IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM MATHIS and KENNEDY 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-TNM

PLAINTIFF'S RENEWED MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF COUNSEL

Pursuant to Federal Rule of Civil Procedure 23 and Local Rule 23.1, Plaintiff Kennedy Davis, on behalf of himself and all others similarly situated, hereby moves the Court to certify this case as a class action, with the following class definition:

> 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.

As more fully set forth in Plaintiff's Memorandum in Support, Plaintiff's proposed class satisfies all of the requirements of Federal Rule of Civil Procedure 23(a), including numerosity, commonality, typicality, and adequacy. Plaintiff's proposed class likewise satisfies the requirements of Federal Rule of Civil Procedure 23(b)(2) because Defendants, the United States Parole Commission ("Commission") and its Chairman, and the Court Services and Offender Supervision Agency ("CSOSA") and its Director, 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." Finally, Plaintiff's counsel is highly experienced in handling class actions and other complex litigation involving people on supervision and disability-discrimination claims, and should therefore be appointed as counsel for the class.

Pursuant to Local Civil Rule 7(m), Plaintiff's counsel met and conferred with Defendants' counsel regarding this motion on September 17, 2024, and Defendants' counsel advised that Defendants will oppose the motion.

Dated: October 3, 2024

Respectfully submitted,

/s/ Peter E. Davis

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S RENEWED MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

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I. INTRODUCTION

This Court recently recognized that the Government "injured [named Plaintiffs] by requiring them to navigate supervision without offering reasonable accommodations." Dkt. 31 ("PI Op.") at 11. To redress that injury, the Court directed the Government to "assess what reasonable accommodations named Plaintiffs . . . require to have an equal opportunity to succeed on supervision based on their individual disability-related needs, and provide any and all such required accommodations." Dkt. 32 ("PI Order") at 1. The Court granted relief only to named Plaintiffs Kennedy Davis, whose mental-health and mobility disabilities made it difficult to meet his supervision requirements, and William Mathis, who faced obstacles to compliance due to congestive heart failure.[1] *Id.* The PI Order does not extend to the class of similarly situated individuals who face the same "obstacles to equal access" that the Court concluded Mr. Davis and Mr. Mathis faced as a result of the Government's failure to accommodate their disabilities. PI Op. at 11, 28.

Accordingly, Plaintiff brings this motion for class certification to ensure that Defendants, the United States Parole Commission ("Commission") and its Chairman, and the Court Services and Offender Supervision Agency ("CSOSA") and its Director, accommodate all individuals with disabilities on parole and supervised release (collectively, "supervision"), who require accommodations to have an equal opportunity to succeed. Plaintiff seeks to certify 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.

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[1] Mr. Mathis passed away during these proceedings, and counsel voluntarily dismissed his claims on September 11, 2024. Dkt. 34.

Plaintiff's 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 law and fact, as they are all harmed by the same system-wide policy for imposing conditions of supervision, which lacks any process for assessing and accommodating their disabilities. Third, Mr. Davis's claim is typical of the class because it arises from the same system-wide policy of non-accommodation and proceeds on the same legal theory as each class member's claim. Fourth, Mr. Davis and his experienced counsel will fairly and adequately protect class interests and will vigorously prosecute this action on behalf of the class.

Certification of Plaintiff's 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). Plaintiff seeks 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.

Finally, Plaintiff's 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 undersigned counsel as counsel for the class under Federal Rule of Civil Procedure 23(g).

II. BACKGROUND

A. Factual Background

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

High numbers of people on parole and supervised release in D.C. have disabilities. CSOSA itself estimates that over 17% of the people it supervises have a mental disability. *See* Dkt. 38 ("Answer") ¶ 22; P. Davis Decl. Ex. 1 (CSOSA response to Freedom of Information Act request (June 23, 2023)) ("CSOSA 6/23 FOIA Response") at 6.[2] And because Defendants do not even track statistics of individuals with intellectual, developmental, or physical disabilities, the total number of people on supervision in D.C. with a disability of any kind is substantially higher. *See* P. Davis Decl. Ex. 1 (CSOSA 6/23 FOIA Response) 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; P. Davis Decl. Ex. 4 (Email from Commission to A. Verriest (Aug. 18, 2023)).[3]

As this Court has recognized, people with disabilities face higher barriers to succeeding on supervision than people without disabilities. *See* PI Op. at 4. These barriers include difficulties

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[2] 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; Answer ¶ 22.

