

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANGELICA S., *et al.*,
Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,
Defendants.

)
)
) No. 1:25-cv-01405 (DLF)
)
)
)
)
)
)
)
)

**PLAINTIFFS’ NOTICE RE: CLASS CERTIFICATION,
INDIVIDUAL PLAINTIFFS, AND CLASS MEMBER DECLARATIONS**

On March 23, 2026, the Court held a telephonic hearing and ordered Plaintiffs to “provide the Court with an update on their intentions with regard to adding new individual plaintiffs and/or seeking class certification on or before March 30, 2026.” Minute Order (Mar. 23, 2026). Below is Plaintiffs’ update.

I. Class certification

Plaintiffs continue to seek certification of the following Class, or alternatively, both the following Class and Reliance Subclass:

Class: All unaccompanied children who are or will be in the custody of HHS and who (a) have or had a potential sponsor who has been identified; and (b) the sponsor’s family reunification application has been denied, closed, withdrawn, delayed, or cannot be completed because the sponsor is missing documents newly required on or after March 7, 2025.

Reliance Subclass: All unaccompanied children who were in or transferred to the custody of HHS on or before April 22, 2025, and who (a) have or had a potential sponsor who has been identified; and (b) the sponsor’s family reunification application has been denied, closed, withdrawn, delayed, or cannot be completed

because the sponsor is missing documents newly required on or after March 7, 2025.¹

See Pls.’ Class Cert Reply at 3 (ECF No. 37). Plaintiffs continue to seek certification under Rule 23(b)(2) or, alternatively, under Rule 23(b)(1)(A). *See* Pls.’ Class Cert. Mot. at 19-21 (ECF No. 9-1); Class Cert. Reply at 18-20.

To the extent the Court believes class certification is appropriate or necessary only as to the proof of identification policy and/or the proof of income policy, the Court has discretion to modify the proposed class definition. *See* Fed. R. Civ. P. 23(c)(1)(B) (“An order that certifies a class action must define the class and the class claims, issues, or defenses...”); *id.* 23(c)(1)(C) (“An order that grants or denies class certification may be altered or amended before final judgment.”); Opinion re Plaintiffs’ Motion for a Preliminary Injunction at 21-22, ECF 35. Specifically, although Plaintiffs maintain that they have standing as to all their claims, if the Court concludes that Plaintiffs do not have standing as to one or more claims it would be appropriate to limit class certification to live claims. *See O’Shea v. Littleton*, 414 U.S. 488, 494 (1974); *NEI Contracting and Engineering, Inc. v. Hanson Aggregates Pacific Southwest, Inc.*, 926 F.3d 528, 532 (9th Cir. 2019); *see also Borum v. Brentwood Village*, No. 16-cv-1723, 2019 WL 2437686, at *8, 12 (D.D.C. June 11, 2019) (decertifying class as to claim where class representative lacked standing but maintaining class as to remaining claim).

Plaintiffs continue to press class claims for two main reasons. First, like in other cases involving children in ORR custody, class certification allows a class claim to remain live throughout future district court and appellate proceedings even if individual plaintiffs’ claims become moot, through application of the inherently transitory mootness exception. *See J.D. v.*

¹ The Reliance Subclass definition is the same as the definition of the class provisionally certified by the Court on June 9, 2025. *See* Order (ECF No. 34).

Azar, 925 F.3d 1291, 1308-11 (D.C. Cir. 2019) (per curiam). Second, class certification allows Plaintiffs to obtain injunctive and declaratory relief (in addition to vacatur) on behalf of the whole class, not just for the named Plaintiffs. Plaintiffs are seeking both declaratory and injunctive relief here. *See* Pls. Amended Complaint ¶ 10, Prayer for Relief (ECF 48); Pls.’ Proposed Order (ECF No. 58-5). Based on lessons learned from Defendants’ slow implementation of this Court’s preliminary injunction order in June 2025, Plaintiffs seek an injunction requiring ORR to provide notice of the vacatur within specific time frames and to promptly adjudicate or re-adjudicate sponsor applications that were previously denied, closed, withdrawn, delayed, or could not be completed because of the unlawful policies. *See* Pls.’ MSJ at 43 (ECF 58-1); Pls.’ Proposed Order (ECF No. 58-5); *Trump v. CASA, Inc.*, 606 U.S. 831, 849 (2025) (distinguishing relief obtained through Rule 23 class actions from impermissible universal injunctions).

