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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Samir Aghar,

Petitioner,

v.

Fred Figueroa, Warden, *et al.*,

Respondents.

Case No. 2:25-cv-03147-KML-CDB

MOTION FOR RECONSIDERATION OF DISCOVERY ORDER [ECF No. 15]

INTRODUCTION

On August 28, 2025, Petitioner Samir Aghar filed a Petition for a Writ of Habeas Corpus ("Petition"), arguing that his detention in civil immigration custody violates his Fifth Amendment Due Process Rights on three grounds, including (1) his detention may one day become prolonged "if his asylum proceedings should result in his being ordered removed to [Afghanistan];" (2) ICE's alleged "failure to consider Mr. Aghar for placement with a sponsor;" and (3) "he is being denied a bond hearing before a neutral decisionmaker." Pet. ¶¶ 20–31, ECF No. 1. On the same date, Petitioner filed a Motion for a Preliminary Injunction and a Temporary Restraining Order ("PI motion"), arguing he was likely to succeed on the merits of his claim that his present detention is unlawful "because there is no significant likelihood that he can be removed to Afghanistahn [sic] should he ultimately be ordered removed to that country," and seeking immediate release. ECF No. 3. As Respondents noted in their opposition to the PI motion, Petitioner makes no mention of his other claims for relief as grounds to grant his preliminary injunction or temporary restraining order.

On September 2, 2025, the Court ordered Respondents to respond to the PI motion by September 8, 2025. ECF No. 5. The Court also ordered that Petitioner may file a reply no later than September 11, 2025. *Id.* Respondents filed an opposition to the PI motion on September 8, 2025. ECF No. 12. Instead of filing a reply, Petitioner, on September 11, 2025, filed a Motion for Discovery and Extension of Time ("discovery motion") seeking production of all documents relating to his claim that ICE failed to consider placing him with a sponsor—a claim not raised in his PI Motion—before he had to reply to said motion.

In filing his discovery motion, Petitioner failed to comply with local rules requiring the position of a nonmovant to be included in both a motion for discovery and motion for extension of time. *See* LRCiv 7.2(j); LRCiv 7.3(b). Despite the discovery motion's shortcomings, the Court, without allowing Respondents 14 days to respond or ordering a different response time pursuant to LRCiv 7.2(c), granted Petitioner's discovery and extension requests just two days after the motions were filed. ECF No. 15. The Court committed manifest error by granting the discovery motion despite Petitioner's failure to meet and confer on either request and without allowing Respondent's to proffer any legal arguments before its ruling. The discovery request is wholly irrelevant to Petitioner's PI Motion and instead goes to the merits of a claim for which Respondents have a compelling argument that this Court lacks jurisdiction. Respondents therefore submit this Motion for Reconsideration of the Court's Sept. 12, 2025, Order granting Petitioner's Motion for Discovery pursuant to LRCiv 7.2(g).

ARGUMENT

District of Arizona Local Civil Rule 7.2(g) governs Motions for Reconsideration. That rule states:

> "The Court will ordinarily deny a motion for reconsideration of an Order absent a showing of manifest error or a showing of new facts or legal authority that could not have been brought to its attention earlier with reasonable diligence. Any such motion shall point out with specificity the matters that the movant believes were overlooked or misapprehended by the Court, any new matters being brought to the Court's attention for the first time and the reasons they were not presented earlier, and any specific modifications being sought in the Court's Order. No motion for reconsideration of an Order may repeat any oral or written argument made by the movant in support of or in opposition to the motion that resulted in the Order."

Generally, a Motion for Reconsideration is granted in rare circumstances. *Moore v. Garnand*, No. CV-19-00290-TUC-RM (MAA), 2025 WL 834913 at *2 (D. Ariz. Mar. 17,

2025) (citing *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995). However, "Local Rule 7.2(g) does not enact a hard-and-fast prohibition against granting reconsideration . . . ." *Fed. Trade Comm'n v. Noland*, No. CV-20-00047-PHX-DWL, 2022 WL 901386 at *3 (D. Ariz. Mar. 28, 2022). Respondents, following each requirement of LRCiv 7.2(g), present specific showings of manifest error, a showing of legal authority that could not have been brought to the Court's attention earlier with reasonable diligence, and request specific modifications to the Court's Order below. Respondents repeat no argument made in opposition to the discovery motion that resulted in the Sept. 12, 2025, Order because they were given no opportunity to respond.

