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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

O.E.O.,
Petitioner,

v.
Fred Figueroa, et al.,
Respondents.

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

Hon. Judge Dominic W. Lanza

**PETITIONER'S MOTION FOR
LIMITED, EXPEDITED
DISCOVERY**

INTRODUCTION

This motion seeks limited, expedited discovery to supplement the evidentiary record after Respondents ICE and ORR filed administrative records and sworn statements that only further call into question whether they followed their statutory obligations when age-redetermining Petitioner O.E.O. When an unaccompanied child's minority is called into question, Respondents are required by law to conduct an age determination that considers the totality of the circumstances and evidence. With the record as it stands now, it is particularly unclear whether ORR even considered the correct evidence in its age redetermination. Ms. Lucibel Gast's sworn declaration is contradicted by O.E.O.'s evidence and her own agency's administrative record. As for ICE, its administrative record is incomplete and provides no contemporaneous evidence of ever having conducted its own independent age determination. Given Respondents' self-contradicting and incomplete evidence, as well as the ongoing harm to O.E.O.—a fifteen-year-old in adult ICE custody—limited, expedited discovery is warranted.

ARGUMENT

I. There Are Significant Factual Disputes Warranting Limited, Expedited Discovery

O.E.O.'s Complaint/Petition raises claims under the Administrative Procedure Act (APA), the Trafficking Victims Protection Reauthorization Act (TVPRA), and the United States Constitution. *See* Dkt. 1, Complaint and Petition for Writ of Habeas Corpus (Complaint/Petition) at ¶¶ 81–109. O.E.O.'s rights have been violated by Respondents' failure to follow their statutory, regulatory, and constitutional mandates to conduct a proper age determination. *Id.*; *see also* Dkt. 2, Motion for a Temporary Restraining Order; Dkt. 45, Petitioner's Traverse in Support of Complaint and Petition for Writ of Habeas Corpus. O.E.O.'s evidence establishes that ORR for its part failed to consider the "totality of the circumstances and evidence" of O.E.O.'s minority. *See* Dkt. 45,

Petitioner's Traverse at 7–15. ICE, for its part, entirely failed to conduct a proper age determination. *See id.* at 7, 9–10, 13–14.

On August 15, 2025, Respondents filed their respective administrative records and the sworn declaration of Ms. Gast, both of which raise significant factual inconsistencies. *See generally* ORR-AR; ICE-AR; Dkt. 43-1, Respondents' Index of Exhibits; Dkt. 45, Petitioner's Traverse. These inconsistencies raise serious questions as to the credibility of Respondents' sworn statements and the completeness of the administrative record. Dkt. 45, Petitioner's Traverse. Further development of the record is required to resolve the following factual disputes between the parties:

- Which Tazkira was reviewed by the Afghan Affairs Unit (AAU);
- How the AAU came to the conclusion that O.E.O.'s DOB was digitally manipulated on the Tazkira;
- Whether Ms. Gast considered O.E.O.'s family declarations; and
- How ICE's administrative record was compiled and what evidence it considered and relied on in its age determination.

These factual inconsistencies at issue fall into four main categories: (1) the Tazkira; (2) corroborating evidence from O.E.O.'s family members; and (3) ICE's lack of contemporaneous age determinations. Each category is taken in turn.

Tazkira. Ms. Gast declared that the English-translated Tazkira and the Dari-translated Tazkira were evaluated by the AAU, which replied to ORR on April 21, 2025, that it determined the date of birth (DOB) on the Tazkira appeared digitally manipulated. *See* Dkt.43-1, Ex. 1 Declaration of FFS Lucibel Gast, with attachments (Gast Decl.). *See* Dkt. 45, Petitioner's Traverse at 5–6. But it is unclear if the original Tazkira was ever sent to the AAU for evaluation. *Id.*; *see also* Dkt.43-1, Ex. 1 Gast Decl., Ex. C. O.E.O.'s evidence shows that ORR did not receive the Dari-translated Tazkira until May 2025, which is consistent with ORR's administrative record. *See* Dkt. 45-2 Supplemental

1 Declaration of S.O., Tab 6 (WhatsApp messages showing when Tazkira was received);
 2 *see also* ORR-AR-0458 (confirming Dari-translated Tazkira was sent to ORR in May
 3 2025). It is also unclear why ORR would send a non-original Tazkira to the AAU for
 4 verification. The record must be clarified to determine what evidence the AAU evaluated
 5 and whether it considered the proper evidence to come to its conclusions.