At the March 23, 2026 telephonic hearing, the Court asked about the interaction between Rule 23(b)(2) and APA relief such as vacatur. “Courts in this District have certified claims seeking indivisible APA relief such as vacatur under Rule 23(b)(2).” *Gutierrez v. Noem*, No. CV 25-1766 (SLS), 2025 WL 3496390, at *11 (D.D.C. Dec. 5, 2025) (citing cases); *see, e.g., Crowe v. Fed. Bureau of Prisons*, No. 24-CV-3582 (APM), 2025 WL 1635392, at *20 (D.D.C. June 9, 2025) (finding Rule 23(b)(2) met where plaintiffs sought declaratory relief and set-aside relief under the APA). Also, whether “final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole” such that a Rule 23(b)(2) class should be certified is a different question from whether an injunction should ultimately be issued. The decision to certify is ordinarily made before a decision on the merits. *See* Local Rule 23.1 (requiring plaintiffs to file a motion for class certification motion within 90 days after filing a complaint); Fed. R. Civ. P. 23(c)(1)(A) (court must determine whether to certify “[a]t an early practicable time after a person

sues”). Thus, Rule 23(b)(2) can be satisfied where the injunctive and declaratory relief that plaintiffs *seek* is appropriate on a class-wide basis, regardless of whether plaintiffs are ultimately awarded such relief. *See O.A. v. Trump*, 404 F. Supp. 3d 109, 154, 157-59 (D.D.C. 2019) (certifying Rule 23(b)(2) class based on declaratory, injunctive, and set-aside relief sought; vacating challenged rule but denying injunction). Even if the Court determines that injunctive or declaratory relief is not immediately necessary, such relief should remain an option if needed to enforce the Court’s judgment. *Id.* at 154 (denying injunctive relief based on government representations that it would comply with vacatur order but noting that Plaintiffs could “return to the Court for further relief if warranted”).²

II. New individual plaintiffs/class representatives

Unless the Court earlier rules on the class certification motion, Plaintiffs intend to add new, still-detained child plaintiffs/class representatives to address the Court’s mootness concerns. Plaintiffs respectfully ask the Court to enter the proposed schedule (attached) for amending the Complaint and supplemental briefing, limited to addressing the new plaintiffs/class representatives.

Plaintiffs maintain, however, that continuously amending the class complaint to add new child plaintiffs—and requiring Defendants and the Court to continuously respond to amended complaints—is not necessary under *J.D. v. Azar*. Under *J.D.*, although the existing child Plaintiffs have already been released during the pendency of litigation (Angelica S., Eduardo M., Liam W.,

² While Defendants have not raised the issue on summary judgment (and therefore have forfeited it), the government has in other cases argued that APA vacatur should also be limited to the parties. *See, e.g., Make the Rd. New York v. Noem*, No. 25-5320, 2025 WL 3563313, at *36 (D.C. Cir. Nov. 22, 2025) (rejecting the government’s “procrustean effort to stretch *CASA*’s plaintiff-specific remedial framework onto the APA”). Class certification also has the benefit of forestalling that issue.

Leo B., Xavier L., Mateo N., David D) or will soon age out of ORR custody (Yair G.), they can still serve as class representatives. *See* 925 F.3d at 1312-13. “[A]s long as plaintiff[s] are] able to achieve class certification, [their] claim[s] will not be dismissed as moot” under the inherently transitory mootness exception. *N.S. v. Hughes*, 335 F.R.D. 337, 345 (D.D.C. 2020). Thus, if the Court determines that the child Plaintiffs’ claims are inherently transitory and certifies a class, the existing child Plaintiffs can continue litigating this case before this Court and on appeal. There would be no need to continuously identify additional class representatives.

III. Declarations from class members

Unless the Court rules on the class certification motion before then, Plaintiffs also request the opportunity to, within 30 days, provide additional declarations from children who were in ORR detention on or before April 22, 2025, who still have live claims. *See* Proposed Order (attached); *see also J.D.*, 925 F.3d at 1310-11 (inherently transitory exception ordinarily 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”). This would give Plaintiffs the opportunity to address Defendants’ argument, raised for the first time on reply and unsupported by any evidence in the record, that “the provisionally certified class in this case is non-replenishable,” *see* Defs.’ MSJ Reply at 3 (ECF No. 76), and to respond to the Court’s request during the March 23, 2026 telephonic hearing for declarations from the children rather than declarations from the legal service providers representing class members that are currently in the record. *See* Felix Decl. ¶¶ 7-8 (ECF No. 65-2); Shortell Decl. ¶¶ 5, 7-8 (ECF No. 65-4).

* * *

Plaintiffs' counsel conferred with Defendants' counsel concerning Plaintiffs' proposed schedule and page limits. On March 30, 2026, Defendants' counsel informed Plaintiffs' counsel that Defendants do not oppose Plaintiffs' request to file a second amended complaint and supplemental brief regarding class certification conditioned on Defendants having at least 30 days to respond to these filings. Defendants' counsel further stated that they cannot consent to page limits without first seeing Plaintiffs' filings. Plaintiffs' position is that Defendants should have no more time than the 14 days the Federal Rules of Civil Procedure and Local Civil Rules allow and that a reasonable page limit is warranted given that the new filings will be limited to the addition of new named plaintiffs/class representatives. *See* F.R.C.P. 15(a)(3); L.C.v.R. 7(b).

Date: March 30, 2026

Respectfully submitted,

/s/ Mishan Wroe

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

Rebecca Wolozin (D.C. Bar No. 144369)
 NATIONAL CENTER FOR YOUTH LAW
 818 Connecticut Avenue NW, Suite 425
 Washington, DC 20006
 (202) 868-4792
 bwolozin@youthlaw.org

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

Counsel for Plaintiffs