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

Edicson David QUINTERO CHACÓN, *Petitioner*, v. Terrence DICKERSON, Warden, Stewart Detention Center, *et al.*, *Respondents*.	Civil Action No. 4:25-cv-50-CDL-AGH

PETITIONER'S REPLY IN SUPPORT OF MOTION FOR EXPEDITED JURISDICTIONAL DISCOVERY

INTRODUCTION

Respondents' Opposition to Petitioner's Motion for Expedited Jurisdictional Discovery rests primarily on the circular argument that "this Court lacks jurisdiction and thus jurisdictional discovery is not warranted." Dkt. 32 at 11. Resolving this dispute, which arises in the context of the U.S. government's unprecedented use of foreign prisons to warehouse migrants, is precisely the point of jurisdictional discovery. As this Court held in another action involving detention under unprecedented conditions—the early days of the COVID-19 pandemic—"[t]he Court agrees that [petitioners] are not simply required to take Respondents' word for it." *A.S.M. v. Donahue*, No. 7:20-CV-62 (CDL) (M.D. Ga. May 7, 2020), ECF No. 50 at 4.

Respondents also make sweeping, generalized objections to all of Petitioner Edicson David Quintero Chacón's ("Mr. Quintero") jurisdictional discovery requests. Dkt. 32 at 11–14. Those objections are premature, at best, and fatally non-specific at worst. Finally, Respondents object to Mr. Quintero's proposed expedited schedule, *id.* at 14–15, and continue to insist that this case should be stayed, which is inappropriate, Dkt. 31 at 18–20. Given Mr. Quintero's ongoing imprisonment, this case and attendant jurisdictional discovery should proceed with due urgency. Thus, the Court should grant Mr. Quintero's Motion for Expedited Jurisdictional Discovery.

ARGUMENT

I. Jurisdictional Discovery Is Appropriate to Resolve Whether Mr. Quintero Is in Respondents' Constructive Custody.

Respondents' core argument against jurisdictional discovery can best be understood as an argument that, as both a factual and a legal matter, Mr. Quintero is not in the U.S. government's constructive custody.[1] This argument ignores the facts Mr. Quintero has alleged, largely based on

[1] As in their motion to dismiss, *see* Dkt. 27 at 11–13, Respondents argue that the case is moot (and thus jurisdictional discovery is not warranted) because Mr. Quintero has been removed. They cite cases

Respondents' own statements, and the legal significance of those facts. Respondents have put forth *no* evidence contradicting Mr. Quintero's allegations. The discovery Mr. Quintero proposes goes to the heart of the question before this Court and will likely prove, with evidence that is currently in Respondents' sole control, that he is in Respondents' constructive custody.

This Court should look to the factors applied by the court in *Abu Ali v. Ashcroft* when it ordered jurisdictional discovery to determine constructive custody, despite physical custody in the hands of a foreign sovereign. 350 F. Supp. 2d 28, 68–69 & n.42 (D.D.C. 2004). An analysis of the *Abu Ali* factors, 350 F. Supp. 3d at 68, leads to a similar conclusion here.

1. **Whether Mr. Quintero is detained "at the behest of U.S. officials":** Dkt. 24 ¶¶ 13, 51, 54–67 (documenting the arrangement between the U.S. and El Salvador to detain those sent to CECOT on behalf of the United States, in exchange for money); Dkt. 31 at 12.

2. **Whether his "ongoing detention is at the direction of the United States enlisting a foreign state as an agent or intermediary who is indifferent to the detention of the prisoner":** Dkt. 24 ¶ 48 (alleging Mr. Quintero has no connection to El Salvador and had never been there before Respondents transferred him there); *id.* ¶ 57 (the U.S. will determine Mr. Quintero's long-term disposition); Dkt. 31-1 (Salvadoran vice president explaining that El Salvador is offering detention services to the world just like tourism or technology services, and stating that the United States, not El Salvador, determines the status of the people the U.S. sent to CECOT).[2]

