IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

Edicson David QUINTERO CHACON, *Petitioner*, v. Terrence DICKERSON, Warden, Steward Detention Center, et al., *Respondents*.	Case No. 4;25-CV-50-CDL-AGH 28 U.S.C. § 2241

RESPONDENT'S OPPOSITION TO PETITIONER'S MOTION FOR EXPEDITED JURISDICTIONAL DISCOVERY AND REPLY IN SUPPORT OF AMENDED MOTION TO DISMISS AND IN THE ALTERNATIVE TO STAY PROCEEDINGS

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Edicson David QUINTERO CHACON, *Petitioner*, v. Terrence DICKERSON, Warden, Steward Detention Center, et al., *Respondents*.	Case No. 4:25-CV-50-CDL-AGH 28 U.S.C. § 2241

RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR EXPEDITED JURISDICTIONAL DISCOVERY AND REPLY IN SUPPORT OF RESPONDENTS' MOTION TO DISMISS THE AMENDED PETITION

On February 10, 2025, Petitioner Edicson David Quintero Chacon ("Petitioner") filed a petition for writ of habeas corpus challenging the length of his detention and seeking release from custody. ECF No. 1. On March 20, 2025, the Government filed a Motion to Dismiss the Petition. ECF No. 10. On April 8, 2025, this Court issued an order appointing counsel for Petitioner, ordering the Parties to confer and propose a briefing schedule on the Government's motion to dismiss and on potential jurisdictional discovery, as well as allowing Petitioner's counsel to file an amended petition. ECF No. 12. On April 16, 2025, Petitioner's appointed counsel filed an amended petition for habeas corpus ("Petition") asserting jurisdiction under "28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (declaratory relief), and Article I, section 9, clause 2 of the U.S. Constitution (suspension clause," asserting that Petitioner "is presently in custody under or by color of the authority of the United States, and he challenges his custody as in violation of the Constitution, laws, or treaties of the United States." ECF No. 22 ¶17. In his amended Petition, Petitioner alleges

that his detention in El Salvador is unlawful, a violation of due process under the Fifth Amendment, a violation of the Immigration and Nationality Act ("INA"), and a violation of habeas corpus. ECF No. 22 ¶¶ 113-136. He seeks release from detention in El Salvador, asks that the Court order the Government to facilitate and effectuate his return and release into the United States or Venezuela, enjoin any further detention of Petitioner, and declare his detention in El Salvador ultra vires and a violation of the INA, due process under the Fifth Amendment, and habeas corpus. *Id.* at 33-34.

On April 22, 2025, the Parties submitted a proposed joint scheduling order ("JSO"), ECF No. 25, which the Court adopted on April 23, 2025, ECF No. 26. Consistent with the JSO, on May 2, 2025, Respondents filed their Amended Motion to Dismiss and in the alternative Motion to Stay Proceedings ("Motion to Dismiss"). On May 5, 2025, Petitioner filed a Motion for Expedited Jurisdictional Discovery ("Discovery Motion"), requesting that this Court order broad discovery on a severely expedited timeline. ECF No. 28. On May 9, 2025, Petitioner filed his Opposition to Respondents' Motion to Dismiss. ECF No. 31.

Respondents oppose the motion for jurisdictional discovery, the scope of Petitioner's requested discovery, and the expedited timeline on which Petitioner requests discovery be produced. Additionally, rather than order unnecessary jurisdictional discovery, this Court should dismiss the instant Petition for lack of jurisdiction or, alternatively, dismiss or stay proceedings pending the resolution of an already-certified nationwide class action.

ARGUMENT

I. Jurisdictional discovery is not appropriate and the Court should dismiss or stay proceedings pending the resolution of a certified nationwide class action of which Petitioner is a member.

As discussed in Respondents' amended Motion to Dismiss, this Court should dismiss or stay proceedings, pending resolution of a class action currently pending in the United States District Court for the District of Massachusetts, *D.V.D. v. DHS*, No. 12-cv-10767 (BEM) (D.

