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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Nader Eshaghian,

Petitioner,

vs.

Chris Howard, Acting Warden, et al.,

Respondents.

No. 2:25-cv-4141-PHX-DWL (ESW)

Response to Motion for Reconsideration of Order Granting Discovery

In his habeas petition, Mr. Eshaghian alleged that ICE cannot obtain travel documents that would allow him to be removed to Iran, the country to which an immigration judge ordered him removed first in 1995 and then in 2003. (Dkt. #1 at 3 ¶¶ 11–13) This is so, he surmised, because he does not have the two documents that the Iranian Interests Section of the Pakistani Embassy insists that ICE provide before it will issue travel documents—Mr. Eshaghian's original Iranian birth certificate and passport. (Dkt. #1 at 4 ¶ 17) Mr. Eshaghian was subject to some period of mandatory detention in 1997 while INS tried to obtain these documents for the first time. *See* 8 U.S.C. § 1231(a)(1), (a)(2). But when INS could not obtain these documents, it released him on an order of supervision in order to avoid subjecting him to unconstitutional indefinite detention. *See* 8 U.S.C. § 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678 (2001). ICE has known for over 20 years that it cannot obtain travel documents for Mr. Eshaghian. Even so, in September 2025 it nevertheless re-detained him in order to remove him to Iran. (Dkt. #1 at 4 ¶ 16)

Alongside his habeas petition, Mr. Eshaghian filed a motion for limited discovery. (Dkt. #4) He asserted that the allegations in the petition were based on partial information that came from counsel's interview with Mr. Eshaghian, a limited set of documents he had provided, and searches of publicly available databases. (Dkt. #4 at 2) But the respondents are certain to have the full set of documents that are relevant to his claims for illegal detention. This is why he asked this Court to order respondents to provide those documents to him. 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 entitled to relief, it is the duty of the court to provide the necessary facilities for an adequate inquiry." *Bracy v. Gramley*, 520 U.S. 899, 909 (1997) (quoting *Harris v. Nelson*, 394 U.S. 286, 300 (1969)). The facts as they stand now are not fully developed, because the government presumably possesses information that bears on whether Mr. Eshaghian's due process claims are likely to succeed. This information is likely contained in Mr. Eshaghian's A-file, or in other files or databases maintained by the Departments of Justice and Homeland Security, to which neither he nor his counsel have access.

The Court screened the petition as required by the habeas rules and 28 U.S.C. § 2243. After doing so, it issued an order that required the respondents to answer the petition and provide the documents listed in Mr. Eshaghian's discovery motion. (Dkt. #7 at 2) Although Mr. Eshaghian asked the Court to order the discovery produced by November 14, 2025, the Court allowed respondents until December 5, 2025, to do so "given the potential difficulty in locating and producing some of the requested items." (Dkt. #7 at 2 n.1) Respondents complain that they were never given an opportunity to address Mr. Eshaghian's discovery request, and ask the Court to "postpone consideration of the discovery order to allow for more efficient case administration." (Dkt. #9 at 1) This complaint is not well taken, and the Court's decision to grant discovery at the outset of the case is the first step in the most efficient way to manage the progress of this case and cases like it, as Mr. Eshaghian will explain.

Argument Against Reconsideration

"Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Harrington v. Cracker Barrel Old Country Store, Inc.*, 713 F. Supp. 3d 568, 575 (D. Ariz. 2024) (quoting *School District No. 1J, Multnomah County, Oregon, v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)). "Such motions should not be used for the purpose of asking a court to rethink what the court had already thought through—rightly or wrongly." *Id.* at 576 (quoting *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995)) (cleaned up).

1. Mr. Eshaghian asked for only those documents that were necessary to allow this Court to conduct an adequate inquiry into the legality of his detention under *Zadvydas*.