6 *Corroborating Evidence from O.E.O.'s Family Members.* Ms. Gast declares she
 7 did not find O.E.O.'s family declarations persuasive when she conducted O.E.O.'s age
 8 redetermination. *See* Dkt. 43-1, Ex. 1 Gast Decl. at ¶ 21. However, she also claims ORR
 9 did not receive the translated declarations until June 10, 2025. *See* Dkt. 43-1, Ex. 1 Gast
 10 Decl. at ¶ 17. If Ms. Gast were correct that ORR did not obtain the declarations until
 11 June 10, 2025, she could not have considered them on May 1, 2025, or May 22, 2025, the
 12 dates of her age-determination memoranda.¹ As to the National I.D.s of O.E.O.'s sisters,
 13 these are not mentioned in either of ORR's memos, nor are they included as part of the
 14 administrative record, despite ORR having received them on April 15, 2025. *See* Dkt.
 15 10, Petitioner's Exhibits, Tab A, B, Z.² The record must be clarified to determine
 16 whether Ms. Gast actually considered the family declarations and why the sister's IDs
 17 were not included in ORR's administrative record.³

18 *ICE's Lack of Contemporaneous Age Determinations.* On July 14, 2025, Officer
 19 Hoffman claimed he conducted an age determination on June 4, 2025. *See* ICE-AR-

21 ¹ O.E.O.'s evidence shows that ORR received the declarations prior to May 8, 2025. *See*
 22 Dkt. 10 Petitioner's Exhibits, Tab Z; *see also* Dkt. 45-2, Supp. Decl. S.O. at ¶ 17.

23 ² The only sister's national ID included in the AR is that of B.O., and it is only included
 as part of Ms. Fox's demand letter. *See* ICE-AR-0095-96.

24 ³ Ms. Gast's memos also state that O.E.O. initially reported his DOB as [REDACTED]
 25 2009, but her declaration states he reported March 23, 2009. *Compare* Dkt. 10
 26 Petitioner's Exhibits, Ex. A, B *with* Dkt. 43-1 at ¶ 6. However, O.E.O. immediately
 27 disclosed his DOB as [REDACTED] under the Afghan calendar because he did not yet know
 28 the Gregorian calendar equivalent. *See* Dkt. 45-1 Supplemental Declaration of O.E.O. at
 ¶ 5. That date is equivalent to [REDACTED] 2009, the date that O.E.O. has consistently
 maintained is his actual birthday. *Id.*

1 0051, Form G-166C. ICE’s administrative record, however, includes an I-213 dated June
2 4, 2025, with no record of having conducted an age determination. ICE-AR-0043–45.
3 This is consistent with Officer Hoffman’s statement to Ms. Fox on June 3, 2025, when he
4 told Ms. Fox he would not conduct an internal evaluation of the evidence. Dkt. 11, Fox
5 Decl. at ¶ 27. Further, the documentation ICE filed in its administrative record alleges
6 that it conducted an age determination but does not specify what evidence was considered
7 and those documents are dated July 14, 2025, and August 7, 2025, *after* this lawsuit was
8 filed. *See* ICE-AR-0051, 0135. Even more concerning is that the August 7, 2025
9 memorandum seems to have been prepared *after* the administrative record was certified
10 on August 5, 2025. *Compare* ICE-AR-0001, 0051, 0135 *with* ERO Juvenile Coordinator
11 Handbook §3.1.2 (requiring ICE “document[] all information relied upon to determine
12 age). Limited discovery is thus warranted to clarify how the administrative record was
13 compiled.⁴

14 Further development of the record is warranted to clarify the inconsistencies
15 presented by Respondents’ evidence. This Court should thus order narrowly tailored
16 discovery for the reasons argued below.

