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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

B-P-,

Petitioner,

v.

JULIO HERNANDEZ, SEATTLE FIELD OFFICE DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT AND REMOVAL OPERATIONS ("ICE/ERO"); TODD LYONS, ACTING DIRECTOR OF IMMIGRATION CUSTOMS ENFORCEMENT ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; AND PAMELA BONDI, ATTORNEYGENERAL OF THE UNITED STATES,

Respondents.

Case No. 3:26-cv-00450-AN

RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR LEAVE FOR EXPEDITED LIMITED DISCOVERY

Respondents, through counsel, submit this Response in Opposition to Petitioner's Motion for Leave for Expedited Limited Discovery. ECF 21.

BACKGROUND

Petitioner is a former lawful permanent resident, born in Laos, who was ordered removed to Laos after serving prison sentences for robbery, attempted aggravated murder, and attempted assault. He was released from immigration detention after immigration authorities were unable to effectuate his removal within the removal period. Immigration and Customs Enforcement ("ICE") has applied for a travel document now that Loas is issuing travel documents and accepting deportees. Petitioner is not detained, and ICE has agreed to not detain him until it has obtained a travel document from the government of Laos. None of these facts appear to be in dispute.

Both sides have briefed the merits and jurisdictional issue in the case. Petitioner, however, asks for leave from this Court to conduct discovery relating to one allegation that was barely mentioned in the Petition[1]: that Respondents have a policy requiring the use of ICE reporting appointments to detain Laotians with removal orders without following the regulations and without a basis for asserting removal is reasonably foreseeable. ECF 21 at 2, 4; *see also* ECF 22 at 5 (describing

[1] The Petition makes only one mention of the alleged policy at issue in the discovery motion, alleging simply that "Respondents have undertaken a campaign to detain Laotian nationals in Oregon and Washington." ECF 1 ¶ 6.

the alleged policy in more detail). Respondents now submit this brief in opposition to Petitioner's discovery motion.

DISCUSSION

I. THE COURT SHOULD NOT ORDER DISCOVERY BECAUSE IT DOES NOT HAVE JURISDICTION.

As explained in Respondents' return, Congress has stripped district courts of jurisdiction to hear claims, such as Petitioner's, challenging the timing of the execution of removal orders. The Ninth Circuit has made clear that 8 U.S.C. § 1252(g) forbids habeas courts not only from reviewing the discretionary decision of *whether* to execute a removal order, but *when*. *Rauda v. Jennings*, 55 F.4th 773, 777–78 (9th Cir. 2022). Although Petitioner claims he is not challenging the removal order at all, this is an argument that multiple district courts have rejected in cases similar to this one. *E.g.*, *Saelee v. Hernandez*, No. 2:26-CV-00735-TL, 2026 WL 1045223, *3–4 (W.D. Wash. Apr. 17, 2026); *O. S. S. v. Hernandez*, No. 3:26-CV-00796-IM, ECF 12 (D. Or. April 27, 2026). Petitioner's request that the Court enjoin detention in anticipation of removal until ICE gives Petitioner advance notice and a hearing before a different agency—procedures not found in the statute or regulations—is an attempt to draw out the removal process no matter how you slice it. Because it does not have jurisdiction over the case, this Court should not order discovery.

At the very least, the Court should not rule on Petitioner's discovery motion until and unless it has determined it has jurisdiction over Petitioner's claims. *See* *Hawes v. Pacheco*, No. 17-cv-52-J, 2017 WL 11577917, at *3 (D. Wyo. Aug. 22, 2017)

(finding no good cause for discovery where the court first needed to resolve a "preliminary legal question that is potentially dispositive without further discovery"). Both parties have briefed the jurisdictional issue, and nothing in Petitioner's discovery request seeks information that is relevant to the jurisdiction issue. The jurisdiction issue is ripe, and it makes sense for the Court to rule on it before ruling on discovery which, if ordered, would be burdensome on both parties

II. PETITIONER HAS NOT SHOWN GOOD CAUSE FOR DISCOVERY.

Unlike typical civil litigants in federal court, habeas petitioners are "not entitled to discovery as a matter of ordinary course." *See Bracy v. Gramley*, 520 U.S. 899, 904 (1997). "[T]he 'broad discovery provisions' of the Federal Rules of Civil Procedure d[o] not apply in habeas proceedings." *Id.* The writ was "never 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. U.S.D.C. (Nicolaus)*, 98 F.3d 1102, 1106 (9th Cir.1996)).

