

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

---

DIEGO N., <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 1:26-cv-577-CJN
	)	
U.S. DEPARTMENT OF HEALTH AND	)	
HUMAN SERVICES, <i>et al.</i> ,	)	
	)	
Defendants.	)	

---

**REPLY IN SUPPORT OF CLASS CERTIFICATION**

**TABLE OF CONTENTS**

INTRODUCTION ..... 1

ARGUMENT ..... 3

    A. The Proposed Class is Appropriately Defined and Easily Ascertainable by Defendants... 3

    B. The Proposed Class Presents Common Questions of Law and Fact and Plaintiffs’ Claims  
are Typical of the Class Claims ..... 5

        1. Plaintiffs’ Claims Present Common Issues of Law and Fact..... 6

        2. Plaintiffs’ Claims Are Typical of the Proposed Class Members’ Claims ..... 12

    C. Class Certification Under Rule 23(b)(2) is Appropriate Because Relief in the Form of an  
Injunction will Benefit all Class Members ..... 16

CONCLUSION..... 17

**TABLE OF AUTHORITIES**

**CASES**

*Afghan & Iraqi Allies v. Pompeo*, 334 F.R.D. 449 (D.D.C. 2020)..... 10

*Angelica S. v. U.S. Dep’t of Health & Hum. Servs.*, 2025 No. 25-cv-1405; 2025 WL 1635369 (D.D.C. June 9, 2025)..... 2

*Coleman v. District of Columbia*, 306 F.R.D. 68 (D.D.C. 2015) ..... 15

*D.L. v. District of Columbia*, 713 F.3d 120 (D.C. Cir. 2013)..... 7

*D.L. v. District of Columbia*, 860 F.3d 713 (D.C. Cir. 2017)..... 16

*Damus v. Nielsen*, 313 F. Supp. 3d 317 (D.D.C. 2018)..... 9

*Davis v. U.S. Parole Comm’n*, No. 24-cv-1312, 2025 WL 457779 (D.D.C. Feb. 11, 2025)..... 12

*FBI v. Fikre*, 601 U.S. 234 (2024) ..... 16

*Garnett v. Zeilinger*, 301 F. Supp. 3d 199 (D.D.C. 2018) ..... 14

*\*J.D. v. Azar*, 925 F.3d 1291 (D.C. Cir. 2019)..... *passim*

*Jacinto-Castanon de Nolasco v. USCIS*, 319 F. Supp. 3d 491 (D.D.C. 2018)..... 5

*\*L.G.M.L. v. Noem*, 800 F. Supp. 3d 100 (D.D.C. 2025) ..... *passim*

*L.V.M. v. Lloyd*, 318 F. Supp. 3d 601 (S.D.N.Y. 2018)..... 3, 8

*Lanner v. Wimmer*, 662 F.2d 1349, 1358 (10th Cir. 1981)..... 11

*Lewis v. U.S. Parole Comm’n*, 743 F. Supp. 3d 181 (D.D.C. 2024) ..... 11

*Little v. WMATA*, 249 F. Supp. 3d 394 (D.D.C. 2017)..... 12

*Lucas R. v. Azar*, No. Cv-18-5741-DMG (PLAx), 2018 WL 10111336 (C.D. Cal. Nov. 2, 2018) ..... 3

*K.Y. v. District of Columbia*, No. 1:24-cv-03056, 2026 WL 125231 (D.D.C. Jan. 16, 2026)..... 9

*Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)..... 2

*Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017) ..... 4, 5, 9, 14

*Sosna v. Iowa*, 419 U.S. 393 (1975) ..... 16

*Stephens v. Farmers Rest. Grp.*, 329 F.R.D. 476 (D.D.C. 2019)..... 11

*Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442 (2016) ..... 6

*U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388 (1980) ..... 16

*Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011) ..... 17

*Zhang v. USCIS*, 344 F. Supp. 3d 32 (D.D.C. 2018) ..... 3

**STATUTES**

8 U.S.C. § 1229c..... 4

8 U.S.C. § 1232..... 13

**FEDERAL RULES**

Fed. R. Civ. P. 23 ..... *passim*

**OTHER AUTHORITIES**

*Charles Alan Wright, Class Actions*, 47 F.R.D. 169 (1969)..... 14

## INTRODUCTION

Defendants' opposition to class certification erroneously assumes that Plaintiffs seek an order directing the release of class members to their sponsors. From that misguided premise, Defendants dispute whether there are questions of law or fact common to the class, or whether the individual child plaintiffs have presented claims typical of the class's claims. But, because Defendants' premise is incorrect, they fail to oppose certification of the particular class Plaintiffs seek to certify. Plaintiffs seek an order invalidating Defendants' blanket policy of treating all children with previously approved sponsors as if they were entering Office of Refugee Resettlement ("ORR") custody for the first time and requiring all prior sponsors to repeat the sponsor application process. As Defendants repeatedly admit, that policy applies across the board to all putative class members, including Plaintiffs. Class certification is therefore appropriate.

