

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

ISAAC N. through his next friend Kerry Simpson, TONY S. through his next friend Leigh Truhe, and VEGETA K. through his next friend Quentin Montemayor, for themselves and those similarly situated,

Plaintiffs,

v.

JARED POLIS, in his official capacity as the Governor of Colorado; and MICHELLE BARNES, in her official capacity as Executive Director of the Colorado Department of Human Services

Defendants.

Civil Action No.

1:26-cv-1123-GPG-CYC

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS (Dkt. 63)

INTRODUCTION

Plaintiffs and the putative class are children charged with delinquency, locked inside Colorado's secure, state-run detention centers, despite juvenile court judges deeming them releasable.¹ Defendants, Colorado Department of Human Services ("CDHS") Director Barnes and Governor Polis in their official capacities, oversee Colorado's juvenile justice and foster care systems. Because Defendants fail to maintain sufficient procedures or to ensure the availability and accessibility of appropriate foster homes, treatment services, and community placements outside of detention, hundreds of children each year languish in highly restrictive, jail-like detention facilities for weeks to months after a judge has found them releasable.

The Constitution protects Plaintiffs' liberty interest in freedom from restraint when the state has no legitimate interest in their continued detention. Colorado's state statutes confirm that the juvenile system is rehabilitative and Defendants have no legitimate interest in continuing to detain children solely because they lack placements or services. Defendants' practice of continued unnecessary detention severely harms these children.

Defendants further fail in their constitutional duty to keep the subclass of Plaintiff foster children reasonably safe from a substantial risk of serious harm by leaving them in harmful detention centers instead of foster homes. Defendants also fail to ensure that the subclass of Plaintiffs with disabilities are not segregated from their community and discriminated against due to their disabilities in violation of the Americans with Disabilities

¹ As alleged, Plaintiffs' releasable status is documented in their juvenile court orders and corroborated by state reporting (whether referred to as "releasable" or "YAMS"). Regardless, at this stage of the litigation, this factual pleading must be treated as true.

Act (“ADA”) and Rehabilitation Act (“RA”). Plaintiffs seek declaratory and prospective injunctive relief for these violations of their rights.

Plaintiffs’ Complaint satisfies the Federal Rules’ lenient pleading standard. Defendants’ arguments that this Court lacks jurisdiction under Rule 12(b)(1), and for dismissal of Plaintiffs’ claims under Rule 12(b)(6), fail and should be rejected in turn:

- First, Plaintiffs have Article III standing. Standing is determined at the time of filing and Plaintiffs alleged injuries-in-fact, traceable to Defendants’ acts and omissions, that are redressable by the requested relief.
- Second, sovereign immunity does not bar Plaintiffs’ claims because they seek only prospective relief under the *Ex parte Young* exception.
- Third, abstention is unwarranted as Plaintiffs seek systemic injunctive relief that would not interfere with any ongoing state juvenile court proceedings, which are also unable to order that relief.
- Fourth, Plaintiffs adequately pleaded their Fourteenth Amendment substantive and procedural due process claims, including claims separately alleged by the subclass of foster children.
- Finally, Plaintiffs adequately state claims under the ADA and RA because they plausibly alleged disability discrimination under *Olmstead*’s integration mandate.

Plaintiffs have plausibly alleged facts that, if proven, show Defendants violated their constitutional and statutory rights. Plaintiffs’ well-pleaded Complaint entitles them to proceed, and Defendants’ Motion to Dismiss should be denied in its entirety.

STATEMENT OF FACTS

The Named Plaintiffs are children—aged eleven, twelve, and seventeen at the time of filing—locked up in Colorado’s state-run detention facilities. Am. Compl. ¶¶ 17, 32, 46

(Dkt. 53).² They all have pending delinquency charges, and in each child's case a juvenile court determined they may return to the community. Yet, Plaintiffs remained detained because the State failed to arrange the placements and services necessary for their release. *Id.* ¶¶ 1, 19, 34, 48, 105–07, 114.

Governor Polis is sued in his official capacity. *Id.* ¶ 71. The Colorado Constitution charges him with the faithful execution of all state laws. *Id.* As governor, he has an active role in the juvenile justice system, directing priorities, setting agency budgets and staffing, responding to issues in youth mental health services, hand-picking the agency heads, and championing the State's reliance on detention. *Id.*

Executive Director Barnes leads CDHS and is sued in her official capacity. *Id.* ¶ 72. CDHS is the state agency charged with overseeing juvenile programs and delivering services to youth and their families. *Id.* As head of CDHS, Barnes oversees and leads its sub-agencies, including the Office of Children, Youth, and Families ("OCYF," responsible for the foster system), and Department of Youth Services ("DYS," responsible for juvenile detention). *Id.*

Colorado's statutory framework confirms the narrow circumstances in which a child may be detained before trial. Pretrial detention of a child is allowed only when they pose either a: 1) serious danger to others; or 2) substantial flight risk, such that community alternatives cannot mitigate the risk. *Id.* ¶ 81. If neither condition exists, the child must be released. *Id.* A child cannot be locked up simply because the State lacks supervision or

² Plaintiffs refer to the status of the named plaintiffs at the time of the Complaint (Dkt. 1), for Isaac N. and Tony S., and the Amended Complaint (Dkt. 53), for Vegeta K.

treatment alternatives. *Id.* ¶ 82. Foster youth likewise cannot be locked up due to lack of foster care placements. *Id.* ¶ 83.

Defendants are obligated to effectuate Plaintiffs' release after a juvenile court finding. CDHS is the entity tasked with building and funding the continuum of placements and services for both delinquency- and foster-involved youth. *Id.* ¶ 88. The legislature appropriates money each year for community placements for detained youth, requiring CDHS to direct funds to detention alternatives. *Id.* ¶ 89. CDHS also sits atop the Colorado Youth Detention Continuum ("CYDC"), a statewide board designed to improve community-based programming. *Id.* ¶ 90. For "crossover" youth in both the child welfare and delinquency systems, the legislature separately mandated CDHS build out-of-home foster placement capacity. *Id.* ¶ 91. County DHS offices operate as state agents under CDHS's direct supervision—not as independent agencies. *Id.* ¶ 92.

Colorado juvenile courts have limited statutory jurisdiction and cannot order the executive to create systemwide processes and build out statewide placement and service capacity. *Id.* ¶¶ 181–83. Once a juvenile court judge makes a release order, Defendants must effectuate the child's release from detention. *Id.* ¶ 122. Despite these obligations, Colorado officials have known since at least 1991 that releasable children routinely languish behind bars. *Id.* ¶¶ 93–103. Yet the crisis continues to grow: the number of unlawfully detained children climbed from 540 in fiscal year 2022–2023 to 693 the following year. *Id.* ¶ 103.