3. **Whether Mr. Quintero is "being detained in the foreign state to deny him an opportunity to assert his rights in a United States tribunal":** Respondents have twice moved to dismiss this proceeding challenging Mr. Quintero's indefinite

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involving typical post-removal scenarios, where because of deportation, the petitioners' shackles were removed. *See* Dkt. 32 at 6–8 (citing, *e.g.*, *Patel v. U.S. Att'y Gen.*, 334 F.3d 1259, 1263 (11th Cir. 2003) (habeas case moot because after removal the United States was "in no position to restrain [petitioner's] liberty," but also recognizing habeas jurisdiction can continue after removal, approvingly citing *Chong v. District Director, I.N.S.*, 264 F.3d 378, 382 (3d Cir. 2001)); *Hernandez-Santiago v. Napolitano*, No. 7:13-cv-134-HL, 2013 WL 6145390, at *1 (M.D. Ga. Nov. 20, 2013) (challenge to custody moot because petitioner was "no longer in custody"). These cases are inapposite because Respondents are paying to imprison Mr. Quintero after depositing him at CECOT.

[2] El Salvador is operating as the United States' detention contractor, and not pursuant to its own domestic law with regard to Mr. Quintero, so *Ahmad v. Wigen* is not relevant. *See* Dkt. 32 at 15. There, by operation of law and treaty, the petitioner was extradited to Israel *for prosecution pursuant to Israeli law for a crime committed in Israel*. 910 F.2d 1063 (2d Cir. 1990). El Salvador could have requested Mr. Quintero's extradition for domestic prosecution if there were any basis to do so; there is no evidence that is did so here.

detention based on Respondents' choice to send Mr. Quintero to CECOT. *See generally* Dkt. 10, 27.

4. **Whether "he would be released upon nothing more than a request by the United States":** Respondent Trump has publicly stated that he could secure another individual's release from a Salvadoran prison by requesting it from the Salvadoran president. *See* Dkt. 31 at 15.[3]

5. **Whether there is a "a formal relationship between the countries that governs the detention, in the nature of a treaty or otherwise":** Dkt. 24 ¶¶ 54–67.[4]

Mr. Quintero has supplied "considerable [evidence] in the absence of discovery"; Respondents have not offered any, "even though such evidence is in many instances directly in [their] control." *Abu Ali*, 350 F. Supp. 3d at 68–69. "[I]f the facts alleged . . . were shown to be true, there would be habeas jurisdiction." *Id.* at 69; Dkt. 31 at 10–14. Thus, jurisdictional discovery is warranted.

Respondents misleadingly argue that because in the context of people transferred from Guantánamo to other countries, the D.C. Circuit "credited the United States' declaration that it no longer had custody or control" of them, this Court should bar jurisdictional discovery. Dkt. 32 at 10 (citing *Gul v. Obama*, 652 F.3d 12, 18 (D.C. Cir. 2011)). The most glaring distinction here is that Respondents have submitted no such evidence. If they had, normal rules of procedure and evidence could guide the Court in determining whether to credit such evidence, in light of Respondents' voluminous public statements demonstrating constructive U.S. custody. *See Kiyemba v. Obama*, 561 F.3d 509, 515 n.7 (D.C. Cir. 2009) (explaining the court credited such declarations because the detained people there "fail[ed] to present anything that contradicts them,

[3] *See also* Joe Walsh, *Trump says he hasn't asked El Salvador's president to return Kilmar Abrego Garcia*, CBS News (Apr. 25, 2025), https://tinyurl.com/22x9vkt2 (President Trump explaining that he has not asked the Salvadoran President for Mr. Abrego Garcia's return, despite a court order to "facilitate" his release, because "I haven't been asked to ask him by my attorneys").

[4] *See also* Anna Bower & Roger Parloff, *Our Reporters' Notes on the May 7 Hearing in the J.G.G. Case*, Lawfare (May 8, 2025), https://tinyurl.com/mtk9f85s (DOJ attorney acknowledging that the U.S. made grants to El Salvador to pay for the detention of migrants at CECOT, and that a "letter" exists between the two countries on the subject, but arguing without evidence that the people the U.S. is paying to detain there are nonetheless there under Salvadoran law).