*First*, Plaintiffs seek to represent a clearly defined class of children who are or will be known by Defendants because they are or will be in Defendants' custody. The proposed class definition does not depend on the individualized circumstances of a child's return to ORR custody, nor is it impermissible that the class definition includes children who will, in the future, be in ORR custody. Classes including future class members are regularly certified in the D.C. Circuit, and doing so here does not render the class definition overbroad.

*Second*, Defendants repeatedly assert that the individual circumstances or preferences of Plaintiffs and unnamed class members render class-wide treatment inappropriate and defeat commonality and typicality. But this is the wrong standard. Plaintiffs challenge ORR's blanket policy of systematically disregarding its prior sponsorship approval decisions and requiring all previously approved sponsors to begin the sponsorship process anew, regardless of the circumstances of a child's return to ORR custody. Plaintiffs are all noncitizen minors in ORR

custody who have sponsors who were previously approved by ORR. Defendants do not dispute that they uniformly apply the same sponsor application requirements to all potential sponsors, even in circumstances where ORR has already vetted and approved the sponsor to care for the child. Plaintiffs raise common questions of law and fact surrounding the processes that the Trafficking Victims Protection Reauthorization Act (“TVPRA”) and the Constitution require. Determining what process Defendants must provide before requiring a child to remain in detention is a question that can readily be addressed on a class-wide basis. Any potential differences in individualized circumstances only highlight the need for the relief Plaintiffs request from this Court: an order directing ORR to engage in a case-by-case assessment of a child’s circumstances and provide the child an opportunity to be heard before requiring their sponsor to begin the application process all over again. Plaintiffs challenge a policy that applies on uniform grounds applicable to every member of the class, regardless of the circumstances by which they re-entered ORR custody. Commonality and typicality are easily satisfied.

*Third*, Plaintiffs seek a class under Rule 23(b)(2), which does not attempt to compare the relevant weight of individual and class-wide issues, and instead applies where “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” When ORR adopts general policies that apply to children in its custody, courts regularly certify classes of unaccompanied children under Rule 23(b)(2) to determine the type of protections to which these children are entitled. *E.g.*, *J.D. v. Azar*, 925 F.3d 1291, 1323 (D.C. Cir. 2019); *Saravia for A.H. v. Sessions*, 905 F.3d 1137, 1141 (9th Cir. 2018); *L.G.M.L. v. Noem*, 800 F. Supp. 3d 100, 118-19 (D.D.C. 2025); *Angelica S. v. U.S. Dep’t of Health & Hum. Servs.*, No. 25-cv-1405 (DLF), 2025 WL 1635369, at \*9 (D.D.C. June 9, 2025) (provisionally certifying

a class); *L.V.M. v. Lloyd*, 318 F. Supp. 3d 601, 615 (S.D.N.Y. 2018); *Lucas R. v. Azar*, No. Cv-18-5741-DMG (PLAx), 2018 WL 10111336, at \*17 (C.D. Cal. Nov. 2, 2018). Defendants offer no reason for this Court to follow a different path under the circumstances here, and Plaintiffs request that the Court grant their motion and certify a class.

## ARGUMENT

### A. The Proposed Class is Appropriately Defined and Easily Ascertainable by Defendants

The proposed class is clearly defined and readily ascertainable and, indeed, consists entirely of children who are or will be known by Defendants and in their custody.<sup>1</sup> The proposed class includes noncitizen minors who are or will be in the custody of HHS and (1) who were previously in ORR custody, (2) who were approved for release by ORR to a sponsor, (3) who have been or will be re-detained by DHS and re-referred to ORR, and (4) whom ORR has not released to their previously approved sponsor pursuant to ORR’s policy requiring the previously approved sponsor to submit a new sponsor application and obtain a new approval for release. It is “administratively feasible” for ORR and this Court to ascertain who is a class member simply by asking whether a child in ORR custody meets these requirements. *Zhang v. USCIS*, 344 F. Supp. 3d 32, 61-62 (D.D.C. 2018).