Defendants know detention harms children. Colorado's legislature acknowledges locking children in detention damages their mental and physical health, *id.* ¶ 149, as

confirmed by a vast body of research, *id.* ¶¶ 150–57. This danger is not theoretical. DYS facilities function as juvenile jails where children are locked in, strip-searched, frequently assaulted, restrained, and cut off from families, schools, and community supports. *Id.* ¶¶ 5–6, 26, 61, 87, 108–12, 158–165.

Isaac N. Isaac N. was seventeen at the time of filing, awaiting adjudication on delinquency charges, when a judge found he could safely return to the community. *Id.* ¶¶ 17–19. A clinician recommended community-based treatment that the State's service array already offered, but he languished in a locked facility for nearly two months because Defendants failed to arrange the service. *Id.* ¶¶ 19, 22, 24–25. Isaac has PTSD and ADHD that substantially impair his ability to concentrate, think, and sleep. *Id.* ¶ 20. During his unnecessary detention, he watched seven staff members forcibly restrain a single child, heard guards direct racial slurs at youth, and was regularly strip searched. *Id.* ¶¶ 26–27.

Tony S. Tony S. was twelve at the time of filing. *Id.* ¶ 32. He was also found releasable while awaiting adjudication on delinquency charges. *Id.* ¶¶ 33–34. As a foster child, Tony was in CDHS's legal custody—thus the agency charged with finding him a home left him in detention for seven months after he was found releasable. *Id.* ¶¶ 34–36. Tony has autism spectrum disorder and cognitive impairments that qualify as disabilities. *Id.* ¶ 37. A clinician recommended placement in a therapeutic setting, available under existing CDHS programs—but CDHS kept him in detention instead. *Id.* ¶¶ 39–42.

Vegeta K. Vegeta K. was eleven at the time of filing—so small that the smallest detention uniform is way too big for him. *Id.* ¶¶ 46, 60. He has no family available to care for him: his mother is incarcerated, he has never met his father, and no relatives can take

him. *Id.* ¶ 49. He, too, was in CDHS foster custody. *Id.* He was found releasable, and a treatment professional found that he would be appropriate for a community-based placement with therapeutic services, but he remained detained for more than a month because the State failed to locate an appropriate placement. *Id.* ¶¶ 48, 50, 55–56, 59. He was diagnosed with PTSD and ADHD disabilities, yet DHS did not timely complete his evaluation. *Id.* ¶¶ 51, 54. While he waited, older children regularly threatened and bullied him, and he witnessed guards break a fourteen-year-old friend's arm. *Id.* ¶ 61.

Each Named Plaintiff wanted to be out of detention and placed in a community setting at all relevant times. *Id.* ¶¶ 23, 40, 57, 148.

LEGAL STANDARD

Granting a motion to dismiss “is a harsh remedy which must be cautiously studied, not only to effectuate the spirit of the liberal rules of pleading but also to protect the interests of justice.” *Dias v. City & Cnty. of Denver*, 567 F.3d 1169, 1178 (10th Cir. 2009) (citation omitted). To state a claim, one simply must “show[] that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A plaintiff need only allege sufficient facts, taken as true, that make their “claim to relief . . . plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007). This is a “low bar.” *Griffith v. El Paso Cnty., Colo.*, 129 F.4th 790, 815 (10th Cir. 2025).

Under Rule 12(b)(1), a party may challenge jurisdiction through either a facial or factual attack. A facial attack “assumes the allegations in the complaint are true and argues they fail to establish jurisdiction,” whereas a factual attack “goes beyond the allegations in the complaint” to contest jurisdiction. *Baker v. USD 229 Blue Valley*, 979

F.3d 866, 872 (10th Cir. 2020) (citations omitted). Defendants' Motion mounts only a facial attack. Defendants' Joint Motion to Dismiss (Dkt. 63) ("Mot. to Dismiss") at 10. Accordingly, the Court must accept Plaintiffs' well-pleaded allegations as true and apply the same standards applicable to a Rule 12(b)(6) motion. See *Burch v. Kobach*, No. 16-cv-2274, 2024 WL 4345817, at *3 (D. Kan. Sept. 30, 2024).

Additionally, where resolution of the jurisdictional question requires resolution of an aspect of the substantive claim, the court must convert a Rule 12(b)(1) motion into a Rule 12(b)(6) analysis. *Knellinger v. Young*, 134 F.4th 1034, 1041 (10th Cir. 2025).

ARGUMENT

This Court has subject matter jurisdiction under Rule 12(b)(1). Plaintiffs have established Article III standing and neither Eleventh Amendment immunity nor abstention doctrines bar this Court's jurisdiction. Additionally, Plaintiffs amply allege their claims under Rule 12(b)(6). Defendants' arguments misconstrue the law, misrepresent the pleadings, and miscite relevant caselaw. The Court should reject each of Defendants' arguments to dismiss.

I. Plaintiffs Have Standing and Their Claims Are Not Moot.

Defendants conflate the distinct doctrines of standing and mootness. Mot. to Dismiss at 11–13, 12 n.5. "Standing concerns whether a plaintiff's action qualifies as a case or controversy when it is filed; mootness ensures that it remains one at the time a court renders [a] decision." *Rio Grande Found. v. Oliver*, 57 F.4th 1147, 1160 (10th Cir. 2023) (citation omitted). Plaintiffs have standing and their claims are not moot.

A. Plaintiffs Have Article III Standing.

1. Standing Is Determined at the Time of Filing.

Standing is assessed at the time a party's operative complaint is filed. *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 51 (1991). When some plaintiffs raise claims in an initial complaint and others in an amended complaint, as here, “standing is determined at the time the relevant claim is raised or party is joined.” *Saleh v. Fed. Bureau of Prisons*, No. 05-cv-02467, 2009 WL 3158120, *5 (D. Colo. Sept. 29, 2009) (citing *McLaughlin*, 500 U.S. at 51). “Standing is generally evaluated for each claim and as to each defendant, not collectively.” *Drexler v. Weiser*, No. 21-cv-00805, 2025 WL 1279116, *7 (D. Colo. Mar. 31, 2025).

Here, each Named Plaintiff had standing at the time of filing: Isaac N. and Tony S. were in DYS detention and had been found releasable when they filed suit on March 18, 2026, Compl. ¶¶ 17–19, 32–43; and Vegeta K. was in DYS detention but releasable and thus had standing when he filed on June 8, 2026. Am. Compl. ¶¶ 46–48.

McLaughlin is instructive. There, adult jail detainees filed a putative class action seeking prospective relief for prolonged detention. The Supreme Court, finding each named plaintiff had standing, concluded that each plaintiff “allege[d] personal injury fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested injunction” when the operative complaint was filed. *McLaughlin*, 500 U.S. at 51. The Court rejected the argument—similar to Defendants’ here—that the plaintiffs’

release during the pendency of the case negated standing, finding that “the constitutional violation had already been ‘completed.’” *Id.* at 51; Mot. to Dismiss 11–12.³

As each Plaintiff had standing when their operative Complaint was filed, the Court can consider their claims brought on behalf of the putative class.

