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14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 O.E.O.,

17 Petitioner,

18 v.

19 Fred Figueroa, et al.,

20 Respondents.

No. 2:25-cv-02283-PHX-DWL (MTM)

**RESPONSE IN OPPOSITION TO
MOTION FOR LIMITED DISCOVERY**

21 Respondents Fred Figueroa, Warden, Eloy Detention Center; John E. Cantu,
22 Phoenix Field Office; Todd M. Lyons, Acting Director of U.S. Immigration and Customs
23 Enforcement (“ICE”); Angie Salazar, Acting Director of the Office of Refugee
24 Resettlement (“ORR”);¹ Andrew Gradison, Acting Assistant Secretary for the
25 Administration of Children and Families; Robert F. Kennedy, Jr., Secretary of Health and
26 Human Services (“HHS”); Lucibel Gast, Federal Field Specialist at the Office of Refugee
27 Resettlement; and Kristi Noem, Secretary of the U.S. Department of Homeland Security
28 (“DHS”) (“Respondents”), by the through undersigned counsel, respond in opposition to
Petitioner’s Motion for Limited Discovery (Doc. 49).

¹ Pursuant to Fed. R. Civ. P. 25(d), Ms. Salazar, now the Acting Director of ORR, is substituted for Robin Dunn Marcos, the former Director of ORR.

1 **I. Factual Background.**

2 Petitioner is a native and citizen of Afghanistan. Doc. 29-1 at Ex A. He entered
3 without inspection and without a valid entry document at the Calexico West Port of Entry
4 on November 12, 2024. *Id.* He presented a laminated photograph of an Afghan passport
5 and an Afghan national identity card that listed his year of birth as 2003, which made him
6 21 years of age, but claimed that he had given the authorities in Afghanistan an entirely
7 false date of birth when obtaining the documents and was only 15 years old. *Id.*; Doc. 29-
8 1 at Exs. B & C. He claimed that his true year of birth was 2009. Doc. 29-1 at Ex. A. Due
9 to the conflicting accounts of Petitioner’s age, he was issued a notice to appear in general
10 removal proceedings under 8 U.S.C. § 1229(a) and was referred to ORR. *Id.* Ultimately,
11 after Petitioner’s mother provided additional documentation and Petitioner underwent a
12 dental age assessment, ORR Federal Field Specialist (“FFS”) Lucibel Gast determined,
13 based on the totality of the circumstances and evidence, that Petitioner is an adult, and he
14 was transferred to ICE custody. Once it was determined that Petitioner is an adult, he was
15 placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b). Doc. 29-1 at Ex.
16 A.

17 Petitioner filed this habeas action on June 30, 2025. Petitioner alleges that
18 Respondents: (1) violated Section 235 of the Trafficking Victims Protection
19 Reauthorization Act of 2008 (“TVPRA”), 8 U.S.C. § 1232; (2) violated the *Flores*
20 Settlement Agreement;² (3) acted arbitrarily and capriciously in violation of the
21 Administrative Procedures Act (“APA”) and the *Accardi* doctrine; (4) have “unlawfully
22 withheld” a discrete agency action in violation of the APA; (5) violated the Fifth
23 Amendment’s Substantive Due Process Clause; (6) violated the Fifth Amendment’s
24 Procedural Due Process Clause; (7) lack a factual basis to initiate expedited removal
25 proceedings; (8) violated the Fifth Amendment’s Procedural Due Process Clause by issuing
26 an expedited removal order; and (9) violated the Prison Rape Elimination Act (“PREA”),

27 _____
28 ² *Flores v. Reno* Stipulated Settlement Agreement dated January 17, 1997, and *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016).

1 28 C.F.R. § 115.14(a). At bottom, Plaintiff's Complaint and Petition challenges
2 Respondents' determination that he is an adult.

