ORAL ARGUMENT HELD SEPTEMBER 15, 2026
No. 26-5157

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Diego N., et al.,
Plaintiffs-Appellants,
v.

United States Department of Health and Human Services,
et al.,
Defendants-Appellees,

On Appeal from the United States District Court
for the District of Columbia
No. 26-cv-0577
Hon. Carl J. Nichols, U.S. District Judge

PLAINTIFFS-APPELLANTS' OPPOSITION TO MOTION TO DISMISS APPEAL AS MOOT

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INTRODUCTION

Plaintiffs-Appellants Diego N., Renesme R., Mario C., and Benito S. filed this litigation on behalf of themselves and a putative class of similarly situated children who were previously released from the custody of the Office of Refugee Resettlement ("ORR"), re-detained by the Department of Homeland Security ("DHS"), re-referred to ORR custody, and forced to remain in detention while their sponsors repeat ORR's sponsor application process. At every stage of this case, Plaintiffs have pursued relief for themselves and the putative class.

This appeal is not moot because Plaintiffs requested provisional class certification for purposes of a preliminary injunction and their motion for class certification remains pending in district court. The district court declined to rule on Plaintiffs' request for provisional class certification only because it concluded that "preliminary relief is not warranted." Joint Appendix 16 n.3 ("J.A."). If this Court reverses the district court's order and remands for further proceedings, Plaintiffs will have a chance to pursue preliminary injunctive relief on behalf of the putative class at that point. Although Plaintiffs have now been released from ORR custody, they satisfy the "inherently transitory" and "picking

off" exceptions to mootness in the class context because of the uncertain length of ORR custody and ORR's decision to expedite the release of Diego, Renesme, and Mario after the filing of this litigation.

In addition, Diego and Renesme remain minors and there is a reasonable possibility they could once again be subjected to ORR's reapplication policy if they encounter DHS officers in the future. Nothing in the record indicates that DHS has ceased its practice of detaining released unaccompanied children solely based on their immigration status. Diego's and Renesme's individual claims thus satisfy the "voluntary cessation" and "capable of repetition, yet evading review" exceptions to mootness.

RELEVANT BACKGROUND

On February 23, 2026, Plaintiffs filed a class action complaint and requested class certification. J.A. 5. The following day, Plaintiffs moved for a preliminary injunction and requested provisional class certification. J.A.6. The district court declined to rule on provisional class certification and Plaintiffs' motion for class certification remains pending in district court. J.A.13 n.1, 16 n.3.

After the filing of this case, ORR took steps to expedite the release

of Diego, Renesme, and Mario to their parents, including waiving requirements that the ORR Policy Guide characterizes as mandatory.

In Diego's case, at the time of filing in late February 2026, Diego and his father had been waiting nearly two months following a positive home study for ORR to schedule a DNA test and identification verification appointment required by ORR policy. J.A.40-41 ¶¶ 9-10; J.A.114-15 ¶ 45; *see also id.* at 115 ("[A]s a matter of policy, ORR still requires a DNA test and identity verification, even for Category 1 sponsors[.]"). On March 12, 2026, ORR released Diego to his father without conducting the required DNA testing and identification verification appointment. J.A.256:25-257:5; Declaration of Toby Biswas ¶ 3, May 4, 2026, Dist. Ct. Dkt. 45-1 ("May Biswas Decl.").

In Renesme's case, at the time of filing, her father had not completed a new sponsorship application. J.A.51-52 ¶¶ 10-11; J.A.116 ¶ 46. Although Renesme's father always wanted his daughter back, he did not initially apply because he was told that he would have to repeat the entire application process as if he were a new sponsor. J.A.51 ¶¶ 10-11. Renesme and her father were aware that other sponsors had been detained when they attended mandatory "appointments that are part of

the sponsor application process." J.A.51-52 ¶ 11; *see also* J.A.76-77 ¶ 7, 83 ¶ 6 (declarations from legal service providers explaining that sponsors have been detained by DHS during the ORR sponsorship process and others have withdrawn from sponsorship "because ORR asked them to show their identification in person at ICE offices or be subjected to invasive 'interviews' by DHS personnel."); Opening Br. at 10-11 (discussing appointments at DHS offices and detention of sponsors).

