

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

_____	)	
ANGELICA S., <i>et al.</i> ,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Case No. 1:25-cv-01405-DLF
	)	
U.S. DEPARTMENT OF HEALTH AND	)	
HUMAN SERVICES, <i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	
_____	)	

**DEFENDANTS’ REPLY MEMORANDUM IN SUPPORT OF THEIR CROSS-MOTION
FOR SUMMARY JUDGMENT**

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INTRODUCTION

Pursuant to Local Civil Rule 7(d) Defendants submit this reply in support of their cross-motion for summary judgment.

RESPONSE TO PLAINTIFFS' ADDITIONAL BACKGROUND

I. Children in ORR care and custody

Plaintiffs cite data that the Office of Refugee Resettlement (ORR) publishes on its website, regarding the numbers of children in ORR care and custody during certain months this year. *See* ECF No. 73 at 11. Defendants concede that these data are correct.

II. The Plaintiffs' interpretation of the provisional class definition.

Plaintiffs state that they seek to certify a class, *see* ECF No. 73 at 11, but the matter has been briefed, ECF Nos. 56, 61, 63, and Defendants will not reiterate their arguments here.¹

III. ORR's long-standing practice of requiring appointments for in-person ID checks, about which Plaintiffs raised no claims in their Complaint.

Plaintiffs' counsel assert that potential sponsors have been detained by U.S. Immigration and Customs Enforcement (ICE) during in-person ID verification appointments, which Plaintiffs claim is a new development. ECF No. 73 at 12. Plaintiffs also allege that "as a result of coordination between ORR and [the Department of Homeland Security (DHS)]," children in ORR custody and their potential sponsors are afraid that sponsors will be detained in DHS custody. *Id.* at 13. In support, Plaintiffs cite a news article suggesting that ORR initiated a new requirement that sponsors appear in person to verify their identification.² In-person identification verification

¹ When citing to documents filed using the Court's ECF system, undersigned counsel uses the page number that appears in the document header created by the Court's ECF filing system.

² ECF No. 73 at 13 (citing Valerie Gonzalez, ICE is showing up to interview parents hoping to reunite with their children who entered the U.S. alone (Sept. 2, 2025), <https://apnews.com/article/immigration-children-parents-reunification-trump->

before releasing children to sponsors has been a long-standing ORR requirement. *See* ORR Policy Guide § 2.8.2 (last revised Mar. 14, 2016) (stating that whether ORR permits a sponsor to pick up a UAC at a care provider facility or at an offsite transfer location, the ORR care provider still must inspect the sponsor’s identity documents and compare them with the documents that the sponsor provided in the sponsorship application). The author of the cited article, furthermore, quotes ORR’s statement that ORR “‘communicates clearly and proactively’ with parents and tells them they ‘may decline to be interviewed by ICE and that refusal will not influence decisions about whether their children will be released to them.’” ECF No. 73 at 13.

ARGUMENT

I. Plaintiffs have not established that they have standing to bring any of their claims.

A. **The five original individual Plaintiffs, Angelica S., Eduardo M., Liam W., Leo B., and Xavier L., established standing as of June 9, 2025, when the Court provisionally certified a class and issued a preliminary injunction as to the provisional class, *see* ECF No. 34, but those Plaintiffs are no longer in ORR custody, making their claims moot.**

Plaintiffs bring claims on behalf of three distinct groups of individuals: (1) individual Plaintiffs; (2) the provisionally certified class; and, (3) the putative class, but conflate the groups. *Cf.* ECF No. 73 at 6 (“[E]ven the child Plaintiffs released prior to class certification can continue to serve as class representatives under the inherently transitory exception to mootness”).

Plaintiffs already conceded that the claims of Angelica S., Eduardo M., Liam W., Xavier L., Leo B., and David D. became moot when they were released from ORR custody. *Cf.* ECF No. 58 at 11 n.2 (“Although Angelica S., Leo B., Eduardo M., Xavier L., and Liam W., have now been released from ORR custody, they continue to have standing as class representatives”). Though a plaintiff may still be able to seek declaratory relief in a challenge to an “ongoing underlying policy”

81b20a1e3651337cec14b508f59cc52f). Plaintiffs cite another article on the same page of their brief, but the article is not accessible to the general public due to a paywall.

even after their individual claim is moot, that plaintiff must still have standing in the future to challenge the policy or policies in question. *See City of Houston v. HUD*, 24 F.3d 1421, 1429-30 (D.C. Cir. 1994). Plaintiffs do not assert that the individual Plaintiffs who have been released have standing in the future to make those challenges.

Plaintiffs have invoked, as to the claims of the provisionally certified class, but have failed to satisfy, the exception to mootness for members of an “inherently transitory” class. *See J.D. v. Azar*, 925 F.3d 1291, 1307 (D.C. 2019). To satisfy this exception, Plaintiffs must demonstrate that: “(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.” *See id.* at 1311 (emphasis added). While ORR custody is inherently transitory, Plaintiffs have not identified members of the provisionally certified class with live claims at every stage of litigation in this case.

J.D. is readily distinguishable. The *J.D.* class consisted of “all pregnant, unaccompanied immigrant minor children (UCs) who are or will be in the legal custody of the federal government.” *See J.D.*, 925 F.3d at 1305-06. The *J.D.* class always will have class members because it will continually add new members in the future. In contrast, the provisionally certified class in this case is non-replenishable because it is restricted, in relevant part, to all “unaccompanied children who were in or transferred to the custody of HHS on or before April 22, 2025.” *See* ECF No. 34 at 1. There will be no new provisional class members outside of those individuals who were class members at the time of certification. Consequently, it is reasonable to foresee that over the course of this litigation, all the claims of the provisional class members will become moot.

