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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)

**RESPONDENTS' CROSS MOTION
FOR SUMMARY JUDGMENT**

I. INTRODUCTION.

Respondents are entitled to summary judgment as a matter of law because there is no case or controversy left to decide as required for Article III subject matter jurisdiction to exist. Article III subject matter jurisdiction no longer exists in this case for two primary reasons: 1) Respondents have received all relief they have requested, and this Court can provide no further effective relief, and 2) any future harms Petitioner allege remain are speculative, premature, and unripe. Put simply, the Court lacks Article III subject-matter jurisdiction over any remaining claims, to the extent there are any. Where no case or controversy exists under Article III, the Court should dismiss this case for want of federal subject matter jurisdiction.

II. FACTUAL AND PROCEDURAL BACKGROUND.

Petitioner brought this suit as a petition for writ of habeas corpus filed with this Court on June 30, 2025. Doc. 1. In the petition, O.E.O. argued that his detention was unlawful and he was entitled to release from immigration custody with United States Immigration and Customs Enforcement (“ICE”) because he was in fact a minor, and only fifteen years old at the time. Petitioner also brought suit against the United States Health and Human Service’s Office of Refugee Resettlement (“ORR”) which Petitioner alleged had violated its statutory obligations and internal policies by incorrectly issuing an age determination concluding that O.E.O. was a twenty-two-year-old adult, when he was in fact a fifteen-year-old minor. *Id.* Petitioner asserted that due to their incorrect and allegedly unlawful age determination, ORR also unlawfully transferred and subjected O.E.O. to adult detention with ICE in Eloy, Arizona. *Id.*

In the petition, O.E.O. requested the following relief 1) Assume jurisdiction over this matter; 2) Declare that ICE and ORR’s actions were arbitrary, capricious, and not in accordance with the law under the Administrative Procedures Act (“APA”) because ICE and ORR failed to follow their internal policies and procedures in re-considering O.E.O.’s age; 3) Declare that ICE and ORR unlawfully withheld agency action they were required to take under the APA by failing to follow their statutory obligations under the TVRPA and their internal policies and procedures with respect to age determinations; 4) Declare that ICE’s decision to detain Petitioner, an unaccompanied minor in adult detention was unlawful under the Trafficking Victims Protection Reauthorization Act (“TVPRA”) and the Flores Settlement Agreement because it did not consider the least restrictive setting or the minor’s best interest; 5) Declare Respondents’ detention of Petitioner in adult ICE custody a violation of the Fifth Amendment of the United States Constitution; 6) Enjoin Respondents from applying the age determinations as the basis for the expedited removal, custody determinations, or other immigration relief made by the agency until ORR makes an age determination in accordance with 8 U.S.C. § 1232(b)(4) and ORR’s Policy Guidelines; 7) Order ORR to complete an age determination in compliance with 8 U.S.C.

1 § 1232(b)(4) and its Policy Guidelines within forty-eight hours of the date of this Order, in
2 compliance with 8 U.S.C. § 1232(a)(4); 8) Order O.E.O.'s transfer to ORR custody within
3 the next seventy-two hours, in compliance with 8 U.S.C. 1232(b)(3), and that ORR release
4 him to his sponsor immediately and, in any case, no later than 3 days after his transfer to
5 ORR custody, in compliance with 8 U.S.C. § 1232(c)(2)(B), which requires prompt release
6 to the least restrictive setting; 9) Enjoin Respondents from causing Petitioner any greater
7 harm during the pendency of this litigation, such as by transferring him anywhere outside
8 of the jurisdiction of the District of Arizona or the Central District of California, away from
9 his counsel; 10) Grant the petition and issue a writ of habeas corpus commanding
10 Petitioner's immediate release from Respondent ICE's custody to Petitioner's previous
11 ORR facility, and then to his sponsor because his detention and the process by which the
12 expedited removal order was issued violated the Fifth Amendment of the United States
13 Constitution; 11) Award Petitioner reasonable attorneys' fees, costs, and other
14 disbursements in this action permitted under the Equal Access to Justice Act, 28 U.S.C. §
15 2412, and on any other basis justified under law; and 12) Grant such further relief as the
16 Court deems just and proper. Doc. 1, Prayer for Relief.

