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)

PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND NEW CLASS REPRESENTATIVES

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INTRODUCTION

The key facts supporting class certification in this case are not subject to reasonable dispute. The Office of Refugee Resettlement ("ORR")'s proof of identity and proof of income policies and Interim Final Rule ("IFR") are generally applicable to children in ORR custody and their potential sponsors. Each of the named Plaintiffs and putative class representatives have lost opportunities for release from ORR custody because their sponsors are unable to satisfy ORR's new documentation requirements. Plaintiffs bring common legal claims, including that ORR's documentation policies are arbitrary and capricious and contrary to law on multiple grounds. Vacatur of these policies would remedy named Plaintiffs' and putative class members' lost opportunity to be released to sponsors who cannot meet ORR's new requirements. Plaintiffs also bring common legal claims challenging the IFR, which Plaintiffs allege authorizes the disqualification of their sponsors based solely on immigration status and deters sponsors from completing the application process.

Defendants do not contest that ORR's documentation policies were applied to the named Plaintiffs' cases and resulted in delays or denial of release to sponsors. Defendants instead focus almost exclusively on whether the new named Plaintiffs and their sponsors have reliance interests in the prior policies, ignoring Plaintiffs' multiple other common legal claims. Further, as the Court has already concluded, even if Plaintiffs are not *guaranteed* release, the Court can still grant meaningful relief to the class by requiring their applications to be processed without regard to the unlawful documentation requirements. Mem. Op. Granting Prelim. Inj. at 9, 23, June 9, 2025, ECF 35 ("PI Mem. Op.").

With the benefit of the full record and evidence now before the Court, the Court should use its authority to alter or amend the existing provisional class definition to include children regardless of when they entered custody, in recognition of the many common issues of law the expanded class raises. To the extent the Court deems appropriate, it can also certify a sub-class of children who entered custody on or before April 22, 2025, in recognition of these children's additional reliance interests. As Plaintiffs' unrebutted evidence demonstrates, there are still children with live claims who first entered ORR custody on or before April 22, 2025.

ARGUMENT

I. The New Plaintiffs Meet the Requirements of Rule 23

Over a year ago, on June 9, 2025, the Court provisionally certified a class consisting of "all unaccompanied children (1) who were in or transferred to the custody of HHS on or before April 22, 2025; (2) who have identified a potential sponsor; and (3) whose 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." PI Mem. Op. at 19. In provisionally certifying this class, the Court noted "its authority to alter[] or amend[] the certification before adjudication on the merits." *Id.* (citations omitted). Since the provisional class was certified, Plaintiffs have twice amended their complaint to include children who entered custody after April 22, 2025, who raise the same legal questions about the challenged policies and have experienced the same predictable prolonged detention resulting at least in part from the challenged policies. *See, e.g.* Min. Order of June 4, 2026 (noting "modest additions to the Complaint").

Defendants' opposition to class certification fails to rebut the strong evidence that the broader putative class shares multiple common questions of fact and law and that this court's decision will "resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Although Defendants point to other issues further contributing to children's prolonged detention—none of which are challenged in this case—they do not contest that the challenged document policies are at least one common barrier to reunification for all named Plaintiffs, including the newly named Plaintiffs. *See* Defendants' Opposition to Plaintiffs' Second Motion for Class Certification at 4-5, ECF 110 ("Defs.' Opp. to Pls.' Suppl. Brief in Supp. of Class Cert."). Their argument that Plaintiffs' cases do not satisfy typicality falls equally flat.

Finally, even if the Court finds lack of standing as to a specific legal claim, this does not defeat class certification where Plaintiffs have standing as to other claims that raise common issues of law. *See* PI Mem. Op. at 20 (even if no individual plaintiff has standing to challenge the IFR, "the named plaintiffs satisfy commonality because they suffered the same injury—extended detention by ORR—as a result of the new sponsor requirements.).