2. Plaintiffs Have Suffered Cognizable Concrete Injuries.

Plaintiffs each suffered an injury in fact. Plaintiffs and the putative class remained unlawfully detained despite court determinations that they may be released under specified conditions within the control of Defendants, including community-based services and supports, and procedures to access those programs. Am. Compl. ¶¶ 88–92.

“[O]ngoing incarceration constitutes an injury.” See *United States v. Meyers*, 200 F.3d 715, 718 (10th Cir. 2000). Government action or inaction that impedes one’s ability to fulfill court-ordered conditions for release can also constitute an injury. *Gaylor v. Does*, 105 F.3d 572, 576–78 (10th Cir. 1997) (preventing detainee from posting bail).⁴ Here, each Plaintiff suffered an injury when they were detained past when a juvenile court judge determined they were releasable. Am. Compl. ¶¶ 19, 34, 48.

³ Because Named Plaintiffs establish standing on their own behalf, Defendants’ cited cases—*Simon v. E. Kentucky Welfare Rts. Org.*, 426 U.S. 26, 40 (1976); *Walburn v. Brandt*, No. 23-3171, 2023 WL 4547999, *2 (D. Kan. July 14, 2023); and *Martinez v. Mesa Cty. Sheriff’s Dep’t*, 69 F.3d 548, 548 (Table), *1 (10th Cir. 1995) (unpublished)—are inapplicable. Moreover, *Walburn* and *Martinez* are factually inapposite. Plaintiffs there attempted to raise conditions of confinement claims that only affected others, not themselves.

⁴ Defendants’ citation to *Mink v. Suthers*, 482 F.3d 1244, 1255 (10th Cir. 2007), Mot. to Dismiss at 12–13, is unavailing. *Mink* affirmed the district court’s dismissal of a journalist’s challenge to a state libel statute where the journalist “face[d] an imminent threat” of being charged at the time of filing their Complaint, but where no charges were ever filed. 482 F.3d at 1254–55. Here, Plaintiffs established standing on the date they filed suit, when they were detained and had suffered an injury. See *McLaughlin*, 500 U.S. 44, at 51 (1991).

Plaintiff foster children suffered a distinct cognizable injury as Defendants failed to keep them reasonably safe from a substantial risk of serious harm. *Schwartz v. Booker*, 702 F.3d 573, 580–81 (10th Cir. 2012) (holding foster children’s “special relationship” with the State “triggers a continuing duty” to protect them from harm). Both Tony S. and Vegeta K. were in CDHS’ legal custody, yet Defendants failed to locate foster placements for them and left them in harmful detention facilities instead. Am. Compl. ¶¶ 34–42, 48–59.

Plaintiffs with disabilities suffered an additional injury because Defendants unnecessarily segregated them from their communities and unlawfully discriminated against them based on their disabilities. *Id.* ¶¶ 133–48; *Olmstead v. L.C., ex rel. Zimring*, 527 U.S. 581, 607 (1999). Each plaintiff has disabilities and was assessed and recommended for community placements. Am. Compl. ¶¶ 20–22, 37–39, 51–55. Each child could have been served in an integrated setting outside detention but Defendants denied them such placements—unlawful discrimination and an injury cognizable under *Olmstead*. *Id.* ¶¶ 23–25, 40–42, 56–59.

3. Plaintiffs’ Injuries Are Fairly Traceable to Defendants’ Failures to Provide Services, Placements, and Procedures for Timely Release.

Applicable pleading standards require only that an injury be “fairly traceable” to the challenged conduct—not proximate causation. *Utah Physicians for a Healthy Env’t v. Diesel Power Gear, LLC*, 21 F.4th 1229, 1242 (10th Cir. 2021). Plaintiffs’ continued detention after being found releasable is directly traceable to Defendants’ systemic failures. As alleged, Defendants oversee the state agency statutorily “responsible for the oversight of the administration of juvenile programs and the delivery of services for juveniles and their families,” including, *inter alia*, funding and managing services “to

reduce the length of time the juvenile is held in preadjudication or postadjudication detention.” Am. Compl. ¶¶ 71–72; C.R.S. § 19-2.5-1407(1) (2024); C.R.S. § 19-2.5-1407.3(1)–(3) (2025). Defendants are also responsible for the foster system and its placement and service array. Am. Compl. ¶¶ 71–72. Defendants’ failure to fulfill these duties is the cause of Plaintiffs’ continued detention. *Id.* ¶¶ 34–42, 49–59.

The Amended Complaint establishes this causal link for each Plaintiff: Isaac N.’s treating professional recommended community placement with wrap-around services, but CDHS failed to locate one, Am. Compl. ¶¶ 22–25; Tony S. remained detained for six months after being found releasable because CDHS could not find an appropriate placement, *id.* ¶¶ 34–42; and Vegeta K. remained detained because Defendants failed to provide needed services, *id.* ¶¶ 48–59. Plaintiffs’ complaint is replete with Defendants’ own admissions that releasable youth remain detained because Defendants fail to provide necessary placements, services or processes. *Id.* ¶¶ 93–107, 114–132, 139–147.

Defendants’ argument that the release conditions require collaboration with third parties outside Defendants’ control mischaracterizes their legal responsibility and the statutory framework. Mot. to Dismiss at 14 n.7. County DHS offices are not independent third parties, but “agents of the state department.” C.R.S. § 26-1-118(1)(a) (2025). Likewise, CYDC contractors operate under plans and funding that CDHS approves annually. C.R.S. § 19-2.5-302(1) (2025). Contrary to Defendants’ mischaracterization, Defendants, not third parties, fail to establish necessary statewide procedures and infrastructure. Courts in similar cases have found such failures sufficient to establish standing. *See, e.g., Jonathan R. ex rel. Dixon v. Morrissey*, 178 F.4th 139, 163 (4th Cir.

2026) (finding standing where state's "actions and inactions have caused chronic and system-wide failures"); *B.K. ex rel. Tinsley v. Snyder*, 922 F.3d 957, 967 (9th Cir. 2019) (finding standing where "deficient statewide policies and practices" led to alleged injuries).

4. Plaintiffs Have Sufficiently Pleaded Redressable Injuries.

Plaintiffs likewise sufficiently allege redressable injuries. At the motion to dismiss stage, a court considers "only whether the plaintiff has sufficiently alleged a cognizable injury, fairly traceable to the challenged conduct that is likely to be redressed by a favorable judicial decision." *Petrella v. Brownback*, 697 F.3d 1285, 1295 (10th Cir. 2012). "A plaintiff need show only that a favorable decision would redress 'an injury,' not 'every injury.'" *Sanchez v. Torrez*, 173 F.4th 1202, 1213 (10th Cir. 2026) (citation omitted).