17 On August 25, 2025, Petitioner filed a traverse in support of his petition/complaint
18 and clarified that "[u]ltimately, O.E.O. is requesting this Court find the agencies' age
19 determinations violate his APA, statutory, and constitutional rights. O.E.O. asks this Court
20 to find the age determinations were unlawful as well as arbitrary and capricious, and to
21 enjoin Respondents from applying this age determination as the basis for their custody
22 determinations." Doc. 45. On January 21, 2026, Respondents moved to remand the case to
23 ORR to allow it to conduct a new age determination in Petitioner's case. Doc. 75. After a
24 hearing on January 22, 2026, the Court granted Respondents' motion to remand. Doc. 80.
25 On February 13, 2026, Respondents notified the Court that ORR had conducted a new age
26 determination on remand and had determined that Petitioner is in fact a minor. Doc. 87.
27 On February 24, 2026, Respondents provided a status update to the Court indicating that
28 O.E.O. was no longer in adult detention at ICE, but had been placed in an ORR-funded

1 care provider facility at Compass Connections in El Paso, Texas, while ORR reviewed the
 2 totality of O.E.O.'s case records in order to conduct the new age determination. Doc. 91.
 3 Now that ORR had determined Petitioner to be a minor ORR was vetting potential verified
 4 sponsors, including O.E.O.'s uncle. *Id.* On March 11, 2026, Respondents provided a further
 5 status update on ORR's progress towards verification of a suitable sponsor and release of
 6 O.E.O. from ORR custody. Doc. 93. On April 24, 2026, Petitioner moved for a preliminary
 7 injunction. Doc. 99. On May 8, 2026, Respondents responded to the motion for preliminary
 8 injunction and argued that because on May 2, 2026, Petitioner was released from O.R.R.
 9 custody and reunified with his verified sponsor, the case was now moot. Doc. 101.

10 On May 15, 2026, Petitioner replied to Respondent's response and asserted the case
 11 was not moot because Petitioner's APA claims remain live, because of the voluntary
 12 cessation doctrine, and finally, because of the threat of re-detention. Doc. 102. Petitioner
 13 stated that he is still seeking relief from the Court in the form of (1) declaring that ICE's
 14 and ORR's actions violated the APA, the TVPRA, and the Constitution; (2) enjoining
 15 Respondents from using the unlawful age determination as a basis to deny immigration
 16 relief, and; (3) ordering that if Respondents seek to re-detain O.E.O., they must afford him
 17 a hearing before a neutral decisionmaker, as required by the Due Process Clause of the
 18 Fifth Amendment, to determine whether re-detention would be justified.

19 **III. THIS CASE IS NOW MOOT.**

20 **A. O.E.O.'s release from any type of government custody rendered his** 21 **habeas petition moot.**

22 The jurisdiction of federal courts depends on the existence of a live case or
 23 controversy under Article III of the Constitution. *PUC v. FERC*, 100 F.3d 1451, 1458 (9th
 24 Cir. 1996). At any stage of the proceeding a case becomes moot when "it no longer
 25 present[s] a case or controversy under Article III, § 2 of the Constitution." *Spencer v.*
 26 *Kemna*, 523 U.S. 1, 7 (1998). The test for mootness is whether the court can give a party
 27 any effective relief in the event that it decides the matter on the merits in their favor.
 28 *Reimers v. Oregon*, 863 F.2d 630, 632 (9th Cir. 1989). A case loses its quality as a live

1 controversy and becomes moot when the court can no longer issue effective relief. *Feldman*
2 *v. Bomar*, 518 F.3d 637, 642-43 (9th Cir. 2008); *see also Picrin-Peron v. Rison*, 930 F.2d
3 773, 775 (9th Cir. 1991) (“if it appears that [the court is] without power to grant the relief
4 requested, then the case is moot.”).

5 Furthermore, Article III requires that a live case or controversy exist not only when
6 the complaint is filed, but throughout the litigation. *Seven Words L.L.C. v. Network*
7 *Solutions*, 260 F.3d 1089, 1094-95 (9th Cir. 2001); *Cook Inlet Treaty Tribes v. Shalala*,
8 166 F.3d 986, 989 (9th Cir. 1999). A litigant must continue to have a personal stake in the
9 outcome of the suit throughout “all stages of federal judicial proceedings.” *United States*
10 *v. Verdin*, 243 F.3d 1174, 1177 (9th Cir. 2001). The writ of habeas corpus affords relief to
11 persons in custody pursuant to the judgment of a court in violation of the Constitution,
12 laws, or treaties of the United States. *See* 28 U.S.C. § 2241.

