IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

W. MATHIS and K. DAVIS, *individually and on behalf of all others similarly situated* Plaintiffs, v. UNITED STATES PAROLE COMMISSION, *et al.* Defendants.	Case No. 1:24-cv-01312

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

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I. INTRODUCTION

People with disabilities are vastly overrepresented on parole and supervised release (referred to collectively as "supervision"); yet Defendants, the United States Parole Commission ("Commission") and its Chairman, and the Court Services and Offender Supervision Agency ("CSOSA") and its Director, systematically fail to accommodate such individuals at every stage of supervision. This failure to accommodate violates Section 504 of the Rehabilitation Act, which requires Defendants to provide "reasonable accommodations" to ensure "meaningful access" to the benefits of supervision, *Alexander v. Choate*, 469 U.S. 287, 301 (1985), including by establishing a process to "assess the potential accommodation needs" of people on supervision, *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 272 (D.D.C. 2015) (Brown Jackson, J.); *see Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1267 (D.C. Cir. 2008) ("Where the plaintiffs identify an obstacle that impedes their access to a government program or benefit, they likely have established that they lack meaningful access to the program or benefit."). Together with their complaint and motion for preliminary injunction, Plaintiffs file this motion seeking certification of a proposed class of:

> All people with a disability who are on or will be on parole or supervised release in the District of Columbia under the Commission's and CSOSA's supervision, and who need accommodations in order to have an equal opportunity to succeed on parole or supervised release.

Plaintiffs' proposed class satisfies all of the requirements of Federal Rule of Civil Procedure 23(a). First, the class is numerous, conservatively consisting of hundreds of individuals, making joinder impracticable. Second, the class members' claims share common questions of fact and law, as they are all harmed by the same system-wide policy for imposing conditions of supervision, which does not reasonably accommodate their disabilities. Third, the claims of the Named Plaintiffs, W. Mathis and K. Davis, are typical of the class because they arise from the

same system-wide policy of non-accommodation and proceed on the same legal theory. Fourth, the class representatives and their experienced counsel will fairly and adequately protect class interests and will vigorously prosecute this action on behalf of the class.

Certification of Plaintiffs' proposed class is warranted under Rule 23(b)(2). Defendants are "act[ing] or refus[ing] 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." Fed. R. Civ. P. 23(b)(2). Plaintiffs seek a single injunction requiring Defendants to implement a system to determine, at the time an individual with a disability is released onto supervision and at regular intervals thereafter, what, if any, reasonable accommodations they require as a result of their disabilities in order to have an equal opportunity to succeed on supervision, and to provide such reasonable accommodations. This Court should certify the class or, at a minimum, provisionally certify the class in conjunction with Plaintiffs' motion for a preliminary injunction, in line with common practice in this District.

Finally, Plaintiffs' counsel is highly experienced in handling class actions and other complex litigation involving criminal defendants, incarcerated persons, and people on supervision, as well as disability-discrimination claims. Accordingly, this Court should appoint Named Plaintiffs' counsel as counsel for the class.

II. FACTUAL BACKGROUND

A. Defendants Are Aware That High Numbers Of People On Parole And Supervised Release Have Disabilities.

People with disabilities are overrepresented in supervision. CSOSA itself estimates that 17% of the people it supervises have a mental disability. *See* P. Davis Decl. Ex. 1 (CSOSA response to Freedom of Information Act request (June 23, 2023)) ("CSOSA 6/23 FOIA Response") at 6 (estimating that of 2,816 individuals who were on active supervision between

June 1, 2022 and May 31, 2023, 484 had a mental disability).[1] And because Defendants do not even track statistics of individuals with intellectual, developmental, or physical disabilities, *see id.* at 7; P. Davis Decl. Ex. 3 (Commission response to Freedom of Information Act request (June 20, 2023) ("Commission 6/20 FOIA Response") at 1–2; *see* P. Davis Decl. Ex. 4 (Email from Commission to A. Verriest (Aug. 18, 2023))—the total number of people on supervision in D.C. with a disability of any kind is substantially higher.[2] Indeed, CSOSA has reported that physical health conditions are "common" among the supervised population. P. Davis Decl. Ex. 5 (Court Services and Offender Supervision Agency for the District of Columbia, Strategic Plan FY2022-2016 at 14, https://www.csosa.gov/wp-content/uploads/bsk-pdf-manager/2022/05/CSOSA-Strategic-Plan-FY2022-2026.pdf ("CSOSA 2022-2026 Strategic Plan")). By contrast, only 11.5% of the District's "non-institutional population" has a disability. *See* P. Davis Decl. Ex. 8 (Coleen Jordan, *2015 Disability Characteristics Among DC Residents*, State Data Center (Aug. 2017)) at 1,

[1] Publicly available CSOSA documents report similar numbers. In 2022, for example, nearly 25% of those entering any form of supervision (including probation) "reported mental health issues at intake." P. Davis Decl. Ex. 2 (CSOSA 2024 Budget Request Summary (Mar. 9, 2023)) at 18, https://www.csosa.gov/wp-content/uploads/bsk-pdf-manager/2023/03/CSOSA-FY2024-CBJ-Summary-Statement-FAQs-03092023.pdf.

[2] While Defendants do not track physical disabilities, they have acknowledged that physical health conditions are "prominent" among the supervised population. *See* P. Davis Decl. Ex. 5 (CSOSA 2022-2026 Strategic Plan), at 14; *see also* P. Davis Decl. Ex. 6 (Todd Manini, *Development of physical disability in older adults*, 4 Curr. Aging Sci 184 (Dec. 2011)); P. Davis Decl. Ex. 7 (Osborne Association, *The High Costs of Low Risk: The Crisis of America's Aging Prison Population* (May 2018)), at 9, https://www.osborneny.org/assets/files/Osborne_HighCostsofLowRisk.pdf ("people who have been incarcerated very often have the physiological attributes of much older people").

https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/2015%20Disability%20Characteristics%20among%20DC%20residents.pdf.

People with disabilities face higher barriers to succeeding on supervision than people without disabilities. These barriers include difficulties understanding their supervision conditions; physically accessing required meeting locations; keeping track of shifting appointments; meaningfully engaging with their supervision officers; and navigating conflicts between their supervision obligations and critical health care needs. *See* Edmondson Decl. ¶¶ 6-7, 34-36. Defendants have expressly acknowledged these difficulties and, in at least one instance, have even admitted that a person on supervision was medically unable to comply with the conditions of supervision that Defendants imposed, but nonetheless failed to provide reasonable accommodations. *Id.* ¶ 37.