The claims of putative class members (that is, Yair G. and Mateo N.) are live because they remain in ORR custody as of today.

But neither Leo B. nor Xavier L. could even be class members ever again, because, having attained 18 years of age, they never will return to ORR care and custody. *See* ECF No. 71-2, Defendants’ Separate Statement of Undisputed Material Facts (“DSSUMF”) ¶¶ 346 (regarding Xavier L.), 347 (regarding Leo B.).

Mateo N., David D., and Yair G. are not members of the provisionally certified class because they were placed in ORR custody after April 22, 2025. *See* ECF No. 58-1, Defendants’ Separate Statement of Undisputed Material Facts ¶¶ 163 (regarding Mateo N.), 176 (regarding Yair G.), 185 (regarding David D.)

B. Plaintiffs have not sufficiently pled or shown that individual Plaintiffs Mateo N. and Yair G. suffered injuries traceable to the IFR or ORR Policy Guide updates.

Mateo N. and Yair G. lack standing to pursue their claims. First, Plaintiffs have made no meaningful argument as to Mateo N.’s or Yair G.’s standing to challenge the proof-of-income requirements. Second, Plaintiffs allege no facts as to Mateo N.’s or Yair G.’s standing to challenge the IFR. Plaintiffs cite a speculative fear of possible immigration enforcement without supporting attestations by potential sponsors, *see* ECF No. 73 at 10 n.1, in an attempt to connect the IFR to the proof-of-identity requirements, *see id.* at 8-10.

Defendants reiterate that Mateo N. and Yair G. lack standing as to the proof-of-identity requirements because their harms are not reasonably traceable to the requirements. *See* ECF No. 71 at 18-20. To the extent that Plaintiffs raise any new arguments in relation to Mateo N.’s and Yair G.’s standing regarding the proof-of-identity requirements, they rely on assumptions about Steven N.’s wife and Milagro G. that are not supported by the record. *See* ECF No. 73 at 7-8. Most notably, Plaintiffs’ arguments hinge on Steven N.’s wife and Milagro G.’s immigration status, but Steven N. does not raise any allegations about his wife, nor does Milagro G. raise any allegations about herself. *See* ECF No. 71-1, Defendants’ Separate Concise Statement of Genuine

Issues (“DSCSGI”) ¶ 173 (noting that Steven N. does not claim that his wife lacks lawful immigration status); *id.* ¶ 182 (noting that Milagro G. does not explain why she cannot obtain documents that satisfy the proof-of-income requirements).

C. No Plaintiff in this case has standing to challenge the Interim Final Rule.

In their reply to Defendants’ cross-motion for summary judgment, Plaintiffs largely repeat the same arguments that the Court rejected in its decision on their motion for a preliminary injunction. *See* ECF No. 73 at 8-10. Most notably, Plaintiffs repeat their attempt to connect the IFR to the proof-of-income and proof-of-identity requirements, *see* ECF No. 34 at 9-12 (explaining the causation and redressability problems of Plaintiffs’ challenge to the IFR) and the reasons provided in Defendants’ cross-motion, ECF No. 71 at 20-22. Plaintiffs continue to rely on speculation and unreasonable inferences from record evidence, such as inferring that Milagro G. could not obtain qualifying documents based on her immigration status when she does not explain in her own declaration why she could not obtain those documents. *Compare* ECF No. 73 at 9 *with* ECF No. 71-1 ¶ 182.

D. Plaintiffs have not met their burden to establish standing to raise a challenge under the Paperwork Reduction Act.

Plaintiffs claim that the proof-of-income and proof-of-identity requirements are unlawful because they are information collections that the Office of Management and Budget has not approved. ECF No. 48 ¶ 167 (citing Paperwork Reduction Act (44 U.S.C. § 3507(a)). Plaintiffs now assert standing under the theory that they are third parties affected by the requirements that they claim Defendants issued in violation of the Act. *See* ECF No. 73 at 18-19 (citing *Corner Post Inc. v. Bd. of Governors of the Fed Rsrv. Sys.*, 603 U.S. 799, 826 (2024) (Kavanaugh, J., concurring)). The relevant part of the Paperwork Reduction Act—ORR requiring OMB approval of the proof-of-income and proof-of-identity requirements—is a restraint on government agencies,

not on private parties. Plaintiffs' alleged harm does not flow from the alleged violation of the Paperwork Reduction Act, but rather with the substance of the proof-of-income and proof-of-identity requirements. *See* ECF No. 73 at 11.

E. The authorities that Plaintiffs rely upon to argue that nonprofit Immigrant Defenders has standing are distinguishable.

ImmDef lacks standing to pursue any of the claims in this matter. ECF No. 73 at 19-20. Defendants briefly summarize their arguments why ImmDef lacks standing. *See* ECF No. 71 at 23-24. ImmDef's allegations regarding its allocation of resources are immaterial to standing. *See* ECF No. 71-1 ¶¶ 198-240. ImmDef's theory of standing relies on an interpretation of *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), that the Supreme Court has recently clarified, in *FDA v. All. Hippocratic Med.*, 602 U.S. 367, 395 (2024) (clarifying *Havens* does not stand for the proposition that "standing exists when an organization diverts its resources in response to a defendant's actions"). Plaintiffs claim that ImmDef has diverted resources from serving primarily one kind of UAC (non-detained) to another kind of UAC (detained). *See* ECF No. 71-1, DSCSGI ¶ 239. In essence, Plaintiffs attempt to re-package setbacks to ImmDef's "abstract social interest" in ensuring that "no immigrant [UACs in particular] has to face removal proceedings alone," as injuries in fact. *Am. Soc'y for the Prevention of Cruelty to Animals v. Feld Ent., Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011) (quoting *Havens*, 455 U.S. at 379); *see* PSSUMF ¶ 198. Under Plaintiffs' theory, any entity, including a private business, could intervene in a lawsuit to advance its policy goals so long as it can frame those policy goals as "missions." *See, e.g., All. Hippocratic Med.*, 602 U.S. 367 (rejecting a standing argument from an association of doctors using their lawsuit as a vehicle to challenge contraception-related regulations to which they had strong moral and policy objections). Thus, Plaintiffs have failed to demonstrate that ImmDef has standing to challenge any of the agency actions at issue in this case.

