U.S. Department of Justice

United States Attorney
Southern District of New York

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September 25, 2026

VIA ECF
The Honorable Andrew L. Carter, Jr.
United States District Judge
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

Re: *T.M.B.A. v. Kennedy, et al.*, No. 26 Civ. 7604 (ALC)

Dear Judge Carter:

This Office represents the respondents (the "Government") in the above-referenced habeas action brought by the minor petitioner T.M.B.A. ("Petitioner") by his next friend, Lauren Fouda. I write in response to the Court's September 10, 2026, order directing the government to file its position on the issue of mootness. ECF Nos. 12, 13. Because Petitioner has been released from ORR custody, there is no longer a live case or controversy for this Court to adjudicate. Accordingly, the Court should dismiss the Petition as moot.

Background. Petitioner filed this habeas corpus action on September 4, 2026, principally seeking an order directing the Office of Refugee Resettlement ("ORR") to release him to his mother. ECF No. 3. Petitioner had been transferred into ORR custody in April 2026 after U.S. Customs and Border Protection ("CBP") encountered him in Texas. Declaration of Toby Biswas ("Biswas Decl.") (ECF No. 14) ¶¶ 36, 37. In April 2026, ORR contacted S.M.A.C., T.M.B.A.'s mother, to determine if she would potentially serve as T.B.M.A.'s sponsor, then sent S.M.A.C. the sponsorship application. *Id.* ¶¶ 39, 41. S.M.A.C. completed part 1 of the sponsorship application on the date the sponsorship application was sent, and part 2 of the next day. *Id.* ¶¶ 43, 44. The application was then referred to the Division of Sponsorship Administration Federal Field Specialist ("DSA FFS"), for completion of the sponsor vetting process. *Id.* ¶ 45.

On April 27, 2026, the DSA FFS contacted the sponsor to explain the sponsor application process and began to review Part 2 of S.M.A.C.'s application. *Id.* ¶ 46. At this time, S.M.A.C and the alternate adult caregiver ("ACG"), P.I.S.G., S.A.M.C.'s partner, still needed to complete several items as part of the required sponsor vetting. *Id.* Among those were completion of Authorization for Release of Information for the ACG, fingerprint-based background checks, internet-based background checks, including public records checks and sex offender registry checks, submission of identification documents, an in-person identification check appointment, a home study, and submission of a Social Security Number ("SSN") or Individual Taxpayer Identification Number ("ITIN"). *Id.*

On May 11, 2026, the care provider staff submitted a referral to the Office of Trafficking in Persons ("OTIP") based on disclosures made by the child. *Id.* ¶ 47. From May 2026 until June 2026, ORR was in the vetting process of S.A.M.C.'s sponsorship application—S.A.M.C.

attended a fingerprint appointment on May 20, 2026; ORR completed a home study visit on June 2, 2026; ORR completed a follow-up home study visit and interview of S.A.M.C. on June 5, 2026; S.A.M.C. attended an in-person identification verification for DNA collection on June 25, 2026. *Id.* ¶ 47-53.

On July 1, 2026, an SSD was drafted and the DSA FFS submitted a Category 1 exemption for the ACG's missing SSN/ITIN. *Id.* ¶ 55. On August 24, 2026, the ORR Director approved the Category 1 exemption for the ACG's missing SSN/ITIN that had been issued on July 1, 2026. *Id.* ¶ 57. On August 27, 2026, a positive sponsor suitability determination ("SSD") was submitted for review by the Assistant Branch Chief. The DSA FFS submitted the SSD the next day. *Id.* ¶ 58.

On September 4, 2026, ORR finalized its dangerous assessment, considering the child's previous affiliation with and [redacted] *Id.* ¶ 59. Ultimately ORR determined that this child would not pose a danger to himself or the community if released such that ORR must deny release based on a finding of dangerousness. *Id.* In making this decision, ORR further identified the need to develop a more robust safety plan. *Id.*

On September 8, 2026, ORR approved release of T.M.B.A. to S.M.A.C, and T.M.B.A. was discharged from ORR custody on September 9, 2026. *Id.* ¶¶ 61, 63. T.M.B.A. departed New York on a flight to Minnesota where T.M.B.A. was reunified with S.M.A.C. *Id.* ¶ 62, 63. Because ORR released T.M.B.A. to S.M.A.C., ORR no longer has custody of T.M.B.A. *Id.* ¶ 64. ORR is required to offer T.M.B.A post-release services under the TVPRA, 8 U.S.C.§ 1232(c)(3)(B), since T.M.B.A. is a victim of trafficking. *Id.* T.M.B.A.'s participation in any post-release services is voluntary. *Id.*

The Petition is Moot. It is axiomatic that, under Article III of the United States Constitution, "the judicial power extends only to cases or controversies," and "a federal court lacks jurisdiction to consider the merits of a moot case." *Chevron Corp. v. Donziger*, 833 F.3d 74, 123 (2d Cir. 2016) (cleaned up). The petitioner bears the burden of establishing, by a preponderance of the evidence, that subject matter jurisdiction exists. *See id.* "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3).