In order to understand why the documents Mr. Eshaghian requested are necessary for an adequate inquiry into the validity of his present detention, *see Bracy*, 520 U.S. at 909, let us first review the elements of his primary claim to relief. The first step is to identify the statutory authority for his present detention. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1058 (9th Cir. 2008). That authority comes from 8 U.S.C. § 1231(a)(6), because Mr. Eshaghian is being detained beyond the statutory removal period. That statute, however, only authorizes detention beyond the statutory removal period when that detention is "reasonably necessary to bring about that alien's removal." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). *Zadvydas* "places the burden on the alien to show, after a detention period of six months, that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Pelich v. INS*, 329 F.3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701). Once the alien makes such a showing, respondents "must then introduce evidence to refute that assertion." *Id.* (citing *Zadvydas*, 533 U.S. at 701; *Xi v. INS*, 298 F.3d 832, 839–40 (9th Cir. 2002)).

In his petition, Mr. Eshaghian alleged that there was no significant likelihood that he will be removed to Iran in the reasonably foreseeable future because he does not have documentation that is adequate to satisfy the Iranian Interests Section of the Pakistani Embassy's requirements

for issuing travel documents to Iranian citizens—his original Iranian birth certificate and passport. (Dkt. #1 at 4–6 ¶¶ 18–20) The documents that Mr. Eshaghian's counsel reviewed as he prepared the petition do not prove this assertion. But if he could prove it, he would be entitled to relief under *Zadvydas*. *See Bracy*, 520 U.S. at 909. So Mr. Eshaghian asked the Court to order respondents to provide documents in their possession that would allow him to prove (or disprove) that allegation. Here is a list of those documents (Dkt. #4 at 2–3) and why they are germane to resolving this petition:

1. Mr. Eshaghian's entire A-file. The A-file is "used to document aliens' interactions with USCIS, Customs and Border Protection, and Immigration and Customs Enforcement. They include all an individual's official immigration and naturalization records and are identified by a unique A-Number." U.S. Citizenship and Immigration Services, *A-File #1 (Million): The first A-File?*, <https://www.uscis.gov/about-us/our-history/stories-from-the-archives/a-file-1-million-the-first-a-file>.

2. A transcript (or, failing that, a recording) of any and all hearings in Mr. Eshaghian's case before the immigration courts that led to his being ordered removed from the United States. These documents may expose defects in the removal proceedings that might show that the removal order, on which Mr. Eshaghian's detention is based, is invalid.

3. Any and all requests from ICE to any diplomatic representative of the Islamic Republic of Iran, including the Office for the Protection of the Interests of the Islamic Republic of Iran housed by the Pakistani Embassy, pertaining to travel documents that would "facilitate" Mr. Eshaghian's removal to Iran, and any responsive or related correspondence to or from those diplomatic representatives pertaining to these requests for travel documents. If these documents are not in the A-file, then they are maintained separately by Respondent Noem at one or more ICE field offices, by one or more ICE district directors, or with Headquarters Detention and Deportation, Office of Field Operations, or the Headquarters Post-Order Detention Unit. *See* 8 C.F.R. § 241.4(g)(2).

4. Any and all documents relating to the periodic custody reviews described in 8 C.F.R. § 241.4 for all periods of time that Mr. Eshaghian has been in ICE custody. These documents concern previous decisions to keep Mr. Eshaghian in detention or release him as authorized by 8 U.S.C. § 1231(a)(3) and (a)(6). If these documents are not in the A-file, then they are maintained by Respondent Noem at one or more ICE field offices, by one or more ICE district directors, or with Headquarters Detention and Deportation, Office of Field Operations, or the Headquarters Post-Order Detention Unit, or with the Executive Associate Commissioner. *See* 8 C.F.R. § 241.4(d).

5. Any and all documents relating to any determination under 8 C.F.R. § 241.13 and 8 C.F.R. § 241.14 regarding whether there is a significant likelihood of removing Mr. Eshaghian in the reasonably foreseeable future. If these documents are not in the A-file, then they are maintained by Respondent Noem at one or more ICE field offices, by one or more ICE district directors, or with the Headquarters Post-Order Detention Unit. *See* 8 C.F.R. § 241.13(b)(2), (e).

In short, these documents—all of which are exclusively in one or more respondent's possession—will help Mr. Eshaghian and ultimately this Court decide whether he is entitled to relief. The caselaw is clear that this Court has a duty to ensure that Mr. Eshaghian can review them. *See Bracy*, 520 U.S. 909. This Court considered the scope of Mr. Eshaghian's discovery request against the backdrop of the allegations in his petition, and concluded that it was proper to order respondents to produce them. It also balanced the government's need for an adequate amount of time to gather and review the documents before providing them to Mr. Eshaghian, and afforded respondents more time to do so than Mr. Eshaghian had requested. This Court thus thought through Mr. Eshaghian's discovery request, deemed it warranted, and granted it.

