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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)

**SUPPLEMENTAL BRIEFING
REGARDING THE APPLICATION OF
THE VOLUNTARY CESSATION
DOCTRINE**

As Petitioner's counsel correctly points out "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." Doc. 102 at p. 8 (citing *Friends of the Earth, Inc., v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 174 (2000)). The Supreme Court has further held that this holds for governmental defendants no less than for private ones. *Fed. Bureau of Investigation v. Fikre*, 601 U.S. 234, 241 (2024) (internal citations omitted).

There are several reasons why the governmental conduct challenged in this lawsuit cannot be reasonably expected to recur. This is not a typical habeas that the government simply mooted through release and can re-detain at anytime. The governmental agency in charge of Petitioner's custody (Immigration and Customs Enforcement (ICE) or Office of

1 Refugee Resettlement (ORR) was specifically dependent on the age determination in this
2 case, and a new superceding age determination has taken place based on significant
3 analysis by the agency which issued the new decision. It is highly unlikely and certainly
4 not reasonably expected to recur that this second superceding age redetermination would
5 somehow be reversed back to the original determination that Petitioner was an adult. As a
6 practical matter, this would only come into play if Petitioner was somehow back in the
7 custody of O.R.R., yet O.R.R. does not have the authority to arrest or detain
8 unaccompanied minor children once they've been released to vetted sponsors. So, it is
9 highly unlikely and not at all probable that this would occur.

10 Further, under 8 U.S.C. § 1232(b)(3), any government agency who comes into
11 contact or gains custody of an unaccompanied minor has 72 hours to release that minor
12 into the custody of O.R.R. Therefore, even if ICE came into contact with Petitioner and re-
13 detained him, because he is currently determined by O.R.R. to be a minor, section
14 1232(b)(3) would mandate his immediate return to O.R.R. custody, who would release him
15 to the same vetted sponsor. However, this too cannot be said to be reasonably expected to
16 occur whereas here, ICE is aware and has documented that Petitioner is an unaccompanied
17 minor. Indeed, ICE is fully aware Petitioner was determined to be a minor and released
18 from O.R.R. custody to a sponsor and ICE retains no authority to detain unaccompanied
19 minors under the strict mandates of the TVPRA.

20 In short, the action that mooted this case was not just the release from custody but a
21 new administrative agency decision by O.R.R. that Petitioner is a minor. This determination
22 is unlikely to be reversed and thus the precise agency action challenged in this lawsuit
23 cannot be said to be reasonably likely to recur. For this reason, the government contends
24 that this case is indeed moot and the voluntary cessation doctrine is inapplicable.

25 Respectfully submitted this 22nd day of June, 2026.

26 TIMOTHY COURCHINE
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s/ Theo Nickerson
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