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

O.E.O.,

Petitioner,

v.

Fred Figueroa, et al.,

Respondents.

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

**MOTION FOR VOLUNTARY
REMAND AND TO STAY
DISCOVERY**

(Expedited Consideration Requested)

Respondents move the Court for a voluntary remand of this matter. At the request of Immigration and Customs Enforcement (“ICE”), the Office of Refugee Resettlement (“ORR”) has accepted custody of Petitioner and placed him at a shelter for unaccompanied alien children in El Paso, Texas. ORR is in the process of performing a new age determination of Petitioner. That process is expected to be completed and a new age determination memorandum issued within three (3) weeks (absent any unforeseen delays). Respondents move for a voluntary remand in order to complete the process and generate a new age determination. They also move to stay discovery—specifically the depositions of Lucibel Gast, Jason Ciliberti and Christopher Hoffman—pending resolution of this Motion.

1 **I. Background.**

2 O.E.O. alleges that he is an unaccompanied alien children from Afghanistan who is
3 improperly being detained as an adult at the Eloy Detention Center. Doc. 1 at ¶¶ 1, 9. At
4 the outset of this action, O.E.O. filed a motion for emergency injunctive relief, asking the
5 Court to order ICE and ORR to rescind their allegedly improper age determinations, to
6 complete an appropriate age determination consistent with statutory guidelines, and to
7 transfer him to an ORR facility or release him to a sponsor. Doc. 2. After emergency
8 briefing, the Court denied the motion because, on the record in existence at that time,
9 O.E.O. had not shown a likelihood of success on the merits of his claim that ORR's and
10 ICE's age determinations were arbitrary and capricious in violation of the Administrative
11 Procedure Act ("APA") and/or the Trafficking Victims Protection Reauthorization Act
12 ("TVPRA") and/or violative of the *Accardi* doctrine and O.E.O.'s constitutional rights.
13 Doc. 32, 35.

14 Subsequently, the Court ordered ORR and ICE to respond to the Complaint and
15 Petition for Habeas Corpus within 20 days of service. Doc. 19. Over Respondents'
16 objections, the Court then granted Petitioner's motion for discovery into the adequacy of
17 the agencies' administrative records and their reasons for their determinations that O.E.O.
18 is not a minor. Respondents have since responded to Request for Production and
19 Interrogatories and produced over 1500 pages of documents. Petitioner has noticed three
20 depositions for this week and next. Docs. 69, 73, 74. Respondents seek to stay discovery
21 (specifically, those depositions) until this Motion is decided.

22 **II. Legal standard.**

23 "Voluntary remand is consistent with the principle that administrative agencies have
24 inherent authority to reconsider their own decisions, since the power to decide in the first
25 instance carries with it the power to reconsider." *Nat'l Res. Def. Council, Inc. v. U.S. Dep't*
26 *of Interior*, 275 F. Supp. 2d 1136, 1141 (C.D. Cal. 2002) (internal quotation and citation
27 omitted); *see Cal. Cmty. Against Toxics v. U.S. Env't Prot. Agency*, 688 F.3d 989, 992
28 (9th Cir. 2012) (per curiam) ("A federal agency may request remand in order to reconsider

1 its initial action.”). When seeking voluntary remand, there are three “litigation positions an
 2 agency might take[:]” first, seeking voluntary “remand because of intervening events
 3 outside the agency’s control[;]” second, seeking voluntary “remand [] without confessing
 4 error[] in order to reconsider its previous position[;]” and third, seeking voluntary “remand
 5 because it believes its original decision is incorrect on the merits and wishes to change the
 6 result.” *Keltner v. United States*, 148 Fed. Cl. 552, 560-61 (2020) (quoting *SKF USA Inc.*
 7 *v. United States*, 254 F.3d 1022, 1027-29 (Fed. Cir. 2001)); *see also Cal. Cmtys. Against*
 8 *Toxics*, 688 F.3d at 992. In other words, remand should be granted so long as “the agency
 9 intends to take further action with respect to the original agency decision on review.”
 10 *Limnia, Inc. v. U.S. Dep’t of Energy*, 857 F.3d 379, 386 (D.C. Cir. 2017). Here,
 11 Respondents’ position falls into the second category. *See, e.g., SKF USA Inc.*, 254 F.3d at
 12 1029 (noting that an agency “might simply state that it had doubts about the correctness of
 13 its decision or that decision’s relationship to the agency’s other policies”). Voluntary
 14 remand is appropriate when the request is reasonable and timely. *See Macktal v. Chao*, 286
 15 F.3d 822, 826 (5th Cir. 2002); *see also Ariz. Pub. Serv. Co. v. EPA*, 562 F.3d 1116, 1122,
 16 1131 (10th Cir. 2009) (granting EPA’s motion for voluntary remand).