[3] Although Defendants do not track physical disabilities, they have acknowledged that physical health conditions are "common" among the supervised population. Answer ¶ 23; P. Davis Decl. Ex. 5 (Court Services and Offender Supervision Agency for the District of Columbia, Strategic Plan, Fiscal Years 2022-2026) ("CSOSA 2022-2026 Strategic Plan") at 14, https://www.csosa.gov/wp-content/uploads/bsk-pdf-manager/2022/05/CSOSA-Strategic-Plan-FY2022-2026.pdf. Individuals may also develop physical disabilities as they age, and the number of older people in prisons nationwide is growing. *See* 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,

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 they imposed. *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.*

2. 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. Answer ¶¶ 14-15. Although parole and supervised release are different forms of supervision, the process for imposing and enforcing conditions is essentially the same.[4]

The Commission is responsible for setting the conditions of supervision and making final decisions regarding the continuation, revocation, or termination of supervision. Answer ¶ 14. If

https://www.osborneny.org/assets/files/Osborne_HighCostsofLowRisk.pdf ("people who have been incarcerated very often have the physiological attributes of much older people").

[4] Parole applies to people who were convicted of felony offenses before August 5, 2000, while supervised release applies to people who were convicted of felony offenses after that date. *See* PI Op. at 2.

the Commission believes a person has violated the terms of their supervision, it 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. Answer ¶ 15. 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. 8 (CSOSA Operations Manual (2018)) at 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 revocation process. *See id.* at ch. II, p. 1, ch. VI, pp. 56-57.

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

The Commission imposes the same "[g]eneral conditions of release" on all class members. 28 C.F.R. § 2.85(a)(1) (general parole conditions); *id.* § 2.204(a)(1) (same for supervised release). The Commission may also impose heightened, "[s]pecial conditions," such as requiring participation in a drug or alcohol treatment program, *id.* §§ 2.85(b), 2.204(b)(1)-(2), but 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; P. Davis Decl. Ex. 4 (Email from Commission to A. Verriest (Aug. 18, 2023)) at 1-2; Edmondson Decl. ¶¶ 8-9, 12; K. Davis Decl. ¶¶ 14-15; Answer ¶¶ 42, 149-50. 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.

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

CSOSA then imposes more particularized supervision conditions through what is known as a prescriptive supervision plan ("PSP"). P. Davis Decl. Ex. 8 (CSOSA Operations Manual (2018)) at ch. V, pp. 9-10. CSOSA obtains these PSPs through an automated process using risk assessment tools, none of which are designed to provide reasonable accommodations to people with disabilities. *Id.*

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. 9 (CSOSA Congressional Budget Justification Fiscal Year 2024 (Mar. 9, 2023)) ("CSOSA FY 2024 Budget Justification") at 52, 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." *Id.* 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 must complete a second risk-assessment tool called the "Dynamic Risk Assessment for Offender Reentry" ("DRAOR").[5] *Id.* at 7, 52. The DRAOR is "intended to allow officers to monitor a person's risk of re-offending"

[5] CSOSA previously used a tool called the "Auto Screener." P. Davis Decl. Ex. 9 (CSOSA FY 2024 Budget Justification) at 7, 52. The DRAOR "performs similarly [to the Auto Screener] but is more fully automated." *Id.* at 52.

through consideration of 19 "dynamic risk and protective factors." *Id.* at 53. It is not clear from publicly available documents whether any of those 19 factors include the person's physical, mental, intellectual, or developmental disabilities.[6] 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.

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. 8 (CSOSA Operations Manual (2018)) at 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) at 32. Thus, "manual" modification of the automatically generated PSP appears to be discouraged, and CSOSA has no policy of modifying the PSP to accommodate disabilities. *Id.*; *see also* Edmonson Decl. ¶ 16.

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[6] The previously-used Auto Screener appeared to have allowed documentation of the supervisee's "Mental Health" and "Physical Health/Disability." P. Davis Decl. Ex. 8 (CSOSA Operations Manual (2018)) at ch. V, p. 5. But CSOSA's answer and FOIA responses make clear that there is no guidance provided to CSOs about using any such 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. 10 (CSOSA response to Freedom of Information Act request (September 5, 2023)) ("CSOSA 9/5 FOIA Response") at 2; Answer ¶ 150.