Given this reasonable fear, Renesme's aunt decided to sponsor Renesme instead, but her application proceeded very slowly. J.A.52 ¶ 13, 116 ¶ 46.[1] After this litigation was filed, ORR reached out to Renesme's father and offered him an expedited sponsorship process. J.A.16 n.2, 116 ¶ 46. He readily agreed and Renesme was released to her father on March 25, 2026. May Biswas Decl. ¶ 4.

Prior to the filing of this litigation, Mario's mother's sponsorship application was stalled because ORR refused to accept her foreign passport as a form of identification and instead demanded she obtain a

[1] There is no factual dispute that ORR waited approximately a month and a half after Renesme's aunt agreed to begin the sponsorship process before contacting her "aunt to request required documents and information for sponsorship application." J.A.116; *see also* J.A.52 ¶ 13.

form of United States-issued identification to satisfy ORR's recent proof of identification requirements. J.A.61-62 ¶¶ 13-14; ORR, Unaccompanied Alien Children Bureau Policy Guide § 2.2.4 ("ORR Policy Guide"), https://acf.gov/orr/policy-guidance/uac-program-policy-guide-section-2; *see also* J.A.62 ¶ 14 ("They didn't do a DNA test or fingerprints because she still has not been able to get the ID they want."); J.A.117 ¶ 47 (noting that "ORR had several conversations with Mario C.'s mother about sponsorship" between November 2025 and February 2026 and she "confirmed her interest in sponsorship but had declined sponsorship due to the requirements"). In early March 2026, shortly after this litigation was filed, ORR reached back out to Mario's mother regarding sponsorship and accepted her birth certificate and existing identification. J.A.117-18 ¶ 47. Mario was released to his mother on March 28, 2026. May Biswas Decl. ¶ 5.

It appears that Diego, Renesme, and Mario were reunified with their parents pursuant to a new ORR review of their individual cases and exceptions to ORR's sponsor requirements. J.A.112-13 ¶ 38; Transcript of Sept. 15, 2026, Oral Argument at 53:3-55:15, 59:24-60:5 ("Oral Arg. Tr."). Mr. Biswas's declaration describing this review does not indicate

when the review began beyond stating that ORR was in the process of conducting a review as of the date of his declaration on March 10, 2026. J.A.112-13 ¶ 38, 120. Nor does Mr. Biswas specify how many children other than the named plaintiffs were offered expedited sponsorship processes. *Id.* There is no evidence that this review predates Plaintiffs' complaint or that it resulted in any lasting change in ORR policy.

Although seven months have passed since this March 2026 review, ORR has not updated its Policy Guide to indicate that it will offer similar expedited processes for re-referred children with parent or legal guardian sponsors beyond the named plaintiffs. *See* ORR Policy Guide § 2. The government's counsel indicated at oral argument that, under the approach described in Mr. Biswas's declaration, if a re-referred child was previously released to a parent or legal guardian, ORR would conduct a background check of the sponsor and if there are no red flags, then ORR would verify the identity of the sponsor and release the child. Oral Arg. Tr. at 53:15-55:15.[2] A revision to the Policy Guide would be necessary to

[2] Counsel's description at oral argument still leaves significant unanswered questions, including whether the background check in question is a public records check or a fingerprint-based background check, *see* ORR Policy Guide § 2.5.1, and whether ORR will require

implement this expedited process, which is inconsistent with multiple existing policies. *See* ORR Policy Guide § 2.[3]

ARGUMENT

"'Art[icle] III mootness doctrine' has a 'flexible character'" and "is a pragmatic doctrine meant to limit 'judicial power to disputes capable of judicial resolution.'" *D.L. v. D.C.*, 860 F.3d 713, 722 (D.C. Cir. 2017) (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 396, 400 (1980)). "The mootness inquiry is a 'claim-specific analysis.'" *J.D. v. Azar*, 925 F.3d 1291, 1307 (D.C. Cir. 2019) (quoting *Daingerfield Island Protective*

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sponsors to provide a form of newly required identification or whether it will permit sponsors to prove their identity through previously acceptable forms of identity such as foreign passports, *see* ORR Policy Guide § 2.2.4. Based on Renesme's and Mario's experiences, it appears that ORR might accept a public records check and a previously acceptable form of identification, but there is no clarity in the record on current ORR policy.