Plaintiffs seek injunctive relief requiring Defendants to adopt statewide procedures ensuring the availability of appropriate placements, services, and processes to prevent unnecessary detention. Am. Compl. ¶ 239. Similarly, for the sub-class of foster youth, Plaintiffs request injunctive relief requiring Defendants to ensure the existence of sufficient foster home placements and establish case management practices to address the unnecessary detention. *Id.* Finally, for the disability sub-class, Plaintiffs seek injunctive relief requiring Defendants to provide sufficient community-based placements, services, and processes so children with disabilities are not unnecessarily segregated from their community and are placed in the most integrated setting appropriate to their needs. *Id.*

The relief sought is sufficiently specific for this stage of litigation and consistent with remedies sought in similar cases. *See, e.g., Jonathan R.*, 178 F.4th at 159 (foster children's alleged injuries of unnecessary institutionalization and lack of services

redressable through policy changes); *Keira M. ex. rel. Odeneal v. Quin*, No. 3:25-CV-00566, 2026 WL 937311, *14–15 (M.D. Tenn. Apr. 7, 2026) (foster children’s alleged injuries redressable through case planning and provision of necessary services); *Disability Rts. Md., Inc. v. Seshamani*, 817 F. Supp. 3d 303, 316 (D. Md. 2025) (disabled adults alleged injury of over-detention redressable through improved release processes).

The Plaintiffs directly suffered cognizable injuries redressable by the requested relief.⁵ Defendants’ cited cases on redressability are inapplicable. See Mot. to Dismiss at 14; *Walburn v. Brandt*, No. 23-3171-JWL, 2023 WL 4547999, at *2 (D. Kan. July 14, 2023) (*pro se* prisoner lacked standing to assert claims based on experiences of other inmates, not her own); see also *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 386 (2024) (plaintiffs lacked standing due to inability to demonstrate injury). Even *Simon v. E. Kentucky Welfare Rts. Org.*, is clearly inapposite because the organizational plaintiffs lacked standing due to the lack of an injury to the organization—not named, injured individuals like the Plaintiffs here. 426 U.S. 26, 40–42 (1976).

B. Plaintiffs’ Claims Are Not Moot for Purposes of Class Certification.

Defendants “do not assert mootness as a basis for dismissal.” Mot. to Dismiss at 12 n.5. Failing to develop or argue mootness in their opening brief precludes them from doing so on reply. *Platt v. Winnebago Indus., Inc.*, 960 F.3d 1264, 1271 (10th Cir. 2020).⁶

⁵ Despite the Named Plaintiffs’ subsequent release from detention, the relevant question is whether the proposed remedies would have helped them at the time of filing. *S. Utah Wilderness All. v. Palma*, 707 F.3d 1143, 1152–53 (10th Cir. 2013).

⁶ Moreover, as the party asserting mootness, Defendants would bear the burden of showing mootness. See *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000). Plaintiffs plan to file a class certification motion promptly.

But even if the Named Plaintiffs' individual claims were presently moot, class actions present unique exceptions to the mootness rules, specifically the "capable of repetition yet evading review," and "inherently transitory" exceptions. *Reed v. Bowen*, 849 F.2d 1307, 1312 n.5 (10th Cir. 1988). Courts have long held that the claims of a class (whether certified or putative) persist even after a named plaintiff's claim becomes moot to avoid constant re-litigation of mootness, or the need to intervene or substitute new representative plaintiffs who have identical claims to those being adjudicated. See, e.g., *McLaughlin*, 500 U.S. at 51–52; *Clark v. State Farm Mut. Auto. Ins. Co.*, 590 F.3d 1134, 1139 (10th Cir. 2009) (citing *Milonas v. Williams*, 691 F.2d 931, 937–38 (10th Cir. 1982)). By its nature, the class of children harmed by Defendants' failures constantly rotates—individual children age out, are adjudicated, or eventually receive a placement after lengthy delays, only to be replaced by new or returning children who enter detention and face the identical systemic barriers. Am. Compl. ¶ 170. These claims are both inherently transitory and capable of repetition yet evading review, satisfying the mootness exception.

II. The Eleventh Amendment Does Not Bar Plaintiffs' Claims.

A. *Ex parte Young* Applies to Each of Plaintiffs' Claims.

Plaintiffs' claims fall squarely under the *Ex parte Young* exception to Eleventh Amendment immunity as they seek only prospective injunctive relief, not monetary damages, against state officials in their official capacities. 209 U.S. 123, 155–56 (1908).

The exception applies if "[the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Verizon Md., Inc. v. Pub. Serv.*

Comm’n of Md., 535 U.S. 635, 645 (2002) (alteration in original) (citations omitted). Here, Plaintiffs allege ongoing violations of federal law and seek only prospective relief.

Plaintiffs also adequately allege the named government officials have: (1) “the power to enforce the law” and (2) “a demonstrated willingness to exercise that power.” *Eaves v. Polis*, 167 F.4th 1304, 1313–14 (10th Cir. 2026). Defendants Polis and Barnes, in their official capacities, both exercise authority over and take responsibility for the legal violations at issue here in multiple ways, including setting agency priorities and funding, responding to issues regarding relevant policy, and appointing agency leadership. See *supra* at 3–4; Am. Compl. ¶¶ 71–72, 88–92, 94–98.

Defendants incorrectly claim *Ex parte Young* only applies to “specific state law when the enforcement of that law would otherwise violate the federal constitution,” Mot. to Dismiss at 16, misrepresenting the holdings of *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 39 (2021) and *Free Speech Coal., Inc. v. Anderson*, 119 F.4th 732, 736 (10th Cir. 2024).⁷ In reality, both cases confirm the legal test that “individuals can sue state officers in their official capacities if the lawsuit seeks prospective relief for an ongoing violation of federal law.” *Free Speech*, 119 F.4th at 736. Plaintiffs amply satisfy this exception. Thus, Eleventh Amendment immunity does not apply.

B. *Pennhurst* Does Not Apply, Since Plaintiffs Allege No State Law Claims.

Defendants’ reliance on *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984) is misplaced as Plaintiffs do not assert any state law claims. Am. Compl.

⁷ While *Whole Woman’s Health* includes the cited language, this is because the challenged violation of federal law in that case was a recently enacted state law.

¶¶ 187–237. *Pennhurst* applies only when federal courts attempt to enforce *state laws* against *state officials*. See *Pennhurst*, 465 U.S. at 106. Here, Plaintiffs seek only an injunction of executive agency practices that violate *federal law*. Plaintiffs cite to state law only to support the elements of their federal claims—not to seek enforcement of any state-law right or obligation. Thus, *Pennhurst* is entirely inapplicable here.