Finally, while CSOSA does place some people on what it calls "'mental health' supervision," this entails only *more* onerous conditions in practice, such as "increased drug testing, extra programming, rigid meeting locations, and more frequent meetings." Edmonson Decl. ¶ 19. "The 'mental health' supervision program does not involve providing reasonable accommodations." *Id.* ¶ 20.

3. Defendants Have A Common Policy Of Not Accommodating Supervisees' Disabilities.

Defendants have a common policy of non-accommodation. Neither the Commission nor CSOSA has any system for considering or accommodating supervisees' disabilities. Indeed, both agencies "admit[ted]" in response to the complaint that they "have not put in place any guidance, instructions, or policies requiring assessing people's disability-related accommodation needs when initially setting supervision requirements, requiring provision of reasonable accommodations for people's disabilities as they become known, or providing a means by which people with disabilities can request reasonable accommodations." Answer ¶ 150; *see also id.* ¶¶ 42-44, 149.

Defendants made similar admissions in response to FOIA requests. *See* P. Davis Decl. Ex. 3 (Commission 6/20 FOIA Response) at 1-2 (finding no guidance whatsoever on evaluating whether people on supervision need reasonable accommodations or on providing such accommodations); P. Davis Decl. Ex. 4 (Email from Commission to A. Verriest (Aug. 18, 2023)); P. Davis Decl. Ex. 1 (CSOSA 6/23 FOIA Response) at 1-2 (describing "exhaustive search of all guidance, dating back to 2015," which yielded no responsive documents on these topics); P. Davis Decl. Ex. 10 (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 it 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 "[c]onsult with the[ir] CSO," without any guarantee that their disabilities would, in fact, be taken into account by their CSO. *Id.* at 1-3; *see also* Answer ¶ 44.

4. 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, 2.208. By contrast, individuals who violate the conditions of their release face extended supervision, added conditions, or reincarceration. *See id.* § 2.216 (supervised release revocation hearing procedure); *id.* § 2.218 (actions Commission may take upon finding of violation); *id.* § 2.103 (parole revocation hearing procedure); *id.* § 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. *See* Edmondson Decl. ¶ 27; *see also* P. Davis Decl. Ex. 9 (CSOSA FY 2024 Budget Justification) 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. 11 (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.*, K. Davis Decl. ¶ 40.

Defendants' policy of non-accommodation makes it substantially more difficult for those individuals to meet the conditions of their supervision. Indeed, CSOSA 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. *See* P. Davis Decl. Ex. 1 (CSOSA 6/23 FOIA Response) at 6-7; Answer ¶ 65. For those whose unaccommodated disability impedes compliance with their supervision terms, the threat of punishment—in the form of heightened conditions of supervision, longer terms of supervision, or even reincarceration—is ever-looming.

Mr. Davis's experiences powerfully demonstrate that fact. Mr. Davis is a 48-year-old Black man who was first released on parole in 2011. 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 made him feel tired and nauseous and caused him to have 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 enforced his requirements differently. *Id.* ¶ 26. 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. K. Davis Decl. ¶¶ 27-28. Defendants "admit[ted]" in response to this lawsuit that "at the time Defendants created and imposed [Mr. Davis's] conditions of supervision, Defendants did not assess whether [he] had disability-related limitations; did not assess whether [he] might need reasonable accommodations to have an equal opportunity to succeed on supervision; and did not assess what individualized accommodations, if any, [he] required." Answer ¶ 152.

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. As this Court found, that 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. *See* PI Op. at 6-7; K. Davis Decl. ¶¶ 34-35; Seltzer Decl. ¶¶ 14-15. Mr. Davis was forced to miss a scheduled surgery for his burns while jailed pending revocation proceedings. K. Davis Decl. ¶ 40. Even though the Commission knew Mr. Davis was getting help for his mental health conditions and was trying to follow his supervision rules despite his disability-related barriers, it revoked his supervision and sentenced him to 12 months in prison. *Id.* ¶¶ 44-45.