2. Respondents are wrong to complain that Mr. Eshaghian did not comply with Rules 26–37 of the Federal Rules of Civil Procedure.

Unlike other civil cases, discovery is not a matter of right in habeas corpus cases. *See Harris v. Nelson*, 394 U.S. 286, 294 (1969). Respondents nevertheless complain that Mr. Eshaghian did not follow the rules of civil procedure that pertain to the discovery process. (Dkt. #9 at 2–3) But those rules do not apply of their own force in this case.

The Federal Rules of Civil Procedure apply here only "to the extent that the practice" in habeas proceedings "is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules Governing Section 2255 Cases" and to the extent that "the practice in those proceedings has previously conformed to the practice in civil actions." Fed. R. Civ. P. 81(a)(4). In 1969, the Supreme Court held that the "previous practice"—that is, the practice in habeas cases before the rules of civil procedure were adopted in 1938—did not incorporate *any* of the discovery provisions of those rules. *See Harris*, 394 U.S. at 294. Nor did the recodification of the habeas statutes in 1948, including what is now 28 U.S.C. § 2246, authorize the modes of discovery set forth in the civil-procedure rules. "Indeed," the Court wrote, "it is difficult to

believe that the draftsmen of the Rules or Congress would have applied the discovery rules without modification to habeas corpus proceedings because their specific provisions are ill-suited to the special problems and character of such proceedings." *Harris*, 394 U.S. at 296. However, the Court also held that the All Writs Act, 28 U.S.C. § 1651, authorizes district courts to "fashion appropriate modes of procedure, by analogy to existing rules or otherwise in conformity with judicial usage," including "issuing orders appropriate to assist them in conducting factual inquiries." *Harris*, 394 U.S. at 299. The Court in *Harris* urged "that the rule-making machinery should be invoked to formulate rules of practice with respect to federal habeas corpus and § 2255 proceedings, on a comprehensive basis and not merely one confined to discovery." *Id.* at 300 n.7.

Taking the Court up on this inquiry, in 1976 the rule-making procedure (*see* 28 U.S.C. § 2071 *et seq.*) finalized, and Congress enacted, two sets of rules—one to govern cases under 28 U.S.C. § 2254, and another for cases under 28 U.S.C. § 2255. *See also generally Bracy*, 520 U.S. at 904. It did not create a discrete set of rules for cases like this one that are brought under 28 U.S.C. § 2241. However, the rules for § 2254 cases allow this Court to "apply any or all of these rules to a habeas corpus petition" filed under a provision other than § 2254. Rules Governing Sec. 2254 Cases 1(b). Mr. Eshaghian flagged this authority in the proposed order he submitted along with his discovery motion. (Dkt. #4-1)

Under Rule 6(a) of the rules for § 2254 cases, this Court may authorize discovery upon a showing of "good cause." In *Bracy* the Court applied the standard articulated in *Harris* to the good-cause requirement of Rule 6(a). 520 U.S. at 908–09. 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, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry." *Harris*, 394 U.S. at 300. Mr. Eshaghian's request for the five categories of documents set forth in his motion depends on this standard. (Dkt. #4 at 2) When this Court granted his discovery motion, it agreed that allowing him to review those documents was necessary for an adequate inquiry into the legality of his detention under *Zadvydas*. Mr. Eshaghian thus complied with the procedural rules

that apply in this case—Rule 6(a) of the Rules Governing Section 2254 Cases, made applicable here by Rule 1(b) of those same rules.

3. Respondents' complaints about the procedure this Court has employed are largely unpersuasive, and the onerousness of complying with the discovery ordered is not a reason not to order it produced.

Respondents do not argue that Mr. Eshaghian did not show good cause for this Court to order discovery. Nor could they sensibly make such an argument. As he has explained, these documents are exclusively in respondents' possession and relate to the validity of his removal order, the efforts that respondents have made to effectuate his removal, and the reasons why they have not been successful thus far. The discovery request was limited only to documents that pertain to these issues.

