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

O.E.O.,
Petitioner,

vs.

Fred Figueroa, et al.,
Respondents.

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

**PETITIONER'S REPLY IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Date: TBD
Time: TBD
Dept: TBD
Judge: Hon. Dominic W. Lanza
Date Action Filed: June 30, 2025

TABLE OF CONTENTS

Page

INTRODUCTION.....	1
STATEMENT OF FACTS.....	1
ARGUMENT	3
I. Petitioner’s Remaining Claims Are Not Claims Sounding Only in Habeas Relief.....	3
II. Respondents’ Voluntary Cessation Does Not Moot O.E.O.’s Case	5
A. The Voluntary Cessation Doctrine Applies.....	5
B. O.E.O.’s Case Is Not Moot Because There Remain Collateral Consequences That Can Be Redressed By Relief.....	6
CONCLUSION	8

INTRODUCTION

After nearly a year of litigation, Defendants still misunderstand the claims brought by O.E.O. and take no responsibility over the severity of the harms inflicted on O.E.O., an unaccompanied child. Respondents assert that O.E.O.’s “case is now clearly moot” because “he can [no] longer be said to be ‘in custody’ as required for habeas jurisdiction.” Dkt. 101 at 2. But this case was never just about O.E.O.’s release. O.E.O. brought habeas claims against Respondent ICE, who, at the time of filing, held Petitioner in an adult detention facility, *and* a civil complaint challenging both Respondent ICE’s and ORR’s unlawful behavior. *See* Dkt. 1, Complaint and Petition for Writ of Habas Corpus at 29–30. Regardless, courts have long held that a defendant’s voluntary cessation “cannot automatically moot a case simply by ending its unlawful conduct once sued.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). But for this litigation, O.E.O. would likely still be languishing in an adult facility in violation of his statutory and constitutional rights. Defendants have notably only “course corrected” in the face of discovery and motions briefing deadlines, or pursuant to orders from this Court, and now wish to evade a decision from the Court affirming that Petitioner’s rights were violated. Absent an order from this Court, there is nothing to protect O.E.O. from suffering future harm at the government’s hands. For the reasons argued below, the Court should grant Petitioner’s preliminary injunction and allow the parties to proceed to summary judgment.

STATEMENT OF FACTS

On June 30, 2025, O.E.O. filed a civil Complaint and Petition for Writ of Habeas Corpus challenging his confinement in an adult detention facility and the violation of his statutory and constitutional rights. *See generally* Dkt. 1, Compl. On August 15, 2025, Respondents filed their Response, which revealed even more troubling aspects of their flawed age determination, including the fact that ORR sent the wrong version of O.E.O.’s identity document, a Tazkira, for evaluation by the Afghan Affairs Unit, among other

1 problems. *See generally* Dkt. 43, Response to Compl. and Pet. for Writ of Habeas
2 Corpus; *see also* Dkt. 45, Petitioner's Traverse in Support of Compl. and Pet. for Writ of
3 Habeas Corpus at 5–6. In Response, O.E.O. filed a Motion for Limited, Expedited
4 Discovery requesting narrowly tailored interrogatories, requests for production, and
5 depositions. *See* Dkt. 49, Mot. for Limited, Expedited Discovery at 9. This Court
6 granted that request on November 12, 2025. *See* Dkt. 59, Order. O.E.O. diligently
7 pursued discovery from Respondents and scheduled three depositions. *See* Dkt. 77 at 2,
8 Petitioner's Opp. to Resp't Mot. for Voluntary Remand and to Stay Discovery. But, as
9 the discovery process unfolded, Respondents continuously delayed complying with their
10 obligations, seeking extension after extension. *See* Dkt. 77 at 2.