While he was incarcerated, Mr. Davis was not able to get the necessary surgery for his burns he had missed while initially jailed pending revocation proceedings. *Id.* ¶ 48. Incarceration

also exacerbated Mr. Davis's mental health conditions, making him feel more anxious, hopeless, and discouraged. *Id.* ¶¶ 41, 49-50. On August 2, 2024, Mr. Davis completed his sentence and was released on parole. *See* P. Davis Decl. Ex. 12 (Bureau of Prisons, *Find An Inmate*, https://www.bop.gov/mobile/find_inmate/byname.jsp (search: "Kennedy Davis")).

As this Court has recognized, Mr. Davis's experiences "are not unique." PI Op. at 7. Defendants' failure to reasonably accommodate individuals with disabilities also inhibits the success of other people on supervision. *See* Edmondson Decl. ¶¶ 34-37. For example, as this Court explained, Mr. Mathis's congestive heart failure "complicate[d] his supervision obligations" because his in-person check-ins with his CSO and medical appointments were often "double-booked"—a problem that Mr. Mathis flagged for his CSO "numerous times" without receiving any accommodation. PI Op. at 4-5. After missing several check-ins as a result, Defendants arrested Mr. Mathis and forced him to miss a scheduled heart surgery while detained in jail. *Id.* at 5. Although Mr. Mathis passed away and is no longer a party to this litigation, his experience remains emblematic of Defendants' failure to reasonably accommodate individuals with disabilities.

Counsel are also aware of several other individuals who were unable to attend required meetings due to their disabilities. *See* Edmondson Decl. ¶¶ 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.* ¶ 37. And 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 Mr. Davis's experience 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.* ¶¶ 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 and often must prioritize compliance over appropriately treating the medical issues associated with their disability, such as when their medical appointments conflict or when compliance exacerbates their disability.

B. Procedural Background

On May 6, 2024, Plaintiffs Davis and Mathis filed a class-action complaint alleging that Defendants' failure to accommodate their disabilities during supervision violated the Rehabilitation Act. *See* Dkt. 1. Plaintiffs simultaneously filed motions for preliminary injunctive relief and class certification. *See* Dkts. 2-3. On May 21, 2024, Defendants opposed the motion for preliminary injunctive relief but did not respond to the class certification motion. *See* Dkt. 16. On June 25, 2024, Defendants filed a motion to dismiss, which Plaintiffs opposed. *See* Dkts. 25, 27.

On September 5, 2024, this Court granted Plaintiffs' motion for a preliminary injunction as to the named Plaintiffs and denied Defendants' motion to dismiss. PI Order. The Court concluded that Plaintiffs had shown they were likely to succeed on the merits and that the Government had irreparably "injured them by requiring them to navigate supervision without offering reasonable accommodations," thereby depriving them of "equal access" to the benefits of supervision. PI Op. at 2, 9-12, 25-26. The Court rejected Defendants' efforts to dismiss the case, concluding that Plaintiffs had a right to sue in equity under *Armstrong v. Exceptional Child Center,*

Inc., 575 U.S. 320, 326-27 (2015). PI Op. at 2, 12, 22-25. The Court further rejected Defendants' attempts to cast doubt on Plaintiffs' injuries by focusing on the downstream consequences of the discrimination, rather than the discrimination itself. As the Court explained, the "obstacles to equal access" "exist[] 'solely by reason' of their disabilities," which the Government failed to accommodate. *Id.* at 11 (quoting 29 U.S.C. § 794(a)). Accordingly, the Court directed Defendants to "assess what reasonable accommodations named Plaintiffs . . . require to have an equal opportunity to succeed on supervision" and to "provide any and all such required accommodations." PI Order at 1.

The Court denied without prejudice Plaintiffs' class certification motion for failure to consult with Defendants prior to filing. Dkt. 33 at 2. The Court acknowledged that "no defense counsel had been assigned at the time of the motion's filing" but concluded that it would "further the purposes of [Local Civil Rule 7(m)] to allow the parties to meet and confer." *Id.* Accordingly, the Court ordered the parties to meet and confer regarding the motion for class certification and submit a proposed schedule for further proceedings. *Id.*

Shortly thereafter, Plaintiffs' counsel confirmed that Mr. Mathis had passed away and moved to voluntarily dismiss his claims. *See* Dkts. 34, 35. Mr. Davis's claims are unaffected. The parties have met and conferred and agreed on a briefing schedule for this motion. *See* Dkt. 36.

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.