[and the court had] no reason to think the transfer process may be a ruse—and a fraud on the court—designed to maintain control over the detainees beyond the reach of the writ").

This case is also nothing like *Trump v. Hawaii*. *See* Dkt. 32 at 8. There, plaintiffs challenged a facially neutral executive policy and the Court opted not to rely on presidential statements, many from the campaign trail, as evidence of discriminatory animus. 585 U.S. 667, 699–701 (2018). Here, in contrast, Respondents largely ignore Mr. Quintero's detention at CECOT in their briefs but have released extensive statements describing CECOT detention as "one of the tools in [DHS's] toolkit." Dkt. 24 ¶ 64. Respondents cannot use *Trump v. Hawaii* to wash their hands of their own statements. If Respondents, all sued in their official capacity, are correct that their own public statements do not carry evidentiary weight, then discovery would be the only way to prove jurisdiction and should be ordered. *See ACLU of Fla. v. City of Sarasota*, 859 F.3d 1337, 1340–41 (11th Cir. 2017) (holding denial of jurisdictional discovery was an abuse of discretion when facts going to jurisdiction were genuinely in dispute).

Respondents also propose constructive custody arguments unsupported by law. They assert there can never be habeas jurisdiction when a petitioner is in physical custody of a foreign sovereign. Dkt. 32 at 9–10. Such a categorical rule does not exist and finds no support in § 2241. *See Munaf v. Geren*, 553 U.S. 674, 686 (2008) (explaining that § 2241(c)(1) is "disjunctive," requiring actual physical custody by a U.S. government custodian *or* custody "under color of" U.S. authority); *J.G.G. v. Trump*, No. 1:25-cv-00766-JEB, 2025 WL 1349496, at *2 (D.D.C. May 8, 2025) ("[T]eaming up with foreign agents cannot exculpate [U.S.] officials . . . from liability for [their] unlawful acts." (quoting *Ramirez de Arellano v. Weinberger*, 745 F.2d 1500, 1542–43 (D.C. Cir. 1984) (en banc), *rev'd on other grounds*, 471 U.S. 1113 (1985) (cleaned up))). *Abu Ali* rejected

this argument after an exacting analysis. 350 F. Supp. 2d at 42–51.[5]

Respondents also invent several new definitions of constructive custody unmoored from § 2241 and relevant precedent, arguing that constructive custody requires "plenary and indefinite control over the detention cite [*sic*]," or implying that an "enforceable agreement or ratified treaty" or "military presence or a lease" is required, Dkt. 32 at 9–10. The cases they rely on—*Boumediene v. Bush*, 553 U.S. 723 (2008); *Johnson v. Eisentrager*, 339 U.S. 763 (1950); and *Al Maqaleh v. Gates*, 605 F.3d 84 (D.C. Cir. 2010)—all considered the dimensions of constitutional habeas, not the meaning of "custody" in § 2241. Finally, Respondents suggest there is no jurisdiction because Mr. Quintero is not a U.S. citizen. Dkt. 32 at 11. But § 2241 "draws no distinction between Americans and [noncitizens]," including for jurisdictional purposes. *Rasul v. Bush*, 542 U.S. 466, 481 (2004). While "citizenship and status" are relevant to the reach of constitutional (not statutory) habeas, the *Boumediene* Court *extended* constitutional habeas to noncitizens who, unlike here, had "enemy combatant" status and never set foot in the United States. 553 U.S. at 766–67; *accord Al Maqaleh*, 605 F.3d at 95–96 (status as "enemy [noncitizens]" weighed in favor of constitutional habeas). If a U.S. citizen could challenge detention at CECOT at Respondents' behest under § 2241, *Rasul* dictates Mr. Quintero can, too.[6]

II. Respondents' General, Sweeping Objections Are No Reason to Deny Jurisdictional Discovery Altogether.

Respondents object broadly to any jurisdictional discovery on the grounds that the discovery sought is irrelevant, overbroad, overly burdensome, vague, privileged, and classified.

