UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

K.A.P.L.,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 26 C 2477
	)	
ANGIE SALAZAR, in her official capacity as ACTING DIRECTOR OF THE OFFICE OF REFUGEE RESETTLEMENT, *et al.*,	)	Judge Alexakis
	)	
Respondents.	)	

MEMORANDUM IN SUPPORT OF
RESPONDENTS' MOTION TO DISMISS

The court should dismiss the complaint under Rule 12(b)(1) because the petitioner's claims regarding his past detention have become moot given that he has been released, reunified with his mother, and is no longer in government custody whatsoever. Fundamentally, this court is without power to grant the petitioner any further redress and the injunction and declaratory judgment that he now seeks is wholly inappropriate where there is no showing of a continuing harm or collateral consequences.

Background

Respondents hereby incorporate by reference their "Background" section from their response memorandum. *See* Dkt. 13 at 2–12.

On March 19, 2026, the parties filed a joint status report ("JSR"), indicating that petitioner had been released from the custody of the Office of Refugee Resettlement ("ORR"). Dkt. 17 ¶ 1. In the JSR, respondents argued that the case was moot as petitioner had been released from HHS custody. Dkt. 17 ¶ 2. Petitioner disagreed, though, contending that his arguments alleging violations under the TVPRA, the APA, and ORR regulations should still be addressed. Dkt. 17

¶ 3. The petitioner also believed that the case was not moot because the respondents' action represented "actions capable of repetition but evading review" and "a voluntary cessation of the challenged activity." Dkt. 17 ¶ 3. At the last status hearing, this court advised the parties to file their positions on whether this case was moot. Dkt. 18.

Argument

I. This Case is Now Moot.

As a threshold matter, this habeas case is now moot because ORR no longer has custody of K.A.P.L. and he faces no collateral consequences from his past detention. Article III of the Constitution limits the jurisdiction of federal courts to the consideration of actual "cases" or "controversies." U.S. Const. art. III, § 2. A party's standing "is an essential component of Article III's case or controversy requirement," and concerns "whether the litigant is entitled to have the court decide the merits of the dispute or particular issues." *Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443 (7th Cir. 2009) (quoting *Perry v. Vill. Fo Arlington Heights*, 186 F.3d 826, 829 (7th Cir. 1999)) (internal quotation marks omitted). It is each party's burden to show that they satisfy the requirements of standing. *See Kathrein v. City of Evanston*, 636 F.3d 906, 914 (7th Cir. 2011). To establish Article III standing, a party must show "an injury in fact' that is 'fairly traceable' to the defendant's conduct and 'that is likely to be redressed by a favorable judicial decision.'" *Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 196 (2017) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)). This requires the litigant to have suffered an actual injury "likely to be redressed by a favorable judicial decision," as federal courts lack jurisdiction over a case that "cannot affect the rights of litigants in the case before them." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (emphasis added).

In this case, the petitioner's asserted injury (past separation from his mother) is no longer

redressable by a favorable decision from this court because he has been released from ORR custody and is now indisputably reunified with his mother. This is a common problem for habeas claims where petitioners have already been released, *see e.g. Spencer v. Kemna*, 523 U.S. 1, 7 (1998), and is a problem here because standing must continue throughout a litigation or the case becomes moot, *see Arizonans for Official English v. Arizona*, 520 U.S. 43, 68 n.22 (1997); *A.M. v. Butler*, 360 F.3d 787, 790 (7th Cir. 2004) (directing lower courts to "dismiss a case as moot when it cannot give the petitioner any effective relief"). It is entirely unclear what the petitioner now requests—an injunction and declaratory judgment to affirm what has already occurred (reunification and release according to challenged vetting procedures of the mother)—will in any way provide further effective relief.

Although it is true that release from custody does not automatically render a habeas petition moot, custody is still the *sine qua non* of habeas. *See Spencer*, 523 U.S. at 7 ("Once the convict's sentence has expired, some concrete and continuing injury other than the now-ended incarceration must exist if the suit is to be maintained."); *Othman v. Gonzales*, No. 07-cv-13, 2010 WL 1132669, at *2 (S.D. Ill. Mar. 1, 2010) (foreign national's habeas case was moot after his release from government custody), *report and recommendation adopted by* 2010 WL 1132658 (S.D. Ill. Mar. 19, 2010). Therefore, after a habeas petitioner has been released from custody, the petitioner must demonstrate that some "concrete and continuing injury" or "collateral consequence" resulted from the detention for the petition to present a continuing case or controversy. *Spencer*, 523 U.S. at 7 (explaining that the petitioner still must present a "case or controversy" under Article III, § 2 of the Constitution for the court to be able to grant further relief to the petitioner). "This means that, throughout the litigation, the [petitioner] 'must have suffered, or be threatened with, an actual injury traceable to the [respondent] and likely to be redressed by a favorable judicial decision.'"

Id. (quoting *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990)). And if the injury cannot be redressed by a favorable judicial decision, the court must dismiss the petition as moot. *See A.M. v. Butler*, 360 F.3d 787, 790 (7th Cir. 2004) (citations omitted). No such collateral consequence exists here.

In this case, the petitioner challenged his custody with HHS and consequently sought to be released from custody. Dkt. 1 at 1. More specifically, the injury alleged was that K.A.P.L. was not being released to his mother. Dkt. 1 at 23. At this point, however, K.A.P.L. has been released to his mother. Dkt. 17 ¶ 1. And nothing is hanging over K.A.P.L. to bring about a collateral consequence of the challenged agency vetting that the petitioner was previously arguing was hindering his release to his mother.