A. The Proposed Class Satisfies Rule 23(a)'s Requirements.

1. 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) 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.

2. 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. Or. 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* ("*D.L. II*"), 713 F.3d 120, 126 (D.C. Cir. 2013) (rejecting proposed class framed around a generalized violation of the law because the law could be violated "in many different ways" (citation omitted)). 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* ("*D.L. III*"), 302 F.R.D. 1, 12 (D.D.C. 2013) (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." (alteration in original) (quoting *Rosas v. Baca*, No. 12-cv-428, 2012 WL 2061694,

at *3 (C.D. Cal. June 7, 2012))). In particular, certification is warranted where, as here, class members "all complain about the same failure to implement and enforce policies that would accommodate them" as required by federal law. *Pappas v. District of Columbia*, No. 19-cv-2800, 2024 WL 1111298, at *6 (D.D.C. Mar. 14, 2024) (quoting *Lacy v. Cook County*, 897 F.3d 847, 865-66 (7th Cir. 2018)); *see also Damus v. Nielsen*, 313 F. Supp. 3d 317, 332 (D.D.C. 2018) (upholding commonality where plaintiff challenged agency's failure to comply with mandatory policy over government's objection that plaintiffs' claims turned on "individualized" issues related to "discretionary parole authority" (citations omitted)).

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 this Court has acknowledged, Defendants use the same "automated assessments [to] generate a baseline supervision plan for each participant," "[b]ut the assessments do not account for disabilities or propose reasonable accommodations." PI Op. at 7. Indeed, CSOSA's "'exhaustive search' of its policies stretching back nine years . . . 'yielded no guidance/instruction/etc.' concerning the need to evaluate or reasonably accommodate offenders with disabilities." *Id.*; *see also* Answer ¶ 150 (admitting this lack of guidance). And to the extent CSOSA considers a person's mental-health disability on an ad hoc basis, it serves as an *aggravating* factor triggering the imposition of *more onerous* conditions of supervision, with no accommodations. 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 Plaintiff is 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." *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."). This question can be (and indeed, has been) answered by "common proof," *Brown v. District of Columbia*, 928 F.3d 1070, 1081-82

(D.C. Cir. 2019)—the agency's systematic failure to maintain any "policies procedures, guidelines, or any other rules or instructions" on "providing reasonable accommodations" as required by the Rehabilitation Act, P. Davis Decl. Ex. 1 (CSOSA 6/23 FOIA Response) at 1-2; *see* P. Davis Decl. Ex. 10 (CSOSA 9/5 FOIA Response) at 2; *see also* Answer ¶ 150.

Defendants' systemic failures also result in "'common harms,' susceptible to common proof, and curable by a 'single injunction.'" *D.L. v. District of Columbia* ("*D.L. IV*"), 860 F.3d 713, 724 (D.C. Cir. 2017) (citation and brackets omitted) (first quoting *D.L. II*, 713 F.3d at 128). This case does not challenge individual denials of accommodations, but Defendants' *systematic* failure to meet their "affirmative obligation" under the Rehabilitation Act "to make benefits, services, and programs accessible to disabled people" by reasonably accommodating supervisees' disabilities in setting and enforcing conditions of supervision. *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 266 (D.D.C. 2015) (emphasis removed). That "undisputed injury—unequal treatment in the administration of supervision . . . because of their disabilities"—stems from Defendants' common policy of non-accommodation, and it affects all class members in the same way. PI Op. at 26. Although class members have different disabilities, they all face "obstacles to equal access," both as a result of those disabilities and the Government's policy of imposing and enforcing conditions of supervision without considering those disabilities. *Id.* at 11.

For instance, as this Court explained, Mr. Davis's "anxiety and PTSD impeded his ability to phone his CSO"—a condition of his supervision Defendants failed to modify to accommodate his disabilities. *Id.* Similarly, Mr. Mathis's "congestive heart failure impeded his ability to make it to his CSO check-ins"—once again, a condition of his supervision Defendants failed to modify. *Id.* While the facts of their disabilities and accommodation needs differed, the result was the same: a denial of equal access to the benefits of supervision. The fact that this Court previously addressed

Mr. Davis's and Mr. Mathis's injuries through a single injunction (despite their different disabilities and accommodation needs) demonstrates that the class is "cast around common harms, . . . curable by a single injunction." *D.L. IV*, 860 F.3d at 724 (citations, brackets, and quotations omitted).

