

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**REPLY IN SUPPORT OF PLAINTIFFS’ MOTION FOR LEAVE TO FILE SECOND
AMENDED COMPLAINT**

INTRODUCTION

Leave to file amended pleadings is given “freely” and should be granted in this case where there is no prejudice to Defendants. *See* Fed. R. Civ. P. 15(a)(2). On March 23, 2026, the Court held a telephonic hearing with the parties and indicated that it would likely permit time for Plaintiffs to file additional pleadings and filings to include additional named plaintiffs given that the existing plaintiffs had been or would imminently be released from the Office of Refugee Resettlement (“ORR”) custody. As Plaintiffs have argued throughout this class action case, the certified and putative classes’ claims remain live because they relate back to the filing of the complaint when the individual named Plaintiffs’ and class representatives’ claims were live. Following the March 23 telephonic hearing, Plaintiffs promptly investigated the claims of similarly situated detained children and filed a motion for leave to amend their complaint by adding new detained child plaintiffs and class representatives for the broader putative class Plaintiffs seek to have certified.

Plaintiff and class representative substitution is the normal course when a court indicates that class representatives with live claims are or would be required. As such, this Court should grant Plaintiffs' motion for leave to file a Second Amended Complaint. There are no new claims or legal theories raised in the proposed Second Amended Complaint. Furthermore, contrary to Defendants' arguments, this type of substitution alleviates prejudice *to Plaintiffs* who put forward class representatives with inherently transitory claims rather than causing prejudice to Defendants.

Alternatively, the Court can issue a ruling based on the record currently before the Court by applying the inherently transitory exception to mootness and relating the class claims back to the filing of the original complaint. Either course of action is appropriate here.

PROCEDURAL BACKGROUND

Currently briefed and pending before this Court are Plaintiffs' Motion for Summary Judgment ("Pls.' MSJ," ECF No. 58), Defendants' Cross-Motion for Summary Judgment ("Defes.' XMSJ," ECF No. 71), and Plaintiffs' Motion for Class Certification (ECF No. 9), including the parties' supplemental briefs regarding class certification following the First Amended Complaint (ECF Nos. 56, 61, 63). On April 29, 2026, Plaintiffs filed the instant motion for leave to file a Second Amended Complaint (ECF No. 96) and a motion for leave to file a supplemental brief regarding class certification (ECF No. 99).

The Court has already issued a decision (ECF No. 34) granting in part Plaintiffs' Motion for Preliminary Injunction (ECF No. 10) and Plaintiffs' Motion for Class Certification (ECF No. 9). *See* Order Granting Prelim. Inj. & Provisional Class Cert. ("PI Order"), ECF No. 34; Mem. Op. at 19-22 ("PI Op."), ECF No. 35 (certifying a provisional class). The current operative complaint is the First Amended Complaint, filed on August 15, 2025. First Am. Compl., ECF No. 48.

On October 1, 2025, two days prior to Defendants' deadline to file their cross-motion for summary judgement and opposition to Plaintiffs' motion for summary judgement, federal appropriations lapsed and the Court issued Standing Order No. 25-55 (JEB), *In re: Stay of Civil Proceedings Involving the United States in Light of Lapse of Appropriations* (Oct. 1, 2025). Two weeks later, Plaintiffs filed a Motion for Relief from Standing Order 25-55 (ECF No. 65) which Defendants opposed (ECF No. 66). The court denied Plaintiffs' motion without prejudice one week later. *See* Oct. 21, 2025 Min. Order. The shutdown and standing order remained in effect until November 12, 2025. During this time, two class representatives remained in ORR custody. *See* Pls.' Mot. for Revised Summ. J. Briefing Schedule at 3-4, ECF No. 68.

Following the lift of the Court's standing order, Plaintiffs moved for a revised briefing schedule on November 17, 2025, to facilitate timely and efficient resolution of this case. *Id.* The Court then issued a minute order ordering summary judgment briefing to conclude on or before December 29, 2025, with the filing of a joint appendix. Nov. 18, 2025 Min. Order. A month after summary judgement briefing concluded, on January 23, 2026, Plaintiff Mateo N. was released to his brother. Plaintiff Yair G. remained in ORR custody.