A. New Proposed Class Representatives Present Common Issues of Law and Fact

All Plaintiffs challenge ORR's unlawful policies on multiple common factual and legal grounds. Like all child Plaintiffs and putative class members, Esmeralda C., Lorenzo V., and Brian G. are subject to the same arbitrary, capricious, and unlawful new proof of income and identification document requirements. *See* Pls.' Suppl. Mem. of Law in Supp. of Mot. for Summ. J. at 7-10, ECF 108 ("Pls.' Suppl. MSJ") (citing undisputed facts).[1] All child Plaintiffs experienced some predictable delay or denial of release as a *direct* result of being subjected to these policies, whether because complying with them was impossible or burdensome enough to cause significant delay or abandonment of the sponsorship process. *Id.*

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[1] Absent the preliminary injunction, the policies would apply to all children regardless of when they entered ORR custody.

Defendants' declaration and records further demonstrate the impact of these policies on Plaintiffs' prospects for release. *See* Declaration of Toby Biswas ¶ 3, June 15, 2026, ECF 109-1 ("Biswas Decl.") ("Lorenzo's brother reported that he was unable to obtain an acceptable form of ID and that his wife who is a U.S. citizen would proceed as Lorenzo's sponsor instead . . . ORR reminded him that as an adult household member, he would still be required to provide an ID that meets ORR's requirements."); *id.* ¶ 5 ("On May 17, 2025, ORR informed Brian's cousin that her household members all needed valid IDs as their current forms of ID would not meet the requirements . . . From August 1 to 8, 2025, ORR was waiting for the household members to relocate."); *see also* Declaration of Rebecca Wolozin ("Wolozin Decl.") ¶¶ 7-8 & Ex. A, June 23, 2026, ECF 112-1 (in addition to information contained in Biswas declaration, Esmeralda's casefile notes that her mother advised Esmeralda's case manager that her family friend sponsor "learned he did not meet income requirements and would not pursue the application" and Esmeralda's sister indicated she did not finish sponsorship process because of a lack of required documents).

All plaintiffs, including Esmeralda, Lorenzo, and Brian, raise common questions of law related to the documentation requirements. These include whether the documentation requirements promulgated by ORR on or after March 7, 2025 are arbitrary and capricious for multiple reasons in addition to a failure to consider reliance interests, such as ORR's failure to consider the impact of these policies on children's length of detention, mental health, or family integrity interests, and failed to reasonably explain its decision or consider reasonable alternatives. Second Am. Compl. ¶ 205, ECF 104 ("SAC"). Plaintiffs also allege these requirements are contrary to law because they violate the Trafficking Victims Protection Reauthorization Act, the pre-IFR ORR Foundational Rule, and the Paperwork Reduction Act ("PRA"). *Id.* ¶¶ 194-200. Defendants focus only on reliance interests and do not address the vast majority of Plaintiffs' common legal claims.

Furthermore, the documentation policies harming all members of the putative class would violate ORR's Foundational Rule but for the improperly promulgated IFR, which the named Plaintiffs and putative class likewise challenge as unlawfully promulgated, arbitrary and capricious and contrary to law. SAC ¶¶ 176-178, 183-185, 189, 196; *see also* Pls.' Mem. in Supp. of Mot. for Summ. J. at 12-14, ECF 58-1 ("Pls.' MSJ"); Pls.' Reply in Supp. of Mot. for Summ. J. at 8-10, ECF 74 ("Pls.' MSJ Reply").

Finally, as this Court has already held, vacatur of the document requirement policies would unquestionably remedy the harm caused by the challenged policies for all children in the putative class. PI Mem. Op. at 9, 23. If the documentation policies were vacated, each named Plaintiff would have a new opportunity to pursue release to their previously disqualified sponsors. Other delays caused by issues not raised in this case do not defeat commonality. For instance, any delays in Lorenzo's second sister-in-law's application are irrelevant to his claim that his first and second choice sponsors—his eldest brother and his eldest brother's U.S. citizen wife—were unable to proceed with sponsorship because Lorenzo's brother lacked qualifying identification because of his immigration status. Biswas Decl. ¶ 3; Declaration of Lorenzo V. ¶¶ 4-6, ECF 105-2. Similarly, that ORR refused to release Brian after fully vetting and recommending his cousin for approval as a sponsor in August 2025 does not change the fact that his initial first choice sponsor—his uncle—lacked newly required identification because of his immigration status and his cousin's application was significantly delayed and eventually abandoned because her household member parents lacked newly required identification because of their immigration status. Biswas Decl. ¶ 5; Declaration of Brian G. ¶¶ 3-5, ECF 105-5.