Given these unique barriers, people with disabilities often need reasonable accommodations to afford them an equal opportunity to succeed on supervision. *Id.* ¶ 7. Reasonable accommodations may include explaining supervision conditions in plain language; providing appointment reminders and transportation assistance; and flexibly scheduling meeting times, locations, and frequencies based on people's needs and abilities. *Id.*

B. Defendants Use The Same System To Establish Supervision Requirements For Every Person On Supervision.

The Commission and CSOSA are federal agencies responsible for administering parole and supervised release in Washington, D.C. The Commission is responsible for setting the conditions of supervision and making final decisions regarding the continuation, revocation, or termination of supervision. If the Commission believes that a person has violated the terms of their supervision, the Commission may issue an arrest warrant and impose a term of incarceration. *See* 28 C.F.R. §§ 2.103, 2.211, 2.216, 2.218.

CSOSA, in turn, is responsible for the day-to-day aspects of supervision. CSOSA adds detail to the conditions set by the Commission, such as by specifying the location and frequency of required appointments with a Community Supervision Officer ("CSO"). *See* P. Davis Decl. Ex. 9 (CSOSA Operations Manual (2018)), ch. II, pp. 11-13, ch. III, pp. 11-14. CSOs monitor those on supervision and make the initial determination as to whether someone has violated the conditions of supervision. In response to an alleged violation, CSOs may apply "graduated sanctions," such as increasing the frequency of appointments, or may file an Alleged Violation Report ("AVR"), which triggers the Commission to begin the formal process of revoking supervision. *See id.*, ch. II, p. 1, ch. VI, pp. 56-57.

Although parole and supervised release are two different forms of supervision, the process for imposing and enforcing conditions is essentially the same for both. Parole is an older form of supervision, which applies to people who were convicted of felony offenses before August 5, 2000. *See generally* Sentencing Reform Amendment Act of 2000, D.C. Act 13-406, 47 D.C. Reg. 7249 (June 8, 2001) (codified as amended at D.C. Code § 24-403.01). At that time, persons convicted of a felony received minimum and maximum prison sentences. An individual was eligible for parole once they served the minimum term of imprisonment. The District of Columbia abolished parole for sentences after August 5, 2000, and shifted from an "indeterminate" sentencing system (i.e., sentences with minimum and maximum prison terms) to a "determinate" one (i.e., sentences with a single prison term). *See id.*; *see also D.C. Act 13-406, the Sentencing Reform Amendment Act of 2000*, D.C. Sentencing Commission (Sept. 25, 2000), https://scdc.dc.gov/publication/sentencing-reform-act-2000.

1. The Commission Imposes The Same General Conditions Of Parole And Supervised Release On All Class Members.

The Commission starts from the same baseline "general conditions of release." 28 C.F.R. § 2.85(a)(1) (general parole conditions); 28 C.F.R. § 2.204(a)(1) (same for supervised release). These conditions include mandatory visits from a supervision officer, compulsory drug or alcohol tests, employment obligations, confinement to the District of Columbia absent permission to leave, and avoidance of any persons with a criminal record without permission. *See* 28 C.F.R. §§ 2.85(a)(1), 2.204(a). The Commission may also impose heightened, "special conditions," such as requiring participation in a drug or alcohol treatment program or confining a person on supervision to their home when not at work or school. *Id.* §§ 2.85(b), 2.204(b)(1)-(2). At no point does the Commission request information from people on supervision regarding their disabilities or consider whether they need reasonable accommodations to have an equal opportunity to succeed at supervision. *See* P. Davis Decl. Ex. 3 (Commission 6/20 FOIA Response) at 1–2 ("[n]o responsive records" to FOIA request for guidance documents on "[e]valuating whether people on parole or supervised release have disabilities" or "need reasonable accommodations," or even documentation on the "number of people with disabilities supervised"); P. Davis Decl. Ex. 4 (Email from Commission to A. Verriest (Aug. 18, 2023)) at 1–2 (confirming the Commission has no responsive records); Edmondson Decl. ¶¶ 8-9, 12; K. Davis Decl. ¶¶ 14-15; W. Mathis Decl. ¶ 19-21. Indeed, neither the individuals on supervision nor their attorneys are present when the Commission imposes conditions. *See* Edmondson Decl. ¶ 11; K. Davis Decl. ¶ 13. And there is "no system for attorneys to seek reasonable accommodations to supervision conditions imposed by the Commission." Edmondson Decl. ¶ 13.

2. CSOSA Uses The Same Automated System To Impose Particularized Conditions Of Supervision On Each Class Member.

CSOSA then imposes more particularized conditions on supervisees' release through what is known as a prescriptive supervision plan ("PSP"). CSOSA obtains these PSPs through an automated process using risk assessment tools, none of which are designed to provide reasonable accommodations to people on supervision with mental, physical, intellectual, or developmental disabilities.

One of these automated tools is the "Triage Screener," which is used to determine "an appropriate supervision level on the first day of supervision." P. Davis Decl. Ex. 10 (CSOSA Congressional Budget Justification Fiscal Year 2024 (Mar. 9, 2023)) at 52 ("CSOSA FY 2024 Budget Justification"), https://www.csosa.gov/wp-content/uploads/bsk-pdf-manager/2023/03/CSP-FY2024-Congressional-Budget-Justification-03092023.pdf. This risk-assessment tool relies exclusively on the supervisee's administrative records to classify the individual as "high-[risk]" or "low-risk." At the Triage Screener stage, CSOSA does not conduct *any* interview of the individual on supervision, or otherwise seek *any* information from them, including whether they have a disability or need accommodations. *Id.*

During the initial weeks of supervision, an individual's CSO is charged with completing a second risk-assessment tool called the "Dynamic Risk Assessment for Offender Reentry" ("DRAOR").[3] *Id.* at 7, 52. The DRAOR is "intended to allow officers to monitor a person's risk of re-offending" through consideration of 19 "dynamic risk and protective factors." *Id.* at 53. It is

[3] CSOSA previously used a tool called the "Auto Screener." P. Davis Decl. Ex. 10 (CSOSA FY 2024 Budget Justification), *supra*, at 52. The DRAOR "performs similarly [to the Auto Screener] but is more fully automated." *Id.*; *see also id.* at 7 (explaining that CSOSA was switching from the Auto Screener to the DRAOR in FY 2023 because the DRAOR's "automated system [would] reduce CSO workload").

not clear from publicly available documents whether any of those 19 factors include the person's physical, mental, intellectual, or developmental disabilities.[4] CSOs fill out the DRAOR using information gathered from interactions with their supervisees. According to CSOSA, a CSO can complete the DRAOR in a mere five to ten minutes. P. Davis Decl. Ex. 5 (CSOSA 2022-2026 Strategic Plan), at 18; *see id.* (claiming that automation enables more frequent DRAOR assessment during supervision).