I. The Court Should Reconsider Its Order Because It Committed Manifest Error.

The term manifest error refers to "an error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record." *Estrada v. Bashas' Inc.*, No. CV-02-00591-PHX-RCB, 2014 WL 1319189 at *3 (D. Ariz. Apr. 1, 2014) (citing Black's Law Dictionary 622 (9th ed. 2009)). The Court committed manifest error in granting the discovery motion despite Petitioner's failure to follow the local rules, in not allowing Respondents a chance to respond, and in granting discovery that is premature and inappropriate.

A. Petitioner failed to follow local rules.

Petitioner failed to follow any local rules regarding contacting opposing counsel before filing his discovery motion. Local Rule 7.2(j) states that "[n]o discovery motion will be considered or decided unless a statement of moving counsel is attached thereto certifying that after personal consultation and sincere efforts to do so, counsel have been

unable to satisfactorily resolve the matter." Further, this rule states that failure to comply with this rule can result in sanctions. *Id.* It is inapposite of the rules that a petitioner would instead get the very discovery he requested without following the local rules.

With regards to extensions of time, LRCiv 7.3 states that "[e]xcept in all civil actions in which a party is an unrepresented prisoner," which does not apply in this case, "a party moving for an extension of time, whether by motion or stipulation, must state the position of each other party." Respondents likely would not have opposed a reasonable extension request for Petitioner to respond to the PI motion had they been contacted; however, Respondents do take issue with Petitioner's request to receive an extension until discovery into a claim unrelated to his PI motion is concluded.

Federal Rule of Civil Procedure 6(b)(1) states that a Court may extend the time of a filing for *good cause*. However, Petitioner failed to advance any arguments as to why there was good cause to not comply with the Court ordered filing deadline put in place in the September 2, 2025, Order requiring a reply by September 11, 2025. Whereas Petitioner sought an extension of time to file a reply in support of his PI motion until after obtaining discovery into a claim he does not even raise in his PI motion, Petitioner's argument is misplaced. The purpose of a preliminary injunction is not to prove a case in full; rather, "a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).

Further, in his PI motion, Petitioner failed to include an argument as to why Petitioner is likely to succeed on the merits of the claim that Respondents' failure to consider placing Petitioner with a sponsor violated Due Process. In fact, Petitioner

describes all three claims just once but only to assert that he is "almost certain to prevail on at least one of [his] claims," and makes no further reference. Instead, his PI motion argues only that he is likely to prevail on his claim that his detention is at risk of becoming prolonged *if* he receives a final order of removal—and *if* that order directs his removal to Afghanistan—and *if* the United States is *at that time* unable to remove him to Afghanistan or to a third country. Respondents made clear in their opposition this is not a justiciable claim. *See* ECF No. 12. It is certainly not grounds to grant extraordinary relief or amenable to discovery on the entirely unrelated question of whether ICE considered placing Petitioner with a sponsor.

Finally, LRCiv 7.2(c) allows for a nonmovant to have 14 days to respond to a Motion for Discovery absent a Court order. In its Sept. 12, 2025, Order, the Court foreclosed Respondents from having *any* opportunity to respond to the discovery motion. The Court's determination to rule on the discovery motion without hearing from the government following Plaintiff's failure to follow the local rules without any reasoned basis is a manifest error that should result in a grant of Respondent's Motion for Reconsideration. Petitioner's discovery motion and extension of time motion should be denied, and Petitioner should be required to respond to Respondents' opposition to Petitioner's PI Motion pursuant to the Court's Sept. 2 Order, unless Petitioner files a motion compliant with the local rules showing good cause to allow more time.

B. Discovery is premature and inappropriate.

Notwithstanding Petitioner's failure to abide by the District of Arizona local rules, the Court committed manifest error by granting a discovery request which is premature and

inappropriate. Habeas proceeding are not "meant to be a fishing expedition for habeas petitioners to 'explore their case in search of its existence.'" *Rich v. Calderon*, 187 F.3d 1064, 1067 (9th Cir. 1999) (quoting *Calderon v. United States Dist. Ct. (Nicolaus)*, 98 F.3d 1102, 1106 (9th Cir. 1996)). Petitioner seeks just that by advancing an unsubstantiated claim in his Petition and now seeking discovery of all information related to that claim. Pet. ¶¶ 25–27; Discovery motion.