17 Whether to grant a request for voluntary remand is within the broad discretion of
 18 the court. *SKF USA Inc.*, 254 F.3d at 1029. “[I]f the agency’s concern is substantial and
 19 legitimate, a remand is usually appropriate.” *Citizens Against the Pellissippi Pkwy.*
 20 *Extension, Inc. v. Mineta*, 375 F.3d 412, 417 (6th Cir. 2004). “Generally, courts only refuse
 21 voluntarily requested remand when the agency’s request is frivolous or made in bad faith.”
 22 *Cal. Cmtys. Against Toxics*, 688 F.3d at 992 (granting remand and citing *SKF USA Inc.*,
 23 254 F.3d at 1029); *see also Limnia, Inc.*, 857 F.3d at 386 (holding that remand should be
 24 granted as long as “the agency intends to take further action with respect to the original
 25 agency action on review.”). In exercising its discretion to grant remand, a court may
 26 consider whether any party opposing remand would be unduly prejudiced. *FBME Bank*
 27 *Ltd. v. Lew*, 142 F. Supp. 3d 70, 73 (D.D.C. 2015).

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1 **III. The Court should grant the voluntary remand.**

2 **A. The agencies have established grounds for voluntary remand of ORR's**
3 **age determination.**

4 Remand is proper in this case because the agencies have voluntarily agreed to re-
5 examine their prior decisions and made make a new determination of Petitioner's age. Due
6 to issues raised in the litigation, ICE asked ORR to re-take custody of Petitioner for the
7 purpose of conducting a new age determination and ORR agreed to do so. By agreeing to
8 re-take custody of Petitioner, ORR has agreed to conduct a new age determination in light
9 of ICE's request and the issues raised in this litigation. ORR's new age determination
10 would supersede its prior determination, which is the subject of this litigation. While ORR
11 completes a new age determination, which will be the third completed by ORR, Petitioner
12 has been removed from adult detention and is at a shelter for juveniles. Because Petitioner
13 has not been determined to be a minor but is housed with minors, ORR's guidelines require
14 that he be monitored at all times.

15 Voluntary remand is appropriate because the agencies have identified "substantial
16 and legitimate concerns" with the May 21, 2025, age determination and seek this voluntary
17 remand so ORR can re-consider the evidence regarding Petitioner's age, including
18 evidence that was either not reviewed by or unavailable to the Federal Field Specialist,
19 Lucibel Gast, when she evaluated Petitioner's age previously. The new age determination
20 will be made by a Supervisory Federal Field Specialist. At this time, the age determination
21 has not been completed but is expected to be complete and a new decision issued within
22 three weeks. Neither ORR nor ICE concede that their prior decisions were wrong.
23 However, ORR concedes that the record is unclear as to what Ms. Gast considered and that
24 Ms. Gast appears to have not reviewed certain documents submitted by Petitioner before
25 making her age determination. Remand would give ORR an opportunity to fully explore
26 and address the concerns raised by Petitioner regarding the evidence that was or was not
27 considered. Remand would also allow ORR to develop a new administrative record, which
28 would benefit the Court and the parties if ORR's third age assessment is unsatisfactory to

1 Petitioner. “[T]his kind of reevaluation is well within an agency’s discretion,” *Nat’l Ass’n*
 2 *of Home Builders v. EPA*, 682 F.3d 1032, 1038 (D.C. Cir. 2012) (citing *Fox Television*
 3 *Stations, Inc.*, 556 U.S. at 514-15), and the Court should allow it. *See Util. Solid Waste*
 4 *Activities Grp. v. EPA*, 901 F.3d 414, 436 (D.C. Cir. 2018).

5 **B. Granting remand conserves judicial resources.**

6 Granting remand here promotes judicial economy and conserves the parties’ and the
 7 courts’ resources. Courts “have recognized that ‘[a]dministrative reconsideration is a more
 8 expeditious and efficient means of achieving an adjustment of agency policy than is resort
 9 to the federal courts.’” *B.J. Alan Co., Inc. v. I.C.C.*, 897 F.2d 561, 562 n.1 (D.C. Cir. 1990)
 10 (quoting *Commonwealth of Penn. v. I.C.C.*, 590 F.2d 1187, 1194 (D.C. Cir. 1978)).
 11 “Remand has the benefit of allowing ‘agencies to cure their own mistakes rather than
 12 wasting the courts’ and the parties’ resources reviewing a record that both sides
 13 acknowledge to be incorrect or incomplete.’” *Util. Solid Waste*, 901 F.3d at 436 (quoting
 14 *Ethyl Corp. v. Browner*, 989 F.2d 522, 524 (D.C. Cir. 1993)). Allowing ORR, in the first
 15 instance, and potentially ICE, if necessary, to make new determinations regarding
 16 Petitioner’s age allows them to address Petitioner’s concerns through the administrative
 17 process. The agencies might resolve Petitioner’s concerns through that process, potentially
 18 rendering unnecessary future litigation that could strain the Court’s and parties’ resources.
 19 Remand would preserve those resources.