Defendants’ arguments to the contrary are unavailing. First, Defendants assert that the class is overbroad because it hinges on “speculative, future conditions.” Defs.’ Opp. to Class Cert. (“Opp.”) at 20, ECF No. 34. Although Defendants claim that the class definition is imprecise because they “do not presently know who ‘will be in the custody of HHS’ or who ‘will be re-detained by DHS or re-referred to ORR,’” Opp. at 20, courts in this District regularly

---

<sup>1</sup> Defendants concede that Plaintiffs have established numerosity and that the Plaintiffs would be adequate class representatives. *See* Defs.’ Opp. to Class Cert. (“Opp.”) at 20 n.3, ECF No. 34. They also do not dispute that Plaintiffs’ counsel should be designated as class counsel.

certify classes that include future class members. For example, in *J.D. v. Azar*, the D.C. Circuit upheld the certification of a class “consisting of pregnant [unaccompanied alien children] who are (or will be) in ORR custody.” 925 F.3d 1291, 1312 (D.C. Cir. 2019); *see also L.G.M.L. v. Noem*, 800 F. Supp. 3d 100, 117 (D.D.C. 2025) (certifying a class “consisting of all unaccompanied alien children from Guatemala in (and who will be in) ORR custody who have not received a final order of removal or the Attorney General’s permission to voluntarily depart under 8 U.S.C. § 1229c and applicable regulations.”); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1202 (N.D. Cal. 2017) (provisionally certifying “a class of noncitizen minors meeting the following criteria: (1) the noncitizen came to the country as an unaccompanied minor; (2) the noncitizen was previously detained in ORR custody and then released by ORR to a sponsor; (3) the noncitizen has been or will be rearrested by DHS on the basis of a removability warrant on or after April 1, 2017 on allegations of gang affiliation”). This is because once a child is in ORR custody, ORR will necessarily have within its possession the information to determine whether that child meets the class definition.

Defendants next assert that the class definition is overbroad because class members were apprehended by DHS under many different circumstances. Opp. at 21. But Plaintiffs’ proposed class definition does not depend on the reasons or mechanisms by which children came into DHS custody or were re-referred to ORR. Instead, children would fall within the class if they came into ORR custody for a second (or third, or fourth) time after previously being released to a vetted and approved sponsor, and ORR has not released them to that sponsor pursuant to its policy requiring all sponsors to begin the sponsor application process anew. Because the relief Plaintiffs seek is individualized consideration of the circumstances of their re-referral and an

opportunity to be heard, any variation in reasons for re-referral poses no obstacle to class certification.

Likewise, Defendants’ argument that the class is inappropriate because it includes individuals who “do not share in the claimed class injury,” Opp. at 21, “or have not suffered or will not suffer any injury,” *id.* at 19, is both inaccurate and irrelevant. The class *definition* does not depend on the scope or depth of the injury suffered by a child who is separated from their family, friends, school, and community for months on end. Although Defendants assert that an individual class member who prefers to pursue release to a new sponsor instead of their previous sponsor has not suffered any injury, that does not make the class definition, or class certification, improper, as Defendants suggest. *Id.* “[A]ll the class members need not be aggrieved by or desire to challenge defendant’s conduct[.]” *J.D.*, 925 F.3d at 1316 (quoting 7AA Charles Alan Wright et al., Federal Practice and Procedure § 1775 (3d ed. 2019)). For example, class certification has been held to be proper in cases challenging voter-qualification laws even when some class members do not intend to register to vote. *Id.* at 1315 (collecting cases). And to suggest that class members—children who have been separated from their families and communities and held in ORR detention—have not suffered or will not suffer *any* injury is not only incorrect as a matter of fact and law but also fails to establish that the class definition is overbroad or indefinite. *See, e.g., Jacinto-Castanon de Nolasco v. USCIS*, 319 F. Supp. 3d 491, 503 (D.D.C. 2018) (family “[s]eparation irreparably harms plaintiffs every minute it persists”); *Saravia*, 280 F. Supp. 3d at 1200 (noting “lasting negative mental health repercussions” on children in confinement). Accordingly, the proposed class definition is sufficiently definite and ascertainable.

**B. The Proposed Class Presents Common Questions of Law and Fact and Plaintiffs’ Claims are Typical of the Class Claims**

Defendants argue that, for the same reasons that the class is overbroad, “commonality and typicality are lacking.” Opp. at 22. Typicality “tend[s] to merge” with commonality and ordinarily does not bar class certification when (1) “the claims or defenses of the representatives and the members of the class stem from a single event or a unitary course of conduct,” or (2) those claims and defenses “are based on the same legal or remedial theory.” *J.D.*, 925 F.3d at 1322 (citation omitted). Here, both typicality and commonality are easily satisfied by Defendants’ blanket imposition of its reapplication requirement to all Plaintiffs’ and class members’ sponsors, which both raises common questions and can be resolved by common answers.