Discovery in a habeas proceeding is only available at the discretion of the Court and for good cause. *Rich*, 187 F.3d at 1067; Rules Governing Section 2254 Cases in the United States District Court ("Habeas Rules") 6(a). Courts do not have to authorize all discovery requests presented to them, but only those "where *specific allegations* before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief." *Harris v. Nelson*, 394 U.S. 286, 300 (1969) (emphasis added).

Petitioner and the Court cite *Bracy v. Gramley*, 520 U.S. 899, 909 (1997) to support the notion that discovery is appropriate at this time. But unlike in *Bracy*, where the petitioner had rebutted the presumption that his claim was too speculative to warrant discovery by submitting news clippings and an indictment supporting judicial corruption, *id.* at 906–909, Petitioner here has advanced no specific allegations that support his claim that his Fifth Amendment Due Process rights were violated. Thus, it is a manifest error of the Court to grant discovery at this stage of litigation into a claim that Petitioner has failed to advance.

II. Reconsideration is Appropriate Because Respondents Have Not Yet Been Able To Presented Any Legal Authority in Opposition To Petitioner's Discovery Motion.

Respondents have only had one opportunity thus far to respond to Petitioner's claims: their opposition to the PI motion. ECF No. 13. Because Petitioner specifically eschewed argument in support of his claim that "[t]he failure to consider Mr. Aghar for placement with a sponsor as required by statute violates the Due Process Clause of the Fifth Amendment," *see* Pet. ¶¶ 25–27, in the PI motion, Respondents only briefly touched on the alleged claim in their Opposition and in a single reference in the supporting declaration. *See* Opp. at 7; Decl. of Brian Ortega ¶ 11. Additionally, Petitioner, in his discovery motion, advanced a new argument not found in his habeas petition or PI motion, that both his detention and the determination that Petitioner is a flight risk and danger is "arbitrary and capricious." *See* ECF No. 13 at 1, 2, 3.

Since Petitioner sought and was granted discovery on a claim to which Respondents have yet to respond, no reasonable diligence could have allowed Respondents to present their legal argument to the Court at all. Respondents briefly present arguments here that, in conjunction with Respondents' opposition to the PI motion, refute Petitioner's likelihood of success on any of his claims.

A. The Court is foreclosed from reviewing the "Age-Out" process because of 8 U.S.C. § 1252(a)(2)(B)(ii).

When a detained minor turns 18 and is transferred to the custody of the Secretary of Homeland Security, "the Secretary shall consider placement in the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232(c)(2)(B). As explained in the Declaration of Brian Ortega

at ¶ 11, ECF No. 12-1, the Secretary did just that. This should be the end of the Court's analysis regarding whether Petitioner received his statutory right to individualized review.

District courts lack jurisdiction to review "any other decision or action of the . . . Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of . . . the Secretary of Homeland Security." 8 U.S.C. § 1252(a)(2)(B)(ii). By looking to the language of Section 1232(c)(2)(B), it is clear that the process by which the Secretary considers an alien for alternative to detention placement is within her discretion. *See* 8 U.S.C. § 1232(c)(2)(B) ("Such aliens shall be *eligible* to participate in alternative to detention programs . . . which *may* include placement of the alien with an individual or an organizational sponsor, or in a supervised group home.") (emphasis added); *see also Rodas Godinez v. United States Immigr. & Customs Enf't*, No. 2:20-CV-466 KWR/SMV, 2020 WL 3402059 (D.N.M. June 19, 2020) ("§ 1252(a)(2)(B)(ii) clearly bars this Court's review of Respondents' discretionary decision to "consider placement in the least restrictive setting."). The Court is thus unable to review the specific nuances of the Secretary's decision.

B. Respondents and Petitioner are bound by the *Ramirez* injunction.

Petitioner, in his discovery motion, also makes a new claim that "respondents' determination that Mr. Aghar is a flight risk and a danger . . . was arbitrary and capricious." To the extent that Petitioner is bringing an Administrative Procedures Act claim regarding the Secretary's failure to abide by Section 1232(c)(2)B), he is foreclosed from doing so in this forum because he is a Rule 23(b)(2) class member of the *Ramirez v. U.S. Immigr. & Customs Enf't*, No. 1:18- cv-508 (D.D.C. 2021) litigation.