II. The Office of Refugee Resettlement lawfully issued its Interim Final Rule.

In the IFR ORR eliminates the provision in the Foundational Rule stating that:

ORR shall not disqualify potential sponsors based solely on their immigration status and shall not collect information on immigration status of potential sponsors for law enforcement or immigration enforcement purposes. ORR shall not share any immigration status information relating to potential sponsors with any law enforcement or immigration enforcement related entity at any time.

45 C.F.R. § 410.1201(b) (2024). Plaintiffs refer to three parts of the rescinded provision by the actions ORR previously stated it shall not do: disqualify, collect information, and share information. ECF No. 73 at 21.

A. Plaintiffs misapprehend the nature and effect of the Interim Final Rule.

The parties agree that the two-prong test in *Bennett v. Spear*, 520 U.S. 154 (1997), remains finality's touchstone. *California Communities Against Toxics v. Env't Prot. Agency*, 934 F.3d 627, 635 (D.C. Cir. 2019). Agency action is final "if two independent conditions are met: (1) the action mark[s] the consummation of the agency's decisionmaking process and is not of a merely tentative or interlocutory nature; and (2) it is an action by which rights or obligations have been determined, or from which legal consequences will flow." *Soundboard Ass'n v. FTC*, 888 F.3d 1261, 1267 (D.C. Cir. 2018) (internal quotation marks omitted). *Bellion Spirits, LLC v. United States*, 7 F.4th 1201, 1208 (D.C. Cir. 2021). But that is where the agreement ends. For the reasons Defendants already stated, ECF No. 71 at 36 (observing ORR's solicitation of public comments on the IFR), the IFR does not meet the first prong of the *Bennett* finality analysis. Plaintiffs liken the IFR to EPA's announcement of its plan to commence a rulemaking to address the use of hydrofluorocarbons as replacements for ozone-depleting substances on a permanent basis, which the D.C. Circuit concluded was the consummation of agency decisionmaking on that matter. ECF No. 73 at 21 (citing *Nat. Res. Def. Council v. Wheeler*, 955 F.3d 68, 78 (D.C. Cir. 2020) (*NRDC*)). Unlike the agency action in *NRDC*, ORR explicitly solicited public comments on the IFR, which

shows an expectation that the IFR could change in response to comments.

Regardless of whether Plaintiffs meet the first prong of *Bennett*, they do not meet the necessary second prong. In undertaking the *Bennett* second-prong inquiry the Court asks whether the action at issue gave “rise to ‘direct and appreciable legal consequences.’” *U.S. Army Corps of Eng’rs v. Hawkes Co.*, 578 U.S. 590, 598 (2016) (quoting *Bennett*, 520 U.S. at 178). Whether an agency action has direct and appreciable legal consequences, as required for judicially reviewable final agency action under APA, is a pragmatic inquiry. *California Communities Against Toxics*, 934 F.3d at 637. This prong is based on the concrete consequences an agency action has or does not have as a result of the specific statutes and regulations that govern it. As Defendants explained, the IFR only excised statements of policy and does not bear on the rights or obligations of private parties. ECF No. 71 at 36-37. The IFR does not require anyone to do anything. Neither ORR nor a sponsor or Plaintiff can rely on the IFR in any proceeding, nor could they previously have relied upon the rescinded provision in the Foundational Rule, 45 C.F.R. § 410.1201(b) (2024). Nothing in the IFR permits much less requires ORR to disqualify sponsors based on immigration status or permits much less requires ORR to collect or share information of any kind, with anyone. Plaintiffs still have not identified a legal consequence of the IFR. Accordingly, Plaintiffs have not established the second, and necessary, prong of *Bennett*.

B. ORR established good cause to forgo notice and comment before issuing the Interim Final Rule, for the reasons ORR stated in the Interim Final Rule, and provided a 60-day public comment period.

An agency may forgo notice and comment when it is “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. § 553(b)(B). As previously noted, the provision that ORR excised from the Foundational Rule contravened an unambiguous statute, and no amount of public comment could grant ORR the authority to override an act of congress. ECF No. 71 at 42. Given the absence of authority either supporting or undercutting the proposition that, under the

circumstances present here, immediate revocation is in the public interest and notice and comment unnecessary, ORR reasonably forwent notice and comment. Plaintiffs argue that ORR's rationale was not legally sufficient. ECF No. 73 at 23. Plaintiffs now rely on *Cornelius*, a 40-year-old case, where an agency repealed a rule that it had promulgated after notice and comment and that had been in effect, with no discernible challenges to its appropriateness, for four years. *Id.* (citing *Nat'l Treasury Emps. Union v. Cornelius*, 617 F. Supp. 365, 371 (D.D.C. 1985)). The *Cornelius* court noted that it would significantly erode the usefulness of the APA if agencies were permitted unilaterally to repeal regulations dealing with the substantive rights of individuals under federal statutes, by declaring that the earlier regulations were just a mistake. *Cornelius*, 617 F. Supp. at 371. Unlike *Cornelius*, the Foundational Rule was in effect for less than a year, and the excised provision, 45 C.F.R. § 410.1201(b) (2024), clearly contravened a statute. ORR's actions were further justified considering the inconsequential nature of the IFR and lack of binding precedent on this specific issue.