[3] Although the current Policy Guide permits some exceptions for parent and legal guardian sponsors, these typically require headquarters-level approval and spark additional vetting requirements. *See, e.g.,* ORR Policy Guide §§ 2.2.4, 2.4.2 (exception to proof of identification requirement for parent or legal guardian requires a home study); *see also id.* § 2.2.4 (no waiver available to requirement that alternative caregiver satisfy identification requirements). The Policy Guide does not contemplate exceptions to the requirement that all sponsors, alternative caregivers, and adult household members submit to background checks. *Id.* § 2.5.1. Fingerprinting may be waived only in extenuating circumstances such as medical conditions and only with the approval of multiple layers of ORR leadership. *Id.*

Soc'y v. Lujan, 920 F.2d 32, 37 (D.C. Cir. 1990)). "'[O]nly when it is *impossible* for a court to grant any effectual relief' is a case moot." *Maldonado v. District of Columbia*, 61 F.4th 1004, 1006 (D.C. Cir. 2023) (quoting *Decker v. Nw. Env't Def. Ctr.*, 568 U.S. 597, 609 (2013)).

I. Plaintiffs' Class Claims are Not Moot

Plaintiffs' class claims are not moot because Plaintiffs requested a preliminary injunction on behalf of a putative class and their request for class certification remains pending. J.A.13 n.1, J.A.16-17 n.3. Plaintiffs satisfy both the "inherently transitory" and "picking off" exceptions to mootness in the class context and this Court retains the authority to grant "effectual relief" to the putative class. *Maldonado*, 61 F.4th at 1006; *see A.A.R.P. v. Trump*, 605 U.S. 91, 98 (2025).

A. Plaintiffs' Claims Satisfy the Inherently Transitory Exception to Mootness

Under D.C. Circuit precedent, Plaintiffs' claims plainly satisfy the "inherently transitory" exception to mootness. This exception applies when "(i) [] the individual claim might end before the district court has a reasonable amount of time to decide class certification, and (ii) [] 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" to the filing of the complaint. *Id.* at 1308, 1311.

This Court has held that a child's time in ORR custody satisfies the first factor and that even a year in immigration custody "would end too soon" to ensure a reasonable amount of time for class certification. *Id.* at 1311 (citing *Nielsen v. Preap*, 586 U.S. 392 (2019)); *see also id.* ("A minor under ORR custody may turn 18 years old or successfully seek voluntary departure to her country of origin.").

The second factor is also satisfied here. ORR continues to apply its reapplication policy to all children re-referred to ORR custody and there is no reason to expect that DHS will suddenly cease detaining released children and re-referring them to ORR. *See, e.g.*, J.A.268 (government counsel stated that "about 500" children were re-referred to ORR custody between January 2025 and the March 2026 preliminary injunction hearing). Putative class members will thus continue to have live claims.

The government does not dispute that Plaintiffs' claims satisfy the inherently transitory exception to mootness. Defendants-Appellees' Motion to Dismiss Appeal as Moot at 10-11 & n.1 ("Motion"). It instead

suggests—without citation to any legal authority—that because this appeal does not involve class certification, the appeal itself is moot. But mootness doctrine applies to Plaintiffs' *claims*, not the specific arguments on appeal. *See J.D.*, 925 F.3d at 1307.

Moreover, the Court has multiple possibilities to grant "effectual relief" regarding Plaintiffs' request for a preliminary injunction. *Maldonado*, 61 F.4th at 1006. As the Supreme Court recently held, appellate "courts may issue temporary relief to a putative class" even without deciding "whether a class should be certified[.]" *A.A.R.P.*, 605 U.S. at 98 (citing 2 W. Rubenstein, Newberg & Rubenstein on Class Actions § 4:30 (6th ed. 2022 and Supp. 2024)).