### **1. Plaintiffs’ Claims Present Common Issues of Law and Fact**

Plaintiffs meet the commonality requirement because they identify common questions “susceptible to generalized, class-wide proof” that are likely to resolve important issues. *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016). Plaintiffs need identify only one; “a single such common question can” be enough for Rule 23(a)(2). *J.D.*, 925 F.3d at 1321. Here, the questions common to the class are whether ORR’s avowed policy of requiring all children re-referred to ORR custody to have their sponsors begin the sponsor application process anew, entirely disregarding ORR’s own previous approval of the sponsor, violates Due Process, is contrary to the TVPRA and the ORR Foundational Rule, and is arbitrary and capricious. *See also* Pls.’ Mem. in Supp. of Mot. for Class Cert. at 12-13, ECF No. 4-1. Plaintiffs seek common answers as to the legality of ORR’s policy requiring all sponsors to restart the application process from the beginning without consideration of individual circumstances. Additionally, Plaintiffs seek, as relief, a standardized process by which ORR can make individualized determinations as to whether there are materially changed circumstances that would render the previously approved sponsor no longer suitable and an opportunity for the child to be heard as to

the agency’s individualized findings. *See e.g., L.G.M.L.*, 800 F. Supp. 3d at 118 (citing as example common questions: “Do the TVPRA provisions governing the removal of unaccompanied alien children like Plaintiffs apply to what Defendants describe as reunifications and repatriations? Would Defendants’ ‘reunification’ plan violate binding regulations governing how federal agencies must treat these unaccompanied children? What notice and opportunity to be heard must unaccompanied alien children receive in this situation—and does the ‘reunification’ plan provide it?”).

Defendants assert that commonality is not met for reasons largely irrelevant to this case. Rather than focus on Plaintiffs’ Due Process or APA questions, they focus instead on whether Plaintiffs’ sponsors are able to meet various documentation requirements not at issue in this litigation. *Opp.* at 24.<sup>2</sup> But the common questions of law in this class action have nothing to do with ORR’s new documentation requirements and everything to do with the fact that ORR requires sponsors to restart the entire sponsor application process, despite having previously successfully completed the process, without even attempting to provide any individualized justification as to why it is necessary. ORR admits that it applies the same sponsor application requirements regardless of whether that sponsor has previously been vetted and approved, and it is this blanket sponsor reapplication requirement that constitutes the “truly systemic policy or practice which affects” all class members. *D.L. v. District of Columbia*, 713 F.3d 120, 127-28 (D.C. Cir. 2013); *see* Defs.’ *Opp.* to Pls.’ *Mot.* for Prelim. Inj. (“PI *Opp.*”) at 1, ECF No. 33

---

<sup>2</sup> Although Defendants repeatedly mention the new (often difficult to satisfy) documentation requirements that it recently imposed on sponsors, *Opp.* at 9-11, 24, 25, 26, Plaintiffs do not challenge the new documentation requirements in this lawsuit. And indeed, one of the Plaintiffs, Diego N., has a sponsor who was able to meet all of ORR’s new requirements, but Diego still waited for over four months to be reunited with his father as a result of ORR’s reapplication policy. Diego was finally released to his father on March 12, 2026.

(acknowledging that “a re-referred UAC is treated the same as a UAC who is encountered by ORR for the first time.”). Moreover, ORR does not deny that it provides *no process* whereby a child or their sponsor can contest the necessity of repeating the entire sponsor application process.

Defendants also focus on the individualized circumstances of each Plaintiff to argue that the various stages of their sponsor applications in the approval pipeline demonstrate a lack of commonality. Opp. at 24. But the fact that some sponsors are more able to repeat ORR’s application process than others is irrelevant to the core legal question here—whether ORR’s categorical *policy* of requiring all previously approved sponsors to undergo a new sponsor application without any procedural protections violates the Constitution, the TVPRA and the ORR Foundational Rule, or is arbitrary or capricious. These purely legal common questions will have a purely legal common answer.