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[5] *Abu Ali* distinguished *U.S. ex rel. Keefe v. Dulles*, 222 F.2d 390 (D.C. Cir. 1954), because Mr. Keefe was convicted under domestic French law, with no claim the U.S. was "actively involved in arranging" his detention. 350 F. Supp. 2d at 56. *Keefe* is similarly inapposite here.

[6] *Abu Ali* makes repeated reference to U.S. citizenship; this makes sense because the petitioner there was a U.S. citizen. *See* 350 F. Supp. 2d at 31. *Abu Ali* relies on *Rasul* (where the petitioners were not U.S. citizens) and did not hold the meaning of "custody" in § 2241 varies based on the petitioner's citizenship, as that question was not before the *Abu Ali* court. *See generally id.* at 46–51.

Dkt. 32 at 11–14. These sweeping objections are premature. Mr. Quintero has proposed a timeline for objections, responses, and resolution of specific objections by the Court. Dkt. 28 at 10. Moreover, Respondents cannot hide from the fact that they have already responded to similar discovery requests in other litigation, which undermines their myriad general objections.

Federal Rule of Civil Procedure 26(b)(1) permits "discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case."[7] "Courts must employ a liberal discovery standard in keeping with the spirit and purpose of the discovery rules." *Bledsoe v. Remington Arms Co., Inc.*, No. 1:09-cv-69-WLS, 2011 WL 13244134, at *2 (M.D. Ga. Feb. 9, 2011). It is Respondents' burden to show specifically why their objections should be sustained. *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550, 1558–59 (11th Cir. 1985) (rejecting resisting party's "conclusory" recitation of expense and burden). Respondents have not met their burden as to any specific request, and their general objections are certainly not a basis to deny jurisdictional discovery altogether.

A. Mr. Quintero's requested discovery is relevant and narrowly tailored.

Respondents have not met their burden to show that Mr. Quintero's requests are irrelevant or overbroad. Respondents challenge the relevance of Mr. Quintero's requests for production of documents ("RFPs") Nos. 4 and 6–10, interrogatories ("ROG") Nos. 1–4, and requests for admission ("RFAs") Nos. 1 and 2. Dkt. 32 at 12. RFP Nos. 4, 6, 8, 10, ROG Nos. 1–3, and RFA Nos. 1 and 2 relate to the manner in which Respondents carried out Mr. Quintero's removal. While Mr. Quintero challenges the fact of his continued detention, not removal, Respondents contend

[7] Federal Rule of Civil Procedure 26(b)(1) applies to habeas discovery because the Rules Governing § 2254 Cases in the U.S. District Courts ("Habeas Rules," or "Habeas R.") do not otherwise speak to the scope of discovery, once good cause for discovery has been found, and Rule 26(b)(1) does not specifically exempt habeas proceedings like other provisions in Rule 26. *See Barbour v. Hamm*, No. 2:01-CV-612-ECM (WO), 2024 WL 4821441, at *2–4 (M.D. Ala. Nov. 18, 2024); Habeas R. 1(b); *Annamalai v. Warden*, 760 F. App'x 843, 849–50 (11th Cir. 2019) (Habeas Rules may be applied to § 2241 petitions).

this case is moot because they removed Mr. Quintero and allegedly exercise no control over his imprisonment. Dkt. 27 at 11–12. The allegations in Mr. Quintero's petition call into serious question whether Respondents carried out his transfer to CECOT as they would an ordinary removal under the INA. *See* Dkt. 24 ¶¶ 11, 12, 43. These discovery requests are aimed at determining whether ICE completed the paperwork and followed the processes incident to normal removal. Evidence that Respondents did not treat Mr. Quintero's removal as any other Title 8 removal may show that Respondents did not consider Mr. Quintero to have been completely released from their custody.

