

1 Alvaro M. Huerta (CA SBN 274787)
2 *ahuerta@immdef.org*
3 Carson Adrianna Scott (CA SBN 337102)
4 *cscott@immdef.org*
5 Alison Steffel (CA SBN 346370)
6 *asteffel@immdef.org*
7 Immigrant Defenders Law Center
8 634 S. Spring St., 10th Fl.
9 Los Angeles, CA 90014
10 Telephone: (213) 634-7601
11 Facsimile: (213) 282-3133
12

13 *Pro Bono Attorneys for Petitioner*

14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF ARIZONA**

16 O.E.O.,

17 Petitioner,

18 v.

19 Fred Figueroa, et al.,
20 Respondents.

Case No. CV-25-02283-PHX-DWL
(MTM)

Hon. Judge Dominic W. Lanza

**PETITIONER'S OPPOSITION TO
RESPONDENTS' MOTION FOR
VOLUNTARY REMAND AND TO
STAY DISCOVERY**

Telephonic Conference Requested

INTRODUCTION

1
2 Just two days before Petitioner is scheduled to take the deposition of Ms. Lucibel
3 Gast, the ORR officer who Respondents concede made errors in her age determination,
4 Respondents move the Court for a voluntary remand and to stay discovery in this case.
5 They do so by misrepresenting Petitioner's position and misconstruing the reasons
6 underlying Petitioner's request for limited expedited discovery and this Court's order
7 granting that request. Contrary to Respondents' claims, Petitioner would have agreed to
8 a stay of discovery had Respondents transferred O.E.O. not to an ORR facility of "their
9 choice" but to any one of six providers who collectively run over fifteen shelters in
10 Southern California with capacity to house O.E.O. But Respondents have inexplicably
11 refused that request and instead have continued to impede O.E.O.'s access to counsel,
12 and his constitutional right to liberty.

13 Further, Respondents still fundamentally misunderstand the present case: O.E.O.
14 is an unaccompanied child who has spent the last eight months in an adult ICE detention
15 facility. On January 1, 2025, he was transferred to an ORR facility in Texas where he is
16 still being treated as an adult and held in isolation at an ORR facility in Texas. O.E.O.
17 brought claims under the Constitution, the Administrative Procedure Act ("APA"), and
18 the TVPRA (8 U.S.C. § 1232) challenging the legality of his age determination and his
19 detention which has now become prolonged.¹ Contrary to Respondents' arguments, this
20 case is not simply an APA case and the discovery that this Court granted is meant to
21 develop the factual record on his non-APA claims as well. *See* Dkt. 1, Comp. at 25–26;
22 *See also* Dkt. 49, Mot. For Limited, Expedited Discovery at 4–5. Petitioner does not
23 oppose Respondents' request for voluntary remand as to the APA claims against ORR,
24 but Petitioner does oppose a stay of discovery should this Court grant voluntary remand,
25

26 ¹ Petitioner has been in government custody since November of 2024, with eight of those
27 fourteen months being spent at an adult ICE detention facility. *See generally* Dkt. 1; *see*
28 *also* Fox Decl. Petitioner's claims extend through his release from ORR custody. *See*
Dkt. 1 at 30.

1 given many of Petitioner's claims in this case remain live despite the agency remand in
2 an attempt to cure the APA violations at issue. Should this Court order a stay of
3 discovery and prolong this litigation, O.E.O.'s irreparable injury of being detained in
4 violation of his rights will compound each day that he remains in detention. For these
5 reasons, this Court should deny Respondents' request to stay discovery and allow the
6 case to proceed toward a final resolution, and also order Respondents to transfer O.E.O.
7 to a shelter within the jurisdiction of his counsel. *See* Dkt. 1 at 25–30. Petitioner also
8 respectfully requests that this Court hold a telephonic conference on this motion the
9 morning of January 22, 2026.