Mass.), in which Petitioner is a class member. "Multiple courts of appeal have approved the practice of staying a case, or dismissing it without prejudice, on the ground that the plaintiff is a member of a parallel class action." *Wynn v. Vilsack*, No. 3:21-CV-514-MMH-LLL, 2021 W5L 7501821, at *3 (M.D. Fla. Dec. 7, 2021) (collecting cases) (internal quotations omitted). Further, district courts have the inherent authority "to stay litigation pending the outcome of related proceedings in another forum." *Chappell v. United States*, 2016 WL 114110411, at *2 (M.D. Ga. Dec. 16, 2016) (quoting *CTI-Container Leasing Corp. v. Uiterwyk Corp.*, 685 F.2d 1284, 1288 (11th Cir. 1982)). In such cases, a stay is "necessary to avoid the inefficiency of duplication, the embarrassment of conflicting rulings, and the confusion of piecemeal resolutions where comprehensive results are required." *Id.* at *3 (internal quotation marks and citations omitted).

Here, the potential for conflicting decisions on jurisdictional and discovery issues is real. Petitioner is a member of the nationwide class certified under Federal Rule of Civil Procedure 23(b)(2) by the United States District Court for the District of Massachusetts. *D.V.D.*, Case No. 1:25-cv-10676-BEM at ECF No. 64. The class is defined as:

> [a]ll individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

Id. at 23. Membership in the class is not waivable. *See* Fed. R. Civ. P. 23(b)(2). *D.V.D.*, ECF No. 64 at 33; *see Kincade v. Gen. Tire & Rubber Co.*, 635 F.2d 501, 506-07 (11th Cir. 1981) (discussing lack of an opt out under Rule 23(b)(2)). In *D.V.D.*, Plaintiffs, on behalf of themselves and the certified class, seek to require DHS to provide additional procedures to class members before removing them to a third country, that is, a country not previously designated in removal proceedings. *See generally,* ECF No. 27-2. Relevant to Petitioner, the *DVD* Plaintiffs seek an

order requiring the Government "to immediately return class members who have been removed to a third country without written notice and a meaningful opportunity to apply for protection under the Convention Against Torture unless the class member confirms they do not wish to return." *Id.* at 37 ¶ l.

Importantly, the *DVD* court has already assumed preliminary jurisdiction in certifying the 23(b)(2) class in which Petitioner is a mandatory member. In order to determine whether and what relief is available to class members, the *DVD* court will necessarily have to resolve the issue of jurisdiction over class members who, like Petitioner, have been removed from the United States—including those detained abroad and/or at the Centro de Confinameinto del Terrorismo (CECOT). *Accord Steel Co v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.") (quoting *Ex parte McCardle*, 7 Wall. 506, 514 (1868)). Notably, the relief requested by *D.V.D.* class members mirrors the relief requested by Petitioner in this case. *Compare* ECF 27-2 at 37 ¶ l (D.V.D Complaint), *with* ECF 22 at 33 ¶ f (requesting that the Court order Defendants "to immediately release [Petitioner] from their custody and facilitate and effectuate his prompt return and release into the United States or facilitate and effectuate his prompt removal and release into Venezuela"). Further, in order for *D.V.D.* class members, who have already been removed, to obtain the other relief sought—notice of removal to a third country and an opportunity to seek fear-based relief or protections from removal— the *D.V.D* court will have to resolve its jurisdiction to order relief that may include facilitation of return to the United States. *D.V.D.*, ECF 27-2 at 36-37.

Petitioner frames the issue in his amended Petition as strictly presenting the question of "constructive custody" and argues that the issue may not be resolved by the district court in *D.V.D.* *See* ECF No. 22. But, this is simply incorrect as there necessarily are members of the *DVD* certified class who were removed and are detained in El Salvador. Thus, there is little sense in ordering jurisdictional discovery where Petitioner is a *D.V.D.* class member and the jurisdiction of district courts over aliens removed to third countries, whether or not detained abroad, will have to be addressed in *D.V.D.* for the *D.V.D.* court to grant relief. *Cf. Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("prudential concerns, such as comity…may require a federal court to forgo the exercise of its habeas corpus power"); *see also Nio v. U.S. Dep't of Homeland Sec.*, 323 F.R.D. 28, 34 (D.D.C. 2017) (Rule 23(b)(1) permits a class action to proceed where "prosecuting separate actions by or against individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class."). Indeed, the very purpose of a Rule 23(b)(2) class is to ensure that all plaintiffs in the class receive the same relief for the same alleged adverse conduct. *See Nio*, 323 F.R.D. at 34 (for Rule 23(b)(2) classes, "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole").

