

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

ZU PING CHEN)

Petitioner,)

v.)

MELISSA B. HARPER Field Director)
New Orleans Field Office, et al)

Respondents.)

) Civil Action No.: 3:25-cv-00970-BL

**RESPONDENTS' EMERGENCY MOTION TO QUASH THE SUBPOENA
DIRECTED TO OFFICER MARIO**

Comes now, Respondents, by and through Kevin P. Davidson, Acting United States Attorney, and respectfully submits this motion to quash the subpoena directed to Officer Mario. Ex. 1, Subpoena. As a preliminary matter, the form of the subpoena is inappropriate. A request for testimony from an "Officer Mario" is insufficient notice of who testimony is requested from. There are no context clues in the Motion for a Preliminary Injunction. It is unclear whether Mario is his first or second name.

Further, discovery requests such as this one are improper in a habeas proceeding. The rules of civil procedure do not apply in habeas matters and Mr. Chen has not shown good cause for the testimony to be had. Further, there is no testimony an ICE officer could provide that is necessary for the Court to determine the issue before it.

A habeas petitioner, “unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course.” *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). The broad discovery provisions of the Federal Rules of Civil Procedure do not apply in habeas proceedings. Rather, “[p]roceedings in [8 U.S.C.] § 2241 petitions are governed by the Rules Governing Section 2254 Cases in the United States District Courts[.]” *Annamalai v. Warden*, 760 F. App’x 843, 849 (11th Cir. 2019). Rule 6(a) authorizes discovery only upon a showing of “good cause.” Rule 6 (a); *see also Estrada v. United States*, No. 1:14-cv-1897, 2017 WL 9049870 (N.D. Ga. Feb. 24, 2017). “Good cause” within the meaning of Rule 6(a) exists only “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 [she] is . . . entitled to relief.” *See Bracy*, 520 U.S. at 904. Good cause for discovery “cannot arise from mere speculation.” *See Arthur v. Allen*, 459 F.3d 1310, 1311 (11th Cir. 2006) (affirming the district court’s finding that no good cause existed for discovery in habeas matter). And Rule 6(a) does not license a petitioner “to engage in a fishing expedition.” *See Pizzuti v. United States*, 809 F. Supp. 2d 164, 176 (S.D.N.Y. 1998).

Mr. Chen has not attempted to show “good cause” for Officer Mario’s testimony. His name does not appear in the Motion for a Preliminary Injunction or the Memorandum in Support. *See generally* Docs. 29 & 29–1.

Assuming that Officer Mario was involved in the revocation of Mr. Chen’s OSUP, he can provide no useful testimony for the Court. As stated in the

Opposition, the United States may detain immigrants who are subject to a final removal order to effectuate their removal. Any detention of six months or less is presumptively reasonable. It is undisputed that Mr. Chen has been held for less than a month.

To the extent Officer Mario is being called to support Mr. Chen's claim that his OSUP was previously revoked in December, he also cannot provide useful testimony to the Court. While ICE dispute's Mr. Chen's assertion, whether or not his OSUP was previously revoked is immaterial to the issue before the Court.

Indeed, this request is nothing more than a fishing expedition. Mr. Chen wishes to place an ICE agent on the stand, under oath, to engage in broad ranging discovery for use in other habeas actions around the Country.

For these reasons, the United States respectfully requests the Court to quash the subpoena directed to Officer Mario. If the Court denies the Motion, the United States respectfully requests a brief continuance of the hearing to find Officer Mario and prepare his testimony.

Respectfully submitted this 17th day of March, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have filed this case with the CM/ECF system which provided a copy of the same to all counsel of record.

Dated this 17th day of March, 2026.

/s/ Stephen D. Wadsworth
Assistant United States Attorney