C. Plaintiffs’ Disability Claims Are Likewise Not Barred by the Eleventh Amendment.

Defendants wrongly contend that Plaintiffs’ ADA claims are barred by the Eleventh Amendment. Mot. to Dismiss at 19–21.⁸ “An individual may bring an ADA . . . action against a state official in federal court for injunctive relief under *Ex parte Young*.” *Roe No. 2 v. Ogden*, 253 F.3d 1225, 1233 (10th Cir. 2001). Because Plaintiffs’ claims are permitted under *Ex parte Young*, this Court need not consider whether Congress separately abrogated state sovereign immunity under Title II of the ADA.⁹ 209 U.S. at 155–56.

III. Defendants’ Motion to Dismiss Based on Abstention Is Meritless.

Abstention is “an extraordinary and narrow exception” to federal courts’ “virtually unflagging obligation” to exercise the jurisdiction conferred by Congress. *Colo. River*

⁸ Although Defendants do not explicitly assert any Eleventh Amendment defense to Plaintiffs’ separate RA claim, that claim is also permissible pursuant to *Ex parte Young*. See *J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280, 1287 (10th Cir. 1999). Defendants have also waived immunity as to the RA claim by accepting federal funds. *Arbogast v. Kansas Dep’t of Labor*, 789 F.3d 1174, 1182 (10th Cir. 2015).

⁹ Regardless, Plaintiffs’ ADA claim may proceed even if they had not satisfied *Ex parte Young*. Per *United States v. Georgia*, Title II of the ADA abrogates Eleventh Amendment immunity where, as here, state officials’ conduct violates both Title II and “the Fourteenth Amendment.” 546 U.S. 151, 159 (2006); see *Havens v. Colo. Dep’t of Corr.*, 897 F.3d 1250, 1256 n.5 (10th Cir. 2018). Should the Court find it necessary to reach “prong three” of the test laid out in *Georgia* and *Havens*, Plaintiffs request the opportunity to submit supplemental briefing on this issue, as this is “a highly detailed inquiry.” *Id.* at 1256.

Water Conservation Dist. v. U.S., 424 U.S. 800, 813, 817 (1976) (internal citations omitted). The *Younger* doctrine, one such exception, provides that federal courts should abstain from issuing injunctions that interfere with certain state judicial proceedings. See *Younger v. Harris*, 401 U.S. 37, 43 (1971). *Younger* abstention applies only to three categories of cases: ongoing state criminal prosecutions, civil enforcement proceedings akin to a criminal prosecution, and civil proceedings involving core state court functions. See *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 79 (2013). Even in such cases, however, a federal court must find three additional conditions met to abstain: 1) the relevant state court proceeding must be “ongoing;” 2) “the state forum must provide an adequate opportunity to raise the relevant federal claims”; 3) “an important state interest must be present.” *Graff v. Aberdeen Enterprizes, II, Inc.*, 65 F.4th 500, 523 (10th Cir. 2023). All three conditions must be met, and here, the first two conditions are absent.¹⁰

A. This Case Would Not Interfere with an Ongoing State Proceeding.

First, Plaintiffs do not challenge or seek to interfere with their underlying juvenile court proceedings. Defendants mischaracterize the injunctive relief sought. See Mot. Dismiss at 22. Plaintiffs challenge systemic failures by the executive agency Defendants, including failures to provide children with adequate procedures, placements, and services—not any aspect of Plaintiffs’ juvenile court proceedings. Plaintiffs’ requested relief does not require this Court to act in place of juvenile courts or to interfere with juvenile court orders. Rather, the requested relief would help effectuate the juvenile

¹⁰ Plaintiffs do not challenge that the state has an important interest in its juvenile delinquency systems.

courts' orders when the juvenile courts find children can be released from custody pre-adjudication. See Am. Compl. ¶¶ 62–64; see also *Jonathan R. by Dixon v. Justice*, 41 F.4th 316, 333 (4th Cir. 2022) (noting state juvenile court proceedings “will proceed as they always have, albeit with more placement and services options. . .”).

The mere existence of a parallel state proceeding does not trigger abstention. See, e.g., *Sprint*, 571 U.S. at 81–82. Federal courts consistently recognize that injunctions against state executive agencies do not enjoin, delay, or interfere with parallel juvenile proceedings.¹¹ The Fourth Circuit has explained this clear delineation:

Plaintiffs do not suggest they were harmed in any way by the state-court hearings . . . and instead find fault in the Department's failure to give the courts enough to work with: enough in-state institutional placements, enough foster homes, enough case workers to file the plans on time While the courts must approve the case plan, the Department must “develop” it.

Jonathan R., 41 F.4th at 333 (finding plaintiffs targeted state agency policies and practices, not state court functions, and thus *Younger* did not apply). This is exactly what the Plaintiffs request here—they do not challenge the juvenile courts' orders (which, after all, found them releasable). They merely seek to require the executive branch to effectuate their release.

¹¹ See, e.g., *Kenny A. ex rel. Winn v. Perdue*, 218 F.R.D. 277, 286–87 (N.D. Ga. 2003) (an order by the Court remedying executive branch failures “would not interfere in any way with ongoing juvenile court proceedings”); *Tinsley v. McKay*, 156 F. Supp. 3d 1024, 1040–41 (D. Ariz. 2015) (same); *Connor B. ex rel. Vigurs v. Patrick*, 771 F. Supp. 2d 142, 157 (D. Mass. 2011) (same); *Brian A. ex rel. Brooks v. Sundquist*, 149 F. Supp. 2d 941, 957 (M.D. Tenn. 2000) (same); *L.H. v. Jamieson*, 643 F.2d 1351, 1354 (9th Cir. 1981) (same).

Defendants' reliance on *Joseph A., ex. rel. Wolfe v. Ingram*, 275 F.3d 1253 (10th Cir. 2002) and *O'Shea v. Littleton*, 414 U.S. 488 (1974) is misplaced as Plaintiffs do not seek relief that would limit juvenile courts' powers. In *Joseph A.*, the Tenth Circuit remanded after finding one provision of an existing consent decree, among many, warranted abstention. *Joseph A.*, 275 F.3d at 1274. That provision prohibited recommending certain placement options, meaning "the state court [was] ... precluded from considering these options." *Id.* at 1269. Plaintiffs seek no such relief here. Similarly in *O'Shea*, plaintiffs sought a federal injunction limiting state courts' discretion in setting bail and sentencing. 414 U.S. at 491–92. Here, juvenile courts' discretion is not impacted, as the requested relief would merely require Defendants to actually ensure release placements exist.

Plaintiffs' requested relief is more than adequate at this pleading stage. After a finding of liability, the Court may limit any final injunctive remedy to the contours of the violations proven at trial. *Shaw v. Smith*, 166 F.4th 61, 81 (10th Cir. 2026).