Further, the Amended Petition alleges the same injury at stake in *D.V.D*, regarding removal to a third country without notice and an opportunity to assert a fear based claim. ECF No. 22 ¶¶ 12 ("He was denied notice and the opportunity to challenge his removal to a third country, including the opportunity to raise Convention Against Torture claims.);" 27 ("Mr. Quintero did not receive advance notice that he was being sent to El Salvador or to CECOT, nor did he have an opportunity to raise claims of fear of persecution or torture in El Salvador.").

The *D.V.D* class action is already well under way and currently being evaluated to some degree by the First Circuit Court of Appeals. *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-1311 (1st Cir.). Trailing this nationwide class action serves great equity and inoculates against different courts reaching different conclusions or inconsistent approaches. *See Nio*, 323 F.R.D. at 34; Fed. R. Civ. P. 23(b)(1)(A), (b)(2). Indeed, "[c]onsistency of treatment [is at the heart of what] Rule 23(b)(2) was intended to assure." *Cicero v. Olgiati*, 410 F. Supp. 1080, 1099 (S.D. NY 1976). Accordingly, this Court should not order jurisdictional discovery where the issue such discovery would seek to resolve—the jurisdiction of this Court to order the relief Petitioner requests—will necessarily be resolved in the class action in which Petitioner is a mandatory member. This Court should instead dismiss, or stay, this action pending such a determination in *D.V.D.*[1]

II. Jurisdictional discovery is not appropriate, because this Court lacks jurisdiction to consider a habeas petition when the Petitioner has been removed and is not in United States custody.

A. Petitioner has been removed from the United States and is no longer in Respondents' custody.

Jurisdictional discovery is not warranted because this Court lacks jurisdiction where Petitioner has been removed from the United States. Habeas corpus requires as an essential element of jurisdiction that the detainee be in the custody of the United States. *DHS v. Thuraissigiam*, 591 U.S. 103, 117 (2020); *see Patel v. U.S. Att'y Gen.*, 334 F.3d 1259, 1263 (11th Cir. 2003) (court lacked habeas jurisdiction where "Patel [was removed to and] is now residing in his native India, and the United Stats is in no position to restrain his liberty"); *cf. Hernandez-Santiago v. Napolitano*, 2013 WL 6145390, at *1 (M.D. Ga 2013) ("The other form of [habeas] relief

[1] Additionally, Respondents renew their jurisdictional arguments set forth in their Motion to Dismiss, that the Court lacks jurisdiction over the petition pursuant to 8 U.S.C. § 1252(g) and 1252(a)(5) and (b)(9). ECF No. 27 at 7-11.

requested by Petitioner—his release from custody—is mooted by his deportation."). Further, the case-or-controversy requirement of Article III, section 2 of the United States Constitution subsists through all stages of federal judicial proceedings. *See Spencer v. Kenna*, 523 U.S. 1, 7 (1998). A petitioner "must have suffered, or been threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990). "[A] case is moot when it no longer presents a live controversy with respect to which the court can grant meaningful relief." *Fla. Ass'n of Rehab. Facilities, Inc. v. Fla. Dep't of Health & Rehab. Servs.*, 225 F.3d 1208, 1217 (11th Cir. 2000) (internal quotation marks and citations omitted). If a case is rendered moot, "dismissal is required because mootness is jurisdictional." *Id.*; *see De La Teja v. United States*, 321 F.3d 1357, 1362 (11th Cir. 2003). Once a petitioner has been removed from the United States, the dispute regarding his detention is rendered moot and must be dismissed. *See Soliman v. United States*, 296 F.3d 1237, 1243 (11th Cir. 2002) (no case or controversy once petitioner in habeas corpus proceeding was removed); *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335-36 (11th Cir. 2001) ("[A] case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.").

