VIA ECF
Hon. J. Paul Oetken
United States District Judge
Southern District of New York

Re: *S.B.Q.V. v. Sanchez et al.*, 1:26-cv-2276 (JPO)

Dear Judge Oetken:

Petitioner, by his next friend and mother, Maria Blanca Vimos Rivera, respectfully submits this reply to Respondents' April 1, 2026 letter.

Although Respondents have released Petitioner from ORR custody, this case is not moot. The Petition does not challenge only the fact of confinement; it challenges Respondents' asserted statutory authority to detain Petitioner in the first instance as an "unaccompanied alien child" under 6 U.S.C. § 279(g)(2), despite the availability of his parent, and their prolonged refusal to reunify him.

I. This Case Is Not Moot Under the Voluntary Cessation Doctrine

Respondents' mootness argument fails under the voluntary cessation doctrine. A defendant's voluntary cessation of challenged conduct moots a case only where it is absolutely clear that the challenged conduct cannot reasonably be expected to recur and that interim events have completely and irrevocably eradicated the effects of the violation. *Mhany Mgmt., Inc. v. County of Nassau*, 819 F.3d 581, 603 (2d Cir. 2016), quoting *Granite State Outdoor Advert., Inc. v. Town of Orange,* 303 F.3d 450, 451 (2d Cir. 2002). That is a formidable burden, and Respondents have not carried it here.

In *Mhany Mgmt., Inc.*, the Court found that Defendants had not met their "formidable burden" of showing that it is "absolutely clear" that the Social Services Site will never be used for housing. Therefore the controversy, whether there the county discriminated against lower income

residents by changing the zoning requirement for the sale of the building, was not moot. The Court was unpersuaded that the County had committed to its new course, of using the land for Courts instead of selling the property. So too here, respondents have not met their "formidable burden" of showing that it is "absolutely clear" that ORR will cease from detaining minors for long periods of time, instead of releasing them to their parents.

Petitioner was released only after this action was filed. Moreover, Respondents have not disavowed the challenged conduct, identified any policy change, or retreated from their position that their actions here were lawful. They continue to defend their authority to classify children as "unaccompanied" despite the availability of a parent and to impose extra-statutory reunification requirements, including DNA testing not required by statute.

Nor have Respondents shown that the effects of their conduct have been "completely and irrevocably eradicated." *Desiderio v. Nat'l Ass'n of Sec. Dealers, Inc.*, 191 F.3d 198, 202 (2d Cir. 1999).

Petitioner's submissions further underscore that the effects of Respondents' conduct have not been "completely and irrevocably eradicated." As detailed in the declaration of Petitioner's father (Ex. A), Petitioner—a eight-year-old child—was subjected to prolonged separation, severely restricted movement, and conditions that caused significant distress during his four-month detention. These unrebutted facts reinforce that the challenged conduct had concrete and lasting effects, and that Respondents cannot meet their burden of demonstrating mootness through post hoc release alone.

IA. Respondents Misstate the Standard for Voluntary Cessation

Respondents argue that the voluntary cessation doctrine is inapplicable because Petitioner "does not contend that there is a reasonable expectation that *he* will be taken into ORR custody again," citing *Paul v. Decker*, No. 20 Civ. 2425 (KPF), 2021 WL 1947776, at *5 (S.D.N.Y. May 14, 2021). First, that argument is incorrect, as we mention *infra,* since there is a reasonable expectation that Petitioner will be taken into ORR custody again.

More fundamentally, Respondents invoke the wrong standard, and conflate two distinct exceptions to the mootness doctrine. The requirement that the "same complaining party" face a likelihood of recurrence applies to the distinct doctrine of conduct "capable of repetition, yet evading review"—not to voluntary cessation. Under the voluntary cessation doctrine, the relevant inquiry is whether "it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013).

Thus, the focus is on the defendant's conduct—not on whether this particular Petitioner will again be subjected to it. **This is clear from the case** in *Mhany Mgmt., Inc. v. County of Nassau*, 819 F.3d 581, 603 (2d Cir. 2016), since the issue at hand wasn't whether the county will refuse to sell the Social Services Site for housing to the given low income Plaintiffs in the future, rather whether they will agree to sell the Social Services Site for housing to others, or discriminate against another Plaintiff.

Here too, Respondents retain full authority to classify minors as "unaccompanied," to impose extra-statutory reunification requirements, and to delay release under the same policies challenged in this action. They have not disavowed that conduct. That is sufficient to defeat mootness under the voluntary cessation doctrine, regardless of whether Petitioner himself is likely

to be re-detained. Moreover, here subsequent events do not make it **absolutely clear** that the allegedly wrongful behavior could not reasonably be expected to recur.

Nor does *Paul v. Decker* compel a different result. That case involved a challenge to immigration detention where the petitioner's release eliminated any ongoing controversy and there was no indication of continuing challenged conduct. By contrast, Petitioner here challenges Respondents' statutory authority and ongoing practices, which Respondents continue to defend and retain the ability to apply in future cases.

II. This Case Presents a Live Controversy Because Petitioner Seeks Declaratory Relief

Independent of habeas release, Petitioner seeks a determination that Respondents acted outside their statutory authority. Courts have recognized that where a petitioner challenges the legality of government action—not merely the fact of confinement—a live controversy may persist notwithstanding release. See *Spencer v. Kemna*, 523 U.S. 1, 7–8 (1998).

Here, Petitioner seeks a ruling that Respondents lacked authority to detain him as an "unaccompanied alien child" despite the availability of his parent. That question remains unresolved and continues to present a live controversy appropriate for adjudication.