Furthermore, courts have held that plaintiffs asserting *Accardi* claims, as Plaintiffs do here, meet the commonality requirement. *See, e.g., Damus v. Nielsen*, 313 F. Supp. 3d 317, 332 (D.D.C. 2018). Plaintiffs’ Due Process claims also meet the commonality requirement because this is not a case where resolution of each class member’s due process claims requires an individualized assessment of each child’s unique circumstances. Plaintiffs don’t seek a particular outcome; they seek a process. Other courts evaluating Due Process challenges to ORR procedures that significantly delayed release from ORR custody readily concluded that the claims met Rule 23’s commonality requirement because plaintiffs challenged a standard ORR policy that applied to all putative class members. *See L.V.M.*, 318 F. Supp. 3d at 615 (“This due process claim, arising solely from the ORR’s standardized conduct that applies uniformly to all putative class members, need not entail factual analyses attributable only to individual

plaintiffs.”); *L.G.M.L.*, 800 F. Supp. 3d at 119 (certifying class to resolve question of “whether [ORR’s] ‘reunification’ plan heeds their due process obligations.”); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1203 (N.D. Cal. 2017) (“The procedural due process claim for which A.H. seeks class-wide preliminary injunctive relief is amenable to common answers.”); *see also Damus*, 313 F. Supp. 3d at 332 (certifying class where plaintiffs alleged DHS was “no longer providing the ‘individualized determinations’” required). Resolving Plaintiffs’ Due Process claim requires an assessment of whether Plaintiffs are entitled to an individualized determination of the necessity of a sponsor reapplication in their case and notice and an opportunity to be heard regarding that determination—not whether any particular outcome is justified.<sup>3</sup>

Defendants also suggest that a child’s decision to pursue release to a new sponsor, rather than their previously approved sponsor, either because the new sponsor may be better situated to meet documentation requirements or may have less fear of attending appointments due to immigration status, or for other reasons, may defeat commonality and preclude class certification. Opp. at 24. This misunderstands the relief Plaintiffs seek. Plaintiffs seek an individualized determination of whether further sponsor application steps are necessary in the first place. If ORR determines based on individualized consideration that its prior sponsorship

---

<sup>3</sup> This distinguishes this case from *K.Y. v. District of Columbia*. In that case, the plaintiffs’ due process claims challenging the length of children’s time in detention depended on the balancing of individualized circumstances, “including the length of commitment and the minor’s medical needs.” No. 1:24-cv-03056, 2026 WL 125231, at \* 4 (D.D.C. Jan. 16, 2026). By contrast, Plaintiffs here do not challenge any delays in the sponsor reapplication process or delays in being re-released to their sponsor. They instead challenge the fact that previously vetted and approved sponsors are required to reapply for sponsorship without any individualized determination that the circumstances of the child’s re-referral to ORR call into question the sponsor’s ongoing suitability. For that reason, Plaintiffs here, unlike the plaintiffs in *K.Y.*, challenge “a truly systemic policy or practice which affects them all.” *Id.* at \*3 (quoting *DL v. District of Columbia*, 713 F. 3d 120, 128 (D.C. Cir. 2013)).

decision need not be disturbed, Plaintiffs' sponsors would not be required to re-apply at all and their ability to successfully complete all of ORR's new requirements would be irrelevant.

At any rate, regardless of whether any particular child desires to be reunified with their prior sponsor (as all Plaintiffs here desire) or affirmatively seeks a new sponsor, those factual distinctions would not defeat commonality. All putative class members are entitled to the procedural protections Plaintiffs seek. That some re-referred children may choose to waive these procedural rights and pursue release to a new sponsor through a new application process does not defeat commonality or render class certification inappropriate here. *See L.G.M.L.*, 800 F. Supp. 3d at 119 (“[T]he potential factual differences that Defendants identify . . . do not affect Plaintiffs’ ‘entitlement to relief’ on their claims about statutorily and constitutionally required *process*. So they are not the kind that destroy commonality.”) (quoting *J.D.*, 925 F.3d at 1321) (emphasis in original); *Afghan & Iraqi Allies v. Pompeo*, 334 F.R.D. 449, 459 (D.D.C. 2020) (certifying a class where “the factual variations among the class members . . . are not fatal to commonality because they do not undermine the class’s common characteristics”) (internal citations omitted).

The relief ultimately sought in this action “would not itself impose a tangible harm” on any class members who choose to pursue release to a new or different sponsor—they would remain free to do so. *J.D.*, 925 F.3d at 1318; *see also id.* at 1314 (“The class members all assert a common entitlement to make that choice on their own[.]”). As explained above, “all the class members need not be aggrieved by or desire to challenge defendant’s conduct in order for some of them to seek relief[.]” *J.D.*, 925 F.3d at 1316 (citing 7AA Charles Alan Wright et al., *Federal Practice and Procedure* § 1775 (3d ed. 2019)). “[W]hether everyone in the class is interested in challenging the policy at issue . . . is largely irrelevant.” *Id.* (citing 2 William B. Rubenstein,

Newberg on Class Actions § 4:28 (5th ed. 2018)). In *J.D. v. Azar*, the D.C. Circuit affirmed class certification in a case challenging abortion restrictions for a class of pregnant minors in ORR custody even though some class members “may strongly oppose abortions.” *Id.* Similarly, in *L.G.M.L. v. Noem*, the court held that the fact that some class members may want to return to Guatemala did not preclude class certification because “factual variations among the class members” do not alone “defeat the commonality requirement.” 800 F. Supp. 3d at 118-19 (quoting *Stephens v. Farmers Rest. Grp.*, 329 F.R.D. 476, 483 (D.D.C. 2019)).