RFP Nos. 7 and 9 and ROG No. 4 go directly to the question of constructive custody, which Respondents continue to argue that they do not have, with no evidence. These requests seek correspondence with El Salvador about Mr. Quintero, which could show Respondents' involvement and control over his detention; documentation regarding Respondent Noem's visit to CECOT, which could show Respondents' access to CECOT and shed light on the detention arrangement; and names of people who have communicated directly with Salvadoran officials regarding Mr. Quintero's ongoing detention.

Next, Respondents characterize the scope of several ROGs aimed at identifying potential witnesses as "outrageously broad."[8] Dkt. 32 at 12. ROG Nos. 2–6 seek names of Executive Branch officials. Respondents contend there could be "hundreds" of names responsive to these interrogatories. *Id.* But ROG Nos. 2 and 3 seek names of officials who had responsibilities directly related to *Mr. Quintero's* transfer to and detention at CECOT. Those are the officials with knowledge of Mr. Quintero's situation, and their names should be disclosed. ROG Nos. 4 and 6 seek names of officials with the authority to communicate directly with Salvadoran officials, a

[8] Mr. Quintero's counsel is of course amenable to meeting and conferring about the discovery requests to resolve disagreements about scope or confusion about terms.

pool of officials that is presumably limited given the nature of U.S. foreign relations. And ROG No. 5 seeks the names of officials with knowledge of the agreement between the U.S. and El Salvador, which is also likely to be limited in number. *See id.* at 13–14.

Respondents contend the requests lack "a reasonable timeframe," *id.* at 13, but each RFP is limited to "documents created or modified on or after November 5, 2024." Dkt. 28 at 6. The remaining requests date back to Mr. Quintero's transfer to CECOT (March 2025 to the present), or to the U.S.-El Salvador arrangement (February 2025 to the present). *See* Dkt. 24 ¶ 54.

B. Mr. Quintero's requested discovery is not overly burdensome.

Respondents also fail to show undue burden. Respondents complain that the RFPs "would require an entirely new search using new search terms" specific to this case, possibly taking "hundreds, if not thousands, of hours." Dkt. 32 at 13, 15. Searching for documents is inherent to discovery and is not in and of itself a basis for finding undue burden. *See Wood Grp. Pressure Control, L.P. v. B&B Oilfield Servs.*, No. 06-cv-3002, 2007 WL 9780403, at *3 (E.D. La. Apr. 27, 2007) (describing the affirmative duty to seek information reasonably available to respond to discovery requests). As Respondents acknowledge, entirely new searches may not be necessary;[9] they are already providing discovery in other similar litigation. *See* Order, *J.G.G. v. Trump*, No. 1:25-cv-00766-JEB (D.D.C. May 16, 2025), ECF No. 128 (ordering jurisdictional discovery on constructive custody and referencing documents already produced); Defs.' Brief at 1, 3, 7, 18, *Abrego Garcia v. Noem*, No. 8:25-cv-00951-PX (D. Md. May 12, 2025), ECF No. 125 (describing discovery already provided); *Abrego Garcia*, 2025 WL 1166402 (D. Md. Apr. 22, 2025) (resolving discovery disputes).

[9] Respondents argue that overlap with discovery in *Abrego Garcia* and *J.G.G.* would make discovery here "highly burdensome without purpose." Dkt. 32 at 13 n.3. To the contrary, Respondents should easily be able to produce discovery already produced in other cases, and vice versa. Such production is certainly not "without purpose"—the purpose is to adjudicate Mr. Quintero's claim of unlawful confinement.

