U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

April 1, 2026

VIA ECF
The Honorable Mary Kay Vyskocil
United States District Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *E.G.V.A. v. Sanchez, et al.* No. 26 Civ. 2258 (MKV)

Dear Judge Vyskocil:

This Office represents the respondents (the "Government") in the above-referenced habeas action brought by the minor petitioner E.G.V.A. ("Petitioner") by his next friend and father, Luis Edgar Vimos Rivera. I write respectfully to respond to Petitioner's March 30, 2026, letter, ECF No. 11. Because Petitioner has been released from ORR custody, there is no longer a live case or controversy for this Court to adjudicate, and no further relief remains for this Court to grant. Accordingly, the Court should dismiss the Petition as moot.

Background. Petitioner filed this habeas corpus action on March 18, 2016, principally seeking an order directing the Office of Refugee Resettlement ("ORR") to release him to his father. ECF No. 1. Petitioner had been transferred into ORR custody in November 2025 as an unaccompanied alien child ("UAC") after being encountered U.S. Customs and Border Protection ("CBP") in Texas. Biswas Decl. (ECF No. 8) ¶ 28. In February 2026, Mr. Vimos Rivera submitted an application to be Petitioner's "sponsor" and take custody of him, but ORR had not yet made a determination on that application when the Petition was filed. *Id.* at ¶¶ 35, 43. In its opposition to the Petition, ECF No. 7, the Government explained that ORR was awaiting the results of DNA testing, which it expected to receive by March 27, 2026, and that ORR would make a final determination regarding the suitability of Mr. Vimos Rivera as a sponsor within 48 hours of receiving those results. *Id.* at 11. Those results came in, and on March 27, ORR released Petitioner to Mr. Vimos Rivera. On March 30, Petitioner filed a letter acknowledging this release but requesting that the Court nonetheless issue a ruling on the merits of the Petition. ECF No. 11.

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 to Mr. Vimos Rivera. 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). Because Petitioner has received the full relief afforded under 28 U.S.C. § 2241, pursuant to which the Petition was brought, the Court no longer has jurisdiction over this moot Petition. *See*, *e.g.*, *Pierrilus*, 293 F. App'x at 79.

No Mootness Exception Applies. Petitioner argues that this case falls under an exception to mootness for challenged conduct that is "capable of repetition, yet evading review." ECF No. 11 at 1. He is incorrect. 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).

Petitioner fails to make any meaningful argument on either prong of this standard. First, he asserts that the challenged conduct is inherently of limited duration and frequently ends before judicial review can be completed. ECF No. 11 at 1. But Petitioner was in ORR custody for nearly four months before filing this Petition. *See* ECF No. 7. 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 he will be subject to the same challenged government conduct again, a requirement to invoke this exception. In November 2025, CBP determined that Petitioner was an unaccompanied minor; he was thus placed in ORR custody. Biswas Decl. ¶ 28. ORR cared for Petitioner while it attempted to locate a sponsor to whom he could be released. *Id.* at ¶¶ 29-35. That Petitioner does not contend he is at risk of being re-detained by ORR is therefore not surprising given the circumstances in which he came into ORR custody.[1]

Petitioner also suggests that the capable of repetition, yet evading review doctrine may apply where "others similarly situated" may be subject to the same challenged government conduct. *See* ECF No. 11 at 1. He is wrong. The Second Circuit rejected this argument in the case

[1] Of course, if Petitioner were to be in ORR custody again, he could file a new habeas petition. *See 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 he is detained by another federal agency by reason of his 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.

that Petitioner cites, *Van Wie v. Pataki*, 267 F.3d 109 (2d Cir. 2001). In *Pataki*, the Second Circuit considered whether the capable of repetition, yet evading review exception applied only where the "*same complaining party* ha[s] a reasonable expectation that they will face the same action again." 267 F.3d at 114 (emphasis in original). The court held that, "in the absence of a class action, there must be a reasonable expectation that the *same* complaining party would encounter the challenged action in the future." *Id.* (emphasis in original). Accordingly, Petitioner's argument that the Court may retain jurisdiction because others similarly situated to him may be in ORR custody is baseless.

Petitioner also argues that the voluntary cessation exception to mootness applies. ECF No. 11 at 2. But 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); *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 he will be taken into ORR custody again. 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 his 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.

Petitioner's Request for Attorneys' Fees Does Not Impact Mootness. Petitioner argues that his request for attorney's fees supports "the Court's continued jurisdiction," ECF No. 11 at 2, but that argument fails. "[A]n "interest in attorney's fees is . . . insufficient to create an Article III case or controversy where none exists on the merits of the underlying claim." *Lewis v. Cont. Bank Corp.*, 494 U.S. 472, 480 (1990); *see also Lamar Advert. of Penn, LLC v. Town of Orchard Park*, 356 F.3d 365, 378 (2d Cir. 2004) ("Lamar's potential receipt of attorney's fees, were it to be a 'prevailing party' . . . is in itself not enough to keep the controversy alive."); *accord Chen v. Noem*, No. 24-2058, 2025 WL 1466205, at *3 (2d Cir. May 22, 2025) ("We are also unpersuaded by Chen's contention that the possibility he could obtain attorney's fees and costs pursuant to the Equal Access to Justice Act ('EAJA'), 28 U.S.C. § 2412(d)(1)(A), saves this case from mootness."). Further, a fee application under EAJA becomes relevant only after a final judgment is entered. *See* 28 U.S.C. § 2412(d)(1)(B) (fee application must be filed "within thirty days of final judgment in the action"). It therefore has no bearing on whether the Petition itself is moot.

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

Respectfully,

JAY CLAYTON
United States Attorney

By: */s/ Mollie Kornreich*
MOLLIE KORNREICH
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Telephone: (212) 637-3274
Email: mollie.kornreich@usdoj.gov

Counsel for Respondents

cc: Counsel of Record (by ECF)