Based on the information collected, CSOSA's case management system then *automatically* generates a PSP, which includes "plan items, goals, and action items for the offender." P. Davis Decl. Ex. 9 (CSOSA Operations Manual (2018)), *supra*, ch. V, p. 9. The PSP operates as the default supervision requirements for the person on supervision. In theory, the CSO "can prioritize, override (with the [Supervisory CSO's] approval), and/or add items to the PSP," *id.*, but such modification rarely, if ever, occurs in practice, Edmonson Decl. ¶ 16. Moreover, any ability CSOs have to modify the conditions in the PSP is, in CSOSA's own assessment, "cumbersome and potentially problematic, as it is based on the CSO subjectively prioritizing the needs of the offender." P. Davis Decl. Ex. 5 (CSOSA 2022-2026 Strategic Plan), *supra*, at 32. Thus, "manual"

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[4] The previously-used Auto Screener does appear to have considered a supervisee's "mental health," including "current mental health status, history of mental health issues, . . . and any previous or current mental health treatment," as well as a supervisee's "physical health/disability," including "chronic diseases, physical anomalies, sexually transmitted diseases (STDs), and the offender's assessment of physical attractiveness." P. Davis Decl. Ex. 9 (CSOSA Operations Manual (2018)), *supra*, ch. V, p. 5; *see also* P. Davis Decl. Ex. 1 (CSOSA 6/23 FOIA Response) at 2 ("SMART's [CSOSA's Supervision & Management Automated Record Tracking system's] 'Physical Information' screen allows documentation of supervisee disability, to include open text for explanation and how the disability is being addressed. The Auto Screener within SMART contains a 'Mental State and Condition' section that is completed by staff to document the supervisee's past and present mental conditions."). However, CSOSA's FOIA responses make clear that there is no guidance provided to CSOs as to how to use this information to "[e]valuat[e] whether people on parole or supervised released need reasonable accommodations" or how to "[p]rovid[e]" such accommodations if needed. P. Davis Decl. Ex. 1 (CSOSA 6/23 FOIA Response) at 1–2; P. Davis Decl. Ex. 11 (CSOSA 9/5 FOIA Response) at 2.

modification of the automatically generated PSP appears to be discouraged. *Id.*; *see also* Edmonson Decl. ¶ 16.

C. Defendants Have No System For Accommodating Supervisees' Disabilities.

Defendants have no system for considering and accommodating supervisees' disabilities. Indeed, both agencies admitted in response to FOIA requests that they had *no guidance whatsoever* on evaluating and accommodating disabilities. *See* P. Davis Decl. Ex. 3 (Commission 6/20 FOIA Response) at 1–2; P. Davis Decl. Ex. 1 (CSOSA 6/23 FOIA Response) at 1–2; P. Davis Decl. Ex. 11 (CSOSA response to Freedom of Information Act request (Sept. 5, 2023) at 2 ("CSOSA 9/5 FOIA Response") at 2.

The Commission could not identify a single "document[] containing policies, procedures, guidelines or any other rules or instructions" regarding (1) "[e]valuating whether people on parole or supervised release have disabilities"; (2) "[e]valuating whether people on parole or supervised release need reasonable accommodations"; and (3) "[p]roviding people on parole or supervised release reasonable accommodations." P. Davis Decl. Ex. 3 (Commission 6/20 FOIA Response) at 1–2; *see* P. Davis Decl. Ex. 4 (Email from Commission to A. Verriest (Aug. 18, 2023)) ("confirming that the Commission does not have any responsive records" for these requests). Instead, the Commission directed Plaintiffs' counsel to contact CSOSA. *See* P. Davis Decl. Ex. 3 (Commission 6/20 FOIA Response) at 1–2.

But CSOSA likewise revealed that "[a]n exhaustive search of all guidance, dating back to 2015, yielded no guidance/instruction/etc." regarding (1) "[e]valuating whether people on parole or supervised release need reasonable accommodations"; and (2) "[p]roviding people on parole or supervised release reasonable accommodations." P. Davis Decl. Ex. 1 (CSOSA 6/23 FOIA Response) at 1–2; P. Davis Decl. Ex. 11 (CSOSA 9/5 FOIA Response) at 2. CSOSA did state that its automated tools "allow[] documentation of supervisee disability." P. Davis Decl. Ex. 1 (CSOSA

6/23 FOIA Response) at 2. But CSOSA acknowledged that it had "no guidance" regarding "[p]roviding people on parole or supervised release with notice of their rights under Section 504 of the Rehabilitation Act," and that the only way individuals could "request a change in conditions of community supervision" was to "consult with the[ir] CSO," without any guarantee that their disabilities would, in fact, be taken into account by their CSO. *Id.* at 1–3.

Defendants' process for setting conditions of supervision thus simply does not include any system of reasonably accommodation for individuals with disabilities. For its part, the Commission's condition-setting process is highly standardized. Although the Commission can impose "special conditions," it does not use this authority to provide reasonable accommodations to individuals with disabilities; on the contrary, the special conditions listed in the regulation are all *more* onerous, not less. *See* 28 C.F.R. §§ 2.204(b)(1)-(2); Edmondson Decl. ¶¶ 12, 21-22.

CSOSA similarly provides no systematic consideration of supervisees' disabilities. At the Triage Screener phase, no mechanism for reasonably accommodating individuals with disabilities exists. And even at the DRAOR phase—where information is theoretically collected by CSOs on an individual's unique risks and needs—CSOSA has no formal system to address whether people with disabilities need reasonable accommodations, or to provide such accommodations when necessary. On the contrary, CSOSA admits that it gives its CSOs "no guidance" on this topic. P. Davis Decl. Ex. 1 (CSOSA 6/23 FOIA Response) at 1-2; P. Davis Decl. Ex. 11 (CSOSA 9/5 FOIA Response) at 2. Moreover, while CSOs theoretically have some discretion to modify the PSPs produced by CSOSA's automated tools, they rarely, if ever, do so. Edmondson Decl. ¶ 16. CSOSA does place some people on "'mental health' supervision," but this practically means only *more* onerous conditions, such as "increased drug testing, extra programming, rigid meeting locations, and more frequent meetings." *Id.* ¶ 19. The "'mental health' supervision program does

not involve providing reasonable accommodations," *id.* ¶ 20, as is evidenced by CSOSA's admission that it has no "policies, procedures, guidelines, or any other rules or instructions" on "[p]roviding … reasonable accommodations." P. Davis Decl. Ex. 1 (CSOSA 6/23 FOIA Response) at 1–2; *see* P. Davis Decl. Ex. 11 (CSOSA 9/5 FOIA Response) at 2.