One of respondents' objections to the discovery order is that the Court issued it before they had a chance to opine on the propriety of granting the request as Mr. Eshaghian presented it in his case-opening documents. (Dkt. #9 at 1, 3) That fact is true, but it does not make the Court's order improper. Respondents say that this Court "lacks authority to order discovery *ex parte* in a habeas petition [*sic*]," but cites no binding authority in support of that assertion. (Dkt. #9 at 3) The published decision that respondents rely on, *In re Pruett*, 133 F.3d 275 (4th Cir. 1997), holds that an *ex parte* discovery order issued *before* a petition is filed amounted to an abuse of discretion. But that court also agreed that "*some* habeas matters may indeed be conducted ex parte." 133 F.3d at 279. Here, respondents have had adequate notice of the discovery request under the circumstances attendant to this case. If Mr. Eshaghian is correct that he cannot be removed to Iran because ICE cannot satisfy the requirements for obtaining travel documents from the Iranian Interests Section, then each day he remains in detention is a day on which he is being illegally detained. This is why he has *also* filed a motion for a preliminary injunction—which the Court *did* order respondents to address before the Court acts on it. (Dkt. #7 at 3)

Mr. Eshaghian filed his discovery request at the same time as he filed his petition. He made key allegations in the petition upon information and belief, explained in his discovery request that those allegations would be confirmed by a review of the documents requested, and

suggested that an amended petition might be filed after discovery is reviewed so that he might support his claims for relief with verifiable facts. This Court reviewed the discovery request alongside the petition and preliminary-injunction motion and determined that Mr. Eshaghian had shown good cause for ordering discovery. But the Court *also* allowed respondents to furnish the discovery to Mr. Eshaghian on the same day that it ordered respondents to address his petition and motion for a preliminary injunction, and thus to review the discovery beforehand. It then effectively allowed Mr. Eshaghian a week to review the discovery and respond to the government's counterarguments. Under the circumstances, and especially in light of the strong possibility that Mr. Eshaghian is being illegally detained, the Court has afforded respondents an adequate opportunity to object to providing discovery.

Respondents complain that the discovery is "overbroad" (Dkt. #9 at 4), but they make no effort to articulate why they believe that is so. Mr. Eshaghian has already explained why the discovery request is limited to the documents that are surely in respondents' possession and that bear on the elements of his *Zadvydas* claim. Indeed, Mr. Eshaghian's counsel, Assistant Federal Public Defender Keith Hilzendeger, has filed substantially the same discovery request in every habeas case he has filed on behalf of an immigration detainee since January 20, 2025. Another judge of this Court has concluded that a similar discovery request was "narrowly tailored to the *Zadvydas* inquiry." Order at 3, *Ishmuratov v. Rivas*, No. 2:25-cv-1366-MTL (ESW) (D. Ariz. Jun. 5, 2025) (Dkt. #31) (citing *Batyuchenko v. Reno*, 56 F. Supp. 2d 1163, 1164 (W.D. Wash. 1999)). This Court should come to the same conclusion.

Respondents further complain that "many of the requested documents are on physical files that are not directly in Respondents' possession." (Dkt. #9 at 4) Not so. All of the documents that Mr. Eshaghian requested are under the custody and control of either Respondent Bondi, as the Attorney General of the United States, or Respondent Noem, as Secretary of Homeland Security. To be sure, Respondents' *counsel* may not have those documents in his possession now. But if he does not want his clients to be held in contempt of this Court's

discovery order, he will ensure that they provide those documents to him in sufficient time to meet the Court's discovery deadline.