17 **II. This Court Has Authority to Order Limited Discovery**

18 This Court has authority to grant O.E.O.’s request for limited discovery because
19 O.E.O. brings claims in addition to those it brings under the APA. Courts have
20 repeatedly recognized that broader discovery is appropriate where, as here, APA claims
21 are brought alongside *Accardi* doctrine and constitutional claims. *See, e.g., Emami v.*
22 *Nielsen*, No. 3:18-cv-01587-JD, at *3 (N.D. Cal. Sept. 12, 2019) (“The key inquiry is
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25 ⁴ With respect to the completeness of the administrative record, it is also notable that
26 O.E.O.’s credible fear interview, which took place after this lawsuit was filed but before
27 the administrative record was certified, is missing from ICE’s administrative record. *See*
28 Dkt. 48-2, Declaration of Alex Fox in Support of Petitioner’s Motion for Leave to
Proceed Anonymously and to Seal the Administrative Record, Tab 1, Credible Fear
Interview.

1 what discovery is proportional and fair in light of the claim at this time.”); *see also Grill*
 2 *v. Quinn*, No. CIV S–10–0757 GEB GGH PS, 2012 WL 174873, at *2, 5 (E.D. Cal. Jan.
 3 20, 2012) (finding courts are entitled to look beyond the administrative record in regards
 4 to constitutional challenges brought in addition to APA claims). But extra-record
 5 discovery has been allowed even in actions brought solely under the APA , and the Ninth
 6 Circuit has enumerated four exceptions where extra-record discovery may be permitted in
 7 a prototypical APA claim: “(1) if admission is necessary to determine whether the agency
 8 has considered all relevant factors and has explained its decision; (2) if the agency has
 9 relied on documents not in the record; (3) when supplementing the record is necessary to
 10 explain technical terms or complex subject matter; or (4) when plaintiffs make a showing
 11 of agency bad faith.” *Lands Council v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2005)
 12 (quoting *Sw. Ctr. for Biological Diversity v. U.S. Forest Serv.*, 100 F.3d 1443, 1450 (9th
 13 Cir. 1996)) (internal citation and quotation marks omitted); *see also San Luis & Delta-*
 14 *Mendota Water Authority v. Locke*, 776 F.3d 971, 995 (deference owed to the agency is
 15 not unlimited, and review beyond the administrative record was warranted to ensure the
 16 agency decision relied on relevant factors). Under these standards, the narrowly tailored
 17 discovery O.E.O. requests is more than justified. *See Lands Council*, 395 F.3d at 1030.

18 **A. The Nature of O.E.O.’s Claims and the Inconsistencies in the Record**
 19 **Necessitate Extra-Record Discovery**

20 O.E.O.’s challenges in this lawsuit require additional investigation beyond
 21 Respondents’ administrative records because all his claims are, at their core, claims “of
 22 procedural fairness that owe as much to the Due Process Clause as to the” APA. *Emami*,
 23 No. 3:18-cv-01587-JD, at *2. In other words, what O.E.O.’s claims have in common is
 24 that they call into question whether ORR and ICE followed their statutory obligations
 25 and their own internal procedures. *See* Dkt. 1, Complaint/Petition at ¶ 81–109. The
 26 inconsistencies found in Respondents’ administrative records have only further called
 27 this into question. *Compare* ICE-AR, ORR-AR, Dkt. 43, Dkt. 43–1 with Dkt. 45.

1 District Courts in the Ninth Circuit have recognized that “it is fundamentally unfair, and
 2 antithetical to our tradition as a republic of laws, for the government to grant procedures
 3 and rights on paper that it fails to honor in practice.” *See Emami*, No. 3:18-cv-01587-JD
 4 at *2. “[W]hen the essence of the claim is the government has failed to act in
 5 accordance with its own rules and regulations” the Court must look beyond the
 6 administrative record to discern whether the Agency has complied with its obligations,
 7 and so discovery beyond the administrative record is warranted. *Id.* This is especially
 8 true where, as here, the administrative record is deficient on its face and compiled in a
 9 self-serving manner by the agencies who have flouted their own rules and regulations
 10 and thereby misclassified an unaccompanied child as an adult. *Id.* Because O.E.O.’s
 11 claims, at their core, are about procedural fairness, this Court must allow for some
 12 limited discovery beyond the deficient administrative records.

