

Cert. Br. at 2, ECF No. 101. This is inaccurate. First, it is Defendants that improperly waited until their reply in support of summary judgment to suggest for the first time that the provisionally certified class is closed. *See* Defs.’ Reply in Supp. of Cross-Mot. Summ. J. at 3, ECF No. 76; *see also Taitz v. Obama*, 754 F. Supp. 2d 57, 61 (D.D.C. 2010) (“Courts ordinarily decline to consider arguments that are raised for the first time in a reply to an opposition.”). Defendants provided *no* evidence to support this untimely argument, and at oral argument Plaintiffs pointed to existing evidence in the record indicating there continue to be provisional class members in ORR custody. Mar. 18, 2026 Summ. J. Mot. Hr’g Tr. at 5:17-7:17.

The Court subsequently requested additional evidence that there continue to be provisional class members detained in ORR custody, and Plaintiffs’ proposed filing and declarations respond to that request. *See* Pls.’ Notice at 5, ECF No. 87 (seeking to file class member declarations “to respond to the Court’s request during the March 23, 2026 telephonic hearing”); Mar. 23, 2026 Hr’g Tr. at 8:12-17, 9:18-25 (noting the Court would “be willing to grant some additional time ... for all the new filings to come in” to ensure that the opinion would be written in response to the issues Plaintiffs were pressing and that submitting provisional class member declarations “is an appropriate path” to address the Court’s questions about whether the class contains any current class members).

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)). Given this, it would be improper to dismiss the provisional class’s claims as moot without first considering evidence that some provisional class members continue to have live claims.

II. A Supplemental Memorandum in Support of Class Certification is Necessary if the Court Grants Plaintiffs' Request for Leave to File a Second Amended Complaint.

Defendants make no argument in opposition to Plaintiffs' request to add new named Plaintiffs as class representatives if Plaintiffs' Motion to for Leave to File a Second Amended Complaint (ECF No. 96) is granted. *See* Defs.' Opp'n to Pls.' Mot. to File Suppl. Class Cert. Br. at 2, ECF No. 101 (merely noting that if the motion is denied, "a supplemental brief in support of class certification to address new plaintiffs will not be necessary"). Therefore, should the Court grant Plaintiffs' Motion for Leave to File a Second Amended Complaint, the proposed supplemental brief will be necessary to incorporate the new plaintiffs as class representatives, and the Court should also grant this motion. Doing so would be appropriate for the reasons articulated in Plaintiffs' Second Motion for Leave to File Supplemental Memorandum Regarding Class Certification (ECF No. 99), and for the reasons articulated in Plaintiffs' contemporaneously-filed Reply in Support of Plaintiffs' Motion to File a Second Amended Complaint. The Court previously granted Plaintiffs' similar motion for leave to file a supplemental brief in support of class certification to incorporate the new plaintiffs and putative class representatives added in Plaintiffs' First Amended Complaint. *See* Sept. 5, 2025 Min. Order.

CONCLUSION

For these reasons, good cause exists for Plaintiffs to submit this limited additional briefing and evidence to permit resolution of this case on the merits, and the Court should grant Plaintiffs' Motion for Leave to File Supplemental Memorandum Regarding Class Certification.

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