The Court can likewise grant effectual relief by reversing the district court's order denying a preliminary injunction and remanding to the district court for further proceedings consistent with the Court's opinion, including consideration in the first instance of Plaintiffs' motion for provisional class certification. *See, e.g.*, *Jonathan R. by Dixon v. Justice*, 41 F.4th 316, 326 (4th Cir. 2022) (holding that Plaintiffs' claims were not moot because "[i]f, on remand, the district court decides to certify the class, the certification will 'relate back to the filing of the

complaint,' preserving Plaintiffs' class claims") (quoting *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 76 (2013)); *Salazar v. King*, 822 F.3d 61, 73-74, 84 (2d Cir. 2016) (holding that "inherently transitory" exception to mootness applied, vacating district court order dismissing complaint, and remanding "for further proceedings consistent with this opinion, including consideration of plaintiffs' class certification motion"). Because provisional class certification and preliminary injunctive relief for the putative class on remand is plausible, Plaintiffs' appeal is not moot. *See Almaqrami v. Pompeo*, 933 F.3d 774, 779-82 (D.C. Cir. 2019); *see also id.* at 784 ("uncertain or even unlikely" possibility of relief "does not typically render cases moot") (internal citation omitted).

The government's novel theory would lead to inequitable results by effectively preventing appellate review of erroneous *denials* of class-wide preliminary injunctive relief involving inherently transitory claims while permitting appellate review of erroneous *grants* of preliminary injunctive relief involving precisely the same claims. *Cf. D.L.*, 860 F.3d at 721 (rejecting argument that erroneous denials of class certification should be treated differently than erroneous grants of class certification). "The separation of powers concerns that animate justiciability jurisprudence

are absent" in cases like this one where "the mootness issue stems neither from the lack of real dispute nor from any deficiency in the [plaintiffs'] advocacy, but rather from judicial error." *Id.* at 722.

Nor is there any basis for the government's assertion that Plaintiffs forfeited provisional class certification. Motion at 6. Plaintiffs' opening brief on appeal makes clear that Plaintiffs seek a preliminary injunction for themselves and the putative class. *See, e.g.*, Opening Br. at 2, 19-20, 24, 30, 42; *see also id.* at 25 n.4 (noting that Diego, Renesme, and Mario can continue to serve as class representatives under *J.D. v. Azar*, 925 F.3d 1291, 1308-11 (D.C. Cir. 2019)); *accord* Reply Br. at 3 n.1, 32. Plaintiffs did not appeal the district court's ruling on class certification because no such ruling exists. The district court did not deny provisional class certification; it simply declined to address class certification given its conclusion that a preliminary injunction was not warranted. J.A.13 n.1, 16 n.3. If this Court reverses and remands for further proceedings, the district court will necessarily address provisional class certification at that point.[4]

[4] Although it *might* be appropriate under certain circumstances for an appellant to request an opinion on class certification from this Court in

B. The Government Cannot Defeat Classwide Injunctive Relief by Granting Certain Named Plaintiffs Favorable Treatment.

"Granting relief to individual plaintiffs does not moot [] a class action claim" challenging systemic policies and seeking class-wide relief. *Samuels v. District of Columbia*, 770 F.2d 184, 193 n.5 (D.C. Cir. 1985); *see also A.A.R.P.*, 605 U.S. at 98 ("[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."); *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 339 (1980) ("Requiring multiple plaintiffs to bring separate actions, which effectively could be 'picked off' by a defendants' tender of judgment before an affirmative ruling on class certification could be obtained, obviously would frustrate the objectives of class actions.").

Like the "inherently transitory exception," the "picking off" exception to mootness operates to relate the Plaintiffs' claims back to the filing of a class action complaint. *See Richardson v. Bledsoe*, 829 F.3d 273,

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the first instance, it would be contrary to ordinary principles of appellate review to *require* that appellants do so in every case where the district court declines to rule on class certification. *Cf. Califano v. Yamasaki*, 442 U.S. 682, 703 (1979) ("[M]ost issues arising under Rule 23 [are] committed in the first instance to the discretion of the district court.").

279-88 (3d Cir. 2016) (collecting cases); *see also Wilson v. Gordon*, 822 F.3d 934, 947-51 (6th Cir. 2016); *Stein v. Buccaneers Ltd. Partnership*, 772 F.3d 698, 704-07 (11th Cir. 2014); *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1091 (9th Cir. 2011).

Here, Plaintiffs claims are susceptible to mootness under the "picking off" exception because ORR "may find a sponsor at any point and [] may obviate the claim by finding one swiftly." *J.D.*, 925 F.3d at 1311; *see also Blankenship v. Secretary of HEW*, 587 F.2d 329, 333 (6th Cir. 1978) (applying relation-back in case where "defendants may expedite processing for any plaintiffs named in a suit while continuing to allow long delays with respect to all other applicants"); *Samuels*, 770 F.2d at 193 n.5 ("partial and long-delayed relief to a few" plaintiffs does not moot class action).

