

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**DEFENDANTS’ OPPOSITION TO PLAINTIFFS’ MOTION
FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

Defendants oppose Plaintiffs’ Motion for Leave to File Second Amended Complaint, ECF No. 96, because Plaintiffs unduly delayed seeking leave to amend and Defendants would be prejudiced by the amendment. Plaintiffs filed this lawsuit in May 2025 alleging that the Office of Refugee Resettlement (“ORR”) improperly adopted policies that increase the amount of time unaccompanied alien children spend in ORR custody. The parties completed briefing on cross-motions for summary judgment in December 2025, and this case should be nearing its completion.

Almost one year after filing the case and over four months after summary-judgment briefing ended, Plaintiffs now seek leave to add new named plaintiffs. Plaintiffs admit that they are seeking to amend the complaint because they fear that the Court may find that they lack standing or that their claims are moot. ECF No. 96 at 5.¹ But that possibility is nothing new. If Plaintiffs wished to add new named plaintiffs to defend against the possibility of mootness, Plaintiffs should have sought leave to file a second amended complaint much earlier.

¹ In this memorandum, page numbers in docket entry citations refer to the CM-ECF-stamped page numbers on the top of documents.

Allowing Plaintiffs to amend their complaint now would unduly prejudice Defendants. Defendants expended substantial resources to brief the pending dispositive motions. At this late stage in the case, Defendants should not be required to investigate the circumstances of new plaintiffs, file a new answer, and prepare new legal briefs. Accordingly, the Court should deny Plaintiffs' motion to amend.

BACKGROUND

Plaintiffs initiated this lawsuit by filing their original complaint on May 8, 2025. ECF No. 1. The next day, Plaintiffs moved to certify a class, ECF No. 9, and moved for a preliminary injunction, ECF No. 10. On June 9, 2025, the Court granted in part and denied in part Plaintiffs' motion for a preliminary injunction. ECF No. 34. The Court also provisionally certified a class. *Id.*

After Defendants answered the original complaint, Plaintiffs filed the operative First Amended Complaint as of right on August 15, 2025. ECF No. 48. The First Amended Complaint added three new named Plaintiffs. *Id.*; ECF No. 48-1. Plaintiffs also sought leave to file a supplemental brief in support of their motion for class certification to assert that the new Plaintiffs would be adequate class representatives. ECF No. 51. The Court granted Plaintiffs' motion for leave to file a supplemental brief in support of their motion for class certification after Defendants filed a statement of non-opposition. Minute Order of Sept. 5, 2025. Defendants answered the First Amended Complaint on August 29, 2025. ECF No. 53.

The parties briefed cross-motions for summary judgment between September 12 and December 19, 2025. ECF Nos. 58, 71, 72, 73, 74, 76. In the summary-judgment briefing, the parties relied on evidence beyond the certified administrative record and disputed numerous factual and legal issues as to the named Plaintiffs. *See, e.g.*, ECF No. 71 at 28–35 (arguing that each Plaintiff

lacks standing or has moot claims); ECF No. 73-1 at 28–29, 33, 36 (listing factual disputes about the named Plaintiffs); ECF No. 73-2 at 47–98 (listing numerous factual disputes about the named Plaintiffs over the course of 50 pages). The Court held a motions hearing on March 18, 2026. Following the motions hearing and a telephonic status conference, the Court ordered Plaintiffs to “provide the Court with an update on their intentions with regard to adding new individual plaintiffs and/or seeking class certification on or before March 30, 2026.” Minute Order of Mar. 23, 2026. On March 30, 2026, Plaintiffs filed a notice stating that they intended to add new individual plaintiffs and asking the Court to approve a proposed schedule for filing a second amended complaint. ECF No. 87; *see* ECF No. 87-1 (proposed order). The Court has taken no action on Plaintiffs’ proposed schedule.

On April 29, 2026, Plaintiffs moved for leave to file their second amended complaint. ECF No. 96. In the proposed second amended complaint, Plaintiffs seek to add three new named plaintiffs (Brian G., Esmeralda C., and Lorenzo V.) and several new allegations about each of them. *Id.* at 3; *see* ECF No. 96-2 at 2, 11–12, 44–49 (¶¶ 20–22, 135–60). According to the proposed second amended complaint, Brian G. entered ORR custody in May 2025 and Esmeralda C. and Lorenzo V. entered ORR custody in September 2025. ECF No. 96-2 at 44, 46–47 (¶¶ 135, 146, 154). Plaintiffs argue that adding new named plaintiffs “will address the Court’s concerns regarding mootness as described at the hearing on the parties’ cross-motions for summary judgment and subsequent telephonic conference.” ECF No. 96 at 3. Plaintiffs contend, however, that “they do not need to add new named plaintiffs because they seek class certification.” *Id.* at 5. In addition, Plaintiffs state that the proposed second amended complaint “includes brief additional facts to ensure Plaintiffs’ allegations related to the Paperwork Reduction Act (‘PRA’) claim accurately reflect the current status of ORR’s sponsor application form.” *Id.* at 3–4. Plaintiffs assert

that the “updated factual allegations regarding ORR’s currently operative sponsorship application forms pertain to Plaintiffs’ existing PRA claim and do not change Plaintiffs’ legal arguments.”² *Id.* at 5.