Respondents point out that in two other cases that their counsel has handled, the court "ruled on claims that are substantially identical to Petitioner's without conducting any discovery at all." (Dkt. #9 at 4) In both cases, the court granted the petition. In both cases, the petitioners were represented by retained counsel, a private immigration lawyer based in Georgetown, Massachusetts. This lawyer may have been able to obtain through other means the documents that Mr. Eshaghian is seeking here—if not from the detainee's supporters on the outside, then perhaps by obtaining them directly from the immigration courts. That option is not available to Mr. Hilzendeger, an employee of a federal defender office organized under 18 U.S.C. § 3006A(g). Although Mr. Hilzendeger is permitted to handle ancillary proceedings on Mr. Eshaghian's behalf, *see* 18 U.S.C. § 3006A(c), that permission does not extend to entering an appearance before an administrative agency, including immigration courts. *See* Guide to Judiciary Policy vol. 7, § 210.20.50(d) (explaining that appearances before the immigration courts are not authorized ancillary matters under § 3006A(c)). In order to obtain documents from a case in immigration court, a lawyer must first enter an appearance on the alien's behalf in immigration court. Because entering an appearance on Mr. Eshaghian's behalf is outside the statutory scope of his duties as an Assistant Federal Public Defender, Mr. Hilzendeger must either rely on his incarcerated clients—who may be hundreds of miles from their homes and personal documents—or resort to the discovery process to review the same kinds of documents that a private immigration lawyer may readily obtain from the immigration courts themselves.

Respondents also assert that even if this Court ultimately orders them to produce the documents described in Mr. Eshaghian's motion, they will take actions that would "take weeks, if not months," and that would be "extremely burdensome and unnecessary." (Dkt. #9 at 4) Respondents say that it is necessary first to review and redact the documents in order to avoid disclosing "information related to asylum and withholding of removal" (even though the Court has already ordered respondents to provide those documents), and then "object to the discovery

and assert various privileges," wait for Mr. Eshaghian to move to compel discovery, then wait to respond to the motion to compel, and if the motion to compel were granted, *then* move for a protective order and "request *in camera* review of documents to preserve privileges and comply with disclosure laws." (Dkt. #9 at 4) Mr. Eshaghian agrees that respondents' proposed course of action would indeed be extremely burdensome and would unnecessarily delay the ultimate resolution of his claim of illegal detention.

Respondents nevertheless assert that their burdensome, convoluted, and time-consuming procedure would nevertheless "allow Petitioner and Respondents to determine which facts, if any, are contested, and hence will allow the Court to narrow the scope of discovery to reduce the burden of discovery and allow for greater efficiency in administering this matter." (Dkt. #9 at 5) Yet there are two much simpler and more straightforward methods for resolving this case efficiently. ICE has known for at least 20 years that it does not have the documentation that will satisfy the Iranian Interests Section's requirements for issuing Mr. Eshaghian's travel documents. Instead of filing a motion to reconsider the discovery, Respondents could have simply admitted all of the allegations in Mr. Eshaghian's petition and asked this Court immediately to grant it. Or they could have released Mr. Eshaghian from custody first, and then moved to dismiss the petition as moot. Either of these courses of action would be more efficient than the burdensome, convoluted, and time-consuming procedure that respondents are asking this Court to employ.

A more realistic—and also a more realistically efficient procedure—would be for respondents in this case to follow the same pattern that ICE and the Justice Department have been following in these cases filed by Mr. Hilzendeger in the District of Arizona. Granting the limited, focused discovery request at the outset of the case has not yet noticeably bogged down any of the other habeas cases that Mr. Hilzendeger has filed on behalf of detained immigrants with *Zadvydas* claims. Respondents in those cases have provided whatever discovery they can obtain by the deadline set by the court. Counsel have been transparent about the progress of obtaining any missing documents. Sometimes, upon review, the partial discovery provided by the

Court's initial deadline can be deemed adequate. If a protective order is necessary, it is quickly agreed to. Mr. Hilzendeger has been filing the discovery with the Court under seal, recognizing the confidential nature of much of the information in an A-file, such as the information relating to asylum and withholding of removal, the disclosure of which respondents have noted is highly circumscribed by law. When the Arizona U.S. Attorney provides the requested documents, it also provides a log explaining whether there are other responsive documents in respondents' possession. As these cases have been progressing, they can be fully briefed in three months or so—a timetable that does not seem to unduly burden either the U.S. Attorney or Mr. Hilzendeger or the staff and judges of this Court.

Conclusion

This Court's decision to order discovery at the outset of this case was proper. Respondents' counterproposal will unduly delay resolution of this case, in which Mr. Eshaghian effectively asserts that each day he spends in immigration detention is a day he is illegally jailed. The government's motion for reconsideration should be denied.

Respectfully submitted: November 12, 2025.

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