10 **FACTUAL BACKGROUND**

11 O.E.O. is an unaccompanied minor who was held for eight months at the Eloy
12 Detention Center, an adult ICE detention facility. Dkt. 1, Complaint at ¶¶ 1, 9. On June
13 30, 2025, Petitioner filed a Petition/Complaint and a Motion for a Temporary Restraining
14 Order, alleging violations under the TVPRA, the APA, and the Constitution. Dkt. 1,
15 Dkt. 2. On August 15, 2025, Respondents filed their respective administrative records
16 and the sworn declaration of Federal Field Specialist ("FFS") Gast, both of which raise
17 significant factual inconsistencies. *See* Dkt. 43; *see also* ORR-AR; ICE-AR. On
18 September 12, 2025, Petitioner filed a Motion for Limited, Expedited Discovery,
19 requesting limited interrogatories, requests for productions, and depositions. *See* Dkt.
20 49. Recognizing discrepancies in the factual bases underlying both ORR and ICE's age
21 determinations, this Court granted that motion on November 12, 2025. *See generally*
22 Dkt. 59. Since that order, Counsel for Petitioner has diligently pursued discovery. *See*
23 *generally* Scott Decl., Ex. A, Ex. B (email exchanges between Opposing Counsel and
24 Counsel for Petitioner). Throughout discovery, opposing counsel delayed complying
25 with Respondents' discovery obligations as required by this Court, including by seeking
26 an extension on the same day Respondents' productions were due, by delaying meeting
27 and conferring with Petitioner on discovery disputes, and now, by, filing a motion to stay
28

1 discovery shortly before the first scheduled deposition, while misrepresenting
2 Petitioner's position. *See id.*

3 On December 31, 2025, Opposing Counsel emailed Counsel for Petitioner stating
4 that "ERO is willing to transfer [O.E.O.] to ORR for ORR to make a new age
5 determination." *See* Scott Decl., Ex. A at 6. Counsel for Petitioner requested that
6 O.E.O. be transferred to an ORR facility in California in order to facilitate Petitioner's
7 access to counsel. *See id.* at 3–5. Opposing counsel stated that "[i]t is not operationally
8 feasible for ORR to transfer your client to Southern California while it makes the age
9 determination. He would be placed at a location in Arizona." *See id.* at 5. Counsel for
10 Petitioner asked Opposing Counsel to inform them when O.E.O. would be moved. *See*
11 *id.* 1–5. Opposing Counsel never responded and instead Counsel for Petitioner found out
12 about O.E.O.'s transfer out of Arizona to Texas on January 4, 2026. *Id.* at 1. Counsel
13 for Petitioner then requested O.E.O. be transferred to California given Opposing
14 Counsel's prior representation that O.E.O. would stay in Arizona and because there is
15 available capacity at multiple facilities in Southern California. *Id.* Opposing Counsel
16 did not respond to that request. *Id.*

17 On January 2, 2026, Counsel for Petitioner served Opposing Counsel with notices
18 of the depositions of Christopher Hoffman, Jason Ciliberti, and Lucibel Gast. Ex. B at
19 18. Ms. Gast's deposition was scheduled for January 16, 2026, and Officer Hoffman and
20 Ciliberti for January 20 and 21, 2026, respectively. *See* Dkt. 65–67. Twelve days ago,
21 on January 9, 2026, Opposing Counsel informed Counsel for Petitioner that Ms. Gast
22 was no longer available for her scheduled deposition due to emergency family leave and
23 that they would be filing a motion for voluntary remand and a motion to stay discovery.
24 Ex. B at 15. That same day Counsel for Petitioner responded, requesting Opposing
25 Counsel comply with LR 7.2(j) and this Court's Case Management Order by meeting and
26 conferring regarding the impending motions and potential dates for Ms. Gast's
27 deposition. *Id.* at 14. Counsel for Petitioner offered various times they were available

1 for a meet and confer and followed up via phone call and email on January 12 and
2 January 13, 2026, to schedule a meet and confer. *Id.* at 11–14. Four days after Counsel’s
3 initial request for a meet and confer, Opposing Counsel stated they were available the
4 next day, on January 14, 2026. *Id.* at 11.

5 During the January 14 meet and confer, Counsel for Petitioner clearly stated that
6 Petitioner would be willing to stay discovery until the next age determination was
7 completed if Respondents transferred O.E.O. to a facility in Southern California to
8 facilitate attorney access. Scott Decl. at ¶ 6. Petitioner did not, as Respondents
9 misrepresented, request “a facility of [our] choice,” but rather informed Opposing
10 Counsel of six different providers in Southern California, who run a combined fifteen
11 different ORR shelters, all of which currently have capacity to take custody of O.E.O.
12 *Id.* Counsel for Petitioner also informed Opposing Counsel that they would be willing to
13 help facilitate O.E.O.’s transfer to Rancho San Antonio Shelter in Chatsworth, a shelter
14 with which O.E.O.’s counsel’s organization, Immigrant Defenders Law Center
15 (“ImmDef”) holds a strong stakeholder relationship. *Id.* As promised, Counsel for
16 Petitioner emailed Opposing Counsel the list of the six providers on January 14, 2026
17 *See* Ex. B at 7.