20 In addition, continuing to litigate this case wastes the parties’ resources in the
 21 present. Because the only issues presently before the Court¹—whether ORR’s May 21,
 22 2025 age redetermination and ICE’s August 7, 2025 age determination were arbitrary,
 23 capricious, or unsupported by the evidence—will be necessarily re-evaluated by the new
 24 review, remand will allow the agencies to focus their resources on the new age
 25 determination and not prioritize litigation deadlines and brief unnecessary summary
 26 judgment motions. *See Am. Forest Res. Council v. Ashe*, 946 F. Supp. 2d 1, 43 (D.D.C.

27 ¹ The Court is holding the habeas petition in abeyance pending resolution of the APA
 28 complaint, but the habeas is moot as a result of Petitioner’s transfer to ORR custody

1 2013) (because agency did “not wish to defend” the action, “forcing it to litigate the merits
2 would needlessly waste not only the agency’s resources but also time that could instead be
3 spent correcting the rule’s deficiencies.”).

4 With a remand, the Court need not resolve Petitioner’s impending summary
5 judgment motion as the agencies’ new age determinations may render some or all of the
6 dispute moot. The agencies’ new age determinations may fully address and resolve
7 Petitioner’s concerns or, at least, narrow the issues and result in a better administrative
8 record if Petitioner challenges the result of the new age determinations. Even if remand
9 does not resolve all of the claims presented by Petitioner, subsequent judicial review will
10 likely turn on a new and different record that will necessarily alter the nature of this Court’s
11 review. Therefore, continuing to litigate the very same issues that the agencies may resolve
12 through a new age determination decision “would be inefficient,” *FBME Bank*, 142 F.
13 Supp. 3d at 74, and a waste of judicial resources.

14 **III. Remand would not prejudice Petitioner.**

15 Remand would not prejudice Petitioner. ORR and ICE intend to consider and
16 evaluate the issues raised by Petitioner in this litigation. As addressed above, the agencies
17 new age determination decisions may resolve Petitioner’s claims. The agencies will review
18 all of the documents previously submitted by Petitioner, documents submitted by Petitioner
19 in this litigation, and documents that Petitioner’s counsel continues to send directly to the
20 agencies. Petitioner has been moved out of adult detention in the interim.

21 **IV. Discovery should be stayed pending resolution of this Motion.**

22 A district court “has inherent power to control the disposition of the cases on its
23 docket in a manner which will promote economy of time and effort for itself, for counsel,
24 and for litigants.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). Judicial economy
25 will best be served by allowing the Court the opportunity to rule on the agencies’ remand
26 motion before Petitioner deposes ORR and ICE employees about age determinations that
27 may no longer be the operative decisions regarding Petitioner’s age. If ORR determines,
28 upon remand, that Petitioner is a minor, then this litigation is moot. If ORR determines that

1 Petitioner is not a minor, the administrative record underpinning that decision will
2 necessarily be different than the administrative record into which the Court has permitted
3 Petitioner to take discovery, and the decisionmakers will not be the same individuals who
4 made the prior age determinations. Deposing those individuals—when their decisions will
5 no longer be the operative ones and the administrative record will be different—serves no
6 purpose and does not conserve the parties’ time and effort. The agencies would be
7 prejudiced if the requested stay is not granted.

8 The parties conferred regarding the Motion for Remand and regarding a stay of
9 discovery, but Petitioner has indicated that they will oppose the Motion for Remand and
10 have refused to stay or postpone the depositions unless ORR moves Petitioner to a facility
11 of their choice in Southern California.

12 **V. Conclusion.**

13 ORR and ICE seek to voluntarily reconsider their prior decisions regarding
14 Petitioner’s age and in so doing create new administrative records establishing what they
15 reviewed and the reasons for their determination of Petitioner’s age. If Petitioner were to
16 prevail in this action—some months down the line after the parties have briefed summary
17 judgment motions and cross-motions—and the Court determined that the agencies’
18 decisions were arbitrary and capricious, the relief to be ordered by the Court would be to
19 remand to the agencies for new determinations. The agencies are proposing to do that
20 now—thereby saving the parties and the Court time and expense, and the new age
21 determinations may render this case moot. The agencies respectfully request that the Court
22 remand the age determination to the agencies for new decisions and stay discovery pending
23 the outcome of those decisions, submission of new administrative records, and a
24 demonstration by Petitioner that discovery is necessary once the new decisions and
25 administrative records are created in the event that the new decisions rendered do not moot
26 this action entirely.

27 Respectfully submitted this 21st day of January, 2026.

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s/ Katherine R. Branch
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