Finally, neither the Commission nor CSOSA has any policy or practice of notifying individuals of their rights under Section 504 of the Rehabilitation Act, including their right to request reasonable accommodations that would ensure meaningful access to supervision. *See* P. Davis Decl. Ex. 1 (CSOSA 6/23 FOIA Response) at 1–2; P. Davis Decl. Ex. 3 (Commission 6/20 FOIA Response) at 1; P. Davis Decl. Ex. 4 (Email from Commission to A. Verriest (Aug. 18, 2023)) at 1; Edmondson Decl. ¶ 9; K. Davis Decl. ¶ 16; W. Mathis Decl. ¶ 22.

D. Defendants' Policies Deprive All Class Members Of Meaningful Access To The Benefits Of Supervision And An Equal Opportunity To Succeed On Supervision.

Success on supervision can mean the difference between early release from supervision and longer supervision or even incarceration. *See, e.g.*, Edmondson Decl. ¶¶ 25-26. If people on supervision successfully comply with their supervision requirements, they have the opportunity to have their supervision terminated early. *See* 28 C.F.R. § 2.95; 28 C.F.R. § 2.208. By contrast, individuals who violate the conditions of their release face extended supervision, added conditions, or reincarceration. *See* 28 C.F.R. § 2.216 (supervised release revocation hearing procedure); 28 C.F.R. § 2.218 (actions Commission may take upon finding of violation); 28 C.F.R. § 2.103 (parole revocation hearing procedure); 28 C.F.R. § 2.210 (possibility of extension of supervised release terms); Edmondson Decl. ¶ 26. Revocation and reincarceration need not be based on any charge of criminal conduct. Supervision may be revoked even for "technical" violations, meaning conduct that would not otherwise constitute a crime, such as missing a required appointment or drug test, or maintaining a friendship with a person with a felony conviction. *Id.* ¶ 27; *see also* P. Davis Decl.

Ex. 10 (CSOSA FY 2024 Budget Justification), *supra*, at 35 (non-compliance with conditions of release "can lead to loss of liberty, or revocation, for 'technical' violations"). And even when the Commission does not revoke supervision, people arrested for technical violations still suffer serious consequences from being detained in jail while awaiting revocation proceedings—a period that lasts an average of four months. *See* P. Davis Decl. Ex. 12 (Andrea Fenster, *Prison Policy Initiative, Technical Difficulties: D.C. Data Shows How Minor Supervision Violations Contribute to Excessive Jailing* (Oct. 28, 2020), https://www.prisonpolicy.org/blog/2020/10/28/dc_technical_violations; Edmondson Decl. ¶¶ 27–30. That is more than enough time to lose a job or housing or to disrupt ongoing medical treatment. Edmondson Decl. ¶¶ 28-30; *see, e.g.*, W. Mathis Decl. ¶¶ 30-35.

Defendants' failure to reasonably accommodate the needs of people on supervision with disabilities makes it substantially more difficult for those individuals to meet the conditions of their supervision. Indeed, CSOSA itself admits that people with mental disabilities are almost *twice* as likely to have an AVR filed against them for a technical violation than the general supervision population. P. Davis Decl. Ex. 1 (CSOSA 6/23 FOIA Response) at 6–7. For those whose unaccommodated disability impedes compliance with the terms of their supervision, the threat of punishment—in the form of heightened conditions of supervision, longer terms of supervision, or even reincarceration—is ever-looming.

Plaintiffs' experiences powerfully demonstrate that fact. Named Plaintiff W. Mathis is a 70-year-old military veteran who has been on parole for nearly two decades. W. Mathis Decl. ¶¶ 1-3. He has congestive heart failure and has been hospitalized four times since October 2023 due to that condition. *Id.* ¶¶ 4-5. Mr. Mathis's heart condition makes it difficult to walk, and he uses a walker whenever he leaves the house. *Id.* ¶ 6. Due to his mobility issues and frequent medical

appointments, Mr. Mathis often struggles to make his twice weekly drug testing and CSO meetings. *Id.* ¶¶ 7-11. Although Mr. Mathis provided his CSO with a list of his VA hospital appointments and asked that his meetings be scheduled around them, his CSO "never offered to change [his] appointment dates," or make any other accommodation like meeting at Mr. Mathis's home or allowing him to check in by phone. *Id.* ¶ 12. Instead, in December 2023, CSOSA *added* another condition to Mr. Mathis's parole: GPS monitoring. *Id.* ¶ 13. Mr. Mathis informed his CSO that the GPS monitor was "dangerous for [his] health" because it made his ankle swell, further limiting his mobility. *Id.* ¶ 15-17. Mr. Mathis's doctor advised him not to wear the GPS monitor, but having received no accommodation, Mr. Mathis chose to suffer the health consequences rather than risk violating his parole by removing it. *Id.* ¶¶ 17-18.

Even when Mr. Mathis was hospitalized for his heart condition, he made concerted efforts to check in with his CSO—both by phone and, when possible, in person. *Id.* ¶¶ 24, 28-29. Nevertheless, in January 2024, Mr. Mathis was arrested for technical violations of his parole, despite the fact that he had been in the hospital on three of the four days he was accused of missing appointments with his CSO and had been wearing his GPS monitor the entire time. *Id.* ¶¶ 26-27, 30. Because of those technical violations, Mr. Mathis was incarcerated for about ten days. *Id.* ¶ 31. Due to his incarceration, Mr. Mathis was forced to miss a previously scheduled appointment to get a defibrillator that would have treated his congestive heart failure. *Id.* ¶¶ 30-35. Although Mr. Mathis's attorney informed the Commission about his upcoming medical procedure at his probable cause hearing and the hearing examiner "agreed that [Mr. Mathis] had a serious medical procedure" and "should be released," the Commission rejected the examiner's recommendation and kept Mr. Mathis in jail for over a week, causing him to miss this important medical procedure. *Id.* ¶¶ 33-35. And while Mr. Mathis was later released, he was released on substantially the same

conditions as before. *Id.* ¶ 37. To this day, neither the Commission nor CSOSA "has ever offered to change [his] conditions of parole because of [his] disability." *Id.* ¶ 19.