18 The parties also discussed an alternative date for Ms. Gast’s deposition. *See* Scott
19 Decl. at ¶ 7. Opposing Counsel informed Counsel for Petitioner that Ms. Gast was
20 officially returning to work on January 19, 2026, and thus available that week. *Id.* The
21 parties discussed noticing the deposition for January 23, 2026. *Id.* At no point during
22 the meet and confer or over email did Opposing Counsel state that she was unavailable to
23 travel that Friday, nor did she request an accommodation to appear remotely, which
24 Counsel for Petitioner would have accommodated. *Id.*

25 On January 16, 2026, Petitioner sought an extension of the deposition deadline
26 with this Court, which Respondents did not oppose, in part because Counsel for
27 Petitioner was willing to continue discussions of O.E.O.’s transfer to Southern California

28

1 and alternative resolutions to the present case. *See* Dkt. 71; *see also* Dkt. 59 (ordering
2 the parties to confer on an alternative scheduling order). This Court granted that request
3 and Petitioner noticed Hoffman and Ciliberti's depositions for the following week, on
4 January 29 and 30, 2026. *See* Dkt. 72–73.

5 On Wednesday, January 21, 2026, at 9:56 AM PST, Respondents filed their Motion
6 for Voluntary Remand and To Stay Discovery with this Court, misrepresenting
7 Petitioner's position and failing to inform the Court of Petitioner's intent to file a
8 response. *See* Dkt. 75. At 12:14 PM PST, Opposing Counsel emailed Counsel for
9 Petitioner and informed them that she has not had a chance to prepare Ms. Gast for her
10 deposition and is "not available to travel to LA on Friday." *See* Ex. B at 2. Opposing
11 Counsel also informed Counsel for Petitioner that "DFOD Ciliberti has been detailed,"
12 and that she was trying to determine whether he was in the Phoenix area, where his
13 deposition had been noticed to take place more than two weeks earlier. *Id.*; *see also* Dkt.
14 57. Counsel for Petitioner replied at 1:41 PM PST requesting Opposing Counsel inform
15 the Court of their intent to respond to her motion. *See* Ex. B at 1. At 2:55 PM PST,
16 Opposing Counsel filed a Notice of Expedited Consideration, without specifying
17 Petitioner's intent to reply. *See* Dkt. 76.

18 19 ARGUMENT

20 This Court should deny Respondents' Motion for Voluntary Remand and to Stay
21 Discovery pending Respondent ORR's new age determination for two main reasons: (1)
22 Respondents' Motion misrepresents Petitioner's position; and (2) Petitioner's complaint
23 alleges constitutional and statutory claims for which discovery is necessary, and the
24 agency's voluntary remand does not obviate the need for discovery on those claims.
25 Additionally, Petitioner would be prejudiced by a stay of discovery, and the stay of
26 discovery will not conserve judicial resources.

I. Respondents Misrepresented Petitioner's Position in Their Motion for Voluntary Remand and to Stay Discovery

Petitioner never stated that O.E.O. needed to be transferred “to a facility of [our] choice in Southern California.” Dkt. 75 at 7. Rather, Petitioner assisted Respondents by providing a list of over fifteen shelters in Southern California that had capacity to house O.E.O. *See* Ex. B at 7. Counsel for Petitioner highlighted a specific shelter with which ImmDef has a strong stakeholder relationship and offered to advocate on their end O.E.O.’s transfer. *Id.* If O.E.O. was transferred to Southern California, Petitioner was more than willing to stay discovery until after the age determination. *See generally* Scott Decl. These facts show a strong willingness on Petitioner’s part to collaborate on swift resolution of this case, but Respondents have refused, giving no reason as to why O.E.O. cannot be transferred to the jurisdiction of his counsel. *See* Ex. A; Ex B.

