IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-03331-SKC

EVER CRUZ CRUZ,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility;
GEORGE VALDEZ, in his official capacity as Acting Field Office Director, Denver Field Office of U.S. Immigration and Customs Enforcement;
DAVID VENTURELLA, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;
MARKWAYNE MULLIN, in his official capacity as Secretary of U.S. Department of Homeland Security; and
TODD BLANCHE, in his official capacity as Attorney General of the United States.

Respondents.

PETITIONER'S MOTION FOR LEAVE FOR EXPEDITED LIMITED DISCOVERY

Petitioner, EVER CRUZ CRUZ, by and through undersigned counsel, respectfully moves the Court for leave to conduct expedited limited discovery under 28 U.S.C. § 2246, Rule 6 of the Rules Governing Section 2254 Cases, as applied to this 28 U.S.C. § 2241 proceeding through Rule 1(b), and the Federal Rules of Civil Procedure. The requested discovery is confined to the Intensive Supervision Appearance Program ("ISAP") messages that Respondents have repeatedly characterized as "threatening," the records and persons on which Deportation Officer Grace Miles relied when repeating that characterization under oath in *Cruz v. Baltazar*, No. 1:26-cv-01451-SKC ("Cruz I"), ECF No. 9, and Respondents continued detention of Cruz based on speculation.

Respondents have repeatedly relied on the mere hearsay statement of alleged messages to justify Cruz's re-detention and continued confinement. The Immigration Court treated the

unsubstantiated statements as clear and convincing evidence of danger. Yet Respondents have never produced the messages, disclosed the recipient, provided the surrounding exchange, or identified what Cruz allegedly threatened.

In *Cruz I*, Respondents submitted the Declaration of Deportation Officer Grace Miles ("Miles Declaration"). Miles stated that her declaration was based on her review of the case file, "reasonable inquiry," and information obtained from unidentified records, systems, databases, DHS employees, and information portals. *Cruz I*, ECF No. 9-1 ¶ 2. She then declared that BI Incorporated staff reported that Petitioner was sending "threatening text messages" through Smartlink and that ICE relied on those messages, together with other allegations, to terminate Cruz's enrollment in Alternatives to Detention and cancel his bond. *Id.* ¶ 12. Miles did not claim that she received or saw the messages, was present in Orlando, spoke with Cruz, or participated personally in the December 5, 2025, encounter.

The Miles Declaration did not quote a single message, identify the recipient, disclose the language used, provide a translation, identify the records Miles reviewed, or identify the BI or ICE personnel from whom she obtained the information. DHS later relied on the same characterization at the May 11, 2026, bond hearing, and the Immigration Court relied materially on the alleged messages in finding both danger and flight risk. ECF No. 1 at 52-54. The present Petition alleges that Cruz's prolonged detention is constitutionally unlawful because Respondents continue to rely on that undisclosed evidence while no existing process permits Cruz to obtain and challenge it. ECF No. 1 ¶¶ 104-21.

Respondents now seek additional time to "assemble supporting evidence" and present the factual bases for Cruz's continued detention. ECF No. 9 at 2. The actual ISAP messages and the source materials underlying the Miles Declaration are the evidence most directly responsive to the

issue before the Court. Limited discovery will permit an informed adjudication of the Petition, prevent another round of briefing based only on Respondents' characterization of unseen evidence, and impose little burden because the requests concern a defined communication platform, a defined event, and records already reviewed or reasonably available to Respondents and their contractor.

The requested discovery is narrow, readily identifiable, and uniquely within the possession, custody, or control of Respondents or the contractor operating Respondents' supervision platform. Good cause therefore exists to order immediate production. Expedited discovery is warranted here given the inherently rapid nature of habeas proceedings and the fundamental liberty interests at stake.

CONFERRAL WITH RESPONDENTS

Pursuant to D.C.COLO.LCivR 7.1(a), undersigned counsel conferred with Respondents' counsel, Abby Weinberg, who indicated that Respondents oppose the Motion but declined to identify the basis for their opposition, stating only that they would respond after the Motion was filed.

The requested discovery is consistent with Respondents' own requested extension. *See* ECF No. 9. Respondents state that they need additional time to review the prior proceedings, listen to the May 11 hearing, assemble supporting evidence, and present the factual bases for detention. ECF No. 9 at 2. Production of the central evidence should be part of that review. Respondents should not receive additional time to assemble evidence supporting confinement while Cruz remains confined and is denied access to the specific evidence on which Respondents' position depends.

LEGAL STANDARD

A petitioner seeking a writ of habeas corpus challenging unlawful executive detention is entitled to limited discovery when good cause is shown. *Harris v. Nelson*, 394 U.S. 286, 299-300 (1969); Rule 6(a), Rules Governing Section 2254 Cases. Rule 1(b) permits the Court to apply the habeas rules to a petition brough under § 2241. The rule allowing for discovery in habeas cases is a "fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action" and must be sufficiently flexible to "reach all manner of illegal detention, cut through barriers of form and procedural mazes," and "ensure that miscarriages of justice... are surfaced and corrected." *Harris*, 394 U.S. at 290-91.

Good cause for discovery exists where "specific allegations" give the Court "reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is... entitled to relief." *Bracy v. Gramley*, 520 U.S. 899, 908-09 (1997)). "Where good cause exists, 'it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry.'" *Harris*, 394 U.S. at 300.

ARGUMENT

This is not a request to search broadly for evidence supporting a new claim. Cruz seeks one specifically identified body of evidence. The actual Smartlink/ISAP messages Respondents have repeatedly characterized as "threatening" and relied upon to justify Cruz's re-detention and continued confinement.