11 On New Years Eve, Respondents transferred O.E.O. out of ICE custody and into
12 an ORR facility in Texas, far away from his counsel. *Id.* at 3. But Respondents had not
13 yet rescinded their unlawful age determination and were still treating O.E.O. as an adult
14 by holding him under isolated conditions. *Id.* at 4. Just days before the first scheduled
15 deposition, Respondents moved this Court to stay discovery but took no action to correct
16 their unlawful age determination, which continued to infringe on O.E.O.'s constitutional
17 and statutory rights. *Id.* It was not until the Court ordered Respondents to conduct an
18 age determination within three weeks that they complied with their legal obligations. *See*
19 Dkt. 80, Order; *see also* Dkt. 87, Notice of Compliance. After nine months, ORR finally
20 re-designated O.E.O. as an unaccompanied minor. *See* Dkt. 87, Notice of Compliance.
21 Despite the rescission of their unlawful age determination, O.E.O. continued to languish
22 in government custody and suffer impediments to his right to seek relief under the
23 TVPRA. *See generally* Dkt. 99, Mot. for Preliminary Injunction. On April 24, 2026,
24 O.E.O. filed a motion for preliminary injunction, asking the Court to order his immediate
25 reunification with his family, enjoin Respondents from continuing to impede his ability to
26 seek relief under the TVPRA, and order Respondents to provide a hearing before a
27 neutral adjudicator if they wish to re-detain him. *Id.* On May 2, 2026, seventeen months
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1 after unlawfully detaining him, Respondents suddenly released O.E.O. to his sponsor
 2 prior to their deadline to respond to the preliminary injunction motion and now claim this
 3 case is moot. *See* Dkt. 101 at 3. They are wrong.

4 **ARGUMENT**

5 Respondents' opposition to O.E.O.'s preliminary injunction is premised on two
 6 arguments: (1) that this case is only a habeas case; and (2) that O.E.O.'s release moots
 7 the entirety of the case. Neither proposition is supported by the filings and orders in this
 8 case or the governing legal standards.

9 **I. Petitioner's Remaining Claims Are Not Claims Sounding Only in Habeas** 10 **Relief**

11 To start, Respondents are wrong to frame this case as a "habeas case" challenging
 12 only O.E.O.'s unlawful detention. As described below, O.E.O. challenged not only his
 13 unlawful detention but also violations of his statutory and constitutional rights. Moreover,
 14 Respondents forget that the Court has already determined it would proceed with O.E.O.'s
 15 civil claims while pausing his habeas claims.¹ *See* Dkt. 59, ORDER at 6 ("[T]he Court
 16 will simply treat O.E.O.'s pleading . . . as a civil complaint and disregard the habeas
 17 claims.").

18 On June 30, 2025, O.E.O. filed the present case as a civil Complaint and a Petition
 19 for Writ of Habeas Corpus (Complaint/Petition), raising distinct claims as to Respondent
 20 ORR and Respondent ICE. As to Respondent ORR, O.E.O. raised APA, constitutional,
 21 and statutory claims challenging its unlawful age determination and the harmful
 22 consequences that flowed from that determination. *See* Dkt. 1, Compl. at ¶¶ 81–109. As
 23 to Respondent ICE, O.E.O. also raised APA, constitutional, and statutory claims
 24 challenging its unlawful age determination, or lack thereof, and its unlawful detention of
 25 O.E.O., an unaccompanied child, in an adult detention facility. *Id.* Notably, the habeas
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 28 ¹ *See also* Dkt. 61, Order (granting Petitioner's request to proceed *in forma pauperis* as to
 the fee for filing a civil complaint).

1 claims were raised only as to Respondent ICE because that agency held custody over
2 O.E.O. at the time of filing. *See* Dkt. 1, Compl. at 30 (prayer for relief requesting the
3 Court “[g]rant the petition and issue a writ of corpus commanding Petitioner’s immediate
4 release from Respondent ICE’s custody . . .”).