Named Plaintiff K. Davis's experience reflects a similar lack of accommodation and resultant harms. Mr. Davis is a 48-year-old Black man who was first released on parole 13 years ago. K. Davis Decl. ¶¶ 1-4. Mr. Davis has numerous, ongoing medical issues related to third-degree burns he sustained on his upper body. *Id.* ¶¶ 5-6. As a result of his burns and corresponding surgeries, Mr. Davis has mobility issues and has had to use a wheelchair, crutches, and a walker at various times while on parole, making it difficult to get to supervision appointments. *Id.* ¶¶ 18-21. He also has depression, anxiety, and posttraumatic stress disorder (PTSD), which make it difficult for him to keep track of and attend all of his supervision appointments, such as drug testing twice a week and regular reporting to his CSO via phone and in person—on top of frequent medical appointments for his burns and mental health treatment. *Id.* ¶¶ 7, 12. Mr. Davis has had to take medications for his mental health that make him feel tired and nauseous and give him slurred speech and headaches, making it hard to keep appointments. *Id.* ¶ 23. He has also had between five and seven different CSOs, each of whom has imposed different specific requirements. These frequent changes exacerbate Mr. Davis's mental health issues. *Id.* ¶ 26. Finally, due to Mr. Davis's mental health conditions, it is hard for him to problem-solve, and to reach out to new people for help, when he encounters barriers to meeting his supervision conditions. *Id.* ¶¶ 24-25; *see also* Seltzer Decl. ¶¶ 10, 14-15.

Prior to his most recent incarceration, Mr. Davis had been jailed four times for violations of his parole, but each time, Defendants reinstated him to the same conditions he previously struggled to follow due to his disabilities. *Id.* ¶¶ 27-28. Then, in August 2023, Mr. Davis was arrested for failing to contact his CSO by phone during a period of less than two weeks, despite

attending every single one of his drug-testing appointments—and testing negative—during that period. K. Davis Dec. ¶¶ 29-38. This violation stemmed from Mr. Davis's disabilities, as his anxiety and PTSD made it difficult for him to problem-solve and find an alternative way to contact his CSO when his phone was not working. K. Davis Dec. ¶¶ 34-35; Seltzer Decl. ¶¶ 14-15. Like Mr. Mathis, Mr. Davis was forced to miss a scheduled surgery for his burns while jailed pending revocation proceedings. K. Davis Dec. ¶ 40. Even though the Commission knew that Mr. Davis was getting help for his mental health conditions and was making efforts to follow his supervision rules despite his disability-related barriers, the Commission ultimately revoked his supervision and imposed a 12-month sentence. *Id.* ¶¶ 44-45. As a result of that sentence, Mr. Davis still has not been able to get the necessary surgery for his burns, more than eight months later. *Id.* ¶ 48. Incarceration has exacerbated Mr. Davis's mental health conditions, making him feel more anxious, hopeless, and discouraged. *Id.* ¶¶ 41, 49-50. While in prison, Mr. Davis is not taking his mental health medication, out of concern that the slurred speech side effect will make him appear to be using illegal substances, which could result in solitary confinement. *Id.* ¶ 50. After Mr. Davis completes this sentence, it is a foregone conclusion that he will be released on the same conditions he struggled to comply with previously due to his disabilities. *Id.* ¶¶ 27-28.

Named Plaintiffs' experiences are not unique. Defendants' failure to reasonably accommodate individuals with disabilities also inhibits the success of other people on supervision who are not Named Plaintiffs in this suit. *See* Edmondson Decl. ¶¶ 34-37. For example, counsel are aware of multiple individuals who were unable to attend required meetings due to their disabilities. *See id*. ¶¶ 34, 36. As a result of missing these meetings, one individual was reincarcerated for several weeks, despite Defendants' *express acknowledgement* that he was medically unable to comply with the terms of his supervision. *Id.* ¶¶ 36–37. And even when

Defendants ultimately returned that person to supervision, they imposed the exact same conditions they had already found he was incapable of complying with, resulting in a subsequent technical violation and another reincarceration for over a month. *Id.* Indeed, as Named Plaintiffs' experiences and others show, Defendants frequently restore individuals with disabilities to the same supervision conditions, even after it has become apparent that those conditions are not attainable due to the supervisees' disabilities. *Id.* at 33-37. This behavior traps supervised people with disabilities in a vicious cycle, preventing them from having the same opportunity to rejoin the community as supervised persons without disabilities.

In short, Defendants' systematic failure to assess the accommodation needs of supervisees with disabilities and to provide reasonable accommodations severely hinders all class members' abilities to succeed on supervision. Even for those class members who manage to comply with the terms of their supervision, they must work substantially harder than their non-disabled counterparts.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 23 authorizes federal courts to determine, "[a]t an early practicable time after a person sues" as a class representative, "whether to certify the action as a class action." Fed. R. Civ. P. 23(c)(1)(A); *see J.D. v. Azar*, 925 F.3d 1291, 1312 (D.C. Cir. 2019). To obtain class certification, plaintiffs must first satisfy the four Rule 23(a) requirements: numerosity, commonality, typicality, and adequacy. Fed. R. Civ. P. 23(a)(1)-(4); *see Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011). Plaintiffs must then show that the case meets the requirements of one of Rule 23(b)'s subsections. As relevant here, Rule 23(b)(2) provides that class certification is proper if "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." Fed. R. Civ. P. 23(b)(2); *see Wal-Mart*, 564 U.S. at 360.

Upon certifying a class, the Court must also appoint class counsel. Fed R. Civ. P. 23(g). To do so, the Court must consider: "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). The court "may also consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B).

IV. ARGUMENT

This case satisfies all of Rule 23's requirements. Defendants have a system-wide policy that sets conditions of supervision using an automated process without any evaluation of reasonable accommodations for persons with disabilities. This systemic failure affects all members of the class by depriving them of an equal opportunity to succeed on supervision. And a single injunction requiring Defendants to implement the system required by the Rehabilitation Act will remedy those injuries. The Court should certify the class.

V. THE PROPOSED CLASS SATISFIES RULE 23(A)'S REQUIREMENTS.

A. The Proposed Class Satisfies the Numerosity Requirement.

The proposed class satisfies the requirement that a class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Although Rule 23(a)(1) does not impose any specific numerical threshold, courts in this District have generally concluded that "numerosity is satisfied when a proposed class has at least forty members." *Howard v. Liquidity Servs., Inc.*, 322 F.R.D. 103, 117 (D.D.C. 2017) (quoting *Coleman ex rel. Bunn v. District of Columbia*, 306 F.R.D. 68, 76 (D.D.C. 2015)); *see Radosti v. Envision Emi, LLC,* 717 F. Supp. 2d 37, 51 (D.D.C.

2010). In considering "the number of potential class members, the Court need only find an approximation of the size of the class, not 'an exact number of putative class members.'" *Coleman*, 306 F.R.D. at 76 (citation omitted).

