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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Nader Eshaghian, Petitioner, v. Chris Howard, *et al.*, Respondents.	No. CV-25-04141-PHX-DWL (ESW) **REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION**

Respondents, through undersigned counsel, hereby file this Reply in support of their Motion for Reconsideration (Doc. 9). Petitioner filed a response (Doc. 12), but Petitioner did not identify any valid legal bases for his Motion for Limited Discovery (Doc. 4), nor for the Court's *ex parte* order (Doc. 8) compelling production of all the documents he requested. Indeed, Petitioner admitted in his Response that at least some of the discovery he requested was nonspecific, irrelevant to any claim he could bring in this Court, or both.

Petitioner argues that he is entitled to discovery under Rule 6(a) of the Rules Governing Section 2254 Cases ("Habeas Rule 6(a)").[1] Doc. 9 at 6–7. Specifically,

[1] Petitioner notes, correctly, that this action proceeds under Section 2241, not Section 2254 nor Section 2255. Doc. 12 at 6. Respondents agree that this Court may apply the Section 2254 rules to this proceeding under Rule 1(a). Rule 6 of both the Section 2254 and Section

Petitioner argues that Habeas Rule 6(a) entitles this Court to authorize discovery on a showing of "good cause." *Id.* at 6. Essentially, Petitioner argues that he showed good cause, thus he is entitled to discovery.

However, Petitioner misstates the law. Habeas Rule 6(a) allows a judge, upon a showing of good cause, to "authorize a party to conduct discovery under the Federal Rules of Civil Procedure[.]" The judge may "limit the extent of discovery." *Id.* The plain text of the rule shows Petitioner's error: Rule 6(a) allows a petitioner who has shown good cause to be "authorize[d] . . . to conduct discovery under the Federal Rules of Civil Procedure[.]" Habeas Rule 6(a) does not permit a judge to order the production of specific documents; it permits a judge to "authorize a party to conduct discovery" *under the FRCP*. Thus, the plain text of Rule 6(a) belies Petitioner's argument. Petitioner points to no source of law permitting *ex parte* discovery motions to compel the production of documents, and there is no rule in the FRCP which permits discovery to be conducted in this fashion.[2] *See In re Pruett*, 133 F.3d 275, 280 (4th Cir. 1997). The FRCP requires service "on every party" of all "written motion[s], except one[s] which may be heard *ex parte*[.]" FRCP 5(a)(1)(D). As the overwhelming weight of authority shows, "[*e*]*x parte* proceedings are the exception, not the rule, and the [FRCP] do not denominate discovery motions as ones which may be heard *ex parte*." *Pruett*, 133 F.3d at 279 n.8 (internal quotation marks omitted).[3] As the Fourth Circuit reasoned in *In re Pruett*, all parties in a

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2255 rules are identical, in any case.

[2] Petitioner argues that habeas cases should not be subject to the normal FRCP rules. *See* Doc. 12 at 5–6 (citing *Harris v. Nelson*, 394 U.S. 286, 294 (1969)). However, Petitioner also states, correctly, that Congress responded to the holding in *Harris* by promulgating the Habeas Rules, and Habeas Rule 6(a) directs back to the FRCP. Habeas Rule 6(a). Thus, *Harris* does not support Petitioner's argument.

[3] *See also Carroll v. Princess Anne*, 393 U.S. 175, 183 (1968) (stating that *ex parte* proceedings are disfavored "because the Court does not have available the fundamental instrument for judicial judgment: an adversary proceeding in which both parties may participate"); *United States v. Thompson*, 827 F.2d 1254, 1258–59 (9th Cir. 1987) (stating that, without a "compelling justification, *ex parte* proceedings are anathema in our system of justice[.]"); *United States v. Napue*, 834 F.2d 1311, 1318–19 (7th Cir. 1987) ("An *ex parte* proceeding places a substantial burden upon the trial judge to perform what is

habeas proceeding, no matter who they are, "must file their discovery motions beforehand, serve notice on the nonmoving party, and convince the judge that there is good cause for the request." 133 F.3d at 280.[4]

Respondents do not believe that this Motion to Reconsider is the proper avenue to litigate specific discovery disputes, but Petitioner's Response reveals that his request was, indeed, overbroad. For example, Petitioner stated that the transcripts of all of his immigration court proceedings were pertinent because they "may expose defects in the removal proceedings that might show that the removal order, on which [Petitioner's] detention is based, is invalid." However, this Court cannot entertain a challenge to a final order of removal in a Section 2241 habeas claim. *See* 8 U.S.C. § 1252(a)(5), (b)(9).[5] The validity of Petitioner's final order of removal is thus unquestionable in this proceeding, so Petitioner cannot have "good cause" to request documents whose only purpose would be to allow him to attack his final order.