13 Here, Petitioner’s release from the custody of the United States government—both
14 ICE and ORR, renders the habeas claims completely moot. It is simple— his petition
15 requested release from custody, and that relief is no longer available to him because he is
16 no longer detained. *McCullough v. Graber*, 726 F.3d 1057, 1060 (9th Cir. 2013). The Court
17 lacks the power to grant any further effective relief, and the habeas petition is now moot.
18 *Reimers*, 863 F.2d 632; *Feldman*, 518 F.3d at 642-43; *Picrin-Peron*, 930 F.2d at 775.
19 Likewise, because Petitioner is no longer in custody, he no longer has a stake in the
20 outcome of his habeas petition which challenged the constitutionality of his continued
21 detention. *Verdin*, 243 F.3d at 1177. Petitioner’s case was rendered moot when he was
22 released from any type of government custody. *Abdala v. INS*, 488 F.3d 1061, 1064-65
23 (9th Cir. 2007) (discussing and collecting cases wherein a petitioner’s release from
24 detention or parole or their removal rendered a habeas petition moot). The Court should
25 dismiss the petition for lack of subject matter jurisdiction because Petitioner’s habeas
26 petition is now moot. *McCullough*, 726 F.3d at 1060.

B. ORR's newly issued age determination rendered Petitioner's remaining APA claims moot.

To the extent Petitioner claims that there are still live claims that are non-habeas and therefore this case is not moot, this is simply incorrect. The complaint portion of the petition which alleged that ORR violated its statutory and policy obligations by incorrectly determining Petitioner to be a minor is entirely moot now that ORR has conducted a new age determination—one which it does not intend to revisit. Exhibit A. It is also moot because now that ORR has determined Petitioner to be a minor this means that he is not and will not be subject to adult detention in the custody of ICE until he is an adult, which is not now. *See* Exhibit A. Any ruling on whether or not the initial age determination violated the APA would be an impermissible advisory opinion¹ and would not redress any of the remaining requests for relief—which appear to be focused on Petitioner's risk for re-classification as an adult and any potential resulting re-detention by ICE. But, here, where Respondent ORR conducted a new superseding age determination and has no plans to revisit the decision, any of the non-habeas APA claims regarding the validity, legality or constitutionality of the original age determination are simply not live. Indeed, any ruling on the legality of the original age determination which no longer governs petitioner's detention would not redress any live controversy or ongoing harm and as such would constitute an impermissible advisory opinion. *Supra* n.1.

¹ “The rule against advisory opinions is ‘the oldest and most consistent thread in the federal law of justiciability,’ reflecting the same core considerations that underlie the justiciability doctrine more generally.” *Ctr. for Biological Diversity v. United States Forest Serv.*, 925 F.3d 1041, 1047 (9th Cir. 2019) (quoting *Flast v. Cohen*, 392 U.S. 83, 96, (1968)). In order not to violate this rule and present a justiciable dispute, a case must satisfy two requirements. First, the case must present “an honest and actual antagonistic assertion of rights by one [party] against another.” *Id.* (quoting *U.S. Nat’l Bank v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 446 (1993)). Second, the Court “must be empowered to issue a decision that serves as more than an advisement or recommendation.” *Id.* at 1048. Here, a ruling on whether a prior decision, which no longer affects the rights of Petitioner, particularly where a new superseding decision has been made by the agency on remand, would be an impermissible advisory opinion.

1 **C. The voluntary cessation doctrine does not apply.**

2 It is axiomatic that “a defendant claiming that its voluntary compliance moots a
3 case, bears the formidable burden of showing that it is absolutely clear the allegedly
4 wrongful behavior could not reasonably be expected to recur.” *Friends of the Earth, Inc.,*
5 *v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 174 (2000). Previously, Respondents
6 argued that there were several reasons why the governmental conduct challenged in this
7 lawsuit cannot be reasonably expected to recur. Respondents pointed out that this is not a
8 typical habeas that the government simply mooted through release and can re-detain at any
9 time. Respondent ICE cannot re-detain Petitioner because its detention was specifically
10 dependent on the age determination in this case, and a new superseding age determination
11 has taken place based on significant analysis by the agency which issued the new decision.
12 Critically, however, in Respondents prior briefing they did not provide any documentary
13 evidence that ORR has no intention of revisiting its new superseding age determination
14 concluding that Petitioner is a minor and not subject to re-detention by ICE. Respondents
15 provide such evidence here. *See* Exhibit A.