The proposed class meets the numerosity requirement because it has significantly more than 40 members. According to CSOSA's own calculations, 484 individuals of a cohort of 2,816 individuals who were on active supervision between June 1, 2022 and May 31, 2023 had a mental disability. *See* P. Davis Decl. Ex. 1 (CSOSA 6/23 FOIA Response) at 6. And that number includes only those with mental disabilities. As previously noted, neither the Commission nor CSOSA tracks individuals with intellectual, developmental, or physical disabilities. *Id.*; P. Davis Decl. Ex. 3 (Commission 6/20 FOIA Response) at 1–2; *see* P. Davis Decl. Ex. 4 (Email from Commission to A. Verriest (Aug. 18, 2023)) at 1. But as CSOSA itself has recognized, physical health conditions are "common" among the supervised population. *See* P. Davis Decl. Ex. 5 (CSOSA 2022-2026 Strategic Plan), *supra*, at 14. And while not every person on supervision with a disability will need an accommodation, many will. *See* Edmondson Decl. ¶¶ 6-7, 23. As a result, the class conservatively includes hundreds of members—certainly more than the 40-member threshold required for numerosity.

B. The Proposed Class Satisfies the Commonality Requirement.

The proposed class also satisfies Rule 23(a)(2)'s requirement of "questions of law or fact common to the class." To meet this requirement, the class members' claims "must depend upon a common contention" that is "capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart*, 564 U.S. at 350. In other words, "commonality requires a showing that there is 'some glue' holding the claims together." *Dunn v. Dunn*, 318 F.R.D. 652, 662-63 (M.D. Ala. 2016) (quoting *Wal-Mart*, 564 U.S. at 352) (certifying a class of incarcerated people to pursue

claims under the Rehabilitation Act that defendant lacked adequate systems for identifying and accommodating people with disabilities). "Even a single common question will do," as long as that question has the capacity to yield an answer that drives litigation for the class as a whole. *Thorpe v. District of Columbia*, 303 F.R.D. 120, 145 (D.D.C. 2014).

Courts have consistently held that "commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members." *Id.* at 147 (quoting *Lane v. Kitzhaber*, 283 F.R.D. 587, 597 (D. Ore. 2012)). The assertedly common question "must be more specific than simply asking whether plaintiffs 'have all suffered a violation of the same provision of law.'" *Id.* at 145 (quoting *Wal-Mart*, 564 U.S. at 350); *see D.L. v. District of Columbia*, 713 F.3d 120, 126 (D.C. Cir. 2013) ("*D.L. II*") (rejecting proposed class framed around generalized violation of law because law could be violated "in many different ways"). But where "plaintiffs allege widespread wrongdoing by a defendant," as in civil rights cases challenging institutional wrongdoing, they can establish commonality notwithstanding individual factual variations by identifying a "uniform policy or practice that affects all class members." *D.L. v. District of Columbia*, 302 F.R.D. 1, 12 (D.D.C. 2013) ("*D.L. III*") (quoting *D.L. II*, 713 F.3d at 128); *see Parsons v. Ryan*, 754 F.3d 657, 682 (9th Cir. 2014) ("In a civil rights suit such as this one . . . commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members. Under such circumstances, individual factual differences among class members pose no obstacle to commonality." (quoting *Rosas v. Baca*, No. 12-428, 2012 WL 2061694, at *3 (C.D. Cal. June 7, 2012))).

This case satisfies the commonality requirement because Defendants maintain a "system-wide policy or practice" that sets conditions of supervision for all class members—and that policy uniformly fails to consider and provide the accommodations necessary for class members to have

an equal opportunity to benefit from supervision. As explained, Defendants use a set of largely automated tools to establish conditions of supervision, which do not involve any assessment of whether a person with disabilities needs accommodations, let alone establish conditions that would properly accommodate that person's disability-related needs. Additionally, to the extent CSOSA considers a person's mental-health disability, it is as an *aggravating* factor triggering the imposition of *more onerous* conditions of supervision. Edmondson Decl. ¶¶ 19-20.

The following factual and legal questions, at least, are common to the class:

- Whether Defendants have a process for assessing whether individuals with disabilities need accommodations in order to have an equal opportunity to satisfy their supervision requirements, and for providing those accommodations.
- Whether Defendants' process for establishing initial supervision conditions provides individuals with disabilities an opportunity to receive the reasonable accommodations necessary to have an equal opportunity to satisfy their supervision requirements.
- Whether Defendants' process for modifying supervision plans after the initial intake assessment enables individuals with disabilities to receive the reasonable accommodations necessary to have an equal opportunity to satisfy their supervision requirements.
- Whether Defendants' policy of imposing supervision conditions without any system to assess people's disability-related needs violates Section 504 of the Rehabilitation Act by failing to provide individuals with disabilities the reasonable accommodations necessary to have an equal opportunity to satisfy their supervision requirements.

Each of these questions can be resolved as to the class as a whole, because they turn on Defendants' policy affecting every single class member. If Plaintiffs are correct that Defendants'

centralized policy fails to assess what accommodations individuals with disabilities require, or fails to provide reasonable accommodations to those persons, then Defendants will have violated the Rehabilitation Act as to the "class as a whole." *See Wal-Mart*, 564 U.S. at 360; *see also Thorpe*, 303 F.R.D. at 146–47 ("[R]esolution of these common contentions will generate common answers for the entire class and resolve issues that are central (and potentially dispositive) to the validity of each plaintiff's claim and the claims of the class as a whole.").

Defendants' systemic failures also result in "common harm[s]" for all class members. *D.L. v. District of Columbia*, 860 F.3d 713, 724 ("*D.L. IV*") (D.C. Cir. 2017) (quoting *D.L. II*, 713 F.3d at 128). This case challenges not individual denials of accommodations, but Defendants' *systematic* failure to reasonably accommodate supervisees' disabilities in setting conditions of supervision. As then-Judge Jackson explained in another Rehabilitation Act case, "the express prohibition[] against disability-based discrimination in Section 504 . . . include[s] *an affirmative obligation* to make benefits, services, and programs accessible to disabled people." *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 266 (D.D.C. 2015). Defendants' failure to do so harms *every single member of the class*, as Named Plaintiffs' experiences illustrate. Defendants' failure to make reasonable accommodations resulted in both Plaintiffs struggling to attend required meetings due to disability-related limitations, being arrested for technical violations, and suffering serious harm as a result of being jailed for those violations. *See* K. Davis Decl. ¶¶ 17-21, 40, 48; W. Mathis Decl. ¶¶ 9-36. And each time that Plaintiffs were re-released on parole, Defendants imposed the same conditions that Plaintiffs were previously unable to satisfy due to their disabilities. K. Davis Decl. ¶ 28; W. Mathis Decl. ¶ 37. Plaintiffs' experiences are far from aberrational; they are the norm. "The Commission regularly revokes supervision . . . for violations that [the Commission] know[s] stemmed from a disability-related limitation," and subsequently

returns individuals "to the community with the same conditions that their known disability demonstrably precludes them from following." Edmondson Decl. ¶¶ 21-23, 33.