Similarly, the Court can remedy the harm of ORR's unlawful disqualification of sponsors based on unauthorized information collection requirements by clarifying that ORR is gravely misreading the PRA; ORR must gain OMB approval of information collection *prior to* carrying out such a collection, must then implement and use the *approved* form, and cannot penalize sponsors previously subjected to the unauthorized information collection. Each of Plaintiffs' requested remedies—vacatur of ORR's unlawful documentation policies and an injunction and declaratory judgment—would remedy the harms associated with the unauthorized information collection.

That there may be individual differences in children's ultimate sponsorship outcomes does not defeat commonality because the Court can still provide a common resolution to the class claims. *See* PI Mem. Op. at 21, 23-24 (holding that resolution of Plaintiffs' legal claims does not require a positive release determination from ORR); *see also* Pls.' Reply in Supp. of Class Cert. at 5-6, ECF 37 ("Pls.' Class Cert. Reply") (citing *Davis v. U.S. Parole Comm'n*, No. 24-1312, 2025 WL 457779, at *4, *6-8 (D.D.C. Feb. 11, 2025)).

B. New Proposed Class Representatives' Claims are Typical

As with commonality, Defendants attempt to muddy the water with issues unrelated to Plaintiffs' class certification request. Regardless of the individualized details of each child's case, Defendants acknowledge the universal fact that every Plaintiff and every child in the putative class is subject to the policies challenged in this action and has experienced obstacles to release because of them. *See* Part I.A *supra*. Namely, whether sponsors were "on notice" of ORR's new but unlawful policies does not affect Plaintiffs' other legal arguments that the policies are arbitrary and capricious and contrary to law. And as with commonality, factual differences in children's broader reunification cases and outcomes are not at issue here. *See, e.g., Little v. WMATA*, 249 F. Supp. 3d 394, 420 (D.D.C. 2017) ("[L]imited factual distinctions between class members does not destroy typicality" where Plaintiffs' claims "arise from the same course of events . . . and class members make similar legal arguments").

Defendants' arguments on typicality misunderstand Plaintiffs' claims. As discussed, reliance interests are only one component of Plaintiffs' claims. *Id.* Although ORR's failure to consider any existing reliance interests when promulgating its documentation policies is persuasive evidence that the policies are arbitrary and capricious, reliance is not the primary, and certainly not the *only* issue of law presented in this case. Pls.' MSJ at 31, 34; Pls.' MSJ Reply at 32. Moreover, any typicality concerns related to reliance interests could be resolved through certification of a main class and a reliance subclass. *See* Pls.' Class Cert. Reply at 6-10.

Finally, Defendants' vague request to "consider ORR's responsibility and authority, separate from the documentation requirements, in conducting a thorough assessment of sponsors on a case-by-case basis" is irrelevant. Defs.' Opp. to Pls.' Suppl. Brief in Supp. of Class Cert. at 7. ORR's discretionary authority to make individualized determinations as to what is needed to evaluate *individual* sponsors on a case-by-case basis is not at issue here. Plaintiffs instead challenge ORR's blanket policies that apply to all children and their sponsors. Defendants' new request for a temporal limitation in the class definition to some unspecified date in the future is unsupported by reasoning or evidence in the record and should be rejected. *Id*. The mere passage of time does not render ORR's policies any less arbitrary and capricious or contrary to law.

