

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

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

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' SUPPLEMENTAL BRIEF IN
SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND NEW
CLASS REPRESENTATIVES**

INTRODUCTION

Pursuant to the Court’s Minute Order of June 4, 2026, Defendants submit this brief in opposition to Plaintiffs’ Supplemental Brief in Support of Plaintiffs’ Motion for Class Certification and New Class Representatives and supporting exhibits. ECF No. 105; 105-1.

Plaintiffs seek certification of a class for the newly named Plaintiffs defined as: “all unaccompanied children who are or will be in the custody of HHS and who (a) have or had a potential sponsor who has been identified; and (b) the sponsor’s family reunification application has been denied, closed, withdrawn, delayed, or cannot be completed because the sponsor is missing documents newly required on or after March 7, 2025.” ECF No. 105 at 4.¹

The Court should deny Plaintiffs’ request to certify a class because Plaintiffs have not established the commonality requirement under Fed. R. Civ. P. 23(a)(2) or the typicality requirement under Fed. R. Civ. P. 23(a)(3). The commonality prerequisite to class certification requires the moving party to demonstrate that there are common “questions of fact or law” that are “capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *DL v. District of Columbia*, 302 F.R.D. 1, 8 (D.D.C. 2013) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). “[W]hile typicality emphasizes whether the class representative suffered a similar injury from the same course of conduct.” *See Daskalea v. Washington Humane Soc.*, 275 F.R.D. 346, 375 (D.D.C. 2011).

The addition of three newly named Plaintiffs in the amended complaint does not cure the deficiency because they do not share the same relevant characteristics as the previously named Plaintiffs nor do they share the same reliance interests.

¹ Page number citations refer to the page number in the ECF header.

BACKGROUND

Plaintiffs challenge two distinct policy changes: (1) the promulgation of an Interim Final Rule, *Unaccompanied Children Program Foundational Rule; Update to Accord with Statutory Requirements*, 90 Fed. Reg. 13,554 (Mar. 25, 2025) (IFR); and (2) the imposition of the new sponsor document requirements as revised in the Policy Guide. Pls' Second Am. Compl. for Decl. & Inj. Relief, ECF No. 104. The new sponsor document requirements consist of two actions: updates that HHS promulgated on March 7, 2025 to the identity documentation requirements, *see Id.* ¶¶ 52-58, and updates that HHS promulgated on April 15, 2025 to the proof of income requirements, both of which are in Section 2.2.4 of the Office of Refugee Resettlement (ORR) Unaccompanied Alien Children Policy Guide, *id.* ¶¶ 59-62. Plaintiffs allege injury arising out of difficulties in procuring an acceptable form of identification listed in the new proof of identity documentation requirements. *Id.* ¶ 62. ORR does provide for deviation from the list, if supported by clear justification, and allows exceptions on a case-by-case basis by ORR headquarters. *See* ORR Unaccompanied Alien Children Policy Guide 2.2.4, ECF No. 10-10 at 2-3. Plaintiffs allege that, because of the policy changes, their time spent in ORR care and custody, and, as a result, the time that they spend separated from family members, has increased. ECF No. 104 ¶ 62.

On June 9, 2025, the Court granted Plaintiffs' motion for a preliminary injunction and certified a provisional class. ECF No. 35. In determining whether Plaintiffs established a likelihood of success on the merits, the Court concluded that the new document requirements could significantly impact children and their potential sponsors who may have acted in reliance on the documentation policies in existence before March 7, 2025. *Id.* at 15, 22. The Court provisionally certified a class defined as all unaccompanied children who were in or transferred to the custody of HHS on or before April 22, 2025, and who (a) have or had a potential sponsor who has been

identified; and (b) the sponsor's family reunification application has been denied, closed, withdrawn, delayed, or cannot be completed because the sponsor is missing documents newly required on or after March 7, 2025. ECF No. 34 at 1. The Court enjoined ORR from enforcing the new proof of identity and proof of income requirements against all members of the provisionally certified class. *Id.* at 2. The preliminary injunction still is in effect. The named Plaintiffs who were members of the provisional class, Angelica S., Eduardo M., Liam W., Leo B., and Xavier L., have been released from ORR care and custody. These five children's claims, therefore, are moot. The claims of the three Plaintiffs added in the first amended complaint—Mateo N., Yair G., and David D.—are also moot because they are no longer in ORR custody.

On June 4, 2026, Plaintiffs amended their complaint by 1) adding three new individual Plaintiffs and 2) including new factual allegations regarding the Defendants' noncompliance with the Paperwork Reduction Act. *See* ECF No. 104.