5 The unique circumstances of Respondents’ unlawful actions violating O.E.O.’s
6 TVPRA and constitutional rights necessitated raising his civil complaint claims
7 concurrently with his urgent need for habeas relief. Indeed, courts have held that “habeas
8 claims need not be brought to the exclusion of all other claims.” *Abrego Garcia v. Noem*,
9 777 F. Supp. 3d 501, 510 n.10 (D. Md. 2025); *see also R.I.L-R v. Johnson*, 80 F. Supp. 3d
10 164, 185 (D.D.C. 2015) (“APA and habeas review may coexist.”); *J.G.G. v. Trump*, 772
11 F. Supp. 3d 18, 31 (D.D.C. 2025) (noting the APA has “long been available to plaintiffs .
12 . . even in immigration challenges where habeas is also available.”); *Goncalves v. Reno*,
13 144 F.3d 110, 120 (1st Cir. 1998) (finding APA review did not repeal habeas review in
14 immigration cases). Here, O.E.O.’s unlawful detention and the deprivation of both his
15 constitutional and TVPRA rights stemmed from Respondent ORR’s unlawful May 21
16 Memo. *See* Dkt. 45, Traverse, at 5–6. But for O.E.O. to be made whole, his requested
17 relief differed as to each Respondent. From ORR, O.E.O. sought rescission of the
18 memorandum that determined him to be an adult, landed him in adult detention, and
19 prevented him from accessing his TVPRA rights, including the ability to apply
20 affirmatively for asylum. *See* Dkt. 1, Compl. at 29–30 (Prayer for Relief). As to ICE,
21 O.E.O. sought not only release from custody, but also declaratory relief finding ICE
22 violated its obligations to conduct a proper age determination under both the agency’s
23 policies and the TVPRA. *Id.* Although O.E.O.’s claims relied on the same underlying
24 premise—i.e., that Respondents’ age determinations were each unlawful—the claims
25 must co-exist because they “reach separate issues and request distinct relief.” *Bautista v.*
26 *Santacruz*, 813 F. Supp. 3d 1084, 1107 (C.D. Cal. 2025) (“Petitioners’ APA and habeas
27 claims must be permitted to coexist because they reach separate issues, and request
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1 distinct relief, despite relying on the same underlying premise that the DHS Policy is
2 unlawful.”). Thus, this Court should reject Respondents’ framing of O.E.O.’s case as
3 exclusively a “habeas case” and allow it to proceed under the normal course.

4 **II. Respondents’ Voluntary Cessation Does Not Moot O.E.O.’s Case**

5 Regardless of whether this case is treated as a habeas petition, a civil complaint, or
6 a hybrid of both, it is far from moot and O.E.O. is still entitled to his requested relief.
7 Respondents’ mootness arguments fail for two reasons: (1) the voluntary cessation
8 exception to mootness applies, and (2) release from custody does not moot a case when
9 collateral consequences can be redressed by success on the petition.

10 **A. The Voluntary Cessation Doctrine Applies**

11 Courts have long held that “a defendant cannot automatically moot a case simply
12 by ending its unlawful conduct once sued.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91
13 (2013). Application of the voluntary cessation doctrine undoubtably applies here where
14 Respondents’ remedial actions are in direct response to this litigation. *See Ms. L v. U.S.*
15 *Immigration and Customs Enforcement*, 302 F. Supp. 3d 1149, 1157 (S.D. Cal, 2018). A
16 review of this case’s procedural history, as detailed above, makes clear that O.E.O.’s
17 reunification with his family was only secured because of the mounting pressure of this
18 litigation.

19 This case is similar to *Ms. L*, which challenged the separation of a mother and her
20 child at the border through both APA and habeas claims. *Ms. L*, 302 F. Supp. 3d at 1154.
21 There, the court found that the voluntary cessation doctrine applied and the case was not
22 moot because Respondents only reunified the mother with her child after litigation was
23 filed and the court had ordered an expedited DNA test. *Id.* at 1157. Similarly, here,
24 O.E.O. was only transferred back to ORR custody after Respondents felt the mounting
25 pressure to produce discovery and defend the depositions of three agency officials. *See*
26 Dkt. 77 at 4–5. It then took an order from this Court to get Respondents to conduct
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O.E.O.’s new age determination within a three-week period, *see* Dkt. 80, Order, and the filing of a preliminary injunction motion to compel Respondents to release O.E.O. to his family after seventeen long months of detention. *See generally* Dkt. 99, Mot. for Preliminary Injunction; *see also* Dkt. 101 at 3 (O.E.O. “was released from O.R.R. custody on May 2, 2026.”). At every step of this litigation, Respondents have acted only under the pressure of a deadline resulting from motions practice and discovery requests, or after an explicit order from this Court. *See Ms. L*, 302 F. Supp. 3d at 1157.