Here, Petitioner was removed from the United States and is no longer in Respondent's custody. *See* ECF Nos. 22 ¶¶ 1, 6, 10, 44, 48; 10-1 ¶¶ 7-8; *see Spencer*, 523 U.S. at 7-8 (discussing "in custody" requirement of habeas statute). Thus, the Court can no longer grant him any meaningful relief regarding his detention, Petitioner's case is therefore moot, and the Court should dismiss the case for lack of jurisdiction. *See Soliman*, 296 F.3d at 1243; *Al Najjar*, 273 F.3d at 1336. Nor should the Court order jurisdictional discovery where, without jurisdiction, "the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998). Furthermore, the Court need not order

jurisdictional discovery where its jurisdiction to consider a habeas claim raised by an alien who has been removed, whether or not he is detained by a foreign sovereign abroad, is not and has never been in question. *See Rumsfeld v. Padilla*, 542 U.S. 426, 433 (2004) (for "core habeas petitions," "jurisdiction lies only in one district: the district of confinement"); *Soliman*, 296 F.3d at 1243 (habeas petition moot where alien removed from the United States and "is no longer being detained by the INA"); *Bravo-Ricardez v. Skinner*, 2013 WL 6087639, at *1 (M.D. Ga 2013) (a petitioner's deportation moots his request for habeas relief). Because Petitioner is no longer in Respondent's custody, the issue of this Court's jurisdiction is clear—the Court lacks jurisdiction as the cause has been rendered moot by Petitioner's removal. Thus, jurisdictional discovery is not warranted and the Court should instead dismiss the Petition.

B. The United States does not have constructive custody of aliens detained in El Salvador.

Petitioner contends that his removal from the United States did not actually terminate his custody by the United States. *See* ECF Nos. 22 at 1-4, 22-24; 31 10-14. Instead, Petitioner argues that the United States has maintained "constructive custody" over him because he is detained in El Salvador, according to Petitioner, "at the behest or direction of the United States."[2] ECF No. 22 at 4, 23; *see also*, ECF No. 31 at 10-14. Petitioner's argument is essentially that prisoners like him, who are held in the territory of and by agents of a separate, sovereign nation, are still within the custody of the United States. That is simply not the case. To the extent the United States and

[2] Petitioner alleges, based on news articles and social media posts, that individuals removed to El Salvador are detained at CECOT at the behest or direction of the United States. ECF Nos. 22 at 12-16; 31 10-15. Indeed, Petitioner's evidence that the United States has retained the necessary agency to establish the United States' constructive custody over detainees in El Salvador comes from a handful of vague statements by a few officials that the United States is paying El Salvador to detain aliens like him. *Id.* However, such public statements by officials have not been credited as evidence of the purpose behind an executive policy. *See Trump v. Hawaii*, 585 U.S. 667, 701-02 (2018).

El Salvador made a bilateral agreement, it is not an enforceable agreement or ratified treaty providing that the United States can obtain or retain control over aliens imprisoned on Salvadoran soil by Salvadoran guards. Moreover, the burden is on *Petitioner* to make a clear showing that this Court's orders will likely result in his desired outcome—release from Salvadoran custody and facilitation of his return to the United States and/or removal to Venezuela. *See Mattern v. Sec'y for Dep't of Corrs.*, 494 F.3d 1282, 1285 (11th Cir. 2007). Petitioner cites to case law holding that when aliens are wrongfully removed the Government can and does return them. ECF No. 31 at 16. Yet, the only ground upon which Petitioner has claimed he was wrongfully removed is that the Government failed to abide by the requirements of 8 U.S.C. § 1231(b)(2) for third country removals. ECF No. 22 at ECF No. 22 at ¶ 1, 3, 47, 131. Thus, all the more reason the Court should dismiss the amended Petition pending the outcome of *D.V.D.* and refrain from granting Petitioner's Discovery Motion.

The Supreme Court's definition of "custody" for purposes of habeas corpus demonstrates the futility of Petitioner's argument. Beginning with the plain language of the statute, it applies to those held "in custody under or by color of the authority of the United States." 28 U.S.C. § 2241(c)(1). A person is "held 'in custody' by the United States when the *United States official* charged with his detention has the 'power to produce' him." *Munaf*, 553 U.S. at 686 (emphasis added) (quoting *Wales v. Whitney*, 114 U.S. 564, 574 (1885)). Here, it is undisputed that Petitioner has been removed to El Salvador and therefore not within the United States' physical custody. Nor can Petitioner invoke "constructive custody" by asserting that "the imprisoning sovereign is the respondent's agent." *Abu Ali v. Ashcroft*, 350 F. Supp. 2d 28, 47 (D.D.C. 2004) (quoting *Steinberg v. Police Ct. of Albany, N.Y.*, 610 F.2d 449 453 (6th Cir. 1979)). Agency requires *control*. *See* Reinstatement (Third) of Agency § 1.01 (Am. L. Inst. 2006); *id.* cmt. f(1) ("An essential element

of agency is the principal's right to control the agent's actions."). The United States has no such control over the actions of a foreign sovereign.