13 This Court should also allow for limited extra-record discovery because it falls
 14 within three of the four exceptions that allow for extra-record discovery in a prototypical
 15 APA claim—i.e., (1) the “admission is necessary to determine whether [Respondents]
 16 ha[ve] considered all relevant factors and ha[ve] explained [their] decision”; (2)
 17 Respondents have “relied on documents not in the record”; and (3) O.E.O. “makes a
 18 showing of agency bad faith.” *Lands Council*, 395 F.3d at 1030 (quoting *Southwest Ctr.*,
 19 100 F.3d at 1450) (internal citation and quotation marks omitted).

20 **First**, O.E.O.’s Complaint/Petition challenges whether ORR and ICE have
 21 considered all relevant evidence of O.E.O.’s minority and explained their decision.⁵ As
 22 argued in the traverse, it is unclear whether the original Tazkira was ever sent to the

23 ⁵ O.E.O. maintains that ICE has failed altogether to conduct an age determination in the
 24 first instance. *See* Dkt. 1 at ¶¶ 95–97 (raising 5 U.S.C. § 706(1) failure to act claim).
 25 Discovery beyond the administrative record is common in failure to act cases. *See*
 26 *Center for Biological Diversity v. U.S. Department of Housing and Urban Development*,
 27 2007 WL 9723130 at *1 (D. Ariz. 2007). For purposes of this Motion, however, O.E.O.
 28 references the post hac justifications ICE provided that claim they have conducted an age
 Determination. *See* ICE-AR-0051; *see also* Dkt. 43-1, Ex. 3 DFOD Ciliberti Final Age

1 AAU and there is no explanation about how the AAU came to its decision. *See* Dkt. 45
 2 Petitioner’s Traverse at 5–6; *see also* ORR-AR- 3129. The only correspondence
 3 included in the administrative record about the AAU’s assessment of the Tazkira is a
 4 short two-sentence email attached to Ms. Gast’s August 4, 2025 declaration providing a
 5 post hac justification for her age re-determination. Dkt. 43-1, Ex. C (email from Emily
 6 Benson reporting AAU’s assessment of O.E.O.’s Tazkira); *see also* ORR-AR-3120–21
 7 (email from Carmen Araujo to Lucibel Gast dated April 30, 2025, showing email from
 8 Emily Benson as attachment). If Respondents’ age determinations rest on the
 9 authentication of a non-original version of O.E.O.’s Tazkira, they have failed to consider
 10 the relevant evidence establishing O.E.O.’s minority. *See* Dkt. 45 Petitioner’s Traverse
 11 at 5–6; *see also San Luis & Delta-Mendota Water Authority v. Locke*, 776 F.3d 971, 993
 12 (9th Cir. 2014) (“Reviewing courts may admit evidence under th[e first] exception only
 13 to help the court understand whether the agency complied with the APA’s requirement
 14 that the agency’s decision be neither arbitrary nor capricious.”).

15 Ms. Gast also makes the following three statements that have no support in the
 16 administrative record or are blatantly contradicted by O.E.O.’s evidence: (1) ORR did
 17 not receive O.E.O.’s family declarations until June 10, 2025; (2) O.E.O. had an original
 18 passport with the DOB of March 23, 2009, which was stolen; and (3) O.E.O. initially
 19 reported his DOB as March 23, 2009. Dkt. 43-1, Ex. 1 Gast Decl. at ¶¶ 5, 6, 17.

20 **Second**, it appears that, for its post-hoc age determinations, ICE relied on
 21 documents not in the administrative record. *See* Dkt. 45 Petitioner’s Traverse at 7, 9–10.
 22 In a document dated July 14, 2025, ICE claims it “reviewed the old evidence submitted”
 23 by Ms. Fox and determined O.E.O. was an adult. ICE-AR-0051. But the “old evidence”
 24 Officer Hoffman alleges he considered is neither mentioned in the memo nor included in
 25 the administrative record, so there is no knowing what the agency relied on. ICE-AR-
 26 0051; *see also* Dkt. 45, Petitioner’s Traverse at 9–10 (arguing that ICE’s lack of
 27 evidence in the administrative record shows their determination is, at minimum, arbitrary
 28

1 and capricious); *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins.*
2 *Co.*, 463 U.S. 29, 43 (1983). The same is true for ICE's Final Age Determination dated
3 August 7, 2025. *See* Dkt. 43-1, Ex. 3 DFOD Ciliberti Final Age Determination; *see also*
4 ICE-AR-0135. Even if ICE conducted a contemporaneous age determination (it did not),
5 the evidence it claims to have considered is not found in the administrative record. *See*
6 *generally* ICE-AR.