C. Respondents' vaguely claimed privileges do not obviate the need for jurisdictional discovery.

Respondents' passing reference to a host of privileges they "may decide to invoke" falls far short of establishing the privileges apply. Dkt. 32 at 13–14; *Waldemar E. Albers Revocable Tr. v. Mid-Am. Energy, Inc.*, No. 7:08-MC-2-HL, 2008 WL 4539379, at *1 (M.D. Ga. Oct. 3, 2008); *see also Abrego Garcia*, 2025 WL 1166402 at *1 (dismissing cursory assertions of privileges "without providing any supporting information or analysis" as "specious"). Instead, a party invoking a privilege has the burden of proving it applies. *In re Grand Jury Investigation*, 842 F.2d 1223, 1225 (11th Cir. 1987). Respondents clearly have not done so.

Moreover, Respondents' assertion that the requested discovery "appears to implicate" national defense or diplomatic relations, Dkt. 32 at 13–14, is a far cry from the specificity required and does not justify the preemptive foreclosure of jurisdictional discovery. Respondents' cited cases do not indicate otherwise. *See United States v. Reynolds*, 345 U.S. 1, 7–8 (1953) (explaining the state secrets privilege "is not to be lightly invoked" and requires "a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer"); *Gen. Dynamics Corp. v. United States*, 563 U.S. 478, 492 (2011) (recognizing the privilege is "available in a very narrow set of circumstances" and applying it as the "option of last resort" in a Government-contract dispute); *Crater Corp. v. Lucent Tech., Inc.*, 423 F.3d 1260, 1265 (Fed. Cir. 2005) (noting the privilege only protects "material that is not strictly necessary to prevent potential harm to national security"); *United States v. Nixon*, 418 U.S. 683 (1974) (discussing the broad claim of presidential privilege). Here, Respondents gesture to various privileges, but offer no specifics, nor the required declarations. The vaguely referenced privileges are no reason to deny jurisdictional discovery here.

III. Jurisdictional Discovery Should Proceed On An Expedited Timeline.

Finally, this Court should order expedited discovery for the same reason it should deny Respondents' stay request: the extraordinary circumstances of Mr. Quintero's case—*i.e.*, his lawless disappearance and incommunicado detention in a notorious torture prison abroad—necessitate a speedy resolution.[10]

Habeas cases are "inappropriate for [] delay" under normal circumstances. *Cross v. Harris*, 418 F.2d 1095, 1105 n.64 (D.C. Cir. 1969); *see* 28 U.S.C. § 2243; *Johnson v. Avery*, 393 U.S. 483, 485 (1969) ("The Court has steadfastly insisted that 'there is no higher duty than to maintain [the Great Writ] unimpaired.'"). This case presents even more urgent circumstances than an ordinary habeas case. Thus, undue delay would cause irreparable harm to Mr. Quintero, who continues to languish in CECOT under "some of the most inhumane and squalid conditions known in any carceral system." *Abrego Garcia*, 2025 WL 1014261, at *3 (D. Md. Apr. 6, 2025).[11] To the extent Respondents require a modification of the expedited discovery schedule, such requests can be negotiated and decided on a case-by-case basis. The extraordinary nature of this case and the limited scope of discovery sought weigh in favor of proceeding on an expedited schedule. *See A.S.M.*, No. 7:20-CV-62 (CDL), ECF No. 50 at 2 (granting request for expedited discovery).

CONCLUSION

The Court should grant Mr. Quintero's Motion for Expedited Jurisdictional Discovery.

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[10] Respondents take issue with Mr. Quintero's proposed discovery timeline but offer no alternative. *See* Dkt. 32 at 14–15. Instead, they vaguely assert, without support, that production of documents will "likely require[] hundreds if not thousands of hours" and that preparing witnesses for depositions will take "multiple weeks or months." *Id.*

[11] Respondents claim the modest delays in *Abrego Garcia* were due to the "impossibility to produce the requested documents on the expedited schedule due to the extreme burden on Respondents," but provide no support for that assertion. Dkt. 32 at 19. Indeed, the *Abrego Garcia* court initially modified its discovery order "to remain on the expedited discovery schedule" and "facilitate the just and expeditious production of discovery." *Abrego Garcia*, No. 8:25-cv-00951-PX (D. Md. Apr. 22, 2025), ECF No. 100 at 1.

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Respectfully submitted,

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