As has been repeatedly confirmed, plenary and indefinite control over the detention cite is key. *Compare Boumediene v. Bush*, 553 U.S. 723, 765 (2008) (United States had "plenary control" over the place of imprisonment despite *de jure* sovereignty by Cuba), *with Johnson v. Eisentrager*, 339 U.S. 763 (1950) (United States control over prison in Germany was neither absolute nor indefinite), *and Al Maqaleh v. Gates*, 605 F.3d 84, 97 (D.C. Cir. 2010) (no habeas jurisdiction over aliens held by United States military at an Air Force base because the United States was leasing the base and did not have *de facto* sovereignty over it), *and United States ex rel. Keefe v. Dulles*, 222 F.2d 390 (D.C. Cir. 1954) (no habeas jurisdiction over petitioner held in French prison by a "foreign jailer" because the petition "show[ed] on its face that Keefe [was] not in the custody of the respondents," but rather "by French civil authorities"). Here, not only does the United States government not have sovereignty over CECOT, it does not even have a military presence or a lease. There is simply no reason to believe that the United States has plenary "control" over prisons in El Salvador, let alone for an "indefinite" time. El Salvador is a separate sovereign over which the United States has no control. Its prisons are operated exclusively by the El Salvadoran government, which has its own law and procedures.

Courts in the United States do not have jurisdiction to question a separate sovereign's choices. In fact, in analogous circumstances, the D.C. Circuit credited the United States' declaration that it no longer had custody or control of Guantanamo Bay detainees transferred to Afghanistan and Sudan. *Gul v. Obama*, 652 F.3d 12, 17 (D.C. Cir. 2011). While petitioners in that case argued that their habeas petitions were not moot due to the collateral-consequences doctrine, the Court held that the harms were "traceable to the act of a foreign sovereign, and that

any decision to lift those restrictions will depend upon an exercise of broad and legitimate discretion a court cannot presume either to control or predict." *Id.* (cleaned up). Indeed, "[t]he interests of international comity are ill-served by requiring a foreign nation…to satisfy a United States district judge concerning the fairness of its laws and the manner in which they are enforced." *Ahmad v. Wigen*, 910 F.2d 1063, 1067 (2d Cir. 1990).

Additionally, Petitioner ignores the importance of citizenship in the inquiry. *See generally* ECF Nos. 22, 28, 31. When it comes to detention abroad, the writ of habeas corpus may run to citizens where it does not run to aliens. *See Munaf*, 553 U.S. at 688 (declining to extend holding of *Hirota v. MacArthur*, 338 U.S. 197 (1948), "to preclude American citizens held overseas by American soldiers subject to a United States chain of command from filing habeas petitions"). Petitioner does not allege United States citizenship. *See generally* ECF Nos. 22, 27, 31.

In sum, this Court lacks jurisdiction and thus jurisdictional discovery is not warranted where Petitioner has been removed from the United States and the United States no longer has control over him as required for habeas jurisdiction. *Accord Munaf*, 553 U.S. at 688 (court had habeas jurisdiction where petitioners were "held overseas in the immediate 'physical custody' of American soldiers who answer only to an American chain of command").

III. The discovery Petitioner requests is irrelevant, overbroad, overly burdensome, vague, and covers classified and privileged materials.