7 **Third**, O.E.O. has shown bad faith on the part of Respondents. "[J]udicial review
8 of agency action requires that the grounds upon which the . . . agency acted be clearly
9 disclosed." *New York v. U.S. Dep't of Com.*, 351 F. Supp. 3d 502, 660 (S.D.N.Y. 2019).
10 "It follows that a court cannot sustain agency action founded on a pretextual or sham
11 justification that conceals the true 'basis' for the decision." *Id.* Where agencies have
12 offered a "pretextual or sham justification" for their decision, courts have found the
13 agency acted in bad faith. *Id.* Here, both Respondent agencies attempted to introduce
14 post hac justifications because they did not follow their statutory and regulatory
15 obligations to conduct contemporaneous age determinations that considered all evidence
16 under the "totality of the circumstances." *See* Dkt. 45 Petitioner's Traverse at 8–13.
17 ORR and ICE's administrative record and sworn statements are riddled with
18 inconsistencies that indicate their post hac justifications for their age determinations
19 were possibly pretextual or even false. *New York*, 351 F. Supp. 3d at 660. Moreover,
20 Respondents' administrative records and filed sworn statements are also contradicted by
21 O.E.O.'s evidence. *See* Dkt. 45, Petitioner's Traverse at 8–13. Further, as argued *supra*
22 at I., Respondent ICE included a "Final Age Determination" dated August 7, 2025, in its
23 administrative record, which was certified two days earlier on August 5, 2025. At
24 minimum, the carelessness with which the administrative record was compiled suggests
25 bad faith on the part of Respondents.

For the aforementioned reasons, this Court should allow extra-record discovery to determine what evidence ORR actually considered in conducting its age re-determination and whether ICE conducted a contemporaneous age determination.

B. Petitioner's Requested Discovery Is Reasonable and Appropriate

O.E.O.'s contemplated discovery is reasonable in breadth and scope, and is "precisely defined and carefully limited" to remedy the factual inconsistencies created by Respondents' incomplete administrative record and statements. *Rovio Ent. Ltd. v. Royal Plush Toys, Inc.*, 907 F. Supp. 2d 1086, 1100 (N.D. Cal. 2012).

O.E.O. specifically seeks to serve written discovery (requests for production and interrogatories) on the following topics:

- ORR's evaluation of O.E.O.'s Tazkiras, family declarations, and national IDs, including correspondence between ORR and the AAU concerning the documents evaluated.
- ICE's purported evaluation of the evidence it used to make its age determination and the process by which it completed and certified the administrative record.

O.E.O. requests that the Court set a ten-day response deadline for written discovery responses after the date of service of the requests.

O.E.O. also seeks to take the following depositions on an expedited timeline to be determined by the Court:

- A deposition of Lucibel Gast
- A deposition of Christofer Hoffman

This limited expedited discovery will help clarify for the parties and the Court what evidence was considered by ORR, and whether ICE ever conducted a

1 contemporaneous age determination. These unresolved factual issues go to the heart of
2 O.E.O.'s legal claims.

3 **III. Good Cause Exists to Expedite O.E.O.'s Request**

4 "Good cause" exists to expedite O.E.O.'s narrowly tailored discovery requests
5 because "the need for expedited discovery, in consideration of the administration of
6 justice, outweighs the prejudice to the responding party." *Rovio Entertainment Ltd.*, 907
7 F. Supp. 2d at 1099 (citing *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273,
8 276 (N.D. Cal. 2002)). Courts may consider the following factors to determine whether
9 good cause justifies expedited discovery: "(1) whether a preliminary injunction is
10 pending; (2) the breadth of the discovery requests; (3) the purpose for requesting the
11 expedited discovery; (4) the burden on the defendants to comply with the requests; and
12 (5) how far in advance of the typical discovery process the request was made." *American*
13 *Legal Net, Inc. v. Davis*, 673 F. Supp. 2d 1063, 1067 (C.D. Cal. 2009).