Further, Petitioner has previously moved this court to prevent O.E.O.’s transfer outside the jurisdiction of this Court or the jurisdiction of the Central District of California, away from his counsel. *See* Dkt. 1 at 30; *see also* Dkt. 2, TRO at 32. As argued *infra*, O.E.O. is prejudiced by his movement to Texas and is suffering further irreparable harm as a result of this transfer. *See generally* Fox Decl. This court previously declined to enter an order preventing his transfer on the request for a TRO, but that decision was prior to the factual development of this case and prior to his transfer back to ORR custody. *See* Dkt. 59. Petitioner thus respectfully requests that this Court consider ordering O.E.O.’s transfer back to the Central District of California, where he is able to access his counsel. Courts have expressed concern when immigration detainees are transferred in a way contrary to ICE policy, “which counsels against transfers outside an Area of Responsibility when a detainee’s family and attorney are within the Area of

1 Responsibility.” *Castaneda v. Garland*, 562 F. Supp. 3d 545, 554 (C.D. Cal. 2021); see
2 also *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 565 (9th Cir. 1990) (enjoining
3 transfers to different districts when doing so interferes with attorney-client relationships).
4 Here, O.E.O.’s transfer to Texas has further impeded his ability to access counsel and
5 further highlighted the need for depositions to proceed. *See generally* Fox Decl. This
6 court should thus deny Respondents’ request and instead order O.E.O.’s transfer to
7 Southern California and an extension of the deposition deadline rather than a stay of
8 discovery if Opposing Counsel needs additional time.²

10 **II. Voluntary Remand Is Not A Sufficient Basis to Stay Discovery Because**
11 **O.E.O. Has Claims Beyond the APA and Will Suffer Prejudice**

12 Petitioner does not oppose voluntary remand, but strongly opposes that voluntary
13 remand is a basis for a stay of discovery in this case. O.E.O. has alleged constitutional
14 and statutory violations from the initiation of this litigation that will not be resolved
15 should this Court grant voluntary remand. *See* Dkt. 1 23–27. Additionally, O.E.O. will
16 suffer prejudice and will continue to suffer irreparable harm should this Court stay
17 discovery while Respondents force him to remain in isolation and subject to one-on-one
18 supervision throughout the age determination process, all while access to counsel is
19 strongly impeded.
20
21
22
23
24
25

26 ² Opposing Counsel has had ample time to prepare Ms. Gast for depositions, having
27 already received a week extension of the deposition deadline. Regardless, if Respondents
28 required more time, Respondents should have timely requested further extension of the
deposition deadline.

A. Discovery Should Continue Based on Petitioner's Constitutional and Statutory Claims

After nearly eight months of litigating O.E.O.'s wrongful detention in an adult ICE facility, Respondents still misunderstand the claims before this Court. Less than two days before the first deposition, Respondents move this Court to stay discovery altogether,³ alleging that "the only issue presently before the Court" is "whether ORR's May 21, 2025 age redetermination and ICE's August 7, 2025 age determination were arbitrary, capricious, or unsupported by the evidence." Dkt. 75 at 5. In support of that argument, Respondents claim the Court is holding in abeyance the habeas petition pending resolution of the "APA complaint." Dkt 75 at 5. But that misrepresents O.E.O.'s claims and this Court's order on discovery.

Petitioner's civil complaint includes many claims that go beyond just the APA, but most importantly it includes the following three claims which remain unresolved: (1) First Claim – Violation of U.S.C. § 1232; (2) Fifth Claim – Violation of the Fifth Amendment: Procedural Due Process; and (3) Sixth Claim – Violation of the Fifth Amendment: Procedural Due Process. These claims do not go away simply because "the agencies have identified 'substantial and legitimate concerns' with the May 21, 2025," age determination yet refuse to "concede that their prior decisions were wrong."⁴ Dkt.

³ Respondents are seeking to stay discovery two days before depositions begin, with Respondent's counsel stating that a delay is necessary because she has not yet prepared the deponent and cannot travel to Los Angeles, California, for the deposition. Ex. B at 2. But the fact that discovery may involve inconvenience and expense is not sufficient, standing alone, to support a stay of discovery. *Kor Media Grp., LLC v. Green*, 294 F.R.D. 579, 583 (D. Nev. 2013). Respondents' counsel also stated that that a second deponent is not available for his deposition at all, Ex. B at 2, despite this Court's order requiring depositions to take place by January 26, which was later extended to February 2, 2026.

⁴ Respondents maintain that ORR and ICE were not wrong in their prior age determinations but, in the same breath, acknowledge that there are "substantial and legitimate concerns" with ORR's prior age determination, including that Federal Field Specialist Lucibel Gast did not review evidence she was required to review when she previously evaluated Petitioner's age. Dkt. 75 at 4. Respondents' position thus raises concerns that the same due process errors that Petitioner has raised will recur.