Courts across the country routinely find commonality met when certifying similar classes under the Rehabilitation Act. In *Armstrong v. Davis*, for example, the Ninth Circuit upheld the certification of a class of people in prison and on supervision with disabilities because, even though "the nature of the particular class members' disabilities" differed, "all of [them] suffer[ed] similar harm from the Board's failure to accommodate their disabilities" during parole proceedings. 275 F.3d 849, 868 (9th Cir. 2001). Likewise, in *Dunn*, the court certified a class of incarcerated people with disabilities to pursue claims that the Alabama Department of Corrections (DOC) had systematically "fail[ed] to implement certain policies and procedures" with "the effect of consistently violating [the plaintiffs'] rights under" the Rehabilitation Act. 318 F.R.D. at 663. The court emphasized that the plaintiffs had presented several "common questions," including whether the DOC had discriminated against them by "employing no system or an inadequate system for identifying and tracking prisoners with disabilities" and "no system or an inadequate system for prisoners to request accommodations and submit grievances regarding non-accommodation." *Id.* at 665. Finally, in *Cobb v. Georgia Dep't of Community Supervision*, the court certified a class of deaf and hard-of-hearing individuals on parole or probation in Georgia—highlighting common questions such as whether the defendant's "policies and practices deny class members adequate and equal access to programs, activities, and services" associated with parole or probation. No. 19-cv-3285, Dkt. 262, at 27-42 (Oct. 13, 2022); *see also Harris v. Ga. Dep't of Corrs.*, 2021 WL 6197108, at *11–14 (M.D. Ga. Dec. 29, 2021) (certifying a class of incarcerated individuals with hearing disabilities in a similar failure-to-accommodate case). These questions are substantially

similar to those Plaintiffs present here regarding Defendants' failure to employ a system that assesses the needs of people with disabilities and provides reasonable accommodations.

In short, because "Plaintiffs are challenging the system-wide policies and practices of [Defendants] and how such issues affect all class members," commonality is met, even though the "necessary accommodations" each class members "need[s] . . . will inevitably vary." *Cobb*, No. 19-cv-3285, Dkt. 262 at 36-37; *see also Harris*, 2021 WL 6197108, at *12 (same).

C. The Named Plaintiffs Satisfy the Typicality Requirement.

Plaintiffs' claims are also "typical of the claims . . . of the class." Fed. R. Civ. P. 23(a)(3). Typicality is satisfied so long as each class member's claim arises from "a unitary course of conduct, or . . . [is] based on the same legal or remedial theory" as other members of the class. *J.D.*, 925 F.3d at 1322 (quoting 7A Wright et al., Federal Practice and Procedure § 1764); *Radosti*, 717 F. Supp. 2d at 52. Plaintiffs need satisfy only one of these conditions; here, Plaintiffs satisfy both. Each class member's claim arises from the same conduct: Defendant's systematic failure to assess class members' disability-related needs and provide reasonable accommodations. And each claim is based on the same legal theory too: the failure to provide "meaningful access" to the benefits of supervision, in violation of the Rehabilitation Act. *Alexander*, 469 U.S. at 301.

That class members may ultimately need different accommodations to have an equal opportunity to succeed on supervision does not render Named Plaintiffs' claims atypical. Like commonality, "typicality is not destroyed merely by 'factual variations.'" *Wagner v. Taylor*, 836 F.2d 578, 591 (D.C. Cir. 1987) (quoting *Donaldson v. Pillsbury Co.*, 554 F.2d 825, 831 (8th Cir. 1977)). As above, the key point here is that each class member has been "discriminated against via systems-level violations of . . . the Rehabilitation Act," giving rise to the same legal claim and the same request for injunctive relief. *Disability Rights Council of Greater Wash. v. Wash. Metro. Area Transit Auth.*, 239 F.R.D. 9, 26 (D.D.C. 2006). That the proposed class includes individuals

with different disabilities and different needs "says nothing, in and of itself, about whether the named plaintiffs' claims are typical." *Id.* at 28. That is because the fundamental "question is whether the *claims* are typical," not whether the *Named Plaintiffs* are identical to all class members in all respects. *Id.*; *see also Moore v. Napolitano*, 926 F. Supp. 2d 8, 30 (D.D.C. 2013) ("'Typical' does not mean identical.").

For that reason, courts in this Circuit have consistently certified or approved classes involving individuals with different disabilities who all claim a similar failure to accommodate. *See, e.g.*, *Brown v. District of Columbia*, 928 F.3d 1070, 1079 (D.C. Cir. 2019); *Disability Rights Council*, 239 F.R.D. at 27-30; *Charles H. v. District of Columbia*, No. 1:21-cv-00997, 2021 WL 2946127, at *13-14 (D.D.C. June 16, 2021); *see also Armstrong*, 275 F.3d at 868-69 (rejecting typicality challenge to certification). The Court should do the same here.

D. The Named Plaintiffs Satisfy the Adequacy Requirement.

Finally, the Named Plaintiffs will "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Rule 23(a)(4)'s adequacy requirement "embraces two components: the class representative (i) must not have antagonistic or conflicting interests with the unnamed members of the class and (ii) must appear able to vigorously prosecute the interests of the class through qualified counsel." *J.D.*, 925 F.3d at 1312 (internal quotation marks omitted) (quoting *Twelve John Does v. District of Columbia*, 117 F.3d 571, 575 (D.C. Cir. 1997)). Both requirements are easily met here.

First, W. Mathis's and K. Davis's interests do not conflict with those of the class. The Named Plaintiffs and class members all suffer the same harms under the Rehabilitation Act, and would benefit from the same injunctive relief. *See Charles H. v. District of Columbia*, No. 1:21-CV-00997, 2021 WL 2946127, at *14 (D.D.C. June 16, 2021) (finding the named plaintiffs adequate where they sought "only forms of relief that [would] benefit the entire class"). Moreover,

because the Named Plaintiffs do not seek monetary damages, there is no potential for financial conflict.