B. State Juvenile Courts Are Not an Adequate Forum for These Claims.

Younger abstention further does not apply where, as here, the state forum does not provide "an adequate opportunity to raise [federal] challenges." *Sprint*, 571 U.S. at 81 (citation omitted). Colorado's juvenile court proceedings are simply inadequate forums for Plaintiffs' systemic claims. Abstention would effectively deny Plaintiffs the opportunity to raise their federal class-wide claims and deny them access to timely relief.

Plaintiffs cannot, as Defendants suggest, seek structural statewide systemic relief in their underlying juvenile proceedings. See Mot. to Dismiss at 22. Juvenile courts in Colorado have limited statutory jurisdiction to five categories of individual proceedings

and possess no class-action mechanism, no authority to issue system-wide injunctions, and no power to order the executive branch to build out statewide system capacity. Am. Compl. ¶¶ 181–83 (citing C.R.S. § 19-2.5-103 (2025)).

Federal courts find *Younger* inapplicable where, as here, federal plaintiffs seek systemic injunctive relief not available to them in individual juvenile court proceedings.¹²

Individual juvenile court orders simply cannot remedy the injuries caused by statewide executive agency failures. See *Jonathan R.*, 41 F.4th at 336 (“Reforming foster care case-by-case would be like patching up holes in a sinking ship by tearing off the floorboards.”). Abstention is inappropriate here because the alleged harm is systemic, and the appropriate remedy is class-wide federal declaratory and injunctive relief.

IV. Plaintiffs Adequately State Fourteenth Amendment Claims.

A. Plaintiffs Adequately Pleaded a Deprivation of Their Liberty Interests.

Plaintiffs adequately allege substantive due process claims under the Fourteenth Amendment. *Contra* Mot. to Dismiss at 25–27. Plaintiffs plausibly allege Defendants unlawfully deprive them of a constitutionally protected liberty interest without just cause by continuing their detention after the juvenile courts found they can be released. The Fourteenth Amendment protects citizens from executive action that deprives them of liberty “without any reasonable justification in the service of a legitimate governmental

¹² See, e.g., *Tinsley v. McKay*, 156 F.Supp. 3d 1024, 1040–41 (D. Ariz. Sept. 29, 2015) (“[I]t does not appear Plaintiffs could raise their classwide claims or pursue the systemic reforms they seek within the framework of the periodic review hearings in the juvenile courts.”); *M.D. v. Perry*, 799 F. Supp. 2d 712, 721 (S.D. Tex. 2011) (Juvenile court hearings do not “represent an ‘adequate opportunity’ to . . . obtain broad-based injunctive and declaratory relief . . .”).

objective.” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). A plaintiff alleging such due process violations must show “conscience shocking” behavior, *Stepp v. Lockhart*, 168 F.4th 1286, 1314 (10th Cir. 2026),¹³ such as imprisoning Plaintiff children, without any legitimate state interest. Am. Compl. ¶¶ 191, 194–96.

The protected liberty interest at stake is straightforward: freedom from continued physical confinement. See *Parham v. J.R.*, 442 U.S. 584, 601 (1979). The Fourteenth Amendment protects individuals’ right to be free from detention (absent a conviction) as a basic liberty interest. *Meechaicum v. Fountain*, 696 F.2d 790, 791–92 (10th Cir.1983). Thus, State officers may not confine an individual without a legitimate state interest. *Disability L. Ctr. v. Utah*, 180 F. Supp. 3d 998, 1006–09 (D. Utah 2016). *Schall v. Martin*, 467 U.S. 253, 263–64 (1984), cited by Defendants regarding the State’s role when children are in its custody, confirms that due process requires States must have a legitimate interest to detain children pre-adjudication. Moreover, once a judicial officer authorizes release—as the juvenile courts did here—the state’s detention justification “fade[s].” *Dodds v. Richardson*, 614 F.3d 1185, 1192–93 (10th Cir. 2010).

The Amended Complaint establishes Isaac N., Tony S., and Vegeta K. had each been charged but not adjudicated, and were found releasable by a juvenile court. Defendants then failed to arrange appropriate placements or services resulting in their continued detention. Am. Compl. ¶¶ 17–19, 32–34, 46–48, 105–09, 189–91.

¹³ Plaintiffs do not allege that any legislative action infringed a “fundamental” right. Cf. Mot. to Dismiss at 25–26. Plaintiffs’ Complaint clearly alleges that Defendants’ executive action “shock[s] the conscience.” Am. Compl. ¶¶ 194–96.

Defendants' citation to state statutes to justify Plaintiffs' detention fails as state law actually codifies and confirms the absence of any legitimate state interest. See Mot. to Dismiss at 5–7. In Colorado, children may only be detained if they “pose[] a substantial risk of serious harm to others” or present “a substantial risk of flight from prosecution and community-based alternatives to detention are insufficient to reasonably mitigate that risk.” Am. Compl. ¶ 81 (citing C.R.S. § 19-2.5-305(3)(a)(IV)(C)). Detention is impermissible solely because Defendants fail to provide sufficient community-based placements or services. *Id.* ¶¶ 81–84, 212–14.

Defendants' detention of the Plaintiffs is thus not “reasonably justified in the service of legitimate governmental objectives” but is instead “arbitrary or conscience shocking.”¹⁴ *Browder v. City of Albuquerque*, 787 F.3d 1076, 1079 (10th Cir. 2015). Courts in similar cases have found Fourteenth Amendment violations where state officials failed to release pre-trial detainees due to administrative delays or continued to detain individuals eligible for release to treatment facilities. See, e.g., *Dodds*, 614 F.3d at 1193, 1206 (affirming denial of summary judgment where pre-trial detainee prevented from posting bond); *Disability L. Ctr.*, 180 F. Supp. 3d at 1012 (denying motion to dismiss where defendants held detainees in jails instead of releasing them to treatment facilities).

Defendants' conduct is particularly shocking given the Named Plaintiffs' young age and the significant and long-lasting impact on their mental and physical well-being. Am.

¹⁴ While courts in this context have not determined that a specific state of mind, such as deliberate indifference is necessary, Plaintiffs have pleaded sufficient facts even under that standard. Am. Compl. ¶¶ 93–148. Plaintiffs request opportunity to brief this issue should the court find it necessary to reach it.

Compl. ¶¶ 17, 32, 149–65. And, as alleged, it is shocking that Defendants have long been aware of the chronic over-detention, and the resulting serious harms to children, but have failed to remedy this long-standing violation of Plaintiffs’ and class members’ constitutional rights. Am. Compl. ¶¶ 93–104.

