar*, No. 25-cv-14778, 2025 WL 3707333, *1 (N.D. Ill. Dec. 22, 2025); *M.A. et al. v. Crystal Molina et al.*, No. 26-cv-415, 2026 WL 741623, at *1 (N.D. Ohio March 17, 2026); *Diego N. v. Salazar*, No. 26-cv-577, 2026 WL 1179706, *2 (D.D.C. April 30, 2026); Hr'g. Tr. at 63:5-6, *Diego N. v HHS*, No. 26-cv-577, ECF No. 40 (D.D.C. March 24, 2026). |
| 431 | ORR applies its proof of identification and proof of income requirements in ORR Policy Guide Section 2.2.4 to sponsors of children re-referred to ORR custody after April 22, 2025, even if the child was previously in ORR custody before April 2025. | Benito Decl. ¶¶ 2-3, 7, 10, ECF 105-9; *E.F.E.L. v. Noem*, No. 26-cv-02507, 2026 WL 1045550, *2, 4-5 (N.D. Ill. Apr. 17, 2026). |

Date: June 15, 2026

Respectfully submitted,

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