3 Petitioner seeks an order: declaring that ICE and ORR have acted arbitrarily and
4 capriciously, failed to follow internal policies, unlawfully withheld required agency action,
5 and violated his due process rights; declaring that ICE's decision to detain Petitioner is
6 unlawful under the TVPRA and the *Flores* Settlement Agreement; enjoining Respondents
7 from applying ORR's age re-determination as a basis for expedited removal, custody
8 determination, or other immigration decision; requiring his immediate release from ICE
9 custody to ORR custody; requiring ORR to complete a new age determination and release
10 him to a sponsor; enjoining Respondents from "causing [him] any greater harm[:]" and,
11 awarding attorneys' fees and costs. Doc. 1 at Prayer for Relief. The Petition is fully briefed.
12 Petitioner now seeks discovery related to his APA and *Accardi* claims, arguing that the
13 documents submitted do not establish whether ORR and ICE followed their policies and
14 procedures when determining his age and whether they considered all of the information
15 provided by Petitioner and his family members before making their age determination.

16 **II. Petitioner's APA and *Accardi* claims against ORR are not cognizable in habeas.**

17 This is a habeas action. Petitioner paid the \$5.00 fee to file a habeas action. *See* Doc.
18 1. Petitioner is asserting claims far afield of those than can be brought in habeas. A habeas
19 action challenges the validity of confinement or its duration. The Ninth Circuit has held
20 that claims falling within the "core" of habeas are those that would "necessarily lead to [the
21 petitioner's] immediate or earlier release from confinement[:]" *Nettles v. Grounds*, 830
22 F.3d 922, 935 (9th Cir. 2016) (en banc), *cert. denied*, 580 U.S. 1063 (2017).

23 Here, attempting to evade the fact that Petitioner is not in ORR's custody (and
24 therefore ORR would not be a proper party to a habeas action), he brings an APA claim
25 against ORR alleging that the determination it made regarding Petitioner's age was an
26 abuse of the agency's discretion. Had this claim been brought properly, the Department of
27 Health and Human Services would have sixty days to answer, and a reasonable deadline
28 would have been set for the agency to prepare the administrative record and for the parties

1 to brief cross-motions for summary judgment. Instead, ORR had 5 days to respond to the
2 motion for a preliminary injunction and temporary restraining order, 20 days to prepare
3 and file a response and the administrative record (extended by 11 days). Petitioner now
4 challenges the adequacy of ORR's administrative record, and the decision made by Ms.
5 Gast, and seeks discovery from other federal agencies, including the Department of State,
6 which opined on the authenticity of the Tazkira. Insofar as Petitioner's APA claim against
7 ORR is not cognizable in this habeas action, discovery should be denied on that basis alone.

8 **III. Discovery Standards.**

9 **A. Discovery in habeas actions.**

10 A habeas petitioner, "unlike the usual civil litigant in federal court, is not entitled to
11 discovery as a matter of ordinary course." *Bracy v. Gramley*, 520 U.S. 899, 904 (1997).
12 Under the Federal Rules Governing Section 2254 Cases (the "Habeas Rules"),³ a district
13 court "may, for good cause, authorize a party to conduct discovery under the Federal Rules
14 of Civil Procedure and may limit the extent of discovery." Habeas Rule 6(a). "[W]here
15 specific allegations before the court show reason to believe that the petitioner may, if the
16 facts are fully developed, be able to demonstrate that he is . . . entitled to relief" the
17 petitioner has shown "good cause", and discovery is warranted. *Pham v. Terhune*, 400 F.3d
18 740, 743 (9th Cir. 2005) (per curiam) (quoting *Bracy*, 520 U.S. at 908-09. "A 'good cause'
19 analysis requires the reviewing court to identify the 'essential elements' of the underlying
20 substantive claim, and determine whether petitioner's allegations, if proven, would satisfy
21 those elements and show the violation of a constitutional right." *Williams v. Hall*, 648 F.
22 Supp. 2d 1222, 1225 (D. Or. 2009) (citing *Bracy*, 520 U.S. at 904). Good cause "cannot
23 arise from mere speculation" and "cannot be ordered on the basis of pure hypothesis[.]"
24 *Arthur v. Allen*, 459 F.3d 1310, 1311 (11th Cir. 2006). If discovery is warranted, "Rule
25 6(a) [of the Habeas Rules] makes it clear that the scope and extent of such discovery is a

26 ³ The district court may apply any or all of the Habeas Rules to a habeas corpus petition
27 not brought pursuant to § 2254, including to petitions brought under 28 U.S.C. § 2241.
28 Habeas Rule 1(b); see also *Juda v. Chavez*, No. CV09-1475-PHX-JAT, 2010 WL 1193601,
at *1, n.3 (D. Ariz. Mar. 23, 2010) (applying Rule 6(a) to a § 2241 petition).