There is no longer a live case or controversy under Article III because Petitioner has been released from ORR custody to his mother, S.M.A.C. Habeas relief is limited to petitioners who seek relief from custody imposed "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a); *see also Allen v. McCurry*, 449 U.S. 90, 98 n.12 (1980) ("[T]he unique purpose of habeas corpus" is to "release the applicant for the writ from unlawful confinement."). Thus, a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 is rendered moot once the petitioner is released from the government's custody. *See, e.g.*, *Leybinsky v. ICE*, 553 F. App'x 108 (2d Cir. 2014) (habeas petition moot upon petitioner's release from ICE custody); *Pierrilus v. ICE*, 293 F. App'x 78, 79 (2d Cir. 2008) ("[P]etitioner's challenge to the length of his detention is moot as a result of his release from DHS custody."); *Remy v. Chadbourne*, 184 F. App'x 79, 80 (2d Cir. 2006) (dismissing as moot an appeal from dismissal of a habeas petition challenging detention where ICE released the alien from detention during the appeal).

Courts in this District have consistently held that habeas petitions are moot upon the Petitioner's release from custody. *See, e.g.*, *E.G.V.A. v. Sanchez*, No. 26 Civ. 2258 (MKV), 2026 WL 2254646, at *2 (S.D.N.Y. Aug. 5, 2026) (dismissing as moot petition brought by UAC, noting that "Petitioner's release—the precise relief he sought—has rendered the Petition moot; he 'is no longer suffering an 'actual injury'' that could be redressed by a favorable decision of this Court"); *M.A.V. v. Sanchez*, No. 26 Civ. 2306 (LJL), ECF No. 19 (Mem. and Order) (S.D.N.Y. Aug. 4, 2026) (dismissing habeas petition brought by UAC as moot after petitioner was released by ORR); *S.B.Q.V. v. Sanchez*, No. 26 Civ. 2276 (JPO), ECF No. 16 (Order) (S.D.N.Y. Aug. 12, 2026) (same); *J.A.A.V. v. Sanchez*, No. 26 Civ. 2299 (VSB), ECF No. 17 (Order) (S.D.N.Y. Aug. 19, 2026) (same); *see also, e.g.*, *Pierre-Paul v. Sessions*, 293 F. Supp. 3d 489, 493 (S.D.N.Y. 2018) (holding that habeas petition was moot subsequent to petitioner's release); *Osias v. Decker*, No. 17 Civ. 2786 (VEC), 2017 WL 3432685 (S.D.N.Y. Aug. 9, 2017) (holding that petition was moot subsequent to petitioner's release from custody); *Soorsattie v. Shanahan*, No. 15 Civ. 7595 (JGK), 2015 WL 6742334, at *1 (S.D.N.Y. Nov. 3, 2015) (dismissing as moot habeas petition where alien was released from detention, concluding that "the petitioner no longer has a redressable injury"); *German v. Green*, No. 15-cv-4691 (WHP), 2015 WL 7184992 (S.D.N.Y. Oct. 30, 2015) (petition moot once alien was no longer detained). Because Petitioner has received the highest form of relief available to him in this habeas proceeding—release—, this action is moot. *See Martin–Trigona v. Shiff*, 702 F.2d 380, 386 (2d Cir. 1983) ("The hallmark of a moot case or controversy is that the relief sought can no longer be given or is no longer needed.").

No Mootness Exception Applies. Petitioner's case does not fall under an exception to mootness for challenged conduct that is "capable of repetition, yet evading review." *Van Wie v. Pataki*, 267 F.3d 109, 114 (2d Cir. 2001). That exception applies only where "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170 (2016) (cleaned up). Further, this exception is available only in "exceptional situations." *Lillbask ex rel. Mauclaire v. Conn. Dep't of Educ.*, 397 F.3d 77, 85 (2d Cir. 2005). "[M]ere speculation that the parties will be involved in a dispute over the same issue does not rise to the level of a reasonable expectation." *Dennin v. Conn. Interscholastic Athletic Conf., Inc.*, 94 F.3d 96, 101 (2d Cir. 1996) (cleaned up); *see also E.G.V.A.*, 2026 WL 2254646, at *2 ("Courts have routinely rejected the application of the voluntary cessation exception in the habeas context where, as here, the complaining party—*i.e.*, the petitioner—has been released from custody and there is no reasonable non-speculative expectation the alleged violation would recur.").