Defendants incorrectly argue that only “affirmative acts” can be conscious shocking and that Plaintiffs’ allegations only show negligence because Defendant did not take “affirmative acts” to harm Plaintiffs. Mot. to Dismiss at 26–27. Here, of course, Defendants *are* acting affirmatively to harm the Plaintiffs by continuing to detain them after the juvenile courts determine they should be released. Likewise, Defendants act affirmatively through their policy and funding choices. See, e.g., Am. Compl. ¶¶ 89, 99.¹⁵ But even if this affirmative action were inadequate, redressable substantive due process violations also often arise from executive agency *inaction*. See *Strain v. Regalado*, 977 F.3d 984, 991–92 (10th Cir. 2020); *Disability L. Ctr.*, 180 F. Supp. 3d at 1012.

B. Plaintiffs Adequately Claim a Deprivation of the Liberty Interests of Tony S., Vegeta K., and the Foster System Subclass.

Plaintiffs Tony S. and Vegeta K., and the Foster System Subclass they seek to represent, sufficiently pleaded that Defendants violated their constitutional duty to keep foster children in Colorado’s custody reasonably safe from a substantial risk of serious harm. Am. Compl. ¶¶ 197–205. That duty flows from the “special relationship” created

¹⁵ Neither of Defendants’ cited cases, *Abeyta By & Through Martinez v. Chama Valley Indep. Sch. Dist.*, No. 19, 77 F.3d 1253, 1258 (10th Cir. 1996) (allegations of potential harassment stemming from name-calling by a teacher) and *Doe v. Woodard*, 912 F.3d 1278, 1301 (10th Cir. 2019) (single examination to investigate for child abuse) apply here. Defendants’ conscience-shocking behavior stems from their illegal continued detention of hundreds of children, including Plaintiffs, without just cause. See Mot. to Dismiss at 27.

when the State restrains a person's liberty and assumes responsibility for their safety and general well-being, *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 197, 199–200 (1989), and it applies to foster youth, who have an affirmative right to protection and to be kept reasonably safe from harm. *Gutteridge v. Okla.*, 878 F.3d 1233, 1238–39 (10th Cir. 2018). Plaintiffs allege Defendants maintain a policy and practice of failing to provide adequate case management and foster placements and services for releasable foster youth, instead leaving them detained. Am. Compl. ¶¶ 116–20, 174, 201–05.¹⁶

Defendants do not meaningfully address this theory, which waives any argument that Count II of the Amended Complaint fails to state a claim. *Cowden v. Bd. of Governors of Colo. State Univ. Sys.*, 622 F. Supp. 3d 1019, 1031 (D. Colo. 2022).

C. Plaintiffs Adequately Allege a Procedural Due Process Claim under the Mathews Balancing Test.

Contrary to Defendants' claims, Plaintiffs have adequately alleged Defendants violation of Plaintiffs' procedural due process rights by depriving them of a protected liberty interest without adequate safeguards. See *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025).

¹⁶ The Complaint alleges these failings in detail. Am. Compl. ¶¶ 93–103, 116–20, 121–129, 201–02. Defendants conduct caused Plaintiffs' injuries and exposed them to known risks. *Id.* ¶¶ 105–20, 149–65. Under the special-relationship doctrine, officials are liable when they know of the danger or fail to exercise professional judgment, an affirmative link to the injury exists, and the conduct shocks the conscience. Defendants' conduct here satisfies this standard. *Schwartz v. Booker*, 702 F.3d 573, 580, 585–86 (10th Cir. 2012); Am. Compl. ¶¶ 199–205.

In analyzing a due process claim, courts apply the *Mathews* factors to identify whether a private interest is at stake and whether adequate safeguards exist:

First, the private interest affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

Defendants fail to address the *Mathews* factors *at all*, foreclosing this argument.

But should the court reach this question, Plaintiffs amply satisfy each of the factors.

First, Plaintiffs plausibly allege a protected liberty interest in freedom from detention when it serves no legitimate state interest. As above, “a child has a protectible interest . . . in being free of unnecessary bodily restraint.” *Parham*, 442 U.S. at 601.

State law also informs a federal liberty interest when the state puts mandatory limits on its own discretion. *Elwell v. Byers*, 699 F.3d 1208, 1213–14 (10th Cir. 2012) (liberty interest created by state law that “establish[es] substantive predicates to govern official decision-making and mandate[s] an outcome when relevant criteria have been met.”). This is the case here, where Colorado placed substantive limitations on when state officials can detain a child. Am. Compl. ¶¶ 186, 209–12.

Second, Defendants are again wrong that the juvenile court system provides adequate procedural safeguards. Plaintiffs plausibly allege Defendants do not provide sufficient notice of the procedures necessary to prevent erroneous deprivations of their liberty. Am. Compl. ¶¶ 121–32. Procedural due process requires “some kind of notice. . . .” *Moore v. Bd. of Cnty. Comm’rs of Cnty. of Leavenworth*, 507 F.3d 1257, 1259 (10th Cir.

2007) (emphasis in original). However, “due process is flexible” as “necessary to gear the process to the particular need. . . . to serve the purpose of minimizing the risk of error.” *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 12–13 (1979) (cleaned up). Defendants either ignore or fail to recognize that Plaintiffs’ particular need for due process only arises *after* the juvenile court hearing where they were found releasable, when the authority passes to the CDHS to meet the juvenile court’s release conditions.

By failing to publish procedures about how detained youth should receive case management, assessments, and planning, or to provide them adequate information about individual case planning efforts, Defendants effectively deny releasable children timely notice. Am. Compl. ¶¶ 125–32. See e.g., *Brown v. Montoya*, 662 F.3d 1152, 1169–70 (10th Cir. 2011) (Due process requires a “written statement by the factfinder of the evidence relied on and the reasons” for government action). Additional hearings by the juvenile court would not cure this lack of notice. “[E]valuation by a neutral fact finder in the absence of notice is a matter of law constitutionally deficient” as it “poses . . . an almost certain risk, of the erroneous deprivation of the liberty interest.” *J.L. ex rel. Thompson v. N.M. Dep’t of Health*, 165 F. Supp. 3d 996, 1035 (D. N.M. 2015).

Finally, under the third *Mathews* prong, Defendants have an interest in developing procedures to release eligible children that serves the State’s *parens patriae* interest and public safety, as detention “makes it more likely that the child or juvenile will reoffend.” C.R.S. § 19-2.5-301 (2025); *J.L.*, 165 F. Supp. 3d at 1035 (No “legitimate government interest that might be impeded . . . by providing Plaintiffs with notice.”).

V. Plaintiffs Have Adequately Alleged Their ADA and RA Claims.

A. Plaintiffs Have Adequately Alleged that Defendants Have Discriminated Against them by Failing to Place them in the Most Integrated Setting.