This conclusion of mootness is further confirmed by the Seventh Circuit's treatment of foreign nationals as habeas petitioners who have already been deported. For example, in *Diaz v. Duckworth*, the Seventh Circuit found that an inmate's release and subsequent deportation rendered moot his petition for writ of habeas corpus challenging the revocation of good conduct credit. 143 F.3d 345 (7th Cir. 1998). The Seventh Circuit questioned whether, after *Spencer*, the consequences of a criminal or disciplinary proceeding other than conviction could ever be "collateral consequences" sufficient to keep alive a habeas petition after the petitioner's release from custody. The court of appeals reasoned that in *Spencer* the Supreme Court limited the scope of collateral consequences necessary to keep alive a petition for writ of habeas corpus, to "statutory disabilities such as loss of the right to vote or the right to own a gun." *Id.* at 346. *Spencer* appeared to categorically exclude potential disciplinary enhancements ~~contingent upon the~~ commission of a crime or disciplinary violation in the future, or, as the Seventh Circuit put it, "consequences that are within the power of the [petitioner] to avoid." *Id.* Applying this reasoning to mootness, the

Seventh Circuit stated, "[a] basic principle of standing is that a person is not entitled to litigate in a federal court unless he can show a *reasonable probability of obtaining a tangible benefit from winning*." *Id.* at 347 (emphasis added). Although "[c]ertainty is not required but a remote possibility won't do." *Id.*

Since *Spencer* and *Diaz*, the Seventh Circuit has also recognized that the Supreme Court has not extended the presumption of collateral consequences from a wrongful criminal conviction. *See Cochran v. Buss*, 381 F.3d 637, 641 (7th Cir. 2004). And in an instructive unpublished opinion, the Seventh Circuit held that a habeas challenge to a prison's calculation of an inmate's release date became moot upon the inmate's release. *See Parker v. Winn*, 210 F.3d 375 (7th Cir. 2000) (unpublished). Citing to *Diaz* and *Spencer*, the court of appeals reasoned that "Parker has completed his sentence, thus mooting his claims about good time and parole credits. The amount of time he spent in prison cannot now be undone." *Id.* "Moreover, Parker does not allege any collateral consequences from not receiving the good time and parole credits, nor do we think that he could." *Id.*

The same reasoning should apply here—K.A.P.L. has been released and there are no collateral consequences that he is now suffering from or will suffer from in the future. Notably, once ORR releases a UAC to a sponsor, it no longer has legal custody of the child such that it can control decision making on the child's behalf. *See*, e.g., 45 C.F.R. 410.1001 (defining "Release" and noting that "After release, ORR does not have legal custody of the unaccompanied child, and the sponsor becomes responsible for providing for the unaccompanied child's physical and mental well-being."). As noted in the Declaration of Toby Biswas, "[a]ccordingly, ORR must front-load child safety considerations in its identity verification and sponsor-vetting policies." Dkt. 13 ¶ 9.

To try to get over this hurdle, petitioner argues that since his release, he has been placed

on "level 3" post release services ("PRS"), which he believes is still a restriction of liberty because it has an "in-person component." Dkt. 17 ¶ 3. However, this is not a restriction. PRS are follow-up *services* ORR provides to some UAC like K.A.P.L. after release. 45 C.F.R. § 410.1001 (post-release services definition). Assistance may, for example, include linking families to educational and community resources, home visits, case management, in-home counseling, and other social welfare services, as may be needed by the sponsor. *Id.* In some cases, ORR is statutorily *required* to offer them by the TVPRA. 8 U.S.C. § 1232(c)(3)(B) (the Secretary "shall" conduct follow-up services, during the pendency of removal proceedings . . . and is authorized to conduct follow up services in cases involving children . . . who could benefit from ongoing assistance from a social welfare agency").

But critically, PRS are *voluntary* on the part of the child and sponsor. Even if ORR is required to *offer* them (and in some cases makes release decisions that are partially premised on offering/providing PRS), the reality is that ORR neither requires (nor is even able to require) children or sponsors to participate with PRS. *See*, e.g., ORR Policy Guide Section 6.1 ("Once a child is released to a sponsor, they are no longer in ORR custody; as such, their participation in PRS is not mandatory[.]"); Section 6.4 ("The PRS case manager must also inform the child and sponsor that PRS are not mandatory and that their participation in these services is voluntary."). Simply put, PRS are purely for the child and sponsor's benefit. And ORR refers children to a PRS provider it funds to manage such cases. However, ORR does not (and realistically cannot) require participation, so level 3 PRS is in no way a restriction.

Relatedly, petitioner also argues that the case is not moot because respondents' polices can be repeated on other possible UACs, making the claims, "capable of repetition, yet evading review" and a "voluntary cessation of activity." Dkt. 17 ¶ 3. However, that is not how mootness

works. It is not about potential application of policies to other parties at some uncertain point in the future. These exceptions only apply if the same actions might be revisited upon the same party.

Doctrinally, a claim is not moot if it is capable of repetition yet evading review. *See, e.g.*, *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007). But this exception applies when "(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." *Id.* (emphases added) quoting *Spencer,* 523 U.S. at 17)). There is *nothing* presented by petitioner here that he will be placed back into ORR custody. This same flaw exists for the voluntary cessation argument. *Jones v. Sullivan*, 938 F.2d 801, 807 (7th Cir. 1991) (finding that voluntary cessation exception did not apply because there was no "reasonable expectation" *plaintiffs themselves* would be subjected to challenged HHS policy). Without anything to suggest K.A.P.L. will be placed back into ORR custody, the exceptions do not apply, and this case is moot.

Conclusion

For the foregoing reasons, the court should dismiss this action.

Respectfully submitted,

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