II. Members of the Provisional Class with Live Claims Remain in ORR Custody

Defendants offer no evidence that the provisionally certified class lacks members. Plaintiffs, by contrast, submitted evidence regarding current provisional class members in ORR custody in multiple different sponsorship postures. *See* Declaration of G.B.J. ¶¶ 3, 9, 15-17, 19-21, ECF 105-6 ("G.B.J. Decl."); 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. ¶¶ 2-3, 7, ECF 105-9 ("Benito Decl."). Defendants do not dispute Plaintiffs' evidence. *See* Defs.' Opp. to Pls.' Suppl. Brief in Supp. of Class Cert. at 7-8. Instead, Defendants broadly argue that the provisional class is limited to children whose current sponsor was identified prior to June 9, 2025. This argument ignores Plaintiffs' evidence and is inconsistent with the plain text of the class definition.

First, Defendants do not contest that there continue to be members of the provisionally certified class in custody under any interpretation of the class definition. Defendants do not dispute, for instance, that some provisional class members, such as G.B.J.'s grandchildren, have had the same potential sponsor since before June 2025 and retain live claims even under Defendants' impermissibly narrow interpretation of this Court's provisional class definition. G.B.J. Decl. ¶¶ 3, 9, 15-17, 19-21.

Furthermore, Defendants do not dispute that children who entered ORR custody prior to April 2025 and were released to a sponsor are continuously being rearrested and re-referred to ORR custody. *See* Defs.' Opp. to Pls.' Suppl. Brief in Supp. of Class Cert.; *see also* Pls.' Suppl. MSJ at 13 (citing Defendants' counsel's representation in separate case that approximately 500 children had been "re-referred" to ORR since January 2025). These re-referred children are often seeking release to the same sponsor *previously identified* and approved by ORR prior to June 2025. *See* Benito Decl. ¶¶ 2-3, 7, 10 (aunt previously approved as a sponsor in 2023 but unable to sponsor again because of identification requirements); *E.F.E.L. v. Noem*, No. 26-cv-02507, 2026 WL 1045550, at *2, *4 (N.D. Ill. Apr. 17, 2026) (child released to brother in March 2025 shortly before new identification requirements was re-detained in December 2025 and his brother was unable to produce newly required identification). Therefore, the provisionally certified class continues to have currently detained class members and is being replenished with children who originally entered ORR custody prior to April 22, 2025.

In any event, Defendants' argument regarding temporal limits on sponsor identification is inconsistent with both the text of the provisional class definition and the reasoning of the Court's opinion granting a preliminary injunction. The Court granted provisional certification of a class consisting of:

> [A]ll 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.

Order Granting Prelim. Inj. at 1, June 9, 2025, ECF 34 ("PI Order"). The only temporal limitation in this class definition—the date of April 22, 2025—plainly refers to the date a child was "in or transferred to the custody of HHS." The provisional class definition does not reference the date of the Court's order and nowhere mentions the date a sponsor is identified by ORR.

This is consistent with the Court's memorandum opinion, which focused on the *child's* reliance interests, not a particular sponsor's interests, and referenced only the date a child entered ORR custody. *See* PI Mem. Op. at 15 ("[T]he unaccompanied plaintiff children arrived in the United States with the expectation that they had family members or friends who could sponsor them, based on the earlier documentation requirements."); *id.* at 21-22 ("The defendants contend that the named plaintiffs are not typical of the class because each was transferred to ORR custody before or around the time ORR updated its Policy Guide, while the majority of potential class members arrived in the United States after the policies were imposed."); *id.* at 22 ("[T]he Court will—at least at this early stage—limit the class to children who were transferred into ORR custody on or before April 22, 2025, shortly after the new document changes became effective.").

The additional requirements in sub-clauses (a) and (b) are not linked to the April 22, 2025, date of transfer to ORR custody, and the use of the present tense in these sub-clauses makes clear that these clauses are not temporally limited. A child who entered ORR custody prior to April 22, 2025, but has a recently identified sponsor who lacks required identification or proof of income would still "have or had a potential sponsor who has been identified" whose application "cannot be completed because the sponsor is missing documents newly required on or after March 7, 2025." PI Order at 1.