Plaintiffs contend that ORR applied the severability doctrine incorrectly. ECF No. 73 at 24. Rather, ORR applied the severability provision in the Foundational Rule. As Defendants already have noted, *see* ECF No. 71 at 40, under the Foundational Rule's severability provision, which ORR promulgated following notice and comment, "the provisions of this part are separate and severable from one another." 45 C.F.R. § 410.1000(b). By eliminating one provision, subsection 410.1201(b), ORR followed the instruction in its Foundational Rule.

Plaintiffs mistakenly argue that changes made by the IFR were consequential. ECF No. 73 at 25. ORR's grounds for forgoing notice and comment were aimed at prompt compliance with the law without any consequential effect on the regulated entities. 90 Fed. Reg. at 13,554, 13,555 (March 25, 2025).

Plaintiffs also argue that regulatory protection has been taken away, allowing ORR to erect new barriers for sponsors. ECF No. 73 at 25-26. As previously indicated, however, the removal of 45 C.F.R. § 410.1201(b) does not impose any obligation on, or take any rights away from, ORR or plaintiffs. ECF No. 71 at 41.

Finally, Plaintiffs claim that no emergency necessitated an immediately effective new rule. ECF No. 73 at 26. A determination of an emergency is rooted in the agency's good cause determination that one exists, instead of a potential issue arising in the future. *Tri-Cnty. Tel. Ass'n, Inc. v. Fed. Commc'ns Comm'n*, 999 F.3d 714, 720 (D.C. Cir. 2021). ORR reasonably concluded that prompt statutory compliance is necessary to ensure the agency does not exceed its authority. 90 Fed. Reg. at 13,554.

C. Plaintiffs' disagreement with the content of the Interim Final Rule does not make the rule arbitrary and capricious.

The Administrative Procedure Act permits courts to set aside agency actions that are "arbitrary" or "capricious," 5 U.S.C. § 706(2)(A). "The arbitrary and capricious standard is deferential; it requires that agency action simply be 'reasonable and reasonably explained.'" *Cmtys. for a Better Env't v. EPA*, 748 F.3d 333, 335 (D.C. Cir. 2014) (quoting *Nat'l Tel. Coop. Ass'n v. FCC*, 563 F.3d 536, 540 (D.C. Cir. 2009)). The standard is reasonableness, not perfection. *Kennecott Greens Creek Mining Co. v. Mine Safety & Health Admin.*, 476 F.3d 946, 954 (D.C. Cir. 2007).

Plaintiffs enumerate six supposed "failures" by ORR without citing any supporting authorities. ECF No. 73 at 26. Plaintiffs claim that ORR (1) misunderstood the law of severability. *Id.* However, as previously mentioned, severability runs to provisions, not portions of provisions and therefore 45 C.F.R. § 410.1201 (b) would be removed in its entirety. ECF No. 71 at 24.

Plaintiffs argue that ORR failed to address important aspects of the problem (2) and failed to consider the existence of reasonable alternatives that could have minimized the supposed harm (3), but these arguments are rooted in speculation. Courts do not require an agency to consider all possible alternatives in reaching a decision. ECF No. 71 at 47-48. Instead, the standard of review under the arbitrary and capricious test is only reasonableness, not perfection. *WildEarth Guardians v. U.S. Fish & Wildlife Serv.*, 749 F. Supp. 3d 26, 52 (D.D.C. 2024). Plaintiffs' allegations of harm that the Information Collections and Disqualification provisions would impose on children and their families, ECF No. 73 at 25, n.5, are based on speculation. ORR, furthermore, explained its reasoning in the IFR. 90 Fed. Reg. at 13,554.

Plaintiffs allege that ORR (4) failed to reconcile the regulatory changes with the agency's still-operative Privacy Act notice and (5) failed to consider legal authorities that undermine the agency's legal theory with regard to the Information Sharing provision. ECF No. 73 at 26. However, Plaintiffs operate under the unsupported assumption that, under the IFR, ORR affirmatively will collect sponsor application information for law enforcement or immigration enforcement purposes. ECF No. 71 at 39, n.8. Likewise, the alleged failure to reconcile the regulatory changes with the Privacy Act is based on the invalid assumption that the IFR creates a duty to share sponsor information. *Id.* As indicated previously and explained by ORR in the IFR, the immigration status of a potential sponsor is only used for evaluating sponsor suitability. 90 Fed. Reg. 13,554. Lastly, Plaintiffs claim that ORR failed to acknowledge or address the reliance interests of sponsors who had shared information with ORR while the Foundational Rule had remained in effect. ECF No. 73 at 18. While it is important for an agency to assess whether reliance interests exist, whether such interests are significant, and weigh any such interests against competing policy concerns. *See DHS v. Regents of the Univ. of California*, 591 U.S. 1,

32 (2020). However, an agency may determine, in the particular context before it, that other interests and policy concerns outweigh any reliance interests. *Id* at 32.

As this court noted, ORR memoranda appear to acknowledge that document changes would significantly impact children and their sponsors who act in reliance on the previous documentation policies. ECF No. 35 at 15. Regardless, regulated entities would not need to adjust their behavior to the agency's discretionary decision and Plaintiffs fail to show that a more elaborate explanation would have resulted in a different outcome. Neither of the two declarants on which plaintiffs rely attest that they would be willing to come forward as a sponsor, absent the interim rule. ECF No. 35 at 10.