Although the government contends that "ORR released three of the four Plaintiffs after conducting the vetting that ORR deemed necessary in accordance with its statutory mandate, regulations, and policies," Motion at 8, it is undisputed that "the vetting that ORR deemed necessary" in Diego's, Renesme's, and Mario's cases changed after this litigation was filed. In each of their cases, ORR waived policy

requirements to facilitate their release. *See* Relevant Background, *supra*; *see also Wilson*, 822 F.3d at 950-51 ("To the extent that evidence of a defendant's actual motive to avoid a class action is necessary, the evidence could support such a finding" because the defendant "created a new, ad hoc process to address Plaintiffs" claims."); *id.* at 950 n.4 (expressing doubt as to whether evidence of a defendant's motive is necessary) (citing *Blankenship*, 587 F.2d at 333).

As discussed above, mootness is determined by the nature of Plaintiffs' claims, not the arguments raised on appeal. The Eleventh Circuit, for instance, concluded that the relation-back doctrine applied even absent a motion for class certification because "the legal status of class members changes not when a motion to certify is filed but when a certification *order* is entered" and a motion cannot "impact[] the constitutional prerequisites to jurisdiction under Article III." *Stein*, 772 F.3d at 707. The same is true here; Plaintiffs' arguments on appeal do not alter Article III jurisdiction. "What matters is that the named plaintiff acts diligently to pursue the class claims." *Id.* Plaintiffs have consistently acted diligently to pursue injunctive relief on behalf of the putative class, including promptly moving for class certification and

requesting provisional class certification for purposes of the preliminary injunction. J.A.5, 16 n.3.

II. Diego's and Renesme's Individual Claims are Not Moot

Diego and Renesme's individual claims are not moot because the voluntary cessation and "capable of repetition yet evading review" exceptions apply to their claims.

A. ORR's Voluntary Cessation of the Full Reapplication Process as to Diego and Renesme Does Not Moot their Claims

"A defendant's 'voluntary cessation of a challenged practice' will moot a case only if the defendant can show that the practice cannot 'reasonably be expected to recur.'" *FBI v. Fikre*, 601 U.S. 234, 241 (2024) (quoting *Friends of the Earth, Inc. v. Laidlow Environmental Services (TOC), Inc.*, 528 U.S. 167, 189 (2000)).

By expediting Diego's and Renesme's sponsorship applications and waiving certain mandatory policy requirements, ORR ceased its challenged practice of treating Diego's and Renesme's sponsors as if they were brand-new sponsors subject to the full reapplication process. *See* Relevant Background, *supra*; J.A.112-13 ¶ 38; Oral Arg. Tr. 53:15-55:15. Even assuming that ORR has adopted a new approach for re-referred

children with parents or legal guardians in the United States and that such approach is generally applicable (which is far from apparent given ORR's rigorous defense of its pre-existing policy in this lawsuit and the absence of any published policy) there is no evidence this new approach pre-exists Plaintiffs' litigation. *See* J.A.112-13 ¶ 38. None of the named plaintiffs with parents in the United States were offered this expedited process until after they filed suit. That ORR did not provide Diego and Renesme *all* the relief they requested, Motion at 8, is immaterial where ORR sufficiently ceased its challenged conduct to result in Diego's and Renesme's earlier release to their parents.[5]

Additionally, the government has not met its "formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth*, 528 U.S. at 190. The government continues to defend ORR's reapplication policy, arguing it is required by statute. And if Diego and Renesme were to once again re-enter ORR custody and seek release to their fathers, there is no guarantee they would be offered an expedited sponsorship process. ORR

[5] Renesme likely would never have been released to her father absent ORR's offer of an expedited process. J.A.51-52 ¶¶ 10-11; J.A.116 ¶ 46.

has not even detailed its purported new approach to re-referred children with parent or legal guardian sponsors in its online Policy Guide, much less made any durable commitment to following it after this litigation.