Courts across the country routinely find commonality met when certifying similar classes challenging systematic failures to accommodate 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 [state parole authority]'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. And in *Cobb v. Georgia Department 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, 2022 WL 22865202, at *13 (N.D. Ga. Oct. 13, 2022); *see also Harris v. Ga. Dep't of Corr.*, 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 presented here regarding Defendants' failure to employ a system that assesses the needs of people with disabilities and provides reasonable accommodations.

In short, because "Plaintiff[] [is] 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 member "need[s] . . . will inevitably vary." *Cobb*, 2022 WL 22865202, at *13; *see also Pappas*, 2024 WL 1111298, at *6-9 (similar); *Harris*, 2021 WL 6197108, at *12 (similar).

3. Mr. Davis Satisfies the Typicality Requirement.

Mr. Davis's claims are also "typical of the claims . . . of the class." Fed. R. Civ. P. 23(a)(3). Typicality is satisfied so long as Mr. Davis's claim arises from "a unitary course of conduct, or . . . [is] based on the same legal or remedial theory" as the claims of 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. Mr. Davis need satisfy only one of these conditions; here, he satisfies both. Mr. Davis's claim arises from the same conduct as other class members' claims: Defendants' systematic failure to assess class members' disability-related needs and provide reasonable accommodations. And Mr. Davis's 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 v. Choate*, 469 U.S. 287, 301 (1985).

That class members may ultimately need different accommodations to have an equal opportunity to succeed on supervision does not render Mr. Davis's claim 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)). 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 plaintiff['s] claim[] [is] typical." *Id.* at 28. That is because the fundamental "question is whether the *claim[]* [is] typical," not whether the *named Plaintiff* is 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*, 928 F.3d at 1079; *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.

4. Mr. Davis Satisfies the Adequacy Requirement.

Finally, Mr. Davis 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, Mr. Davis's interests do not conflict with those of the class. Mr. Davis and the class members all suffer the same harms under the Rehabilitation Act, and would benefit from the same injunctive relief. *See Charles H.*, 2021 WL 2946127, at *14 (finding the named plaintiffs adequate where they sought "only forms of relief that [would] benefit the entire class"). Moreover, because Mr. Davis does not seek monetary damages, there is no potential for financial conflict.

Second, Mr. Davis is 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 plaintiff have "some rudimentary knowledge of [his] role as a class representative and [be] committed to serving in that role in litigation." *Id.* (citation omitted). Mr. Davis's declaration demonstrates a sufficient "awareness of the facts of this case" to satisfy the adequacy factor. *Id.* at 211. Moreover, Mr. Davis's 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. ¶¶ 4-11; S. Michelman Decl. ¶¶ 3-13; H. Perry Decl. ¶¶ 3-7; A. Verriest Decl. ¶¶ 3-11; *see Howard*, 322 F.R.D. at 135 ("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))). Indeed, Mr. Davis's counsel has already vigorously defended the interests of the class by defeating Defendants' motion to dismiss and obtaining a preliminary injunction for named Plaintiffs.

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

B. 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 Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (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 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, the complaint requests a single permanent 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;[7]

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).

C. The Court Should Designate Plaintiff's 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).

Mr. Davis's counsel satisfy all four criteria. Mr. Davis is jointly represented by the Public Defender Service for the District of Columbia, the American Civil Liberties Union, the American

[7] This includes providing reasonable accommodations to Mr. Davis to enable him to have an equal opportunity to succeed on supervision—relief this Court has already preliminarily granted.

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. ¶¶ 4-11; S. Michelman Decl. ¶¶ 3-13; H. Perry Decl. ¶¶ 3-7; A. Verriest Decl. ¶¶ 3-11. As reflected in the complaint, preliminary injunction briefing, and motion to dismiss briefing, 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). 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. ¶¶ 4-6; A. Verriest Decl. ¶¶ 4-6, 8-9. And counsel have already obtained substantial relief in this case, including by obtaining a preliminary injunction for Mr. Davis and defeating Defendants' motion to dismiss. Accordingly, Mr. Davis's counsel should be designated as counsel for the class.

V. CONCLUSION

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

Dated: October 3, 2024

Respectfully submitted,

/s/ Peter E. Davis

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