To the extent that this Court determines that jurisdictional discovery is warranted, the discovery Petitioner seeks is irrelevant, overly broad, vague, unduly burdensome, and covers classified and privileged materials. *See* Fed. R. Civ. P. 26(b)(1); *see also United States v. Reynolds*, 345 U.S. 1 (1953); *U.S. Dep't of the Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8-9 (2001); *F.T.C. v. Grolier Inc.*, 462 U.S. 19, 20 (1983). First, much of the discovery Petitioner seeks is wholly irrelevant to the question of this Court's jurisdiction and overly broad

as it does not pertain only to Petitioner. *See* ECF 28 at 6-10; Fed. R. Civ. P. 26(b)(1). Any discovery ordered should be solely and strictly related to whether the United States continues to have "custody" of Petitioner, specifically, notwithstanding his removal to El Salvador. Any discovery request not related specifically to Petitioner and not narrowly tailored to discovering the basis for Petitioner's "constructive custody" argument should be rejected and excluded from discovery. *See* Fed. R. Civ. P. 26(b)(1). The majority of the discovery Petitioner seeks is plainly overly broad, irrelevant, and outside the scope of discovering material facts related to this Court's jurisdiction over an alien removed to a third country and detained in that third country, including any "constructive custody" assertion. For example, Petitioner's requests for production of documents are irrelevant and overly broad as to the limited question of this Court's jurisdiction:

> Documents relating to [Petitioner's] transport or removal from the United States to El Salvador and to CECOT, including but not limited to flight manifests," "[a]ny documents provided to or signed by [Petitioner] within 72 hours prior to or within 72 hours after completion of his transport or removal to El Salvador," "[a]ll communications to or from anyone in the government of El Salvador or connected with CECOT concerning [Petitioner]," "[a]ll documents sufficient to show Respondents' compliance with the 2011 Performance Based National Detention Standards…as to [Petitioner's] 'removal' to El Salvador," "[d]ocuments relating to Respondent Noem's March 26, 2025 visit to CECOT," and "[d]ocuments relating to policies or directives regarding the process for identifying non-U.S. citizens for removal or transfer to CECOT and effectuating removals or transfers to CECOT.

ECF 28 at 7 ¶ 4-10. Relatedly, Petitioner's requested interrogatories numbered 1 through 4 as well as Petitioner's requests for admission 1 and 2 are all irrelevant to the determination of this Court's jurisdiction and overly broad. Notably, several of Petitioner's proposed interrogatories are outrageously broad in scope to the extent that they include "[t]he names of *all* Executive Branch officials" with some knowledge such that the request could include hundreds of officials from numerous agencies. *Id.* at 8 ¶ 2-6. The Court should reject Petitioner's invitation to order such a broad and irrelevant scope of discovery where the only current issue is the Court's jurisdiction,

not the circumstances of Petitioner's removal or the merits of Petitioner's habeas Petition. *See* ECF 12.

Additionally, much of the discovery Petitioner seeks is vague and relatedly overly burdensome on Respondents to produce. Petitioner's requests for production of documents would require an entirely new search using new search terms developed specifically for the scope of the ordered jurisdictional discovery as it pertains to Petitioner. As requested, Petitioner's desired discovery would require coordination of several different Executive Branch agencies, including review by each agency and interagency review for privileges and protection of classified and sensitive documents. Without limiting the scope of the requested discovery, Petitioner's request would amount to hundreds, if not thousands, of hours of collection and review prior to production—which is entirely unduly burdensome as the sole question is that of the Court's jurisdiction and, as discussed *supra*, that question will necessarily be addressed in *D.V.D.*[3] Further, few of Petitioner's requests are constrained within a reasonable timeframe and leave terms undefined and open to interpretation. *See, e.g.*, ECF No. 28 at 7 ¶ 6; *id.* at 8 ¶ 2-5.

Moreover, nearly all of Petitioner's requested discovery implicates a variety of different privileges that Respondents may decide to invoke, as Respondents have so asserted in related cases. *See Abrego Garcia, et al., v. Noem*, Case No. 8:25-cv-00951-PX (D. Md.); *J.G.G., et al., v. Trump*, Case No. 1:25-cv-00766-JEB (D.D.C.). Such privileges that Respondents may determine are appropriate to invoke include, but are not limited to, attorney-client privilege,

[3] Notably, the crux of the Court's jurisdictional question—whether the United States has "constructive custody" over noncitizens detained in El Salvador, specifically CECOT—will likely be addressed in *Abrego Garcia, et al., v. Noem*, Case No. 8:25-cv-00951-PX (D. Md.), as well as in *J.G.G., et al., v. Trump*, Case No. 1:25-cv-00766-JEB, and a resolution of the "constructive custody" question may render Respondent's efforts to produce jurisdictional discovery in this case highly burdensome without purpose.