1 matter confided to the discretion of the District Court.” *Bracy*, 520 U.S. at 909. Under
2 Habeas Rule 6(b), a party requesting discovery “must provide reasons for the request. The
3 request must also include any proposed interrogatories and requests for admission, and
4 must specify any requested documents.” Habeas Rule 6(b). Petitioner has not done so in
5 this case, instead simply requesting leave of court to serve interrogatories and requests for
6 production, and to take the depositions of the Federal Field Specialist who made the age
7 determination decision for ORR and of a Supervisory Detention and Deportation Officer
8 at ICE who did not make the age determination on behalf of DHS.

9 **B. Discovery in APA actions.**

10 In considering an APA claim, “the focal point for judicial review should be the
11 administrative record already in existence, not some new record made initially in the
12 reviewing court.” *Camp v. Pitts*, 411 U.S. 138, 142 (1973). The APA provides that a court’s
13 arbitrary and capricious review shall be based on “the whole record or those parts of it cited
14 by a party.” 5 U.S.C. § 706. The whole administrative record “includes everything that was
15 before the agency pertaining to the merits of its decision.” *Portland Audubon Soc’y v.*
16 *Endangered Species Comm.*, 984 F.2d 1534, 1548 (9th Cir. 1993). Further, the whole
17 record “consists of all documents and materials directly or indirectly considered by agency
18 decision-makers and includes evidence contrary to the agency’s position.” *Thompson v.*
19 *U.S. Dep’t of Labor*, 885 F.2d 551, 555 (9th Cir. 1989) (citing *Exxon Corp. v. U.S. Dep’t*
20 *of Energy*, 91 F.R.D. 26, 33 (N.D. Tex. 1981)).

21 The administrative record submitted by the federal government is entitled to a
22 presumption of completeness, which is rebutted by clear evidence. *Id.* A court may only
23 consider extra-record materials in the following circumstances: “(1) if necessary to
24 determine ‘whether the agency has considered all relevant factors and has explained its
25 decision,’ (2) ‘when the agency has relied on documents not in the record,’ or (3) ‘when
26 supplementing the record is necessary to explain technical terms or complex subject
27 matter.’” *Sw. Ctr. for Biological Diversity v. U.S. Forest Serv.*, 100 F.3d 1443, 1450 (9th
28 Cir. 1996) (quoting *Inland Empire Public Lands Council v. Glickman*, 88 F.3d 697, 703-

1 04 (9th Cir. 1996)). The Ninth Circuit also permits extra-record documents when a plaintiff
2 demonstrates bad faith by the agency. *Id.* (citing *Nat'l Audubon Soc. v. U.S. Forest Serv.*,
3 46 F.3d 1437, 1447 n.9 (9th Cir. 1993)). These exceptions are narrowly construed and
4 applied. *Lands Council v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2005) (citations omitted).
5 Petitioner, as the party seeking extra-record evidence, has the burden to prove that one of
6 the exceptions applies. *San Luis National Audubon Soc. v. Butler*, 160 F. Supp. 2d 1180,
7 1186 (W.D. Wash. 2001).

8 **IV. Discovery is not warranted in this case.**

9 **A. DHS's administrative record is complete.**

10 The documents relied on by DHS in making its age determination are included in
11 the administrative record. Doc. 53. The administrative record regarding DHS's age
12 determination is sufficient for the Court to determine whether the agency's decision—that
13 the totality of the evidence submitted by Petitioner did not overcome ICE's initial
14 determination that Petitioner is an adult—was arbitrary or capricious. Petitioner seeks to
15 take the deposition of Supervisory Detention and Deportation Officer Chris Hoffman, who
16 is not the DHS employee who made the relevant age determination. Petitioner argues that
17 discovery is necessary because he alleges that DHS has failed to conduct an age
18 determination and/or is now attempting to rationalize its decision after the fact, *see* Doc.
19 49 at 6, n.5, but that assertion is contradicted by the administrative record. *See* Doc. 53 at
20 ICE-AR-0135; ICE-AR-0132–0134. DHS did make a pre-suit decision regarding
21 Petitioner's age—Petitioner simply disagrees with it and wants to inquire into the reasons
22 why DHS found Petitioner's evidence lacking. That DHS formalized its decision via a
23 memorandum prepared after this litigation was initiated is immaterial. Nothing in the
24 regulation or in the Field Office Juvenile Coordinator Handbook specifies the date by
25 which the memorandum must be prepared. The administrative record regarding DHS's age
26 determination is sufficient for the Court to determine what the agency reviewed and
27 whether the agency's decision was arbitrary or capricious, and no additional discovery
28 should be permitted, including the deposition of the non-deciding official.