The *Ramirez* litigation concerned a class of individuals who contended that ICE failed to follow proper procedures under 8 U.S.C. § 1232(c)(2)(B) when determining the "least restrictive placement" of individuals who turned 18 while in HHS-ORR custody. *Ramirez v. U.S. Immigr. & Customs Enf't*, 338 F. Supp. 3d 1, 11 (D.D.C. 2021). During the course of litigation, the *Ramirez* court certified a Rule 23(b)(2) class as:

> All former unaccompanied alien children who are detained or will be detained by ICE after being transferred by ORR because they have turned 18 years of age and as to whom ICE did not consider placement in the least restrictive setting available, including alternatives to detention programs, as required by 8 U.S.C. § 1232(c)(2)(B).

Id. at 50. This is precisely the group to which Petitioner contends he belongs. Pet. ¶¶ 25–27; Discovery motion. After final judgment was entered, the *Ramirez* court issued a permanent injunction requiring ICE to follow certain protocols and retained exclusive jurisdiction over the injunction for five years. *Ramirez v. U.S. Immigr. & Customs Enf't*, 568 F. Supp. 3d 10, 36 (D.D.C. 2021).

Thus, Petitioner is a member of a certified Rule 23(b)(2) class seeking injunctive and/or declaratory relief for which there is no opt-out requirement. *Cooper v. Fed. Rsrv. Bank of Richmond*, 467 U.S. 867, 874 (1984); *see also Crawford v. Honig*, 37 F.3d 485, 487 n.2 (9th Cir. 1994) ("[Rule 23(b)(2)] does not require notice or permit members to opt out"); *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 207 (D.D.C. 2020) (holding "certification of a 23(b)(2) class precludes individual suits for the same injunctive or declaratory relief") (citing *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1538 (2018)). Permitting individual litigation regarding the injunctive relief awarded to Petitioner as part of his membership in the mandatory class undermines the purpose of the certified Rule 23(b)(2)

class as it impacts the injunctive relief ordered to the class as a whole. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360–61 (2011). Further, Respondents are bound by the injunction requiring compliance with Section 1232(c)(2)(B), and the Court should not grant discovery into a mere speculatory claim when class members in *Ramirez* have not even argued the injunction has been violated. *See Ramirez*, No. 1:18-cv-508 (D.D.C.).

III. The Court Should Deny Petitioner's Discovery Request Or, In The Alternative, Stay Discovery Until Respondents Have An Opportunity To Respond To The Petition.

For the above reasons, Respondents ask that the Court amend its order to deny Petitioner's discovery and extension requests. If the Court is not inclined to grant this Motion for Reconsideration, Respondents ask that the Court stay discovery until Respondents have a chance to respond to the Petition on September 24, 2025.

A district court has "broad discretion to stay proceedings." *Clinton v. Jones*, 520 U.S. 681, 706 (1997). "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket . . . ." *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936). When there is a jurisdictional issue, a court has discretion to stay discovery pending resolution. *See In re Netflix Antitrust Litig.*, 506 F. Supp. 2d 308, 321 (N.D. Cal. 2007) (citing *Jarvis v. Regan*, 833 F.2d 149, 155 (9th Cir.1987)) ("District courts have broad discretion to stay discovery pending the resolution of a potentially dispositive motion").

As explained above, Respondents have only had the opportunity to briefly touch on the alleged Due Process claim regarding Petitioner's placement in civil immigration detention instead of with a sponsor in their Opposition to the PI motion and have not yet

had the opportunity to fully respond to the claim in a Return. Notwithstanding that Petitioner sought discovery on an issue not raised in the PI motion and has shown no good cause why discovery should occur in any event, it would be premature for the Court to grant discovery. The Court should, at a minimum, allow Respondents to file their habeas return and demonstrate that the Court lacks jurisdiction to hear Petitioner's claims. *See supra* § II. Thus, a stay of discovery in the alternative would conserve the Court's resources as it would allow both parties' arguments to be before the Court, and for the Court to determine jurisdiction, before it conducts premature and inappropriate discovery.

CONCLUSION

For the foregoing reasons, the Court should reconsider its Sept. 12, 2025, Order granting Petitioner's Motion for Discovery and Extension of Time.

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DATED this 15th day of September 2025.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing document on September 15, 2025, on the Electronic Case Filing (ECF) System, which will send notification of such filing to all counsel of record.

Respectfully submitted,

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