III. Respondents' Authorities Are Distinguishable

Respondents rely on cases involving routine detention challenges by adult petitioners, such as *Leybinsky v. ICE*, *Pierrilus v. ICE*, and *Remy v. Chadbourne*. Those cases do not control here.

First, those decisions involve adult detainees challenging only the length of detention—not the government's underlying statutory authority to detain in the first instance.

Second, they do not involve the detention of minor children under the statutory framework governing "unaccompanied alien children," nor prolonged separation from an available parent.

Third, those cases did not involve allegations that the government imposed extra-statutory barriers to release, such as DNA testing not required by statute.

Accordingly, they do not address the legal questions presented here and do not compel dismissal.[1]

IV. The Capable-of-Repetition Doctrine Provides Additional Support

Although Petitioner principally relies on the voluntary cessation doctrine in its position that the case in not moot, this case also bears the hallmarks of conduct capable of repetition yet evading review. The challenged conduct—prolonged detention of a minor during the reunification process—terminates at the government's discretion, often after litigation has commenced. Absent judicial review, such claims are unlikely to be adjudicated before they become moot. *See Kingdomware Techs., Inc. v. United States,* 579 U.S. 162, 170 (2016).

Respondents' argument that in our case, since Petitioner was in ORR custody for nearly four months before filing this Petition, their egregious conduct "does not render this type of case one that frequently ends before judicial review can be completed", is incorrect. Every case and controversy takes a few months before the conflict and dispute is developed and brought to the eyes of the Court. The fact that it took four months for Petitioner's father to become aware of the child abuse conducted by the government to his 3 year old son, does not change the fact that this case is inherently of limited duration and frequently ends before judicial review can be completed.

Furthermore, respondents' claim without any proof or evidence, that "Petitioner does not and cannot argue that there is a reasonable expectation that he will be subject to the same

[1] Courts in this Circuit have distinguished routine detention cases where the challenged conduct has fully ceased from cases, like this one, where the government maintains the legality of its actions and retains authority to repeat them. See, e.g., *Pierre-Paul v. Sessions*, 293 F. Supp. 3d 489, 492–93 (S.D.N.Y. 2018); *Alcine v. Decker*, No. 17 Civ. 3754 (RA), 2019 WL 988944, at *2 (S.D.N.Y. Feb. 19, 2019).

challenged government conduct again", which is a requirement to invoke this exception, is false. After reading Petitioner's father's affidavit, it will be self-understood to the Court, that there is a reasonable risk that the Petitioner would be re-detained by ORR. Thus, although Petitioner's father did not overtly state that his son is at risk of being detained again, as Petitioner has just started to enjoy his freedom at the age of 3, after four months of detention, it is obvious that Petitioner's father does contend and feel that his son is at risk of being re-detained by ORR. This is not surprising, given the circumstances and conditions Petitioner was detained under in our case.

V. Respondents' Conduct Reflects Strategic Mooting of Judicial Review

The record further supports application of the voluntary cessation doctrine because Respondents' actions reflect a pattern of mooting judicial review through post-filing compliance. Petitioner remained in ORR custody for approximately four months while reunification was delayed, including by the imposition of DNA testing not required by statute. Yet, immediately after this habeas action was filed—and consistent with Respondents' own representation that a determination would follow promptly upon receipt of test results—Petitioner was released within days. This sequence supports the conclusion that the timing of Petitioner's release was responsive to the initiation of litigation.

Courts have cautioned against permitting defendants, particularly government actors, to evade judicial review, or to defeat a judgment, by voluntarily agreeing to Petitioner's request. *See Knox v. Service Employees Int'l Union*, 567 U.S. 298, 307 (2012), ("[i]n opposing the petition for certiorari, the SEIU defended the decision below on the merits. After certiorari was granted, however, the union sent out a notice offering a full refund to all class members, and the union then promptly moved for dismissal of the case on the ground of mootness. Such post certiorari

maneuvers designed to insulate a decision from review by this Court must be viewed with a critical eye. *See City News & Novelty, Inc. v. Waukesha,* 531 U. S. 278, 283–284 (2001)." Allowing dismissal under these circumstances would risk encouraging precisely that result.

VI. Attorneys' Fees

While Respondents are correct that attorneys' fees alone do not create jurisdiction, "in order to be considered a 'prevailing party' ., a plaintiff must not only achieve some material alteration of the legal relationship of the parties, but that change must also be judicially sanctioned." *Roberson v. Giuliani,* 346 F.3d 75, 79 (2d Cir.2003) (internal quotation marks omitted). That is, plaintiffs are only eligible for attorneys' fees if they "achieve some material alteration of the legal relationship" between them and their adversaries, and that change bears a "judicial imprimatur." Roberson, 346 F.3d at 79-80.

The Supreme Court held in *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources,* 532 U.S. 598, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001), that the requisite of judicial imprimatur, to be considered the "prevailing parties" , plaintiffs must receive "some relief on the merits" to be termed prevailing parties, as, for example, when they win a judgment on the merits or obtain "settlement agreements enforced through a consent decree." *Id.* at 603-04, 121 S.Ct. 1835 (internal quotation marks omitted).

The circumstances of this case further underscore why dismissal is inappropriate. Petitioner's release occurred only after this litigation was filed. Absent a ruling on the merits, Respondents could avoid accountability while benefiting from mooting challenges through post-filing compliance. See, e.g., *Perez v. Westchester County Dep't of Corr.*, 587 F.3d 143, 149 (2d Cir. 2009). That is precisely the concern the voluntary cessation doctrine is designed to address.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court deny Respondents' request to dismiss this action as moot and instead adjudicate the legality of Respondents' conduct.

Respectfully submitted,

Dated: April 7, 2026
Queens, New York

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