On February 27, 2026, two months after the completion of summary judgment briefing, Defendants supplemented the factual record with the status of Office of Management and Budget (OMB) review under the Paperwork Reduction Act (PRA) and the date by which OMB review was complete (Defs.' Feb. 27 Status Report, ECF No. 81), pursuant to the Court's Minute Order of February 24, 2026. Defendants stated that OMB had completed its review and approved information collection on February 27, 2026, coincidentally the same date as the court-ordered deadline for filing Defendants' status report. Defs.' Feb. 27 Status Report at 2. The Court heard oral argument on March 18, 2026. At oral argument, Plaintiffs informed the Court that Mateo N.

had been released to his brother, and that Yair G. would shortly turn 18. Mar. 18, 2026 Summ. J. Mot. Hr'g Tr. at 22:4-5, 23:4-6. In response to the Court's order during and following oral argument, Defendants again supplemented the factual record and filed the "current Sponsor Application Form" with the Court. Defs.' Notice of Filing & Exs., ECF No. 85.

The Court held a telephonic hearing on March 23, 2026. At that hearing, Plaintiffs alerted the Court to inconsistencies between the forms filed as the "OMB approved Sponsor Application" and the actual application submitted to and approved by OMB. Mar. 23, 2026 Hr'g Tr. at 12:3-18. The next day, Defendants disclosed that the forms currently in use by ORR and submitted to the Court were not, in fact, the same forms approved by OMB on February 27, 2026. Defs.' Resp. to Mar. 23, 2026 Min. Order, ECF No. 86. The Court ordered further response from Defendants by March 31, 2026. *See* Mar. 25, 2026 Min. Order.

On April 1, 2026, Defendants confirmed that the sponsor application forms currently in use by ORR were not the same versions of the forms that received OMB approval and differed in significant ways. Defs.' Resp. to Mar. 25, 2026 Min. Order, ECF No. 91. On April 2, 2026, Plaintiffs filed a response to Defendants' filing explaining why Plaintiffs' PRA claims remain live. Pls' Resp. to Defs.' Filing Regarding Paperwork Reduction Act Compliance, ECF No. 92.

Also at the March 23, 2026 telephonic hearing, the Court raised the potential age-related impending mootness of Yair G.'s claims, the sole remaining detained named plaintiff and putative class representative, and asked if Plaintiffs were contemplating adding plaintiffs or taking any other steps to address Yair G.'s aging out prior to the Court issuing a ruling. Mar. 23, 2026 Hr'g Tr. at 3:7-17, 4:1-2. The Court stated that if Plaintiffs notified the Court of their intent to add Plaintiffs or declarations to the case, the Court would "be willing to grant some additional time ... for all the new filings to come in." Mar. 23, 2026 Hr'g Tr. at 8:12-17, 9:18-25. On March 30, 2026,

Defendants counsel informed Plaintiffs' counsel that Defendants did not oppose Plaintiffs' request to file a Second Amended Complaint conditioned on Defendants having at least 30 days to respond. *See* Pls.' Notice Re: Class Cert., Individual Pls., and Class Member Decls. at 6, ECF No. 87.

Plaintiffs filed a motion for leave to file a Second Amended Complaint on April 29, 2026. Pls.' Mot. for Leave to File Second Am. Compl. ("Pls.' Mot. to File SAC"), ECF No. 96.¹ The day of Plaintiffs' filing, Defendants' counsel informed Plaintiffs' counsel that they now opposed Plaintiffs' motion for leave to file a Second Amended Complaint. *Id.* at 1. Plaintiffs simultaneously moved to supplement their class certification briefing to include the newly added putative class representatives and declarations from members of the provisionally certified class. Pls.' Second Mot. to File Suppl. Br. Supp. Class Cert., ECF No. 99. Defendants filed their opposition to both motions on May 14, 2026. Defs.' Opp'n to Pls.' Mot. to File SAC, ECF No. 100; Defs' Opp'n to Pls.' Second Mot. to File Suppl. Class Cert Br., ECF No. 101.

In summary, currently pending before the court are Plaintiffs' motion for class certification (ECF No. 9), the parties cross-motions for summary judgment (ECF Nos. 58, 71), and Plaintiffs motions for leave to file a Second Amended Complaint (ECF No. 96) and additional memorandum regarding class certification (ECF No. 99).

ARGUMENT

A. Plaintiffs' Motion Is Not a Product of Undue Delay.

First, throughout this litigation, Plaintiffs have prosecuted this case on behalf of the putative and provisionally certified class with all due expediency. The instant motion is plainly not

¹ To avoid including inaccurate or stale factual allegations in the Second Amended Complaint, Plaintiffs also updated the status of the factual allegations pertaining to their Paperwork Reduction Act claim based on Defendants' own filings with the Court. Pls. Mot. to File SAC at 3-4. Defendants deem this "unnecessary" but do not appear to oppose these updates. Defs.' Opp'n to Pls.' Mot. to File SAC at 4 n.2.

a product of bad-faith delay. *See Boyd v. District of Columbia*, 465 F. Supp. 2d 1, 4 (D.D.C. 2006) (“timeliness is ‘relevant only insofar as it suggests either bad faith on the part of the moving party or potential prejudice to the non-moving party’”) (quoting *Caribbean Broad. Sys., Ltd. v. Cable & Wireless PLC.*, 148 F.3d 1080, 1084 (D.C. Cir. 1998)).