Finally, Defendants argue that the proposed class lacks commonality because “the determination of whether a class member has been injured . . . would require an examination of individualized facts.” Opp. at 25. Defendants dispute that Plaintiffs are injured at all when they are ripped away from their families, schools, and communities, and held in ORR custody for months on end. *See also* PI Opp. at 37-39. The notion that the ongoing separation of children from their families and communities, and ongoing detention in ORR custody, does not constitute an injury should be flatly rejected, and this is an injury shared by all the class members.<sup>4</sup> In any event, all class members share an injury in that they have been deprived of the opportunity for a hearing before ORR requires a new sponsor application; “even if class members might make varying ultimate decisions about how to exercise their choice,” that would not render class certification improper. *J.D.*, 925 F. 3d at 1314. “As courts have long recognized, ‘[i]t is not fatal if some members of the class might prefer not to have violations of their rights remedied.’” *Id.* at 1317 (quoting *Lanner v. Wimmer*, 662 F.2d 1349, 1357 (10th Cir. 1981)).

---

<sup>4</sup> Even if some absent class members could be viewed as not having been injured by Defendants’ policies, “a class may contain a de minimis number of uninjured members.” *Lewis v. U.S. Parole Comm’n*, 743 F. Supp. 3d 181, 203 (D.D.C. 2024).

Defendants’ arguments against commonality fail to grapple with the relief Plaintiffs actually request in this litigation. *See* Opp. at 24. Plaintiffs do not seek an order of release, and the resolution of Plaintiffs’ *legal claims* in this matter does not depend on whether ORR ultimately releases them to their sponsor. “Defendants focus on outcomes—immediate reunification—that are irrelevant to the common questions that Plaintiffs raise about the processes that they say the TVPRA and the Constitution require.” *L.G.M.L.*, 800 F. Supp. 3d at 118. All class members are currently detained in ORR custody, separated from their families and communities for months on end, while ORR imposes a blanket reapplication requirement on their sponsors, with no opportunity for children or their sponsors to be heard as to whether the sponsor remains suitable. The common questions—whether this blanket reapplication requirement violates Due Process, the TVPRA, the Foundational Rule, and the APA—all have common answers and the relief sought, in the form of individualized determinations and an opportunity for notice and a hearing, would provide relief to all class members. That there may be individual differences in the downstream effects of the Court’s common answers to these common questions does not defeat commonality. *See, e.g., Davis v. U.S. Parole Comm’n*, No. 24-cv-1312, 2025 WL 457779, at \*4, \*6-8 (D.D.C. Feb. 11, 2025).

## **2. Plaintiffs’ Claims Are Typical of the Proposed Class Members’ Claims**

Defendants’ arguments on typicality largely mirror their arguments on commonality and fail for many of the same reasons. The typicality requirement is satisfied “if each class member’s claim arises from the same course of events that led to the claims of the representative parties and each class member makes similar legal arguments to prove the defendant’s liability.” *Little v. WMATA*, 249 F. Supp. 3d 394, 420 (D.D.C. 2017) (internal quotation omitted). Plaintiffs’ claims are typical of the proposed class members’ claims because each Plaintiff has been required to

have their already approved sponsor reapply for sponsorship and has not been given any individualized reason to justify why a new sponsor application process is necessary. Each Plaintiff has been denied any notice or opportunity to be heard as to whether reapplication is necessary in their circumstances. Plaintiffs' claims, therefore, arise from the same unlawful conduct: ORR's universal requirement that all previously approved sponsors reapply for sponsorship. Plaintiffs' claims are also based on the same legal theory as all proposed class members' claims: that Defendants have violated children's due process rights, the TVPRA, the Foundational Rule, and the APA. In the end, the "test for typicality is not demanding." *L.G.M.L.*, 800 F. Supp. 3d at 119 (citation omitted). Thus, Plaintiffs satisfy the typicality requirement.