Petitioner fails to meet either prong of this standard. First, Petitioner was in ORR custody for nearly five months before filing this Petition. *See* ECF No. 3. That Petitioner filed a petition only when ORR's suitability assessment was at its final stage does not render this type of case one that frequently ends before judicial review can be completed. Second, Petitioner does not and cannot argue that there is a reasonable expectation that Petitioner will be subject to the same challenged government conduct again, a requirement to invoke this exception. In April 2026, CBP placed Petitioner in ORR custody. Biswas Decl. ¶¶ 37, 38. ORR cared for Petitioner while it awaited and then assessed S.M.B.A.'s sponsorship application. *Id.* at ¶¶ 38-62. ORR ultimately found S.M.B.A. to be a suitable sponsor and released Petitioner to her care. Petitioner cannot show that there is a risk of re-detention by ORR, or that "there is a reasonable expectation that the alleged

violation that Petitioner faced would recur given that he has now been released to [the sponsor] and is no longer an UAC." *E.G.V.A.*, 2026 WL 2254646, at *4; *accord M.A.V. v. Sanchez*, No. 26 Civ. 2306 (LJL), ECF No. 19 (Mem. and Order) (S.D.N.Y. Aug. 4, 2026) ("The Petition also is not saved from mootness by the exception for conduct capable of repetition yet evading review. Petitioners have not established that there exists a reasonable risk that, now that Maykel has been released to his mother, Maykel will be detained again as an UAC.").[1]

The voluntary cessation exception to mootness also does not apply. While a defendant's "voluntary cessation" of illegal conduct or a challenged practice sometimes creates an exception to the general rule of mootness, *see Desiderio v. Nat'l Ass'n of Sec. Dealers, Inc.*, 191 F.3d 198, 202 (2d Cir. 1999), that is inapplicable here. This exception may be overcome where the defendant demonstrates that "(1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur, and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *Id.* (cleaned up). Thus, courts have rejected the argument that the government's voluntary release of a habeas petitioner falls within the voluntary cessation exception to mootness. *See, e.g.*, *Pierre-Paul*, 293 F. Supp. 3d at 492-93 (rejecting argument that exception applied where petitioner was released, which "eradicated" the alleged violation, and could show no reasonable expectation that detention would recur); *E.G.V.A.*, 2026 WL 2254646, at *4 (rejecting voluntary cessation exception noting that "Petitioner otherwise provides no authority that his case is not moot simply because ORR might unlawfully hold a different minor in custody."); *Alcine v. Decker*, No. 17 Civ. 3754 (RA), 2019 WL 988944, at *2 (S.D.N.Y. Feb. 19, 2019).

As noted above, Petitioner does not contend that there is a reasonable expectation that Petitioner will be taken into ORR custody again. Nor could he. That alone renders the voluntary cessation doctrine inapplicable. *See Paul v. Decker*, No. 20 Civ. 2425 (KPF), 2021 WL 1947776, at *5 (S.D.N.Y. May 14, 2021). Further, Petitioner's release has eradicated the effects of Petitioner's allegedly prolonged custody, as it terminated the alleged violation. This is not a case where the government has engaged in gamesmanship to avoid judicial review. Rather, ORR's vetting process, the consummation of which resulted in the release of Petitioner from government custody, was ongoing when the Petition was filed and resulted in his release. *See Gutierrez v. U.S. Dep't of Homeland Sec.*, No. 18 Civ. 1958 (PLF), 2019 WL 6219936, at *6 (D.D.C. Nov. 21, 2019) (habeas petition was moot where the government completed the process of reunifying the petitioner with his mother after litigation commenced). Accordingly, the voluntary cessation exception does not apply here.

[1] Of course, if Petitioner were to be in ORR custody again, Petitioner could file a new habeas petition. *See Gonzalez-Reyes v. Decker*, No. 20 Civ. 2639 (GHW), 2020 WL 7869549, at *12 (S.D.N.Y. Dec. 31, 2020) ("In the event that Mr. Gonzalez-Reyes is detained in the future, he will have the opportunity to file a new habeas petition based on the actual circumstances of his future detention."); *Pierre-Paul v. Sessions*, 293 F. Supp. 3d 489, 493 (S.D.N.Y. 2018). But even in that case, Petitioner would come back into ORR custody only if Petitioner is detained by another federal agency by reason of Petitioner's immigration status. *See* 8 U.S.C. § 1232(b)(3); 6 U.S.C. § 279(b)(1)(A). Pursuant to its statutory authorities, ORR has no authority to affirmatively apprehend and take custody of a UAC who is not already in federal custody; rather, ORR takes custody of a UAC only upon referral and transfer of custody from another federal department or agency.

The Government thanks the Court for its consideration of this submission.

Respectfully,

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