On April 29, 2026, Plaintiffs also moved for leave to file a supplemental brief in support of class certification. ECF No. 99. Plaintiffs want to file the supplemental brief to argue that the proposed new named plaintiffs would be adequate class representatives and to “submit evidence regarding provisional class members who continue to have live claims.” ECF No. 99-1 at 3. Plaintiffs seek to file eight declarations from the proposed new named plaintiffs and provisional class members. *Id.* at 1; ECF Nos. 99-2, 99-3, 99-4, 99-5, 99-6, 99-7, 99-8, 99-9, 99-10.

LEGAL STANDARD

While leave to amend a complaint should be “freely given,” *Foman v. Davis*, 371 U.S. 178, 182 (1962), *see* Fed. R. Civ. P. 15(a)(2), “the decision whether to permit amendment is vested in the sound discretion of the trial court,” *Mowrer v. U.S. Dep’t of Transp.*, 14 F.4th 723, 732 (D.C. Cir. 2021) (citation omitted). A district court may exercise that discretion and “deny leave to amend based on either ‘undue delay’ by the moving party or ‘undue prejudice’ to the other side.” *Mowrer*, 14 F.4th at 732 (quoting *Foman*, 371 U.S. at 182). Likewise, a district court may deny a motion for leave to amend a complaint if amendment would be futile. *Hettinga v. United States*, 677 F.3d 471, 480 (D.C. Cir. 2012). Amendment would be futile “if the proposed claim would not survive a motion to dismiss.” *Id.*

² To the extent Plaintiffs are not asserting any new legal argument or claim as to the Paperwork Reduction Act, amending the operative complaint to assert updated factual allegations on that issue is unnecessary.

ARGUMENT

I. The Court should deny the motion for leave to amend because of undue delay.

This case has been pending for over a year. ECF No. 1. Plaintiffs already filed the First Amended Complaint in which they added three new Plaintiffs and new allegations. ECF No. 48. Defendants filed two answers and produced the certified administrative record. ECF Nos. 46, 47, 53, 77. The parties briefed Plaintiffs' preliminary injunction motion, Plaintiffs' class certification motion, and the dispositive cross-motions for summary judgment. ECF Nos. 9, 10, 58, 71. "[W]here a defendant has filed a dispositive motion . . . and plaintiff has opposed it, denial of permission to amend is proper." *James Madison Project v. Dep't of Just.*, 208 F. Supp. 3d 265, 277 (D.D.C. 2016) (quoting *Moldea v. New York Times Co.*, 793 F. Supp. 338, 338 (D.D.C. 1992)); see *Wilderness Soc. v. Griles*, 824 F.2d 4, 19 (D.C. Cir. 1987) (affirming denial of motion to amend complaint where the "District Court explained that plaintiffs' motion occurred more than a year after the filing of their initial complaint and after dispositive motions had been filed and opposed"). This case should be nearly complete. If Plaintiffs wanted to add new named plaintiffs and new allegations to defend against the possibility of mootness, Plaintiffs should have done so sooner. See *Hoffmann v. United States*, 266 F. Supp. 2d 27, 34 (D.D.C. 2003) ("[I]t is fairly well established that denying leave to amend is particularly appropriate when a lawsuit is on the verge of final resolution." (citation modified)), *aff'd*, 96 F. App'x 717 (Fed. Cir. 2004).

In addition, Plaintiffs have not adequately explained their failure to seek leave to amend earlier. "Whether there has been an 'unexplained delay in pleading' previously-known allegations is 'another important consideration.'" *James Madison Project*, 208 F. Supp. 3d at 277 (quoting *Societe Liz, S.A. v. Charles of the Ritz Grp., Ltd.*, 118 F.R.D. 2, 4 (D.D.C. 1987)). Plaintiffs did not seek leave to amend their complaint earlier because they chose to rely on their legal theory that the inherently transitory exception to mootness would apply. See ECF No. 96 at 5 ("Plaintiffs

reasonably believe that, under D.C. Circuit precedent, they do not need to add new named plaintiffs because they seek class certification.”). Plaintiffs seek leave to amend now only because they fear that the Court may disagree with their mootness theory. *Id.* (“[T]o address the mootness concerns raised by the Court at the March 18 and 23, 2026 hearings, Plaintiffs have identified additional named plaintiffs.”). But the mootness concerns raised at the March 18 and 23, 2026 hearings were nothing new.