As an initial matter, Defendants' argument that Plaintiffs cannot represent the proposed class because their sponsors may possess varying abilities to meet ORR's new documentation requirements, *Opp.* at 27, is a non sequitur. As explained above, Plaintiffs in this case do not challenge ORR's new documentation requirements. Defendants also assert that variations in potential sponsor-child relationships make Plaintiffs atypical of the class members. But this argument fails for many of the same reasons that Defendants' commonality argument fails. Defendants assert, without legal support, that the claims of the Plaintiffs, who were previously released to their parents or aunt, differ from any unnamed class members who may have been released to other sponsors. *Opp.* at 27. But Defendants do not explain why those claims would differ, when all class members are subject to the same reapplication policy, and all seek relief in the form of minimal due process protections by which they may have an opportunity to demonstrate that their previously approved sponsor remains suitable. All putative class members were previously released to live with sponsors in the community pursuant to the TVPRA's requirement that they be placed in the least restrictive setting in their best interests, 8 U.S.C.

§ 1232(c)(2)(A), and all share a strong interest in avoiding unnecessary re-detention in ORR custody. *See* Pls.’ Mem. in Supp. of Mot. for Prelim. Inj. at 24-26, ECF No. 10-1. Typicality requires similarities in the nature of the claims of the representative, “not the individual characteristics of the plaintiff.” *Garnett v. Zeilinger*, 301 F. Supp. 3d 199, 209 (D.D.C. 2018); *see also Saravia*, 280 F. Supp. 3d at 1204 (concluding that named plaintiff’s claims were typical of the class where “he has experienced the same trajectory of release, rearrest, and transfer back to ORR custody”).

Defendants also argue that the proposed class fails typicality because it is prohibitively disparate, given that some class members may have an interest in being released to somebody other than their previously approved sponsor. *Opp.* at 27. Again, the fact that some unnamed class members may choose to waive their procedural rights and pursue release to a new sponsor does not make the Plaintiffs’ claims atypical in this case. As discussed above, factual distinctions in class members’ subjective beliefs and desires does not defeat class certification. Indeed, “[i]n any conceivable case, some of the members of the class will wish to assert their rights while others will not wish to do so.” *J.D.*, 925 F.3d at 1317 (quoting Charles Alan Wright, *Class Actions*, 47 F.R.D. 169, 174 (1969)). So too here—the fact that some individual class members may have an interest in being released to a different sponsor does not render Plaintiffs’ claims atypical because this case concerns a challenge to a generally applicable policy which applies to Plaintiffs and absent class members equally. “Although absent class members may elect to exercise their choice in a different manner than [named plaintiffs], the claims and defenses of the representatives are substantially—arguably entirely—identical to those of the class.” *Id.* at 1322.

Defendants’ other arguments likewise cannot defeat typicality. They alternatively argue that Plaintiffs have not “establish[ed] the alleged ORR policy,” *Opp.* at 28, while simultaneously

acknowledging that ORR does, in fact, require all previously approved sponsors to restart the entire sponsor application process even where there is no evidence of changed circumstances in the sponsor's suitability, *see* PI Opp. at 1; *see also* Biswas Decl. ¶ 37, ECF No. 33-1 ("ORR applies the same requirements ... as to release for all UAC in its custody."). It is undisputed that ORR imposes a blanket reapplication requirement on all previously approved sponsors, and this policy is generally applicable to Plaintiffs and all class members. The fact that Plaintiffs are (or were) in ORR custody and now seek to represent a class of children that includes those who will be in ORR custody in the future also does not make their claims distinct in a way that would defeat typicality. Opp. at 28. As discussed above, courts regularly certify classes that include future members, *see J.D.*, 925 F.3d at 1312; *see also L.G.M.L.*, 800 F. Supp. 3d at 117, and it is not "pure speculation" that previously released children will continue to be re-referred to ORR custody, *contra* Opp. at 28. Neither ORR nor DHS has disclaimed the practice of continuing to re-arrest and re-refer minors to ORR custody.

Likewise, Defendants argue that the circumstances of Plaintiffs' re-referral to ORR defeat typicality, but the individual circumstances of each child's re-referral to ORR are irrelevant to the Due Process and APA claims in this case. Plaintiffs do not challenge DHS's individual detention decisions or the legal requirement that DHS refer unaccompanied minors to ORR custody. They challenge only ORR policies that apply to all class members once they are in ORR custody. Because the Plaintiffs' claims "are based on the same legal theory as the claims of the other class members" and their "injuries arise from the same course of conduct that gives rise to the other class members' claims" their claims are typical of the class. *Coleman v. District of*

*Columbia*, 306 F.R.D. 68, 83 (D.D.C. 2015). Accordingly, this aspect of Rule 23(a)(3) is satisfied.<sup>5</sup>

**C. Class Certification Under Rule 23(b)(2) is Appropriate Because Relief in the Form of an Injunction will Benefit all Class Members**