Rule 6 of the Rules Governing Section 2254 Cases in the United States District Courts ("Habeas Rules") govern discovery in these cases. Although Rule 6 does not mandatorily apply to 28 U.S.C. § 2241, the Rule states that the "district court may apply any or all of these rules to a habeas corpus petition not [filed pursuant to 28 U.S.C. § 2254]." Habeas Rules 6(a) & (b) are relevant to this case and provide:

> (a) Leave of Court Required. A judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Civil Procedure and may limit the extent of discovery. If necessary for effective discovery, the judge must appoint an attorney for a petitioner

> who qualifies to have counsel appointed under 18 U.S.C. § 3006A.
>
> (b) Requesting Discovery. A party requesting discovery must provide reasons for the request. The request must also include any proposed interrogatories and requests for admission, and must specify any requested documents.

Rules Governing Section 2254 Cases in the United States District Courts, Rule 6.

A petitioner demonstrates "good cause" to satisfy Habeas Rule 6(a) by identifying the "essential elements" of the claim for which he seeks discovery and setting forth "specific allegations before the Court [to] show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is ... entitled to relief[.]" *Bracy*, 520 U.S. at 904, 908–09 (quoting *Harris v. Nelson*, 394 U.S. 286, 300 (1969)). On the other hand, discovery is not warranted where "the facts relevant to the limited questions currently facing the court . . . are not in dispute," *Khalil v. Joyce*, 2025 WL 849803, at *11 n.6 (S.D.N.Y. March 19, 2025), or where an immigration-related "petitioner has failed to demonstrate that discovery is necessary to the determination of the claims" in his petition. *Alexis v. Holmes*, 2004 WL 2202646, at *3 (W.D.N.Y. Sept. 29, 2004).

Here, Petitioner seeks discovery related to one issue: an alleged policy of Respondents to illegally detain Laotian nationals. ECF 21 at 2, 4. The motion itself, along with the Petition,[2] does little to describe what Petitioner thinks the alleged policy contains. Petitioner's reply brief, however, claims that the alleged policy:

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[2] The Petition itself makes only one mention of the alleged policy at issue in the discovery motion, alleging simply that "Respondents have undertaken a campaign to detain Laotian nationals in Oregon and Washington." ECF 1 ¶ 6.

> appears to direct the use of regular ICE reporting appointments to detain Laotian nationals released under § [1231](a)(6) without providing meaningful notification of the purpose for deportation as required by the regulations and conditions of release, without following the regulatory process for revocation of release, and without a basis for asserting removal is reasonably foreseeable.

ECF 22 at 4. In short, Petitioner claims that Respondents have a policy explicitly directing agencies to ignore the regulations when detaining Laotian nationals with removal orders.

Petitioner has failed to make a showing that such a policy exists or that his requested discovery materials would help him develop his claims. The only evidence Petitioner cites for the existence of the alleged policy is the declaration of a paralegal at the Post-Conviction Relief program of the Seattle Clemency Project. ECF 24; ECF 22 at 5 (citing ECF 24 ¶¶ 6–7). That declaration makes two primary claims. First, that ICE recently began detaining Laotians with removal orders at check-ins without giving them multiple appointments to complete paperwork, which the declarant claims was the prior practice. ECF 24 ¶ 6. Second, that the declarant's firm represents a "significant number" of Laotians who were detained at check-ins without advanced notice that OSUP would be revoked at the appointment. *Id.* ¶ 7.