attorney work product privilege, deliberative process privilege, state secrets privilege, and presidential communications privilege. Importantly, much of Petitioner's requested discovery appears to implicate matters that, if disclosed, would harm the nation's defense capabilities and/or disrupt diplomatic relations with foreign governments, not only El Salvador, but also any other country that has engaged in bilateral agreements or discussions on sensitive topics with the United States. *See Reynolds*, 345 U.S. at 6 & n.9; *General Dynamics Corp. v. United States*, 563 U.S. 478, 489-92 (2011); *Crater Corp. v. Lucent Tech., Inc.*, 423 F.3d 1260, 1265 (Fed. Cir. 2005) (observing that, where covered information is at stake, "even the most compelling necessity cannot overcome the claim of privilege"), *cert. denied*, 126 S. Ct. 2889 (2006); *see also United States v. Nixon*, 418 U.S. 683, 710-11 (1974) (regarding a "claim of privilege on the ground [of] military or diplomatic secrets…the courts have traditionally shown the utmost deference to Presidential responsibilities"); *C. & S. Air Lines v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948).

In sum, to the extent the Court determines that jurisdictional discovery is necessary, it should require significant narrowing of the scope of requested discovery to include only information relevant to the narrow factual question of whether the United States has control over this specific Petitioner's detention in El Salvador and be respectful of the significant burden such discovery places on the Government. Fed. R. Civ. P. 26(b)(1).

IV. Petitioner's request for an expedited timeline for jurisdictional discovery is unreasonable.

Petitioner's request for an extremely truncated timeline is entirely unreasonable under the circumstances and considering the overly broad, irrelevant, and vague scope of Petitioner's requested discovery. As discussed above, any discovery—but particularly Petitioner's unreasonable requested discovery—will require the production of documents under new search terms, with different custodians, and possibly different timeframes. Creating relevant search terms

with quality control for usefulness, finding and loading all potentially responsive documents into a review platform, and conducting and entirely new round of agency and interagency review amounts to a significant amount of work, likely requiring hundreds if not thousands of hours by multiple individuals at multiple Executive agencies. Imposing a one-week deadline to produce responsive documents from the date of the discovery order is simply not workable and would impose a substantial and unwarranted burden on Respondents.

Relatedly, the burden of preparing witnesses for depositions under Fed. R. Civ. P. 30(b)(6), such as those proposed by Petitioners, is the work of multiple weeks or months, not simply within two weeks of service of notice. This is particularly true here where the scope of the proposed deposition topics is broad—notably unbound to the Court's jurisdiction over the individual Petitioner in this case. Petitioner's request for *multiple* of such depositions is not workable on an expedited, two-week timeline.

Finally, Petitioner's suggestion that such an extremely expedited schedule is warranted and reasonable because the District Court in *Abrego Garcia* permitted expedited discovery "of a similar scope and on a similar timeline" is misleading. ECF 28 at 10. The *Abrego Garcia* discovery order has been extended several times because of the impossibility to produce the requested documents on the expedited schedule due to the extreme burden on Respondents. Further, this case is not analogous to *Abrego Garcia* as it is not "undisputed that [Petitioner] is entitled to injunctive relief" for any "reasons previously discussed and affirmed without exception." *Abrego Garcia*, Case No. 8:25-cv-00951-PX, ECF 79 at 5-7. To the contrary, in this case, Petitioner has proffered no good reason for expedited discovery, much less such extremely expedited discovery as requested. Put simply, Petitioner's request elevates speed over effectiveness and should be denied.

CONCLUSION

The Court should deny Petitioner's request for expedited jurisdictional discovery. To the extent the Court determines that limited jurisdictional discovery narrowed to the factual question of whether the United States retains control over Petitioner's detention in El Salvador, the Court should require that any requested discovery not exceed the narrow jurisdictional scope and deny Petitioner's request that discovery be completed on an extremely expedited basis. Further, rather than order unnecessary jurisdictional discovery, this Court should dismiss the instant Petition for lack of jurisdiction or, alternatively, dismiss or stay proceedings pending the resolution of an already-certified nationwide class action.

Respectfully submitted,

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DATED: May 14, 2025

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CERTIFICATE OF SERVICE

I hereby certify that I served this document on May 14, 2025, by filing it with the Court's CM/ECF system, which will electronically deliver the document to counsel for all parties.

DATED: May 14, 2025

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