1 75 at 4. The violation of O.E.O.’s constitutional and statutory rights are issues that
 2 require the depositions to move forward and O.E.O. clearly sought limited discovery
 3 based on his constitutional and statutory claims as well. *See* Dkt. 49, Petitioner’s Motion
 4 for Limited, Expedited Discovery at 4–5 (arguing that limited, expedited discovery is
 5 warranted, in part, because Petitioner brings constitutional claims alongside his APA
 6 claims); *see also Emami v. Nielsen*, No. 3:18-cv-01587-JD, at *3 (N.D. Cal. Sept. 12,
 7 2019) (“The key inquiry is what discovery is proportional and fair in light of the claim at
 8 this time.”); *Grill v. Quinn*, No. CIV S–10–0757 GEB GGH PS, 2012 WL 174873, at *2,
 9 5 (E.D. Cal. Jan. 20, 2012) (finding courts are entitled to look beyond the administrative
 10 record in regards to constitutional challenges brought in addition to APA claims); Dkt.
 11 58 at 1 (quoting Dkt. 1 at ¶¶ 81–109) (“O.E.O.’s complaint clearly brings constitutional,
 12 APA, and Accardi claims against all Respondents and seeks relief beyond release from
 13 detention.”).

14 Further, this Court acknowledged in its order granting limited discovery that
 15 O.E.O. sought limited discovery “based on the additional claims raised in his
 16 complaint/petition,” and stated that it “will simply treat O.E.O.’s pleading, at least for
 17 now, as a civil complaint and disregard the habeas claims.” Dkt. 59 at 5–6.⁵ Given
 18 Petitioner’s civil complaint raises claims beyond the APA, this court should allow
 19 discovery to proceed.

20 **B. Petitioner Will be Prejudiced by a Stay of Discovery**

21 Petitioner has spent 224 days in ICE custody, and despite currently being in ORR
 22 custody, he is still treated as an adult. Fox Decl. at ¶¶ 7, 9. Petitioner has consistently
 23

24
 25 ⁵ The Court also ordered the parties to meet and confer to discuss whether a new
 26 scheduling order should issue. Dkt. 59 at 10. The Parties met and conferred on this part
 27 of the Court’s order on December 5, 2025. *See generally* Ex. A. Counsel for Petitioner
 28 proposed an alternative resolution. *Id.* Opposing counsel agreed to check with her clients
 and never responded to further inquiries from Counsel for Petitioner as to that proposal.
Id. at 9–10.

1 sought expeditious resolution of this case. Allowing discovery to proceed as to his
2 constitutional and statutory claims will allow the parties to narrow the issues in the case
3 while his age re-determination is pending. The agency's request for voluntary remand
4 will not resolve Petitioner's non-APA claims, and a stay in discovery will only delay the
5 Court's ability to adjudicate those claims. Respondents assert that the new age
6 determination will last at least three weeks. *See* Dkt. 75 at 1. These are three additional
7 weeks that O.E.O. will be subject to isolation and one-on-one supervision with zero
8 movement on his case should this Court stay discovery. Additionally, there are no
9 assurances that this litigation will be resolved at the conclusion of ORR's current age
10 determination. It will take the agency additional time to compile a new Administrative
11 Record, further prolonging Petitioner's detention and this litigation.

12 Further, Respondents' continued delay tactics have only compound the irreparable
13 injury suffered by Petitioner. Petitioner will continue to be subject to isolation and
14 invasive monitoring throughout his time in ORR custody, or alternatively, he could be
15 transferred back to ICE custody at any moment. ORR's redundant requests for evidence
16 are putting his family in Afghanistan in danger. Fox Decl. at ¶ 7. Additionally, as raised
17 in the TRO, his continued detention has delayed his ability to seek immigration relief,
18 including affirmative asylum before USCIS and Special Immigrant Juvenile Status. Dkt.
19 2 at 30. O.E.O. also suffered irreparable injury when Respondents transferred him
20 across state lines to Arizona and then to Texas, even further away from his counsel,
21 without notifying his counsel of his transfer. *See generally* Fox Decl.; see also Dkt. 11,
22 Fox Decl. at ¶ 19–22. Courts have expressed concern when immigration detainees are
23 transferred in a way contrary to ICE policy, "which counsels against transfers outside an
24 Area of Responsibility when a detainee's family and attorney are within the Area of
25 Responsibility." *Castaneda v. Garland*, 562 F. Supp. 3d 545, 554 (C.D. Cal. 2021); *see*
26 *also Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 565 (9th Cir. 1990) (enjoining
27 transfers to different districts when doing so interferes with attorney-client relationships).

28