The requirements of Rule 23(b)(2) are met because Defendants have “acted or refused to act on grounds that apply generally to the class” and injunctive and declaratory relief are appropriate as to the entire class. Fed. R. Civ. P. 23(b)(2). Rule 23(b)(2) does not require that the challenged conduct must have “damag[ed]” “every member of the class.” *L.G.M.L.*, 800 F. Supp. 3d at 122 (citation omitted). Instead, the “[a]ction or inaction” need only be “based on grounds which have general application to the class.” *Id.* This is a “low bar.” *Id.*

Defendants alternatively assert that there is “no policy” requiring previously approved sponsors to begin the sponsor application process anew when a child is re-referred to ORR custody, Opp. at 29, but at the same time repeatedly admit that ORR applies a blanket reapplication policy to all re-referred children with previously approved sponsors, *see* PI Opp. at 1.<sup>6</sup> Plaintiffs seek a declaration that Defendants’ conduct is unlawful and an injunction directing Defendants to vacate the reapplication policy and provide children with prompt notice

---

<sup>5</sup> Since the filing of Plaintiffs’ opening brief, Diego N., has been released to his father. His individual claims are not moot because there is a reasonable possibility he could again be subjected to ORR’s reapplication policy if he encounters DHS officials in the future. *See* Diego N. Decl. ¶ 17, ECF No. 4-4; *FBI v. Fikre*, 601 U.S. 234, 241, 243 (2024) (“[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,” which is a “formidable burden.”) (internal citations omitted). In any event, D.C. Circuit caselaw is clear that mootness of a class member’s individual claim does not make class certification inappropriate. *D.L. v. District of Columbia*, 860 F.3d 713, 726 (D.C. Cir. 2017). And the Supreme Court has specifically recognized that a plaintiff with a moot claim may continue to serve as a class representative. *See U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388, 404 (1980) (citing *Sosna v. Iowa*, 419 U.S. 393, 402-03 (1975)).

<sup>6</sup> Defendants also assert that Plaintiffs’ APA claims fail because there has been no final agency action, Opp. at 29, but that argument is addressed in Plaintiffs’ reply in support of their motion for a preliminary injunction.

and hearings to conduct individualized assessments of whether their sponsors must begin the sponsor application process anew. Defendants' response on this point largely serves to confirm why Plaintiffs' requested relief is both necessary and fully aligned with the requirements of Rule 23(b)(2). Defendants argue that it is essential for ORR to be able to conduct "case-by-case" suitability assessments, especially when it "becomes aware of a change in circumstances of the previously approved sponsor." Opp. at 29. Nothing about Plaintiffs' requested relief would prevent Defendants from making these individualized determinations. Plaintiffs simply seek a timely hearing to assess whether the circumstances of the child's re-referral to ORR evidence a need to have the previously approved sponsor complete additional application requirements. See Proposed Order, ECF No. 10-2. And a single injunction directed to Defendants' conduct "would provide relief to each member of the class." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011). Defendants' arguments thus do not undermine the appropriateness of certifying the class under Rule 23(b)(2). "Plaintiffs seek relief based on what the TVPRA and Due Process Clause require . . . . Under these circumstances, how Defendants may proceed is appropriately the subject of "a single injunction or declaratory judgment" under Rule 23(b)(2). *L.G.M.L.*, 800 F. Supp. 3d at 122 (quoting *Wal-Mart Stores, Inc.*, 564 U.S. at 360).

### CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), certify a class consisting of noncitizen minors who are or will be in the custody of HHS's ORR and (1) who were previously in ORR custody, (2) who were approved for release by ORR to a sponsor, (3) who have been or will be re-detained by DHS and re-referred to ORR, and (4) whom ORR has not released to their

previously approved sponsor pursuant to ORR's policy requiring the previously approved sponsor to submit a new sponsor application and obtain a new approval for release.

Dated: March 17, 2026

Respectfully submitted,

/s/ Anna Deffebach

Anna Deffebach (D.C. Bar. No. 241346)  
Joel McElvain (D.C. Bar No. 448431)  
Robin F. Thurston (D.C. Bar No. 1531399)  
DEMOCRACY FORWARD FOUNDATION  
P.O. Box 34553  
Washington, D.C. 20043  
(202) 448-9090  
adefebach@democracymforward.org  
jmcelvain@democracymforward.org  
rthurston@democracymforward.org

Mishan Wroe\*  
Diane de Gramont\*  
NATIONAL CENTER FOR YOUTH LAW  
428 13th Street FL 5  
Oakland, California 94612  
(510) 835-8098  
mwroe@youthlaw.org  
ddegramont@youthlaw.org

\* Admitted *pro hac vice*