Finally, the government cannot demonstrate the absence of "any arguable manipulation of [] jurisdiction." *Public Citizen, Inc. v. FERC*, 92 F.4th 1124, 1128 (D.C. Cir. 2024). As detailed above, it may fairly be inferred that Diego, Renesme, and Mario were released to weaken Plaintiffs' claims for class-wide relief. *See A.A.R.P.*, 605 U.S. at 98. Unlike in *Public Citizen*, where there was no "arguable manipulation" because the defendant itself opposed mootness, 92 F.4th at 1129, the government in this case moved to dismiss Diego, Renesme, and Mario's claims on mootness grounds in both the district court and this Court. J.A.9; Defs.' Mot. to Dismiss at 13-16, May 4, 2026, Dist. Ct. Dkt. 45.

B. ORR's Conduct is Capable of Repetition Yet Evading Review

Finally, Diego's and Renesme's claims are not moot because they are "capable of repetition yet evading review." *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911). In order to invoke this exception, Plaintiffs must demonstrate that: "(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 question is only whether a controversy is "*capable* of repetition and not . . . whether the claimant had demonstrated that a recurrence of the dispute was more probable than not." *Honig v. Doe*, 484 U.S. 305, 320 n.6 (1988). Each plaintiff has already been re-referred to ORR custody, so the likelihood they will be re-referred again is far more than a theoretical possibility.

As discussed with regard to the "inherently transitory" exception, ORR custody is usually too short to be fully litigated prior to cessation. *J.D.*, 925 F.3d at 1308, 1311; *see also 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); *Turner v. Rogers*, 564 U.S. 431, 438 (2011) (holding that the petitioner's completion of his 12-month civil contempt sentence did not moot his appeal).

Diego and Renesme remain minors and could again be subject to ORR's reapplication policy. Diego is just fifteen years old and lives in Texas near the U.S.-Mexico border. J.A.39 ¶¶ 2-3, J.A.42 ¶ 17. There is a reasonable likelihood that he will encounter DHS officials again before

he turns eighteen, including at immigration checkpoints or traffic stops. *See* 8 U.S.C. § 1357(a)(3) (permitting warrantless searches of vehicles "within a reasonable distance from any external boundary of the United States"); 8 C.F.R. § 287.1(a)(2) (defining "reasonable distance" as "100 air miles"). Renesme is seventeen years old and lives in Tennessee, which requires by state law that all law enforcement agencies communicate with federal officials "regarding the immigration status of any individual" and, beginning in January 2027, will require that all sheriffs enter into 287(g) agreements with federal immigration officials to aid in the enforcement of federal immigration law. *See* Tenn. Code § 7-68-105(a), (b); *see also* J.A.51 ¶ 8 (Renesme detained by immigration officials after police car followed her home).

Given DHS's recent pattern of stopping and detaining released unaccompanied children for no reason beyond their immigration status, there is also a reasonable likelihood that any additional encounter Diego or Renesme has with DHS would again lead to their detention. *See* J.A.51 ¶ 8; J.A.75-76 ¶ 5; J.A.81-82 ¶ 4; J.A.116 ¶ 46; *E.F.E.L. v. Noem, et al.*, No. 26-cv-02507, 2026 WL 1045550, at *2 (N.D. Ill. Apr. 17, 2026); *A.N.P.S. v. Salazar*, No. 25-cv-14778, 2025 WL 3707333, at *5 (N.D. Ill.

Dec. 22, 2025). In that situation, DHS is likely to once again classify them as unaccompanied children and re-refer them to ORR because DHS did so just last year and there is no evidence of a change in DHS policy on this issue. Finally, both Diego and Renesme have fathers in the United States who sponsored them twice and would very likely wish to sponsor them again.

III. If the Appeal is Dismissed, the Opinion Below Should Be Vacated

If the Court dismisses this appeal as moot, the district court's order should be vacated. *See United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950); *see also Select Milk Producers, Inc. v. Johanns*, 400 F.3d 939, 949 (D.C. Cir. 2005) ("[W]hen a losing party is blocked from appealing an adverse judgment or order because the case becomes moot due to happenstance, the court will vacate the disputed judgment or order.").

CONCLUSION

For the foregoing reasons, the motion to dismiss should be denied.

Date: October 26, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This response complies with the typeface and type-volume limitations in Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 4,279 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and D.C. Cir. Rule 32(e)(1). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 27(d)(1) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century font.

Dated: October 26, 2026

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