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.	)	

RESPONDENTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS

K.A.P.L. argues that since he *could* be re-detained, and because *other* persons have been placed back into government custody for various reasons, the same situation may happen to him. *See* Dkt. 25 at 1–2. These arguments matter because, 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 v. Kemna*, 523 U.S. 1, 17 (1998)). Contrary to the petitioner's argument here, however, there is *no reasonable* expectation that he will be placed back into the custody of the Office of Refugee Resettlement ("ORR"). This same flaw exists for the voluntary cessation argument because petitioner can only point to other persons' experiences. *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 policy).

In *Jones*, for example, the plaintiffs filed a class action claiming that the Secretary of Health and Human Services' "no process" policy of denying applicants new social security cards violated the Social Security Act and the Due Process Clause because it was done without adequate notice or hearing. *Jones v. Sullivan,* 938 F.2d 801, 802 (7th Cir. 1991). Many of the applicants received new social security card under the Immigration Reform and Control Act of 1986, and therefore the Secretary moved to dismiss those cases as moot. *Id.* at 804. The district court held that the case was capable of repetition, yet evading review. *Id.* However, the Seventh Circuit sided with the Secretary, noting:

> The SSN application requirements indicate that the denial of the requested SSNs is not of the transitory nature that would cause a claim to disappear before the district court could reasonably be expected to rule. . . . Further, "[p]laintiffs . . . acknowledge that any change in procedure by SSA will not make a difference to [plaintiff] if he never receives another IRS notice, or has another unemployment compensation problem. The *possibility* that [he] may lose his duplicate SSN card and seek another, is not sufficient since 'the Court has never held that a mere physical or theoretical possibility was sufficient to satisfy the test . . . . [T]here must be a 'reasonable expectation' or a 'demonstrated probability' that the same controversy will occur.

Jones, 938 F.2d at 806–07.

K.A.P.L.'s argument that he *may* be re-detained at some uncertain point in the future is analogous to the plaintiffs in *Jones*. More specifically, K.A.P.L. asserts that because of the theoretical possibility that he could be referred back to O.R.R., it must be probable that such a re-detention could occur with him. However, like the IRS notice example in *Jones*, no change to ORR's procedures will matter if K.A.P.L. has no other further encounters with immigration or law enforcement in the United States (and is unaccompanied). Indeed, ORR is not a "law enforcement or immigration enforcement agency" and "only takes children into its custody upon referral by another federal agency." Dkt. 13, Exhibit 1, Biswas Decl. ¶ 9. In short, any future encounters

with immigration or law enforcement that K.A.P.L. *might* have at some uncertain point in the future will not be by ORR's actions, but possibly from petitioner's own actions if he finds himself violating immigration or criminal laws in the United States. These are simply factors outside respondents' control and are speculative at best. Simply giving three examples of where children have come back into ORR custody—without explaining how the facts in those cases were similar to the petitioner's (aside from them being minors)—certainly shows a "possibility" that the petitioner may find himself back with ORR, but it is far from same as showing a "demonstrated probability" that it will happen to the petitioner. *Jones*, 938 F.2d at 806–07.

Petitioner also argues that the release has not remedied the prolonged detention he experienced in the past because he now suffers from a collateral consequence—he claims he developed PTSD during his time with ORR. Dkt. 25 at 2. That is a retroactive tort claim for damages and has nothing to do with the prospective request for release that K.A.P.L.'s petition actually pleaded. Moreover, the Seventh Circuit has recognized that the Supreme Court has not extended the presumption of collateral consequences from a wrongful criminal conviction to other proceedings such as disciplinary sanctions, which are analogous to the petitioner's claim. *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 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.* (emphasis added). The same reasoning should apply here.

Eichwedel v. Curry, is also instructive. 700 F.3d 275 (7th Cir. 2012). In that case, the petitioner argued that the three months that he was held on supervised release constituted a major restraint on his freedom and was the sort of serious collateral consequence sufficient to avoid mootness. *Id.* at 278. The Seventh Circuit rejected that argument, finding that

> "he has not met [his] burden. The best that Mr. Eichwedel can do is to point to the *possibility* that he *might* have served a shorter period of incarceration before beginning his period of supervised release. All he can suggest is that prison authorities *might* have seen fit to grant him a reduction in the days he had to serve. . . . Moreover, even if Mr. Eichwedel had been guaranteed additional good-conduct credits, a ruling in his favor would not redress his injury. The fact remains that he is now released and the amount of time that he spent in prison cannot be undone."

Id. at 279. Again, the same reasoning should apply here: K.A.P.L. has been released to his sponsor and there are no collateral consequences that he can tie back to himself related to ORR's sponsorship-application process. And even though petitioner notes he was diagnosed with PTSD while with ORR, there is nothing in the record about that issue (such as medical records or a psychological analysis of the petitioner showing that his actual experience in ORR custody or experience dealing with that agency's sponsorship-application process), explaining the reason for his diagnosis, or even anything to suggest whether PTSD *might* have been cause by his time with ORR, other than a sealed report that appears to discuss the "negative consequences of family separation" and an allegation that that the document process caused the petitioner to have "stress and worry." Dkt. 25 at 3.

In fact, ORR's sponsorship-application process is designed to prevent harm to children, not cause it. 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* 45 C.F.R. 410.1001 (defining "Release" and noting that "[a]fter 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. That was done here, and K.A.P.L. was released accordingly. His habeas petition is therefore moot, and this case should be dismissed.

Conclusion

Based on the foregoing, the habeas petition should be denied as moot.

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