The current operative class complaint was filed on August 15, 2025, a mere nine months ago. First. Am. Compl. Summary judgment briefing was interrupted by a month and half delay resulting from the government shutdown and resumed mid-November 2025. Nov. 18, 2025 Min. Order. Plaintiffs moved for relief from this delay, which would have led to the conclusion of summary judgment briefing and oral argument nearly two months earlier, and which Defendants opposed. *See* Oct. 21, 2025 Min. Order. Plaintiffs have done everything in their power to proceed with the required expediency throughout this case.

Second, both the initial Complaint, the First Amended Complaint, and the Second Amended Complaint are class complaints. A provisional class, which continues to contain class members with live claims, has been certified. PI Op. at 19-22. Although granting leave to amend is appropriate, repeatedly replacing plaintiffs is not required because of the inherently transitory exception to mootness that has been thoroughly briefed throughout the case. *See J.D. v. Azar*, 925 F.3d 1291, 1308-11 (D.C. Cir. 2019) (per curiam); *Nielsen v. Preap*, 586 U.S. 392, 403-04 (2019) (upholding the exception to mootness for plaintiffs bringing class claims under the transitory doctrine); *see also D.L. v. District of Columbia*, 860 F.3d 713, 721-22 (D.C. Cir. 2017) (rejecting the District’s argument that the certified class could and should have found new named plaintiffs following remand because “[t]his misses the point: when the relation back doctrine applies, as it does here, named plaintiffs have no obligation to find new class representatives even if they could.”); Pls.’ Mot. Summ. J. at 11-14, ECF No. 58, Pls.’ Opp’n to Defs.’ Cross-Mot. Summ. J. at

6, ECF No. 73. Importantly, Defendants have not presented any evidence to the Court that the provisionally certified class lacks class members, and the case of Leo B.’s re-arrest and transfer to ORR years after his initial release shows that the class is replenishable and not closed.² *See* PI Op. 15-16; Pls.’ Opp’n to Defs.’ Cross-Mot. Summ. J. at 4.

As a class action complaint, precedent and regular practice show that adding named plaintiffs and putative class representatives is permissible and appropriate when or after a plaintiffs’ claim becomes moot. *Daniel v. Fulwood*, 310 F.R.D. 5, 7 (D.D.C. 2015) (prior to class certification, ordering plaintiffs to file an “Amended Complaint [that] will reflect substituted class representatives as plaintiffs whose claims are not moot.”); *In re Thornburgh*, 869 F.2d 1503, 1510 (D.C. Cir. 1989) (holding that the trial court should grant leave to amend the complaint to substitute in new plaintiffs when the original plaintiffs’ claims became moot); *Mon v. McAleenan*, No. 19-cv-1593 (JEB), 2019 WL 4225322, at *7-8 (D.D.C. 2019) (applying *Nielsen* to find an exception to mootness for class claims related to challenges to immigration-detention procedures).

Here, at least one Plaintiff and putative class representative—Yair G.—was still detained at the time the Court first raised the prospect of Plaintiffs filing an amended complaint to replace putative class representatives with currently detained children. *See* Mar. 18, 2026 Summ. J. Mot. Hr’g Tr. at 23:5-6, 23:9-23, 24:19-24; Mar. 23, 2026 Hr’g Tr. at 3:10-17, 4:8-5:3. Plaintiffs are not required to constantly and preemptively seek to substitute class representatives. *See D.L.*, 860 F.3d

² While Defendants opined in a single sentence of summary judgment briefing that the provisionally certified class was “non-replenishable” (Defs.’ Mot. Summ. J. Reply at 3, ECF No. 76), there is *no* evidence in the record or before the Court supporting such an assertion or the unstated inference that there are no current provisional class members with live claims. In contrast, there *is* evidence already in the record (Felix Decl. ¶¶ 7-8 (ECF No. 65-2); Shortell Decl. ¶¶ 5, 7-8 (ECF 65-4)) and in Plaintiffs’ proposed supplemental briefing on class certification to rebut any such inference. *See* Pls.’ Second Mot. to File Suppl. Br. Supp. Class Cert., ECF No. 99.

at 721-22. Rather, the case law reflects that *if* substitution is deemed necessary, courts should grant leave to amend a complaint after such individual mootness occurs. *In re Thornburgh*, 869 F.2d at 1509; *Fulwood*, 310 F.R.D. at 7. Seeking leave to substitute the putative class representatives less than a month after the Court identified that substitution may be required is reasonable and does not constitute delay, bad faith or otherwise.