Second, W. Mathis and K. Davis are competent to represent the class. Adequacy "does not require either that the proposed class representatives have legal knowledge or a complete understanding of the representative's role in class litigation." *Garnett v. Zeilinger*, 301 F. Supp. 3d 199, 210 (D.D.C. 2018) (citation omitted). It requires only that the Named Plaintiffs have "some rudimentary knowledge of [their] role as … class representative[s] and [be] committed to serving in that role in litigation." *Id.* (citation omitted). Named Plaintiffs' declarations demonstrate a sufficient "awareness of the facts of this case" to satisfy the adequacy factor. *Id.* at 211. Moreover, Named Plaintiffs' counsel has extensive experience litigating discrimination cases, issues related to supervision, and/or class actions, and they will vigorously defend the interests of the class in this case. *See* S. Deger-Sen Decl. ¶¶ 4-13; S. Michelman Decl. ¶¶ 3-13; H. Perry Decl. ¶¶ 3-6; A. Verriest Decl. ¶¶ 3-11; *see Howard v. Liquidity Servs. Inc.*, 322 F.R.D. 103, 135 (D.D.C. 2017) ("Particularly in complex cases, 'the qualifications of class counsel are generally more important in determining adequacy than those of the class representatives.'" (quoting *Harris v. Koenig*, 271 F.R.D. 383, 392 (D.D.C. 2010))).

Accordingly, the proposed class meets all requirements of Rule 23(a).

VI. CLASS CERTIFICATION IS APPROPRIATE UNDER RULE 23(B)(2).

In addition to satisfying the four criteria of Rule 23(a), this class qualifies for certification under Rule 23(b)(2). That rule permits certification 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." Fed. R. Civ. P. 23(b)(2). As the Supreme Court has explained, "[t]he key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can

be enjoined or declared unlawful only as to all of the class members or as to none of them." *Wal-Mart*, 564 U.S. at 360 (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 132 (2009)).

That criterion is readily met here. "'[C]ivil rights cases against parties charged with unlawful, class-based discrimination are prime examples' of what (b)(2) is meant to capture," as this case demonstrates. *Id.* at 361 (quoting *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 613 (1997)); *see also In re District of Columbia*, 792 F.3d 96, 102 (D.C. Cir. 2015) ("Rule 23(b)(2) was intended for civil rights cases."). Defendants have no formal system for assessing class members' disabilities and accommodation needs, and they routinely impose conditions that deny persons with disabilities an equal opportunity to succeed on supervision. This course of conduct affects the entire class. Accordingly, Plaintiffs' complaint requests a single injunction requiring Defendants to:

i. Implement a system to determine, at the time an individual with a disability is released onto supervision and at regular intervals thereafter, what, if any, reasonable accommodations they require as a result of their disabilities in order to have an equal opportunity to succeed on supervision, and provide such reasonable accommodations;

ii. Provide reasonable accommodations to class members known to Defendants to have a disability to ensure class members have an equal opportunity to succeed on supervision;[5]

[5] This includes providing reasonable accommodations to Named Plaintiffs W. Mathis and K. Davis to enable them to have an equal opportunity to succeed on supervision.

iii. Implement a mechanism whereby individuals with disabilities who are on supervision can request reasonable accommodations for their disabilities, and provide such reasonable accommodations as are requested; and

iv. Assess the supervision conditions of all individuals currently on supervision in the community and determine which individuals require reasonable accommodations due to their disabilities and provide such reasonable accommodations.

Because this injunction would apply to the entire class as a whole, the class satisfies Rule 23(b)(2).

VII. THE COURT SHOULD DESIGNATE PLAINTIFFS' COUNSEL AS CLASS COUNSEL.

Upon certifying a class, the Court must also appoint class counsel. Fed R. Civ. P. 23(g). To do so, the Court must consider: "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). The court "may also consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class.'" Fed. R. Civ. P. 23(g)(1)(B).

Plaintiffs' counsel satisfy all four criteria. Plaintiffs are jointly represented by the Public Defender Service for the District of Columbia, the American Civil Liberties Union, the American Civil Liberties Union of the District of Columbia, and Latham & Watkins, LLP. Counsel from all four organizations are experienced federal litigators, most of whom have specific expertise in representing criminal defendants, incarcerated persons, and/or civil rights plaintiffs, and most of whom have extensive experience in class action litigation. *See* S. Deger-Sen Decl. ¶¶ 4-13; S. Michelman Decl. ¶¶ 3-13; H. Perry Decl. ¶¶ 3-6; A. Verriest Decl. ¶¶ 3-11. As reflected in the

complaint and preliminary injunction briefing, Plaintiffs' counsel have already devoted "substantial time and resources to identifying and investigating potential claims in the action," and will continue to do so. *Encinas v. J.J. Drywall Corp.*, 265 F.R.D. 3, 9 (D.D.C. 2010). Plaintiffs' counsel have strong knowledge of the applicable law, including in the disability rights and supervision contexts. *See* S. Deger-Sen Decl. ¶ 5; S. Michelman Decl. ¶¶ 6, 11; H. Perry Decl. ¶¶ 4-5; A. Verriest Decl. ¶¶ 4-6, 8-9. Accordingly, Plaintiffs' counsel should be designated as counsel for the class.

VIII. ALTERNATIVELY, THE COURT SHOULD PROVISIONALLY CERTIFY THE CLASS.

The early stage of this litigation should not deter the Court from certifying Plaintiffs' proposed class, as the class plainly satisfies all of the required elements of Rule 23. Moreover, no consideration of the merits is required, because, "[a]s the Supreme Court has long held, courts may not examine whether 'plaintiffs have stated a cause of action or will prevail on the merits' in order to determine whether class certification is appropriate." *In re Veneman*, 309 F.3d 789, 794 (D.C. Cir. 2002) (quoting *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 178 (1974)).

Nevertheless, should the Court not be prepared to certify the class at this time, it should certify the class provisionally, subject to later reconsideration or amendment. *See* Fed. R. Civ. P. 23(c)(1). Courts in this district have done so many times. *See, e.g.*, *Damus v. Nielsen*, 313 F. Supp. 3d 317, 328-29, 343 (D.D.C. 2018) (granting provisional class certification in context of granting preliminary injunction); *Kirwa v. U.S. Dep't of Defense*, 285 F. Supp. 3d 21, 44 (D.D.C. 2017) (same); *R.I.L.-R. v. Johnson*, 80 F. Supp. 3d 164, 181–82, 191 (D.D.C. 2015) (same); *Chang v. United States*, 217 F.R.D. 262, 274 (D.D.C. 2003) (granting provisional class certification before defendants had filed their opposition to certification); *Bame v. Dillard*, No. 05-cv-1833, 2008 WL 2168393, at *9 (D.D.C. May 22, 2008) (provisionally certifying class "without prejudice to

Defendant's renewed objections after the close of discovery"); *Kifafi v. Hilton Hotels Ret. Plan*, 189 F.R.D. 174, 178 (D.D.C. 1999) (granting provisional class certification and noting that Rule 23(c)(1) "provid[es] that class certification may be granted provisionally and subsequently altered or amended"). At a minimum, provisional certification is warranted here.

IX. CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion for class certification and appointment of class counsel.

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Respectfully submitted,

/s/ Hanna M. Perry

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