16 First, ORR has no authority to take Petitioner back into its custody after releasing
17 him to his verified sponsor, his uncle. Exhibit A. ORR has no intention of revisiting its age
18 determination unless it receives new and credible evidence that Petitioner is actually an
19 adult. *Id.* If Petitioner were detained by the Department of Homeland Security, for any
20 reason, he would have to be released into ORR custody as ICE does not have legal authority
21 to conduct age determinations nor does it have the authority to detain minors under the
22 TVPRA. *Id.* Therefore, even if he came into custody, he would simply be released to ORR
23 and ORR does not intend to re-evaluate his age. Therefore, Respondents have shown that
24 the governments challenged conduct in this case—incorrectly determining O.E.O. to be a
25 minor and subjecting him to adult detention—are not reasonably expected to recur.

26 **IV. THE COURT SHOULD DECLINE TO ENTERTAIN UNRIPE CLAIMS.**

27 Petitioner’s remaining claims seeking prospective and speculative relief should be
28 dismissed as unripe. Petitioner claims this case is not moot and that the remaining relief

1 requested consists of an order enjoining Respondents from using the unlawful age
2 determination as a basis to deny immigration relief, and an order that if Respondents seek
3 to re-detain O.E.O., they must afford him a hearing before a neutral decisionmaker to
4 determine whether re-detention would be justified. Doc. 102.

5 First, not only is this relief speculative and unripe, but with respect to any immigration
6 relief in the context of removal proceedings, 8 U.S.C. §§ 1252(a)(5), (b)(9), and (g) strip
7 this Court of jurisdiction to review any issue challenging a removal order (e.g., a denial of
8 immigration relief), *see* 8 U.S.C. § 1252(a)(5), any issue arising from removal proceedings,
9 *see* 8 U.S.C. § 1252(b)(9), or any decision by the Attorney General to “adjudicate cases”
10 in removal proceedings, *see* 8 U.S.C. § 1252(g). This Court simply has no jurisdiction to
11 review let alone issue prospective orders related to an issue in immigration court which
12 could bear on a grant of immigration relief. Those issues are squarely vested with the
13 immigration courts within the Executive Branch. Further, Petitioner does not allege let
14 alone establish that the Department of Homeland Security is attempting to use ORR’s
15 previous age determination, which it now has clearly issued a new superseding decision
16 concluding O.E.O. is a minor, in any effort to prohibit his eligibility for immigration relief.
17 Accordingly, this relief is speculative and the claim is unripe. Indeed, “[a] claim is not ripe
18 for adjudication if it rests upon contingent future events that may not occur as anticipated
19 and indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300, (1998) (internal
20 quotation marks and citations omitted).

21 Second, with respect to an order that Respondents provide a hearing before a neutral
22 decisionmaker prior to any re-detention of Petitioner, this claim too is speculative and
23 unripe. Generally, a matter is not ripe “if it rests upon contingent future events that may
24 not occur as anticipated or indeed may not occur at all. *Scott v. Pasadena Unified Sch.*
25 *Dist.*, 306 F.3d 646, 662 (9th Cir.2002) (quotations omitted). In the event that issue became
26 ripe, and Petitioner were detained by ICE without a re-detention hearing to the extent he
27 would be entitled to one, Petitioner could easily raise this in a newly filed petition for writ
28 of habeas of corpus when the issue becomes ripe. If a claim is unripe, federal courts lack

1 subject matter jurisdiction and it must be dismissed. *Shelter Creek Dev. Corp. v. City of*
2 *Oxnard*, 838 F.2d 375, 377 (9th Cir.), *cert. denied*, 488 U.S. 851 (1988). The majority of
3 Petitioner's claims are moot and to the extent any remaining claims seek prospect and
4 speculative relief, they should be dismissed for lack of subject matter jurisdiction because
5 they are not ripe for judicial review.

6 **V. CONCLUSION.**

7 The Court should dismiss this case for lack of subject matter jurisdiction. There
8 is no live case or controversy. There are no remaining justiciable claims. There is no further
9 effective relief this Court can grant and any remaining claims are speculative and unripe.

10 Respectfully submitted this 18th day of September, 2026.

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