This declaration does not establish that Respondents have adopted a policy described by Petitioner. It does not allege that ICE detained anyone without giving the notice "required by the regulations" or "following the regulatory process," or that ICE detained anyone "without a basis for asserting that removal is reasonably foreseeable." ECF 22 at 4. It does not even allege that ICE has done anything illegal.

To be sure, the declaration alleges that ICE detained Laotians with removal orders without giving *prior* notice, but the regulations make clear that notice must be provided "upon revocation," not in advance. 8 C.F.R. § 241.13(i)(3); *see also Saelee v. Hernandez*, 2026 WL 1045223, at *4 (noting that there is no authority for the proposition that due process requires "even one month's notice" prior to detention). And neither the declaration, nor Petitioner, has pointed to any statute, regulation, or case obliging ICE to schedule multiple check-ins to fill out paperwork before an OSUP may be revoked. In short, the declaration relied on by Petitioner does not establish ICE did anything illegal, let alone that it implemented a policy to ignore the law.

The breadth[3] of Petitioner's discovery request also demonstrates it is a "fishing expedition" designed for Petitioner to "explore their case in search of its existence." *Rich*, 187 F.3d at 1067. Petitioner seeks many materials that are not related to the alleged policy. He seeks, for example, the identity of individuals who applied for Petitioner's travel document, the identity of agents who interacted with Petitioner at a recent check-in, and the identities and details about all Laotians who have been given appointments since January 2026. He also seeks a long list of documents that have no obvious connection to the alleged policy, such as the entire A-file, orders of supervision, documents maintained in DHS systems, documents relating to Laos

[3] If the Court allows Petitioner to proceed with his discovery requests, Respondents reserve the right to object on any and all grounds. Respondents generally addressing Petitioner's discovery requests does not constitute a waiver of any objections.

issuing travel documents, and ICE communications related to Petitioner's reporting. Some of these documents appear to be aimed at challenging issues not in dispute in this case, such as the fact that Laos has begun issuing travel documents and that ICE has not alleged an OSUP violation. ECF 1 ¶ 55; *see generally* ECF 18. Petitioner does not explain why any of these materials would help him establish the existence of the alleged policy.

Finally, Petitioner's own case establishes that even if there is such a policy—which defendant has not shown beyond a bald claim—it is not being applied to him. Even though Respondents disagree with Petitioner's argument that a travel document is required to establish a significant likelihood of removal in the reasonably foreseeable future, ECF1 ¶ 7, ICE has nevertheless agreed to not detain Petitioner until it has obtained a travel document. In the meantime, Petitioner is on actual notice that ICE is in the process of obtaining a travel document, undetained and able to live in the community and prepare for his removal.

Discovery in a habeas case is discretionary, and this case does not warrant it because Petitioner has not shown good cause for his expansive discovery request. The Court has everything it needs to rule on the merits and jurisdiction without discovery in this case. It should do so.

III. THERE IS NO NEED TO EXPEDITE DISCOVERY.

Petitioner asks for an expedited discovery schedule due to the "inherently rapid nature of habeas proceedings." ECF 21 at 2. Here, however, the circumstances do not

warrant expedition. Unlike in most habeas cases, Petitioner is not detained and there is a court order to not detain him without 48 hours' notice. ECF 4 ¶ 3. In addition to the 48-hour notice requirement, ICE has agreed to not detain Petitioner until it has obtained a travel document. ECF 18 ¶ 12. Given these circumstances, there is nothing pressing in this case requiring an expedited discovery schedule.

CONCLUSION

Respondents respectfully request that the Court deny Petitioner's motion for discovery because the Court lacks jurisdiction and Petitioner has not shown good cause. If the Court is inclined to grant discovery, Respondents respectfully request that the Court not expedite the discovery schedule.

DATED this 4th day of June, 2026.

Respectfully Submitted,

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/s/ Andrew B. Kartchner
ANDREW B. KARTCHNER
Assistant U.S. Attorney
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