1 **B. ORR's administrative record is complete.**

2 With respect to ORR's age determination, Petitioner asks for leave to conduct
3 discovery into ORR's evaluation of the Tazkira, family declarations and national IDs, and
4 the Department of State's reasons for determining that the passport appeared genuine while
5 Tazkira appeared altered and why the other documents (medical letter and school record)
6 could not be authenticated. *See, e.g.*, ORR-AR-3191-93; ORR-AR-4044. The Department
7 of State is not a party to this action. ORR relied on the Department of State's assessment,
8 and it was not arbitrary or capricious of it to do so. The reasons for ORR's decision and
9 what it considered are set out in the administrative record (Doc. 54), the original and
10 subsequent age determination memoranda, and in the Declaration of FFS Lucibel Gast
11 (Doc. 43-1 at Ex. 1). The administrative record contains the email sent from Petitioner's
12 counsel to Ms. Gast attaching Petitioner's evidence purporting to establish minority. *See,*
13 *e.g.*, Doc. 54 at ORR-AR-3152-54, ORR-AR-3173; ORR-AR-3187. It includes a letter
14 from Petitioner's mother stating that Petitioner's Tazkira was falsified in order to obtain a
15 passport listing an adult age. ORR-AR-4178. It also includes a letter from a dentist who
16 estimated Petitioner's age at 20-21 with 95% certainty, *see* ORR-AR-3449, and the dental
17 age assessment conducted by another dentist that estimated Petitioner's age at 19.35 years
18 with 77.55% certainty, ORR-AR-3444. That ORR did not receive all of Petitioner's family
19 member's statements until after the May 21, 2025 age re-determination was made and
20 Petitioner was transferred to ORR custody is immaterial, and Ms. Gast declared they were
21 unpersuasive in light of the other evidence in any event. Further, Petitioner claims that his
22 sisters' identity documents do not appear in the administrative record, despite having been
23 provided by ORR, but those documents (like all of the other documents provided by
24 Petitioner's family) appear to have been sent via Whatsapp to Erik Ortiz, an employee of
25 Crittendon Services who was Petitioner's case manager at Crittendon Shelter, not FFS Gast
26 or any other federal employee. Mr. Ortiz selected what information to provide to FFS Gast
27 and does not appear to have always provided everything that was sent to him to ORR. *See,*
28 *e.g.*, ORR-AR-3180; ORR-AR-3182; ORR-AR-3183. If Petitioner's sisters' national

1 identity cards (other than the one for his closest sister that was provided by Petitioner's
2 counsel) were not considered because they were not provided to ORR, it is unclear what
3 impact that would have on Ms. Gast's determination of Petitioner's age.

4 **V. Conclusion.**

5 The administrative records, prepared on an expedited timeline, and about which
6 Petitioner did not confer with Respondents to discuss Petitioner's concern regarding
7 missing documents before filing this motion, are complete, and there has been no showing
8 of good cause to warrant discovery in this habeas action, much less for Petitioner to
9 propound broad discovery that has not been provided to the Court for review pursuant to
10 Habeas Rule 6(b). Given that the crux of Petitioner's claims in this habeas petition is an
11 APA challenge to the ORR and ICE's determination that he is an adult, not a minor, the
12 administrative record is complete, and the Court can determine on the basis of the
13 administrative record whether the decisions made were arbitrary, capricious, or an abuse
14 of discretion.

15 Respectfully submitted this 1st day of October, 2025.

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19 s/ Katherine R. Branch
20 KATHERINE R. BRANCH
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