Further, the elapsed time of less than one month between the age-out of Yair G. and the filing of Plaintiffs' motion to seek leave to amend the complaint is not prejudicial. *Infra* Part. B. *See also Harrison v. Rubin*, 174 F.3d 249, 252-53 (D.C. Cir. 1999) (“[W]e have consistently held that delay, without a showing of prejudice, is not a sufficient ground for denying the motion [to amend the complaint].”). Defendants' reliance on *Harrison v. Rubin* to support their claim of prejudice is misplaced and misleading. Defs.' Opp'n to Pls.' Mot. to File SAC at 6. The court in *Harrison* explained the general legal standard for amending a complaint but ultimately held that the district court *had* abused its discretion in denying leave to amend a complaint even though *two years* had passed since the filing of the complaint, the case was nearing trial, and the parties had almost concluded pre-trial discovery. 174 F.3d at 252-53; *cf. In re Brewer*, 863 F.3d 861, 876 (D.C. Cir. 2017) (district court did not err in refusing to substitute new class representatives when plaintiff demonstrated lack of diligence by waiting over a year after receiving notice of impending mandatory retirement before requesting leave to amend). Here, Plaintiffs do not seek leave to add any new legal theories and moved promptly for leave to amend within weeks of Yair's release.

Defendants have not shown any delay by Plaintiffs, because there is none.

B. Granting Plaintiffs' Motion Will Not Prejudice Defendants.

Contrary to Defendants' claim, additional work or expense caused by an amended pleading does not constitute prejudice. *See Bronner v. Duggan*, 324 F.R.D. 285, 292 (D.D.C. 2018) (stating

that if the court “were to employ a policy of denying plaintiffs leave to amend in every situation where an amended complaint may result in additional discovery or expense, then this court would fail to abide by the legal standard of granting leave ‘freely . . . when justice so requires.’”) (citations omitted). Plaintiffs’ Second Amended Complaint, which does nothing more than add additional named plaintiffs and clarify the current status of the sponsor application in line with the parties’ existing filings, will create minimal work for Defendants. Defendants have submitted extremely limited evidence regarding the existing named Plaintiffs’ factual allegations, consisting of one paragraph per child in Mr. Biswas’ declaration. *See* Defs.’ Separate Concise Statement of Genuine Issues (“DSCSGI”) at 41-61, ECF No. 72-1; Defs. Separate Statement of Undisputed Facts (“DSSUF”) at 25-27, ECF No. 72-2 (citing Toby Biswas Decl. ¶¶ 22 (Angelica S.), 23 (Eduardo M.), 24 (Liam W.), 25 (Leo B.), 26 (Xavier L.) (ECF No. 21-1)). Any additional burden on Defendants to verify factual allegations regarding the new child plaintiffs and putative class representatives is minor: Defendants are already in possession of each child’s case file and relevant information and need merely consult their own records and staff.

This does not rise to a prejudicial level of effort or harm, nor does it amount to “a denial of the opportunity to present facts or evidence which would have been offered had the amendment been timely.” *United States v. Honeywell Int’l, Inc.*, 318 F.R.D. 202, 206 (D.D.C. 2016) (quoting *Does I through III v. District of Columbia*, 815 F. Supp. 2d 208, 215 (D.D.C. 2011) (internal quotation marks omitted)); *see also Bronner*, 324 F.R.D. at 292 (granting Plaintiffs’ motion to file a Second Amended Complaint adding defendants because additional likely or required fact gathering is not “undue prejudice”); *City of Moundridge v. Exxon Mobil Corp.*, 250 F.R.D. 1, 6 (D.D.C. April 16, 2008) (“Inconvenience or additional cost to a defendant is not necessarily undue prejudice.”); *United States ex rel. Westrick v. Second Chance Body Armor, Inc.*, 301 F.R.D. 5, 9-10

(D.D.C. 2013) (holding “an amendment is not automatically deemed prejudicial if it causes the non-movant to expend additional resources” and finding no prejudice where “most of the facts cited in the Proposed Second Amended Complaint came from [the opposing party]’s own documents”).