Defendants misconstrue and entirely ignore the relevant legal standard for claims brought under the ADA and RA pursuant to *Olmstead v. L.C. by Zimring*, 527 U.S. 581 (1999). Mot. to Dismiss at 28–30.¹⁷ In *Olmstead*, the Supreme Court recognized that “[u]njustified isolation . . . is properly regarded as discrimination based on disability.” 527 U.S. at 597. As the Court explained, this reflects that “confinement in an institution severely diminishes the everyday life activities of individuals,” including “family relations,” “social contacts,” and “educational advancement.” *Id.* at 601.

Both the ADA and RA prohibit disability discrimination by public entities. 42 U.S.C. § 12132; 29 U.S.C. § 794(a); 28 C.F.R. § 41.51; 28 C.F.R. § 35.130(a). Public entities and ones that receive federal funding must therefore “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d).¹⁸ To comply with this mandate, public entities must reasonably modify their policies, practices, and procedures to ensure individuals are placed in the most integrated setting. 28 C.F.R. § 35.130(b)(7).

A plaintiff sufficiently pleads an “integration mandate” claim by alleging they are a qualified individual with a disability, and that they satisfy a three-prong test set out by the

¹⁷ As the ADA and RA apply a similar legal standard, these claims are typically analyzed together. *Baker v. Alliance for Sustainable Energy, LLC*, No. 24-1143, 2025 WL 400743, at *2 (10th Cir. Feb. 4, 2025).

¹⁸ The most integrated setting is one “that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.” 28 C.F.R. Pt. 35, App. B.

Court in *Olmstead*: (1) community-based placement is appropriate; (2) “the affected persons do not oppose such treatment;” and (3) “the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.” 527 U.S. at 607.¹⁹

Here Plaintiffs have properly alleged an *Olmstead* claim. See Am. Compl. ¶¶ 11, 133–48. Plaintiffs and Disability Subclass members are qualified individuals with disabilities. *Id.* ¶¶ 20, 37, 51, 134. Defendants are officials of public entities under the ADA and receive federal funding for purposes of the RA and receive federal funding. *Id.* ¶¶ 71–72, 89. Plaintiffs were institutionalized and segregated at the time of their complaint. *Id.* ¶¶ 17, 32, 46, 137–138. A state professional determined community placement was appropriate for each Plaintiff. *Id.* at ¶¶ 19, 22, 34, 39, 48, 55, 141, 142, 144. Plaintiffs did not oppose community-based placements. *Id.* at ¶¶ 23, 40, 57, 148. And finally, the placements and services Plaintiffs seek can be reasonably accommodated, because those services are already ostensibly available (though not sufficiently)—as evidenced by the recommendations set out in Plaintiffs’ assessment documents. *Id.* ¶¶ 19, 22 34, 39, 48, 55, 141, 142, 144.²⁰

¹⁹ Defendants incorrectly claim Plaintiffs must affirmatively request a specific accommodation or modification. Mot. to Dismiss at 29. This misstates the standard under *Olmstead*. 527 U.S. at 607.

²⁰ Moreover, whether a particular service or placement would require a fundamental alteration of the state’s services is an affirmative defense that must be raised by Defendants. *Hamer v. City of Trinidad*, 441 F. Supp. 3d 1155, 1172 (D. Colo. 2020).

These allegations amply state a claim under *Olmstead*. 527 U.S. at 602–03. Defendants do not refute any of these allegations. Instead, they omit any mention of *Olmstead* and fail to engage in the required analysis set out in that case.

B. Plaintiffs Have Adequately Alleged that Defendants’ Insufficient Placements and Services Caused the Disability Discrimination.

Defendants incorrectly argue that Plaintiffs have failed to demonstrate causation as to their ADA and RA claims. Mot. to Dismiss at 31. In the Tenth Circuit, “the ADA merely requires the plaintiff’s disability be a but-for cause” of the discrimination. *Crane v. Utah Dep’t of Corrs.*, 15 F.4th 1296, 1313 (10th Cir. 2021). The RA, by contrast, requires that it occur “solely by reason of” disability. *Id.*

Plaintiffs sufficiently meet both standards here, where they have alleged that CDHS segregates them from the community in restrictive juvenile detention facilities solely because Defendants fail to administer their juvenile justice and foster care systems with sufficient access to community-based placements and services. Am. Compl. ¶¶ 19, 22–25, 34, 39–42, 48, 55–59, 96–107, 114–120, 139–146. Plaintiffs need not demonstrate their continued detention is “wholly attributable to Defendants, as long as they sufficiently show some reasonable connection between Defendants’ conduct and their harm.” *M.G. v. N.Y. State Office of Mental Health*, 572 F. Supp. 3d 1, 12–13 (S.D. N.Y. 2021) (allegations sufficient under both ADA and RA that failure to provide community-based care put imprisoned plaintiffs at risk of continued incarceration).

Courts routinely find similar allegations sufficient. In *M.J. v. District of Columbia*, 401 F. Supp. 3d 1, 11 (D. D.C. 2019), the court found allegations “sufficient to state claims under *Olmstead*” where children with mental health disabilities claimed that defendant

officials violated the ADA and RA by keeping them in residential facilities even though plaintiffs were “able to live in their homes and communities, if the District provided the required treatment.” *Id.* at 11 & 13; see also *Isaac A. v. Carlson*, 775 F.Supp.3d 1296, 1349 (N.D. Ga. 2025) (same); *S.R. ex rel. Rosenbauer v. Penn. Dep’t of Human Servs.*, 309 F. Supp. 3d 250, 263–266 (M.D. Pa. 2018) (same). Similarly, the court in *Seshamani*, 817 F. Supp. 3d at 321, found adult pre-trial detainees with disabilities sufficiently alleged *Olmstead* claims under both the ADA and RA as they were “indefinitely detained in jails as a direct result of [Defendants’] failure to furnish [them] with necessary services and supports” outside of detention.

Defendants’ argument that they do not discriminate against Plaintiffs because “all youth who received conditional release orders, regardless of disability status” are affected by CDHS’s “system-wide operational deficiencies,” reflects a basic misunderstanding of *Olmstead*. Mot. to Dismiss at 31. An integration mandate claim need not demonstrate “similarly situated individuals” without disabilities are “given preferential treatment.” *Olmstead*, 527 U.S. at 598. See also *Amundson v. Wis. Dep’t of Health Servs.*, 721 F.3d 871, 874 (7th Cir. 2013) (explaining that “discrimination” in this context, includes “undue institutionalization of disabled persons, no matter how anyone else is treated.”). Rather, the segregation of persons with disabilities *from their communities* is itself discrimination under the ADA and RA. *Olmstead*, 527 U.S. at 596.

CONCLUSION

For the foregoing reasons, the Court should deny Defendants’ Motion to Dismiss and allow discovery on this urgent matter to proceed.

Respectfully submitted this 27th of July 2026,

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