To the extent Respondents argue that O.E.O. no longer has a “personal stake” in this litigation because Respondents “voluntarily” released him from custody, this argument is misguided. *See* Dkt. 101 at 2. “[A] defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.” *Friends of the Earth, Inc., v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 174 (2000). Respondents’ mere recitation of legal standards from cases inapposite to O.E.O.’s does not meet that “formidable burden.” *Id.*; *see also* Dkt 101 at 2–3. As argued *infra* at II.B., Respondents have made no assurances that they will not again unlawfully age re-determine O.E.O., re-detain O.E.O. absent a hearing before a neutral arbiter, or infringe on O.E.O.’s ability to access immigration relief under the TVPRA. Given that Respondents’ actions clearly arose because of this litigation and Respondents have provided no assurances that they will not once again violate O.E.O.’s rights, the voluntary cessation doctrine applies, and the Court should find that O.E.O.’s claims are not moot.

B. O.E.O.’s Case Is Not Moot Because There Remain Collateral Consequences That Can Be Redressed By Relief

Even if the Court were to construe this case as only arising from a habeas petition, it is well-established that a habeas petition “continue[s] to present a live controversy after the petitioner’s release” where there is “some remaining ‘collateral consequence’ that

1 may be redressed by success on the petition.” *Abdala v. I.N.S.*, 488 F.3d 1061, 1064 (9th
2 Cir. 2007) (quoting *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)). Respondents would have
3 the Court believe that O.E.O.’s release is enough to moot this case. *See* Dkt. 101 at 2.
4 But Respondents fall into the exact trap that the Court in *Zalawadia*, a case they cite in
5 support of their argument, cautions against. *See* Dkt. 101 at 2. There, the Fifth Circuit
6 explained that the loss of a habeas petitioner’s “in custody” status during the pendency of
7 the litigation must not be conflated with mootness. *Zalawadia v. Ashcroft*, 371 F.3d 292,
8 297 (5th Cir. 2004).

9 Here, just as in *Zalawadia*, there are many remaining “collateral consequences”
10 that can be redressed by success on O.E.O.’s Preliminary Injunction and Complaint.
11 Absent a court-ordered guarantee that Respondents ORR and ICE will not re-detain
12 O.E.O. or otherwise continue to infringe on his rights under the TVPRA, O.E.O.’s claims
13 remain live and redressable. *See* Dkt. 101 (making no guarantee that Respondents won’t
14 re-detain O.E.O. or cease violating his TVPRA rights); *see also Nielsen v. Preap*, 586
15 U.S. 392, 403 (2019) (finding claims were not moot after release from detention on a
16 preliminary injunction because the threat of re-detention remained until that relief was
17 made permanent). In addition to his now-secured release, O.E.O.’s requested relief
18 includes an order (1) declaring that ICE’s and ORR’s actions violated the APA, the
19 TVPRA, and the Constitution; (2) enjoining Respondents from using the unlawful age
20 determination as a basis to deny immigration relief, and; (3) ordering that if Respondents
21 seek to re-detain O.E.O., they must afford him a hearing before a neutral decisionmaker,
22 as required by the Due Process Clause of the Fifth Amendment, to determine whether re-
23 detention would be justified. *See* Dkt. 1, Compl. at 29 – 30; *see also* Dkt. 99 at i. An
24 order from this Court entering the above would undoubtably give O.E.O. the type of
25 relief that would redress his injuries.

26 Further, courts in this circuit have repeatedly found that a petitioner’s fear of re-
27 detention is “ripe” where, as here, the government has refused to acknowledge its
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1 conduct, much less “refused to provide any assurance that [petitioner would] not be re-
2 arrested.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019); *see also Cruz v.*
3 *Lyons*, No. 5:25-CV-02879-MCS-MBK, 2025 WL 3443146, at *2 (C.D. Cal. Dec. 1,
4 2025) (“A habeas petition is not moot where preliminary relief is not made permanent”).
5 Given that Respondents have not acknowledged, much less disavowed, their unlawful
6 conduct and O.E.O. remains subject to re-detention and the violation of his TVPRA
7 rights, the Court should reject Respondents’ arguments that this case is moot, enter
8 preliminary relief, and allow this case to proceed to summary judgment.

9 CONCLUSION

10 For the foregoing reasons, the Court should reject Respondents’ assertions that
11 O.E.O.’s case is moot and instead grant O.E.O.’s preliminary injunction, ensuring
12 Respondents do not re-detain O.E.O. or otherwise continue to violate his rights under the
13 TVPRA during the pendency of these proceedings.

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15 DATED: May 15, 2026

Respectfully submitted
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