Plaintiffs do not raise any new claims in their second amended complaint. ECF No. 104. Plaintiffs ask the Court to add three new individual Plaintiffs, Lorenzo V., Esmeralda C., and Brian G., and ask the court to appoint them as class representatives, along with the existing class representatives. *See* ECF No. 104; 105.

ARGUMENT

Plaintiffs have not met their burden to establish that class certification is warranted under any theory they have proposed. Plaintiffs have not established standing as to their claims arising out of the IFR, nor do they mention the IFR in their proposed class definition. *See* ECF No. 105.

Relying on their previous arguments, Defendants maintain that Plaintiffs have not shown that their claims depend upon a common contention capable of class wide resolution. *See* ECF No. 31; 61. As this court has previously held, "because no individual plaintiff has established standing

to challenge the Interim Final Rule, the Court will address commonality for the sponsor requirements in the Policy guide only.” *See* ECF No. 35 at 20-21. The Court should likewise find that none of the newly added Plaintiffs have standing to challenge the IFR nor can they show their reliance on the proof of identity documentation requirements in effect before March 7, 2025.

A. The New Plaintiffs do not Meet the Requirements of Rule 23

Plaintiffs proposed class without any date limitation should not be certified because the three named Plaintiffs do not share the same relevant characteristics as previously named Plaintiffs and cannot establish commonality or typicality.

First, to satisfy Rule 23(a)(2), the plaintiff must establish that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The “claims [by class members] must depend upon a common contention,” and “[t]hat common contention . . . must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart*, 564 U.S. at 350. Here, class wide resolution is impracticable because the named Plaintiffs’ release from ORR care and custody involves many underlying issues that cannot be directly attributed to the new sponsor requirements.

Lorenzo V., Esmeralda C., and Brian G., argue that they share common injury in that they have endured extended detention by ORR as a result of the new sponsor requirements. ECF No. 105 at 4. However, for all three Plaintiffs, the delay in establishing eligibility for release from ORR care and custody seems to be attributable to factors beyond the reliance on documentation requirements in effect before March 7, 2025. In fact, none of the three named Plaintiffs were in ORR custody prior to ORR’s policy changes in Spring 2025. *See* ECF No. 109-1, Ex. A, June 15, 2026, Declaration of Toby Biswas (“Biswas Decl.”) ¶¶ 3-5. And none had potential sponsors who

originally submitted sponsor applications under the old policies. *See* ECF No. 105-2 ¶¶ 2-3 (Lorenzo V. arrived in September 2025 and his brother became his sponsor after his arrival at the shelter); *See* ECF No. 105-3 ¶¶ 2,3 (Esmeralda C. arrived around September 2025, and her mother became her sponsor); *See* ECF No. 105-4 ¶¶ 2-4 (Brian G. arrived in May 2025 and did not have a sponsor at first).

These factors include the potential sponsor’s unwillingness or delay in obtaining the required documents, securing an alternative sponsor, or maintaining a residence with individuals who cannot provide the required documentation. ECF No. 105-2, ¶¶ 4–6 (Lorenzo V.s’ sister-in-law, a U.S. citizen, residing with his brothers who do not meet the ID requirement); ECF No. 105-3, ¶¶ 3–7 (Esmeralda C.’s mother’s withdrawal and inability to find a suitable substitute sponsor); ECF No. 105-4, ¶¶ 3–8 (Esmeralda C.’s mother qualifying for an exception and being aware of ORR’s new processes, yet being unable to obtain the required documentation); ECF No. 105-5, ¶¶ 3–5 (Brian G.’s cousin withdrawing sponsorship application as a result of family separation concerns and an allegedly lengthy and demanding ORR sponsorship process).

The newly named Plaintiffs raise the same commonality problems as the previous Plaintiffs that were named in the first amended complaint. *See* ECF No. 61 at 8–12. (potential sponsors inability in securing an alternative sponsor or a suitable residence). Therefore, Plaintiffs have not presented a common contention that is “capable of classwide resolution.” *Wal-Mart*, 564 U.S. at 350.

Second, Rule 23(a)(3) requires a finding that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). The typicality requirement ensures that the interests of the named representatives align with the interests of the class. To prove typicality, the representative Plaintiffs must establish that they “possess the same

interest and suffer the same injury” as the other class members. *Damus v. Nielsen*, 313 F. Supp. 3d 317, 331 (D.D.C. 2018).

The representative Plaintiffs have not established that they have typical claims for the same reasons they have not shown commonality. Plaintiffs request to “certify a main class of unaccompanied children in HHS custody affected by the new sponsorship requirements without any date limitation” extends beyond the reliance interests in this case. The named Plaintiffs were all transferred into ORR custody after April 15, 2025. *See* ECF No.109-1, Biswas Decl. ¶¶ 3-5. Thus, the sponsors of any new class member who was transferred to ORR custody after March 7, 2025, or April 15, 2025, would have been put on notice of the new document requirements.