Plaintiffs argue that ORR had an obligation to consider important aspects of the problem and to explain how it resolved those concerns. ECF No. 73 at 27. ORR has considerable flexibility in carrying out its responsibility. *See DHS v. Regents of the Univ. of California*, 591 U.S. 1, 32 (2020). ORR exercised its discretion in a reasonable manner and provided that compliance with the law is mandatory and there is no adjustment period for the regulated entities. 90 Fed. Reg. 13,554.

Plaintiffs contend that the IFR fell far short of the basic requirements for reasoned decisionmaking under the APA. ECF No. 73 at 26. Further, they contend that ORR did not provide an explanation regarding the rescission of 45 C.F.R. § 410.1201(b) (2024). Under the APA, an agency need not “consider all policy alternatives in reaching its decision,” *State Farm*, 463 U.S. at 51, or “explore every alternative device and thought conceivable by the mind of man,” *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435. U.S. 519, 551 (1978). As this court indicated, at a minimum, an agency must address the concerns the agency itself identified before changing the status quo. ECF No.35 at 16. ORR did exactly that by

identifying the important aspect of omitting 8 U.S.C. § 1373 in the preamble to the Foundational Rule and fixed it to ensure compliance with the law. ECF No. 71 at 39; 90 Fed. Reg. at 13,554-55.

Plaintiffs' assertion that ORR is treating immigration status as a dispositive factor in preventing some persons from serving as sponsors is contrary to the language of the IFR itself. ECF No. 73 at 27. As previously argued, no credible evidence supports the notion that the removal of 45 C.F.R. § 410.1201(b) (2024) will permit ORR to disqualify a sponsor solely on the basis of their immigration status. ECF No. 71 at 30. And as the Court has recognized, ORR's support of stricter identity documents is aimed at preventing fraud and trafficking, not using immigration status as a bar to sponsorship. ECF No. 35 at 14.

Plaintiffs' contention that absent the rescission of the Disqualification provision, the Foundational Rule would prohibit ORR from imposing these new policies. ECF No. 73 at 27. However, Plaintiffs hardly provide any support for such contention, considering ORR's purpose is to provide a safe and appropriate environment for unaccompanied children in ORR custody by determining whether placement is safe and suitable for an unaccompanied alien child in accordance with 8 U.S.C. § 1232(c). 89 Fed. Reg. 34,385, 34416 (Apr. 30, 2024). Again, ORR is acting in accordance with its statutory authority to prevent document fraud and to ensure UAC's do not become victims of crimes by their sponsors. ECF No. 73 at 20; *see* DSSUMF ¶ 292.

D. Plaintiffs' disagreement with the content of the Interim Final Rule does not make the rule contrary to law.

Plaintiffs argue that the IFR cannot be reconciled with the requirements of the TVPRA, ECF No. 73 at 27, but overlook the agency's statutory mandate and its requirements of placing children in the least restrictive setting that is in the best interest of the child, 8 U.S.C. § 1232(c)(2)(A). While the importance of ORR's mission to release children in its custody into stable

and nurturing environments is critical, it is also imperative to assess the sponsors' immigration status and potential underlying criminal activity in the household. *See J.E.C.M. v. Lloyd*, 352 F. Supp. 3d 559, 584 (E.D. Va. 2018).

Plaintiffs fail to show a causal connection between the government policy and potential sponsors' claims fear. ECF No. 35 at 11. Plaintiffs' generalized, hearsay-based assertions are not "substantial evidence" establishing the necessary causal relationship. ECF No. 35 at 11, n 2.

Similarly, Plaintiffs continue to overlook TVPRA's policy goal of combatting trafficking of children. *See* 8 U.S.C. § 1232(c)(1). HHS has been tasked with establishing policies and ensuring that UACs are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful or exploitative activity. 8 U.S.C. § 1232(c)(1). The language of § 1232 (c)(3)(A), in pertinent part, provides that HHS is tasked with making a determination that the proposed custodian is capable of providing for the child's physical and mental well-being 8 U.S.C. § 1232(c)(3)(A). Moreover, such determinations, at a minimum, include verification of the custodian's identity and relationship to the child. *Id.*

Further, there is no indication in the TVPRA, Foundational Rule, or ORR Policy Guide that suggests that immigration status alone is a basis for disqualifying potential sponsors. ECF No. 71 at 32. Similarly, nothing in the IFR affects ORR's ability to fulfill the requirements in the TVPRA to promptly place UACs in the least restrictive setting that is in the best interest of the child. 8 U.S.C. § 1232(c)(2)(A).

Plaintiffs misinterpret IFR's purpose and scope by claiming that it grants the agency authority it does not possess. ECF No. 73 at 28. As previously indicated, no affirmative duty has been imposed upon ORR to share information. ECF No. 71 at 37. Plaintiffs fail to provide any evidence showing that ORR has taken the alleged action or will take such action in the future.

Defendants have consistently explained the reasoning behind agency action and the purpose of the IFR without engaging in *post hoc* rationalizations. ECF No. 73 at 28; *Ctr. for Biological Diversity v. United States Fish & Wildlife Serv.*, 146 F.4th 1144, 1167 (D.C. Cir. 2025). Defendants have not deviated from the explanations that ORR provided in the IFR and Foundational Rule. Further, ORR adequately explained its rationale and its stated purpose in the IFR regarding the urgent need to comport with the express language of the governing legislation. 90 Fed. Reg. at 13,554.

III. The Office of Refugee Resettlement’s updates to its Unaccompanied Alien Children Policy Guide in March and April, 2025 are lawful.

A. The new proof of identity requirements are lawful and permissibly designed to fulfil the important public policy goal of screening potential sponsors.