Indeed, Petitioner must "demonstrate that the sought-after information is pertinent and that there is good cause for its production." *Williams v. Beard*, 637 F.3d 195, 206 (3d.

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naturally and properly the function of an advocate.") (quoting *United States v. Solomon*, 422 F.2d 1110, 1119 (7th Cir. 1970)) (internal quotation marks omitted); *United States v. Microsoft*, 56 F.3d 1448, 1464 (D.C. Cir. 1995) ("*Ex parte* communications generally are disfavored because they conflict with a fundamental precept of our system of justice: a fair hearing requires a reasonable opportunity to know the claims of the opposing party and to meet them.") (quoting *In re Paradyne Corp.*, 803 F.2d 604, 612 (11th Cir. 1986) (internal quotation marks omitted)); *RZS Holdings AVV v. PDVSA Petroleo S.A.*, 506 F.3d 350, 356 (4th Cir. 2007).

[4] Petitioner incorrectly attempts to distinguish *Pruett* from his own case by stating that the *Pruett* court held "that an *ex parte* discovery order issued *before* a petition is filed amounted to an abuse of discretion." Doc. 12 at 7. However, the *Pruett* court explicitly chose not to address the issue of prepetition discovery, instead addressing only the issue of *ex parte* discovery. *Pruett*, 133 F.3d at 277 n.1, 278 n.5.

[5] A habeas petition is a direct challenge to a removal order—and hence barred under Section 1252(a)(5)—when "the order of removal entered by the IJ and affirmed by the BIA . . . would necessarily be flawed" if the petitioner were to "obtain[] the relief he seeks." *Estrada v. Holder*, 604 F.3d 402, 408 (9th Cir. 2010). If this Court were to order Petitioner released because his final order of removal was legally infirm, it is hard to imagine how this would not render "the order of removal . . . necessarily . . . flawed."

Cir. 2011); *see also Williams v. Bagley*, 380 F.3d 932, 974 (6th Cir. 2004); *Murphy v. Johnson*, 205 F.3d 809, 814 (5th Cir. 2000) ("Simply put, Rule 6 does not authorize fishing expeditions.") Petitioner states two claims for relief: he claims that his detention is unlawful because his removal will not occur in the reasonably foreseeable future, *see* Doc. 1 at ¶ 19(e), and he claims that he is entitled to procedural protections if ICE wants to remove him to a country other than Iran. *Id.* at ¶¶ 21–23. However, Petitioner did nothing to connect any of the categories of documents that he requested to his claims for relief. He admits that Petitioner's A-File, which he requested, is not one document but many documents, "includ[ing] all an individual's official immigration and naturalization records[.]" Doc. 12 at 4. Petitioner did nothing in his original motion to show why every single one of his immigration and naturalization records is pertinent to his two claims for relief, nor why there is "good cause" to produce them. Although Petitioner did make "specific allegations" that "may, if the facts are fully developed, be able to demonstrate that he is entitled to relief," all that this entitles Petitioner to do is access the FRCP's tools of discovery, and the FRCP does not permit discovery of irrelevant materials. FRCP 26(b)(1). Petitioner is therefore required to show relevance to obtain discovery, and Petitioner made no effort to do so.

Petitioner has pointed to no request for discovery that this Court has granted that specifically considered *ex parte* discovery, and the one order to which he cites was granted, again, without an opportunity for the Respondents to weigh in on his discovery request. *See Ishmuratov v. Rivas*, No. 2:25-cv-1366-MTL (ESW) (D. Ariz. Jun. 5, 2025) (Doc. 31).

Petitioner points to no source of law that specifically authorizes this Court to order production of documents *ex parte*, he provides no justification for why Respondents should be ordered to produce the documents he demands, and he demands documents on the basis of bare factual assertions made "on information and belief," which are based on documents that he did not permit this Court nor Respondents to view. *See, e.g. Stanley v. Davis*, 2016 U.S. Dist. LEXIS 103595 at *7–8 (N.D. Cal. Aug. 5, 2016) (holding that

unsupported allegations made on "information and belief" are insufficient for "good cause" under Habeas Rule 6(a)). The federal court system is predicated on the adversarial system, which requires notice and an opportunity to respond, except in the most extreme cases. Petitioner has provided no grounds to believe that his *ex parte* demand for documents is justified. This Court should therefore reconsider its previous order and, if Petitioner still intends to pursue discovery, this Court should require Petitioner to produce the documents on which his petition is predicated. Then, if the Court is satisfied that good cause exists, the Court should permit Petitioner to serve requests for production on Respondents that state specific documents that he wants and specific justifications for why he is entitled to them. The Court should then permit Respondents to respond to these requests, asserting privileges and objecting as necessary.

Respectfully submitted on November 13, 2025.

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