14 On the first factor, although there is no preliminary injunction pending, O.E.O.
15 previously sought a temporary restraining order before this Court. But more relevant to
16 the instant action is the fact that O.E.O. also seeks immediate habeas relief, which
17 functions like a preliminary injunction motion in that the timeline is expedited and the
18 relief sought is injunctive. Habeas "is the fundamental instrument for safeguarding
19 individual freedom against arbitrary and lawless state action." *Harris v. Nelson*, 394 U.S.
20 286, 290–91 (1969). Indeed, "[t]he scope and flexibility of the writ—its capacity to
21 reach all manner of illegal detention—its ability to cut through barriers of form and
22 procedural mazes—have always been emphasized and jealously guarded by courts and
23 lawmakers." *Id.* It is this flexibility and the unique procedural posture of this case that
24 should be considered by the Court in determining whether O.E.O.'s narrowly tailored
25 discovery should be allowed.
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27 As to the second and third factors, O.E.O.'s request is narrowly tailored to address
28 only the evidentiary gaps created by Respondents' sworn declaration and incomplete

1 administrative records, as detailed *supra*. See *Rovio Entertainment Ltd.*, 907 F.Supp. at
2 1100. The seriousness of the deprivation at issue here warrants granting O.E.O.’s limited
3 discovery, which seeks only to clarify inconsistencies raised by Respondents’ evidence
4 and fill holes in an incomplete administrative record. *Id.*

5 On the fourth factor, O.E.O.’s requests are not excessively burdensome. O.E.O. is
6 asking only that Respondents comply with their obligation to provide a complete
7 administrative record and clarify inconsistencies between that record and other sworn
8 statements. See *Portland Audubon Soc. v. Endangered Species Comm.*, 984 F.2d 1534,
9 1548 (9th Cir. 1993) (“An incomplete record must be viewed as a fictional account of the
10 actual decisionmaking process.”). Where an agency has not done so, courts have
11 repeatedly granted a Petitioner’s request for limited discovery. See *Pub. Power Council*
12 *v. Johnson*, 674 F.2d 791, 794 (9th Cir. 1982) (finding that granting discovery beyond
13 administrative record is warranted “when necessary to explain agency action”). Further,
14 as argued *supra*, O.E.O.’s claims are fundamentally about “procedural fairness that owe
15 as much to the Due Process Clause as to the” APA. *Emami v. Nielsen*, No. 3:18-cv-
16 01587-JD, at *2. A complete picture of what the agency did, or did not do, is necessary
17 for the evaluation of the merits of O.E.O.’s claims. *Id.* O.E.O.’s request is narrowly
18 tailored to address only the gaps and inconsistencies in the evidentiary record above and
19 will not overly burden Respondents.

20 On the fifth and final factor, there is no typical discovery process in a habeas
21 petition and no pending close of discovery deadline in the present case for evaluation of
22 this factor. However, given the nature of habeas, and thus the urgency of the present
23 matter, this factor weighs in favor of expediting discovery so that the Court has a full
24 evidentiary record with which to properly determine the merits of O.E.O.’s claims.
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1 Given the nature of O.E.O.'s claims, this Court has the authority, and good cause
2 exists, to grant O.E.O.'s request to expedite his limited discovery request.⁶
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5 **CONCLUSION**

6 For the foregoing reasons, O.E.O. respectfully requests that this Court grant
7 Petitioner's Motion for Limited, Expedited Discovery.
8

9 Respectfully submitted on September 12, 2025,

10 /s/ Carson Adrianna Scott

11 Carson Adrianna Scott

12 *Pro Bono Attorney for Petitioner*
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27 ⁶ On September 12, 2025, undersigned counsel emailed Respondents' counsel requesting
28 their position on the present motion. Respondents indicated they oppose the motion.