Plaintiffs lead with the argument that the proof of identity requirements issued March 7, 2025, in Policy Guide §§ 2.2.4, 2.7.4, and 5.8.2, and the proof of income requirements issued April 15, 2025, Policy Guide §§ 2.2.4 and 2.4.1 are unlawful. ECF No. 73 at 29. Plaintiffs’ argument, however, rests on two invalid assumptions, namely, that the IFR is unlawful (an issue to be decided by the Court, if Plaintiffs have standing to raise it, and they do not) and that the new documentation requirements are impermissible under the regulation that the IFR rescinded, 45 C.F.R. § 410.1201(b) (2024). As to Plaintiffs’ latter argument, Defendants already have noted the absence of any support for the theory that the proof of identity requirements amount to a disqualification of any individual Plaintiff’s potential sponsors based solely on immigration status. ECF No. 71 at 44-45; *see also id.* at 29-30 (discussing inadequate factual support for traceability of delays in release of individual Plaintiffs Mateo N. and Yair G. to the proof-of-identity requirements).

Plaintiffs also contend, incorrectly, that Defendants have argued that a sponsor, household member, or alternative caregiver’s immigration status is not a “causal factor” in delay of release to a sponsor, ECF No. 73 at 29, but Defendants have made no such argument in this litigation. Defendants have pointed out that the two individual Plaintiffs who potentially have live claims in

this case, Mateo N. and Yair G. have not shown that any delay in their release is traceable to ORR's new proof of identity requirements. ECF No. 71 at 28-30. Defendants have acknowledged that immigration status may make it more difficult for sponsors to obtain some of the required documentation. ECF No. 71 at 32, 40. Plaintiffs, on the other hand, have not identified any individual Plaintiff with a potentially live claim in this case, who was not released from ORR care and custody because ORR disqualified a sponsor solely on the basis of immigration status.

Plaintiffs disagree with ORR's policy choice to borrow from USCIS's Form I-9 list of documents and fault ORR for not "explaining why USCIS has any more expertise than other government agencies that accept foreign passports as proof of identification." ECF No. 73 at 30 (citing ECF No. 71 at 42-44). But Defendants do not bear this burden, and Plaintiffs have not explained why they believe that Defendants' reliance on another agency's expertise was unlawful or would result in the disqualification of a sponsor solely based upon immigration status.

Further, Plaintiffs still have not identified any delay, much less denial, of release to a sponsor for failure to comply with the proof of income requirements. Plaintiffs also appear to argue that it is not permissible for immigration status to have any bearing on a sponsor's ability to comply with documentation requirements. *See* ECF No. 73 at 30-31 (asserting that Defendants' reference to "alternative" documents "does not destroy the causal link between immigration status and qualification as a sponsor."). But it would be unreasonable--and unrealistic--to expect that immigration status would not have some degree of impact, for some potential sponsors, on ability to obtain proof of identity and proof of income. Any potential sponsors seeking to sponsor a UAC in ORR care and custody who entered after April 22, 2025, have been on notice of the new requirements and have the opportunity to obtain the required documents.

Plaintiffs also overlook ORR's articulated rationale for the proof of income requirements,

which are based not only on fraud concerns but on potential sponsors' capability to care for children released to them. ECF No. 73 at 29; *see* ECF No. 71 at 22, 51-52; 8 U.S.C. § 1232(c)(3)(A) (conferring upon the HHS Secretary the responsibility to make a determination that a sponsor is capable of providing for the child's physical and mental wellbeing); 45 C.F.R. § 410.1202(c) (authorizing ORR to require verification of the employment, income, or other information provided by the potential sponsor as evidence of the ability to support the child); DSSUMF ¶ 310. Additionally, considering that ORR is releasing children to sponsors whose responsibility is to care for them, it was reasonable for ORR to rely upon several states' child welfare laws to develop proof of income requirements. *See* ECF No. 71 at 51-52.

Plaintiffs then argue that ORR's new documentation requirements violate the TVPRA's and Foundational Rule's mandates to promptly reunify children with caregivers. ECF No. 73 at 32. Plaintiffs, respectfully, overlook HHS's mandate to "establish policies and programs to ensure that unaccompanied alien children in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity." 8 U.S.C. § 1232(c)(1); *see* ECF No. 71 at 12-13 (discussing HHS's responsibilities under the TVPRA); *id.* at 11 (observing the competing goals of protection from trafficking and expediting the release to a sponsor). Plaintiffs cite data on the numbers of children released, compared to the number of children in ORR care and custody in October 2025, ECF No. 73 at 32, but no data on sponsor fraud.

Plaintiffs also argue that the new documentation policies render meaningless the Foundational Rule requirements that completed sponsor applications be adjudicated within certain timelines (10 days for parents and legal guardians and certain close relatives, or 14 days for other close relatives). ECF No. 73 at 33 (citing 45 C.F.R. § 410.1205(b)). Plaintiffs do not explain why

a sponsor's submission of a completed application with the required documents would slow down adjudication. Plaintiffs thus overlook the time needed for ORR to receive the referral and transfer a child to a suitable placement in ORR care and custody and track down and notify family members or other potential sponsors. *See* 45 C.F.R. subpt. B (setting forth processes). Plaintiffs also overlook policies and procedures for releasing children, in 45 C.F.R. subpt. C, which include a sponsor suitability assessment, contacting the sponsor and explaining the requirements and procedures for release, notification of other federal government agencies, home studies (which include interviews, a home visit, and a written report containing the home study case worker's findings), and determination whether to release a child to the Unaccompanied Minors Program. The presence of certain factors also will add time, such as a sponsor's or sponsor's household member's criminal arrests or convictions, child welfare concerns uncovered during a home study, a Category 2A or 2B sponsor who is simultaneously sponsoring multiple children related to them, suspected sponsor fraud, disagreement between the case coordinator and case manager and or a particularly complex case. *Id.* Potential sponsors might minimize delay by obtaining the required documents as soon as possible. The new documentation requirements are provided to the public on ORR's website, and, as noted, if a potential sponsor is identified, ORR must explain to the UAC and potential sponsor the procedures and requirements for release. 45 C.F.R. § 410.1203(b).