Significantly, ORR's increased application requirements have forced many children to switch sponsors, often multiple times. *See, e.g.,* Declaration of Y.R.M. ¶¶ 2, 4-6 (entered January 2025; initial sponsor cousin could not be approved and great aunt and great uncle attempted to sponsor but lacked required identification); *see also* Biswas Decl. ¶¶ 4-5 (describing Esmeralda and Lorenzo's multiple sponsorship attempts); *id.* ¶ 5 (Brian's cousin was recommended for approval in August 2025 after a positive home study but release was delayed due to medical clearance; after medical clearance was obtained, the case was nonetheless remanded for "additional sponsor vetting" due to "new and enhanced sponsor vetting policies"). There is no just basis to deny a child with all the same reliance interests as other provisional class members an opportunity for release simply because their first sponsor was unable to successfully complete ORR's highly burdensome process.

Defendants' argument that later-identified sponsors should be able to fulfill the new documentation requirements is plainly inconsistent with the record in this case. Defendants assert that "it is reasonable to expect that potential sponsors, who were disqualified or denied after June 19, 2025, are on notice of the new sponsorship requirements and able to gather the documents required to show their suitability for sponsorship or make their case as to why the new requirements should be waived in ORR's discretion, on a case-by-case basis." Defs.' Opp. to Pls.' Suppl. Brief in Supp. of Class Cert. at 8. As Plaintiffs have repeatedly shown, however, it is impossible for many sponsors to gather the required documents because of their immigration status and ORR's discretionary waivers apply only to parents or legal guardians and only to the identification requirement. Biswas Decl. ¶¶ 3, 5; Defs.' Separate Concise Statement of Genuine Issues ¶¶ 21-22, 37, 40-41, 61-62, 66, 109, 124-25, 172-73, 180, ECF 72-1. The prejudice to provisional class members remains the same whether it is their first or fourth sponsor disqualified.

Finally, contrary to Defendants' suggestion, the notice requirements in the Court's order in no way modify the provisional class definition. These notice requirements helped ensure that previously "disqualified or denied" sponsors had an opportunity to continue their applications without regard to the unlawful policies. PI Order at 2. Such notice was not necessary for sponsors in other postures covered by the provisional class definition, such as sponsors whose applications were "delayed," because the Court separately enjoined ORR from applying its revised proof of income and proof of identification requirements "against all members of the certified class." *Id.* Had Defendants faithfully implemented the Court's order, ORR would simply have applied the prior documentation requirements to newly identified sponsors of provisional class members and no additional notice would be needed.

CONCLUSION

Plaintiffs respectfully request the Court grant their motion for class certification.

Date: June 25, 2026

Respectfully submitted,

/s/ *Diane de Gramont*
Diane de Gramont (admitted *pro hac vice*)
Mishan Wroe (admitted *pro hac vice*)
NATIONAL CENTER FOR YOUTH LAW
428 13th Street, FL 5

Oakland, California 94612
(510) 835-8098
ddegramont@youthlaw.org
mwroe@youthlaw.org

Rebecca Wolozin (D.C. Bar No. 144369)
David Hinojosa (D.C. Bar No. 1722329)
NATIONAL CENTER FOR YOUTH LAW
2300 18th St. NW
P.O. Box 21156
Washington, DC 20009
(202) 964-0406
bwolozin@youthlaw.org
dhinojosa@youxthlaw.org

Cynthia Liao (admitted *pro hac vice*)
Joel McElvain (D.C. Bar No. 448431)
Skye L. Perryman (D.C. Bar No. 984573)
DEMOCRACY FORWARD FOUNDATION
P.O. Box 34553
Washington, D.C. 20043
(202) 448-9090
cliao@democracyforward.org
jmcelvain@democracyforward.org
sperryman@democracyforward.org

Counsel for Plaintiffs