For instance, Brian G. received a positive home study and was recommended for release, subject to federal field specialist’s approval. *Id.* ¶ 5. Despite the pending release, Brian G. suffered an unexpected injury that required medical clearance and subsequent medical attention, including a minor surgery and dental treatment that extended his stay in ORR care and custody. *Id.* Ultimately, his sponsor, withdrew her sponsorship application, even after requesting additional time to finalize her decision. *Id.*

In the cases of Lorenzo V. and Esmeralda C., ORR had made several outreach attempts and even offered Lorenzo’s sister-in-law technical assistance with the sponsorship application process. *Id.* ¶¶ 3-4. ORR followed up with Lorenzo’s sister-in-law multiple times over a month in an attempt to obtain outstanding documentations and schedule a fingerprinting appointment. *Id.* ¶ 3. Esmeralda’s mother informed ORR that she was unable to sponsor Esmeralda due to personal safety concerns, and Esmeralda’s family friend declined to proceed after considering sponsorship responsibilities. *Id.* ¶ 4. Such circumstances further illustrate the myriads of factual differences

that contribute to the extended stay and care by ORR beyond reliance on the documentation requirements. *Id.* ¶¶ 3-5.

Plaintiffs’ proposal to remove the temporal limitations on the class definition would only exacerbate the typicality and commonality problems. Individuals who were in ORR care before the new documentation requirements, for example, arguably have reliance interests that are far different than individuals who came into ORR care after the changes. To ensure that the class is comprised of members who are able to raise similar legal arguments to prove the defendant’s liability, Defendants ask this Court to avoid certifying a class comprised of Plaintiffs who are unaffected by the retroactive application of the sponsor requirements. *See Little v. WMATA*, 249 F. Supp. 3d 394, 420 (D.D.C. 2017); ECF No. 35 at 21.

Even if this Court finds that the named Plaintiffs satisfy Rule 23 requirements, Defendants ask the Court to consider ORR’s responsibility and authority, separate from the documentation requirements, in conducting a thorough assessment of sponsors on a case-by-case basis. *See generally* 8 U.S.C. § 1232(c)(3). Defendants further request that the Court, employing its discretionary power, limit the certification of a potential class to a determinate date in the future.

B. Provisional Class Members in ORR Custody

Plaintiffs argue that Defendants are wrong about the provisional class being “non-replenishable” and that children who entered ORR custody before April 22, 2025, and who had been released to sponsors, are continuously being re-detained and subjected to the challenged identification and income verification policies. *See* ECF No. 105 at 6.

Plaintiffs seem to overlook the definition of the class and temporal limitations set forth in the Court’s order of June 9, 2025. *See* ECF No. 34 at 1. Defendants maintain that a child who was in custody before April 22, 2025, but had a potential sponsor identified today would not meet the

definition of the class set forth in this Court's order of June 9, 2025. ECF No. 34 at 1. Such a child would not have had a sponsor whose family reunification application was denied, closed, withdrawn, delayed or unable to be completed on the basis that the sponsor is missing documents newly required on or after March 7, 2025, and therefore, the child would not meet part (b) of the class definition. *See* ECF No. 34 at 1. Potential sponsors of such children are on notice of the new document requirements issued in March and April 2025 and had been on notice of those requirements when the Court issued its order certifying a provisional class. To read the class definition to include all children who entered ORR custody before April 22, 2025, whose potential sponsor's application was denied, closed, withdrawn, delayed, or cannot be completed, at any time after June 9, 2025, because the sponsor is missing documents newly required on or after March 7, 2025, would render part (b) of the class definition superfluous.

In its June 9, 2025 order, the Court ordered ORR, by June 19, 2025, to inform all potential sponsors of class members who were disqualified or denied based on the new documentation requirements that they may continue their sponsorship applications. *Id.* at 2. Thus, it is reasonable to expect that potential sponsors, who were disqualified or denied after June 19, 2025, are on notice of the new sponsorship requirements and able to gather the documents required to show their suitability for sponsorship or make their case as to why the new requirements should be waived in ORR's discretion, on a case-by-case basis.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' request to appoint Lorenzo V., Esmeralda C., and Brian G. as class representatives and the Court should decline Plaintiffs' request to certify a main class without any temporal limitations and a reliance subclass of children who were in or transferred to the custody of HHS on or before April 22, 2025.

DATE: June 15, 2026

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General

WILLIAM C. SILVIS
Assistant Director

/s/ Oleksiy Isaev
OLEKSIY ISAEV
JOSHUA C. MCCROSKEY
Trial Attorneys
United States Department of Justice
Office of Immigration Litigation
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
(202)-431-1481
oleksiy.isaev@usdoj.gov

Counsel for Defendants