B. Plaintiffs' disagreement with ORR's policy choices does not make the new proof of identification requirements arbitrary and capricious.

Normally agency action is "arbitrary and capricious" under the APA if the agency has relied on factors that Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm*

Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)). The Court must uphold a decision of less than ideal clarity, however, if the agency's path may reasonably be discerned. *Univ. of Chicago Med. Ctr. v. Becerra*, No. 16-CV-1276 (DLF), 2024 WL 3181308, at *3 (D.D.C. June 26, 2024) (citations omitted), *aff'd sub nom. Univ. of Chicago Med. Ctr. v. Kennedy*, No. 24-5188, 2025 WL 3183158 (D.C. Cir. Nov. 14, 2025); *see also United States Sugar Corp. v. Env't Prot. Agency*, 830 F.3d 579 (D.C. Cir. 2024) (subsequent history omitted) (citing *State Farm*, 463 U.S. at 43).

Plaintiffs first argue that ORR did not show a need for the documentation requirements, ECF No. 73 at 36, overlooking the history of insufficient safeguards against child trafficking and abuse following release, and sponsor fraud in furtherance of such abuse, ECF No. 71 at 17-19. Plaintiffs observe that of 204 unique events that ORR caught and identified for fraud, approximately six percent involved concerns with sponsors' identity documents, *see* ECF No. 73 at 36, n.8. Further, there were 56 instances between January 16, and February 6, 2025, a three-week period, Angelica-00000268, providing additional cause for concern. Requiring state- or local-government-issued identification not only avoids the risks inherent in foreign documents, which are easier to falsify, but also disincentivizes the use of other tools for committing fraud, such as photoshopping of photographs.³ Requiring photo identification, furthermore, reduces address fraud by creating a strong link between a person and their stated address. Identification issued by a U.S. state government is generally easier to track and verify than foreign identification, due to standardized security features, interconnected databases for verification, and established inter-agency cooperation. Although did not explicitly articulate a link between the advantages of photo IDs issued by a state or locality, for establishing a sponsor's identity, over foreign

³ *See* Angelica-00000295 (event IDs 30654226, 30654326, 31627126, 32734326); Angelica-00000268 (event ID 9533290526).

documents, ORR did document the instances of fraud. ORR thus made a rational connection between the facts found and choices made.

Plaintiffs contend that the new documentation requirements are not tailored to the fraud that ORR found, on the basis that Plaintiffs prefer that ORR wait to see whether other measures, like ORR's new fingerprinting and DNA testing requirements, would be sufficient. ECF No. 73 at 47, n.9. As Defendants noted in this case previously, however, ORR relies on the new documentation requirements in conjunction with enhanced biometric collection and background checks. ECF No. 71 at 20, 45. And ORR is not required to wait to test alternatives to enhanced documentation requirements, especially considering the consequences of child trafficking. ORR has provided a rationale for the new requirements, and Plaintiffs have not provided an example of a Plaintiff in ORR custody who remains in custody solely on the basis that a potential sponsor or sponsor's household member is unable to meet the new documentation requirements.

Plaintiffs argue that ORR made no effort to "examine or study" length of time in custody, ECF No. 73 at 38, but ORR did acknowledge length of custody, even if only to consider that stakeholders would express concerns, ECF No. 71 at 49. Plaintiffs also contend that ORR should have considered the lawsuit against Southwest Key, where minors were held in a potentially harmful situation, ECF No. 73 at 38, but Plaintiffs, again, do not identify Southwest Key's relevance considering that ORR stopped housing UACs there before it issued the new documentation requirements, ECF No. 71 at 49.

Plaintiffs object to Defendants placing their arguments in context, such as Defendants' observation that ORR supervisors must conduct 90-day custody reviews. ECF No. 73 at 40 (citing ECF No. 71 at 49-50). Plaintiffs refer to such arguments as *post hoc* rationalizations, ECF No. 73 at 41 and n.12, but ORR reasonably presumed the reader's familiarity with, and thus not discuss

comprehensively, the other elements of its UAC program when ORR explained the reasoning for the new documentation requirements. Plaintiffs also take issue with ORR allowing UACs to provide foreign birth certificates but subjecting potential sponsors to heightened requirements for establishing their identity. *Id.* at 40-41 (citing ECF No. 71 at 48, 50-51). But the reasons for the different requirements, should be so obvious that Defendants will not reiterate them here.

C. ORR was not required to engage in notice-and-comment rulemaking when it issued the Policy Guide updates at issue in this litigation, nor should it have done so.

Plaintiffs argue that the new documentation requirements are legislative rules because, Plaintiffs contend, they “alter the rights” of children to family integrity. ECF No. 73 at 42. Plaintiffs’ argument rests on a couple of invalid assumptions. Plaintiffs refer to “disqualification” of qualified sponsors based on the new documentation requirements, *id.*, but have not identified any Plaintiff whose sponsor was disqualified on the basis of not being able to obtain the required documents. Moreover, Plaintiffs have not identified the source of their right to family integrity, making it unclear whether in the context of this case, such a right even exists, considering that UACs, by definition, enter ORR care and custody separated from family or other adult caregivers.

IV. Plaintiffs are not entitled to relief as to any of their claims.

A. If the Court were to find for Plaintiffs as to any of their claims, then the only permissible relief under the APA is remand to the agency.