Throughout this litigation, Plaintiffs have known that their claims may become moot either because ORR approves a qualified sponsor or because the child turns 18. Indeed, after the originally named Plaintiffs had been released from ORR custody, Plaintiffs filed the First Amended Complaint to add new named Plaintiffs. ECF No. 48, ¶¶ 12–16. Plaintiffs could have sought leave to add the three new proposed plaintiffs before April 29, 2026. According to Plaintiffs, proposed plaintiff Brian G. entered ORR custody in May 2025 and proposed plaintiffs Esmeralda C. and Lorenzo V. entered ORR custody in September 2025. ECF No. 96-2 at 44, 46–47 (¶¶ 135, 146, 154). But, after filing their First Amended Complaint in August 2025, Plaintiffs chose not to seek leave to add further plaintiffs for eight months. Plaintiffs’ newfound doubt in their previous legal arguments is not a sufficient basis to seek leave to amend. “A plaintiff, quite simply, cannot be permitted to circumvent the effects of summary judgment by amending the complaint every time a termination of the action threatens.” *Hoffmann*, 266 F. Supp. 2d at 34 (citation modified). In sum, Plaintiffs’ undue delay in adding “new factual allegations” is itself a “a basis for denying a motion to amend.” *Harrison v. Rubin*, 174 F.3d 249, 253 (D.C. Cir. 1999).

II. The Court should deny the motion for leave to amend because of the prejudice to Defendants.

Granting Plaintiffs leave to file the proposed second amended complaint would prejudice Defendants by forcing them at this late stage of the case to investigate new factual allegations and

respond to new individuals' claims after already expending substantial resources to litigate the claims of the previous named Plaintiffs. Preparing Defendants' summary-judgment briefing "was no small matter." *James Madison Project*, 208 F. Supp. 3d at 280. The filing of the proposed second amended complaint would create substantial new work for Defendants. At the very least, Defendants would have to investigate and respond to the new allegations in the second amended complaint. Defendants would likely also have to investigate and respond to Plaintiffs' supplemental memorandum in support of class certification and Plaintiffs' eight new declarations. ECF Nos. 99-1, 99-2, 99-3, 99-4, 99-5, 99-6, 99-7, 99-8, 99-9, 99-10.

In addition, the new proposed plaintiffs may necessitate a new round of summary-judgment briefing. Plaintiffs contend that "[t]he addition of new child plaintiffs does not substantially affect the central issues of the case, as these child plaintiffs allege the same wrongdoing and harm as the prior named plaintiffs." ECF No. 96 at 6. Plaintiffs ignore, however, that much of the summary-judgment briefing focused on the specific circumstances of the individual named Plaintiffs. *See, e.g.*, ECF No. 71 at 28–35; ECF No. 73-1 at 28–29, 33, 36; ECF No. 73-2 at 47–98. If Plaintiffs had sought leave earlier to add the proposed new plaintiffs and new allegations, Defendants could have responded to those allegations in the summary-judgment briefing. At this stage, addressing new plaintiffs could require new briefing.

Plaintiffs argue that Defendants would not be prejudiced because "Defendants will still have the opportunity to present facts and evidence in defense of their actions." ECF No. 96 at 7. But Defendants are prejudiced by having to conduct new factual investigations and develop new arguments after completing the dispositive-motion briefing. *See Schubarth v. Fed. Republic of Germany*, No. 14-CV-2140 (CRC), 2020 WL 13065292, at *8 (D.D.C. Mar. 12, 2020) ("[P]rejudice may result when an amendment substantially changes the theory on which the case

has been proceeding and is proposed late enough so that the opponent would be required to engage in significant new preparation.” (citation modified); *cf. Atchinson v. District of Columbia*, 73 F.3d 418, 426 (D.C. Cir. 1996) (“For example, we have previously given weight to whether amendment of a complaint would require additional discovery.”). Indeed, “the crux of the liberal concepts of notice pleading embodied in the Federal Rules is to make the defendant aware of the facts.” *Harrison*, 174 F.3d at 253 (citation modified). By adding new plaintiffs with new circumstances, Plaintiffs would change the facts and the potential claims and defenses late in the litigation. Because of the prejudice to Defendants, the Court should deny Plaintiffs’ motion.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs’ motion for leave to file a second amended complaint.

Dated: May 13, 2026

Respectfully submitted,

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