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14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 Nader Eshaghian,

17 Petitioner,

18 v.

19 Chris Howard, *et al.*,

20 Respondents.

No. CV-25-04141-PHX-DWL (ESW)

MOTION FOR RECONSIDERATION

21 Respondents, through undersigned counsel, hereby respectfully file this Motion
22 for Reconsideration of this Court's Order dated November 7, 2025 (Doc. 7). Specifically,
23 Respondents ask that this Court reconsider the portion of its order wherein it granted
24 Petitioner's Motion for Limited Discovery in full without giving Respondents an
25 opportunity to respond to the Motion. Respondents request that this Court postpone
26 consideration of the discovery order to allow for more efficient case administration.

27 "A habeas petitioner, unlike the usual civil litigant in federal court, is not entitled
28 to discovery as a matter of ordinary course." *Bracy v. Gramley*, 520 U.S. 899, 904 (1997).
A court may grant discovery to a habeas petitioner only upon a showing of "good cause,"
and then only to the extent authorized by the Federal Rules of Civil Procedure. Rules
Governing Section 2255 Proceedings ("Federal Habeas Rule") 6(a). The Federal Rules of

1 Civil Procedure authorize discovery only of documents that are both relevant and not
2 privileged, and only to the extent that discovery is necessary and practical:

3 Unless otherwise limited by court order, the scope of discovery is as follows:

4 Parties may obtain discovery regarding any nonprivileged matter that is
5 relevant to any party's claim or defense and proportional to the needs of the
6 case, considering the importance of the issues at stake in the action, the amount
7 in controversy, the parties' relative access to relevant information, the parties'
8 resources, the importance of the discovery in resolving the issues, and whether
9 the burden or expense of the proposed discovery outweighs its likely benefit.

10 FRCP 26(b)(1).

11 Petitioners must show that the discovery they seek is relevant. *See* Federal Habeas
12 Rule 6(b); *Calderon v. United States Dist. Court*, 98 F.3d 1102, 1106 (9th Cir. 1996)
13 (“[C]ourts should not allow prisoners to use federal discovery for fishing expeditions to
14 investigate mere speculation”); *Williams v. Beard*, 637 F.3d 195, 209 (3d Cir. 2011);
15 *Williams v. Bagley*, 380 F.3d 932, 974 (6th Cir. 2004); *Odiase v. Oddo*, 2025 U.S. Dist.
16 LEXIS 207720 at *8–9 (W.D. Penn. October 22, 2025). When petitioners bring habeas
17 claims under *Zadvydas v. Davis*, 533 U.S. 678 (2001), they must show that the requested
18 discovery is “likely to generate evidence beyond that which is already in the record,”
19 which includes sworn declarations like those commonly provided in responses to such
20 claims. *Atikurraheman v. Garland*, 2024 U.S. Dist. LEXIS 99422, at *15–16 (W.D.
21 Wash. May 10, 2024), *R&R adopted at* 2024 U.S. Dist. LEXIS 98364 (W.D. Wash. June
22 3, 2024).

23 The Federal Rules of Civil Procedure require a party seeking discovery to “serve
24 on any other party a request within the scope of Rule 26(b)” asking for the desired
25 documents. FRCP 34(a).¹ This request “must describe with reasonable particularity each
26 item or category of items to be inspected” and “must specify a reasonable time, place, and
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28 ¹ Petitioner did not comply with this rule. *See* Doc. 4 (asking the Court directly to order
discovery prior to serving Respondents).

1 manner for the inspection.” FRCP 34(b)(1)² Once a party from whom discovery is sought
2 receives a Rule 34 request, they must respond within a set time—typically thirty days,
3 but the court may alter this by order—either by agreeing to provide the requested
4 discovery or by “stat[ing] with specificity the grounds for objecting to the request,
5 including the reasons” FRCP 34(b)(2)(B). If a party objects to discovery in part, that party
6 must state which responsive materials are objectionable and provide the remainder. FRCP
7 34(b)(2)(C). Only “[o]n notice to other parties and all affected persons” may a party move
8 for an order to compel discovery. FRCP 37(a)(1).³ A motion to compel “must include a
9 certification that the movant has in good faith conferred or attempted to confer with the
10 person or party failing to make disclosure or discovery in an effort to obtain it without
11 court action.” *Id.*⁴