Plaintiffs contend that if they prevail on any of their claims “remand with vacatur” is the proper course. *See* ECF No. 73 at 35. Remand without vacatur is warranted when: (1) an “agency may be able to readily cure its defect in its explanation of a decision”; and, (2) vacatur would have “disruptive consequences.” *See Heartland Regional Medical Center v. Sebelius*, 566 F.3d 193, 198 (D.C. Cir. 2009). In this case, in contrast, Defendants likely can readily cure any defects through additional explanation when, overall, the main contention between the parties is whether

“the government follows the APA’s procedural requirements by offering a reasoned explanation for its decisions.” *See* ECF No. 35 at 18. Therefore, if Plaintiffs were to prevail as to any of their claims, remand without vacatur would be appropriate.

B. Plaintiffs still have not shown that they are entitled to a permanent injunction

Plaintiffs have failed to explain how other remedies, such as vacatur of the challenged policies, would be inadequate. Through the Court’s preliminary injunction, the members of the provisionally certified class have effectively experienced the effects of vacatur of the proof-of-income and the proof-of-identity requirements. *See* ECF No. 34. Plaintiffs have not alleged one instance of Defendants’ noncompliance with the preliminary injunction. Thus, Plaintiffs have failed to explain how vacatur and continued cooperation between the parties would be inadequate to address their injuries.

Second, Plaintiffs have failed to explain why “the public interest would not be disserved by a permanent injunction.” *See Monsanto Co., v. Geerston Seed Farms*, 561 U.S. 139, 156-57 (2010). Plaintiffs assert that the equities and public interest support an injunction because, they claim, ORR had a robust vetting process to protect children from trafficking and exploitation. ECF No. 73 at 45. The instances of sponsor fraud cited in the administrative record, however, undermine that assertion. Plaintiffs also have not explained why injunctive relief must be permanent as opposed to temporary.

Plaintiffs rely on the Court’s findings in granting a preliminary injunction, *see* ECF No. 73 at 37 (citing ECF No. 35 at 17), but that rationale does not explain why a *permanent* injunction would not disserve the public interest. Furthermore, the Court made itself clear that its finding in favor of Plaintiffs in this prong of the preliminary injunction analysis was not due to a categorical rejection of the proof-of-income and proof-of-identity requirements, but rather a desire for

Defendants to “follow[] the APA’s procedural requirements by offering a reasoned explanation for its decisions.” *See* ECF No. 35, Mem. Op., at 18. Moreover, the Court acknowledged that the challenged requirements implicate “complex and nuanced policy considerations regarding the best way to protect unaccompanied minors.” *See id.* at 18. Thus, the public interest would be disserved by Plaintiffs using a *permanent* injunction to effectively shut down debate about how ORR, the agency that Congress entrusted to care for these children, should perform that duty.

C. Plaintiffs still have not shown that they are entitled to declaratory relief.

The Court should deny Plaintiffs’ request for declaratory relief under the Declaratory Judgment Act (28 U.S.C. § 2201(a)). First, if the Court were to find that none of the Plaintiffs have a live controversy and standing to pursue that controversy, the Court would lack subject matter jurisdiction over Plaintiff’s claim for declaratory relief because the Declaratory Judgment Act does not serve as an independent source of subject matter jurisdiction. *See Ali v. Rumsfeld*, 649 F.3d 762, 778 (D.C. Cir. 2011). Second, Plaintiffs are not entitled to declaratory relief as a matter of the Court’s discretion. *See Wilton v. Seven Falls Co.*, 515 U.S. 277, 287 (1995). Plaintiffs claim that declaratory relief is necessary to clarify “the lawful process for reviewing sponsorship applications for [UACs],” *see* ECF No. 73 at 38, but the parties do not dispute that 8 U.S.C. § 1232(c)(2)(A) should guide ORR’s review or that requiring proof of income and proof of identity is consistent with 8 U.S.C. § 1232(c)(2)(A). *See President v. Vance*, 627 F.3d 353, 364 n.76 (D.C. Cir. 1980) (describing the purposes of declaratory relief as “‘serv[ing] a useful purpose in clarifying the legal relations in issue’ or ‘terminat[ing] and afford[ing] relief from the uncertainty, insecurity, and controversy giving rise to the proceeding’”). At most, Plaintiffs have a policy disagreement with Defendants implicating “complex and nuanced policy considerations regarding the best way to protect unaccompanied minors”). *See* ECF No. 35 at 18. Consequently, a declaratory judgment would not clarify anything, but rather permit Plaintiffs to override the

discretion Congress gave to ORR in administering 8 U.S.C. § 1232(c)(2)(A) with their policy preferences. Thus, the Court should deny Plaintiffs' request for declaratory relief.

CONCLUSION

For the foregoing reasons, and the reasons Defendants articulated in their Memorandum in support of their Cross-Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment, ECF No. 71, the Court should dismiss Plaintiffs' claims, deny any of Plaintiffs' claims that the Court does not dismiss, and grant summary judgment to Defendants as to all claims.

Dated: December 19, 2025

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General

GLENN M. GIRDHARRY
Acting Deputy Director

WILLIAM C. SILVIS
Assistant Director

CHRISTINA PARASCANDOLA
Senior Litigation Counsel

By: /s/ Dean De Las Alas
DEAN P. DE LAS ALAS
OLEKSIY ISAEV
Trial Attorneys
United States Department of Justice
Civil Division
Office of Immigration Litigation
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
Tel.: (771) 202-1393
Fax: (202) 305-7000

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will provide electronic notice and an electronic link to this document to all attorneys of record.

By: /s/ Dean P. De Las Alas
DEAN P. DE LAS ALAS
Trial Attorney
United States Department of Justice
Civil Division