Furthermore, the material facts alleged by the new named plaintiffs and putative class representatives are identical to the existing eight children’s facts: their reunification cases were prevented or stalled because their sponsors or sponsors’ household members could not produce the newly required documentation that has been at issue in this case from the filing of the original complaint. *See* Pls.’ Mot. to File SAC at 6. No additional summary judgment briefing is necessary, because these children’s facts do not change any arguments that have already been briefed. Nor do Defendants dispute the common fact that without the newly required documents, a sponsor cannot proceed with their application. *See, e.g.*, Pls.’ Resp. to DSCGI ¶¶ 14-22, ECF No. 73-2.

Further, there has been no discovery in this case to date and no reason to expect discovery to be necessary. *Cf.* Defs.’ Opp’n to Pls.’ Mot. to File SAC at 7. Defendants produced an administrative record, and their own declaration responding to Plaintiffs’ allegations. Defendants’ concerns related to discovery are inapposite here.

Finally, courts’ openness to substitution is based on the principle that a certified class “acquires a legal status separate from the interest asserted by the named plaintiff.” *United States v. Sanchez-Gomez*, 584 U.S. 381, 388 (2018) (quoting *Genesis HealthCare Corp. v. Symczyk*, 569 U.S. 66, 74 (2013)). This is true even where a change in law rather than fact moots class representatives’ claims. *See Kremens v. Bartley*, 431 U.S. 119, 134–35 (1977) (finding that change in law mooted claims of class representatives and “remand[ing] to the District Court for . . . substitution of class representatives with live claims”). It follows that the prejudice to *Plaintiffs* in

blocking the addition of currently detained plaintiffs and putative class representatives outweighs any inconvenience to Defendants in class action cases, especially where claims are inherently transitory. *See* Part A, *supra*.

C. Alternatively, Plaintiffs' class claims remain live, and the Court may rule based on the current record.

The Supreme Court has recognized that “[s]ome claims are so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative’s individual interest expires,” and that “[i]n such cases, the ‘relation back’ doctrine is properly invoked to preserve the merits of the case for judicial resolution.” *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991) (internal citations omitted). Under the “relation back” doctrine, a motion for class certification relates back to the filing of the complaint with class allegations “at which point the named plaintiff’s claims were live.” 1 William B. Rubenstein, *Newberg & Rubenstein on Class Actions* § 2:13 (6th ed. Dec. 2025 Update); *Swisher v. Brady*, 438 U.S. 204, 213 n.11 (1978) (holding that Defendants’ decisions mooted some of the named plaintiffs claims “did not deprive the District Court of the power to certify the class action”).

Plaintiffs maintain that the Court may relate Plaintiffs’ claims to the filing of the complaint to treat the class claims as live and rule based on the existing record and briefing. *See J.D.*, 925 F.3d at 1308-11; *see also P.J.E.S. by and through Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 509-10 (D.D.C. 2020) (applying the relation back doctrine and the inherently transitory exception to mootness in a case brought by unaccompanied children and holding that “*J.D. v. Azar* is binding precedent on this Court.”) (citation omitted). Despite the release or age-out of the existing named Plaintiffs, standing and mootness “relates back” to the filing of the complaint for the original named Plaintiffs and the First Amended Complaint for Mateo N., Yair G., and David D.

The “inherently transitory” exception to mootness works hand-in-hand with the “relation back” doctrine to allow the Court to rule on the merits of the case even though the individual named Plaintiffs are no longer in ORR custody. Where a trial court “will not have even enough time to rule on a motion for class certification before the proposed representative’s individual interest expires,” the “inherently transitory” exception to mootness applies and again, standing and mootness relate back to the filing of the complaint when individual claims were live. *McLaughlin*, 500 U.S. 52 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 399 (1980)). *See also D.L.*, 860 F.3d at 721-23 (applying the “relation back” doctrine to a class of toddler-aged children asserting claims under the IDEA’s child find obligation).

The inherently transitory exception to mootness commonly arises “in the immigration detention context.” 1 Rubenstein, Newberg & Rubenstein on Class Actions § 2:13. *See, e.g., R.I.L.-R. v. Johnson*, 80 F. Supp. 3d 164, 183 (D.D.C. 2015) (holding that “weeks or months . . . [are] significant enough to create a cognizable injury [but] too short for a court to be expected to rule on a certification motion. So long as the policy remains in effect . . . [t]he class population as a whole thus retains a continuing live claim. Relation back is appropriate.”). Claims and classes defined by childhood are also quintessential transitory claims. Here, claims are both defined by childhood and occur in the detention context. There is no question that both doctrines apply to the claims in this case.

CONCLUSION

For the reasons stated above, the Court should either grant Plaintiffs motion for leave to file the Second Amended Complaint or issue a judgment based on the record currently before the Court.

Date: May 20, 2026

Respectfully submitted,

/s/ Rebecca Wolozin

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

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

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

Counsel for Plaintiffs