12 The Court should reconsider its order because it lacks authority to order discovery
13 *ex parte* in a habeas petition. *In re Pruett*, 133 F.3d 275, 280 (4th Cir. 1997); *see also*
14 *Johnson v. Lamas*, 2011 U.S. Dist. LEXIS 80863 at *13–14 (E.D. Pa. July 20, 2011)
15 (applying *Pruett*). Petitioner did not comply with the structure for requesting discovery
16 outlined in FRCP 26 and FRCP 37. Petitioner’s motion for limited discovery is
17 quintessentially a motion to compel discovery, and it did not comply with the notice and
18 conferral requirements in FRCP 37(a). Further, the requests for production were
19 overbroad, and a court may not compel overbroad production. *See Wiwa v. Royal Dutch*
20 *Petroleum*, 392 F.3d 812 (5th Cir. 2004). Finally, the documents that Respondents were
21 ordered to produce include documents covered by evidentiary privileges, including the
22 executive privilege, the state-secrets privilege, the attorney-client privilege, and the
23 deliberative-process privilege, and a court may not compel the production of privileged
24 materials. *See Admiral Ins. Co. v. United States Dist. Court*, 881 F.2d 1486, 1491 (9th
25 Cir. 1989) (collecting cases). In other words, if the Court intends to order discovery now,

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27 ² Petitioner did not comply with this rule. *See* Doc. 4 (demanding discovery be completed
within four days of filing, again prior to service).

28 ³ Petitioner did not comply with this rule. *See supra* fn. 1.

⁴ Petitioner did not comply with this rule. *See* Doc. 4.

1 Respondents have a right to object to discovery and assert privileges.

2 The Court should also reconsider its order to produce overbroad discovery
3 because, as a practical matter, discovery would stick this matter in a pointless morass and
4 could needlessly prolong Petitioner's detention. First, many of the requested documents
5 are on physical files that are not directly in Respondents' possession, so they cannot be
6 produced before Respondents retrieve them and scan them. Some of the documents may
7 also contain information that it is illegal for Respondents to disclose, including
8 information related to asylum and withholding of removal, *see, e.g.*, 8 U.S.C. § 1367; 18
9 U.S.C. § 798; 8 C.F.R. § 1208.6, so Respondents would need time to redact all such
10 information. Respondents would then likely object to the requested discovery and assert
11 various privileges, and if Petitioner intended to seek discovery of such materials, he would
12 need to file a motion to compel, and Respondents would be entitled to respond. *See* Local
13 Rule of Civil Procedure 7.2. Respondents would also likely seek a protective order and
14 may request *in camera* review of documents to preserve privileges and comply with
15 disclosure laws. This process would take weeks, if not months, and it would be extremely
16 burdensome and unnecessary.

17 This Court has often ruled on habeas claims that are substantially identical to
18 Petitioner's without conducting any discovery whatsoever. *See, e.g., Ho v. Archambeault*,
19 No. CV-25-03753-PHX-JJT (JZB); *Bui v. Archambeault*, No. CV-25-03774-PHX-KML
20 (JFM). Generally, petitioners requesting habeas relief under *Zadvydas* provide the court
21 with the immigration documents available to them, along with sworn declarations
22 supporting their claims.⁵ Respondents then provide their own sworn declaration and any
23 documents they may wish to provide. The Court then rules based on the documents
24 provided. Other courts have denied discovery requests that would not have added
25 anything substantial to the evidence presented in the petition and response. *See, e.g.,*
26 *Atikurraheman*, 2024 U.S. Dist. LEXIS 99422, at *15–16. If the parties have significant

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28 ⁵ Petitioner mentions in his Motion for Limited Discovery that he consulted various documents when preparing his habeas claim, but he did not provide them to this Court or to Respondents. *See* Doc. 1; Doc. 4 at 2.

1 factual disputes, and if the Court determines that discovery would be useful to resolve the
2 matter, the Court could then order a focused discovery that would be substantially more
3 efficient and less burdensome.

4 Respondents request that this Court postpone consideration of Petitioner's
5 discovery request until after the Motion for a Preliminary Injunction (Doc. 3) is fully
6 briefed. This will allow Petitioner and Respondents to determine which facts, if any, are
7 contested, and hence will allow the Court to narrow the scope of discovery to reduce the
8 burden of discovery and allow for greater efficiency in administering this matter.

9 Respectfully submitted on November 10, 2025.

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