Respondents have represented that those communications existed, described them as threatening, used that description to terminate Cruz's release, and relied on it to oppose release at the May 11 bond hearing. The requested discovery should be readily available to Respondents. Respondents have known since *Cruz I* that the alleged ISAP messages are disputed, central to their

justification for Cruz's re-detention, and unavailable to Cruz. At the latest, Respondents were expressly placed on notice when Cruz's May 14, 2026, Motion to Enforce challenged their reliance on the messages without producing their contents, recipient, timing, context, or authentication. The significance and disputed nature of these records have therefore been apparent for more than two months. Respondents have had ample time to preserve the messages, identify their recipient, consult BI Incorporated, and obtain the underlying records from the Smartlink system. This is not a request requiring Respondents to locate an unforeseen category of historical material; it concerns the specific communications Respondents have repeatedly invoked as the principal factual basis for depriving Cruz of his liberty.

At the same time, the Miles Declaration exposes the evidentiary gap. Miles was assigned to Cruz's case at the Denver Contract Detention Facility and had served as a Deportation Officer only since November 3, 2025. *Cruz I*, ECF No. 9-1 ¶¶ 1-2. The alleged communications and re-detention occurred at a BI Incorporated office near Orlando, Florida. *Id.* ¶ 12. Miles did not state that she was present, that she reviewed the messages, or that she spoke with their recipient. Instead, she relied on unidentified official records and information obtained through other employees. *Id.* ¶ 2.

The only material information missing from Respondents' prior presentation is the information they elected not to disclose which were the actual words Cruz allegedly wrote, the identity of the recipient, the surrounding exchange, the language and translation of the messages, and the identity of the person who characterized them as threatening. The Petition specifically alleges that DHS never produced the messages, screenshots, timestamps, sender or recipient information, translation, or context, even though the Immigration Court relied on the allegation in

finding both danger and flight risk. That omission—not the emergence of some new factual issue—is the central procedural injury challenged in *Cruz II*.

Discovery is necessary to identify and examine the evidence that supplied the factual basis for her sworn assertions. If Miles relied only on the Form I-213 or another derivative summary, that fact confirms that Respondents' sworn account rests on repeated characterization rather than review of the primary evidence. If she reviewed the actual messages or records identifying their recipient and content, those materials must be disclosed so that Cruz and the Court can evaluate the basis for her testimony. ***If the messages have been deleted or cannot be retrieved, the custodian, retention policy, search performed, and circumstances of their unavailability are relevant to whether Respondents may continue to rely on an untestable summary as the central factual justification for detention***.

The Petition challenges the constitutionality of continuing civil detention through a process that treats an undisclosed allegation as established while denying Cruz any meaningful mechanism to test it. The actual words, context, timing, recipient, language, translation, and authenticity of the messages bear directly on that claim. The messages may show whether Respondents accurately characterized them, whether they reflected a threat or an attempt to obtain instructions after Cruz appeared at the office as directed, whether material context was omitted, and whether any legitimate concern could be addressed through a condition less restrictive than confinement.

Cruz cannot access his former Smartlink account while detained and does not possess an independent copy of the communication thread. BI Incorporated administered the ATD program and contacted ICE about the messages. *Cruz I*, ECF No. 9-1 ¶ 12. ICE then used the reported communications to terminate ATD and cancel bond. *Id.* The communications were therefore

transmitted through the supervision platform operated by Respondents' contractor and used by Respondents as the basis for official action against Cruz.

The proposed request, attached hereto as Attachment A, is limited to:

1. The exact text of the messages attributed to Cruz;
2. The immediately surrounding messages necessary to understand the exchange; and
3. The timestamps and participant labels displayed with the messages.

Discovery here is not sought to substitute this Court's discretionary custody judgment for that of the Immigration Judge. It is sought so that the Court can decide the independent constitutional question actually presented: whether Respondents may continue detention based on allegations that have never been independently verified or sustained.

RELIEF REQUESTED

Cruz respectfully requests an order authorizing the proposed discovery attached hereto as Exhibit A and providing as follows:

1. Because Cruz remains detained and the requested discovery concerns the central factual basis for his continued confinement, discovery should proceed on an expedited schedule, and within three days of the Court's order, Respondents shall produce the documents specified in the Request for Production No. 1.[1]

---

[1] The expedited schedule imposes no unfair burden on Respondents because they have been on notice throughout *Cruz I* that Cruz disputes the alleged messages and seeks access to the underlying evidence. Because the messages were generated and maintained through Respondents' own ATD contractor and form the asserted basis for Cruz's re-detention, Respondents should already have preserved or obtained them. Any additional delay would reward Respondents for failing to collect the very evidence on which they have continued to rely.

Moreover, Deportation Officer Miles represented in April 2026 that she had already reviewed the case file, conducted a reasonable inquiry, and consulted the relevant DHS records and personnel. Therefore, the materials and witnesses underlying her declaration should already have been identified and preserved. Respondents do not need additional time to develop a new factual account, only to produce the evidence supporting the account they previously gave under penalty of perjury.

2. Respondents shall preserve all responsive Smartlink/ISAP communications, metadata, audit records, screenshots, exports, backups, contractor records, and records concerning their retrieval, deletion, or retention while this action remains pending.

3. Any responsive material withheld on a claim of privilege shall be identified in a privilege log sufficient to permit evaluation of the claim.

4. Cruz may take the deposition of Deportation Officer Grace Miles for no more than three hours, limited to paragraph 12 of her declaration, the sources identified in paragraph 2, and the documents and communications responsive to Exhibit A, in the event Respondents are unable to produce the communications.

CONCLUSION

Good cause has been established for the limited discovery Cruz seeks. Discovery here is sought to substitute this Court's discretionary custody judgment for that of the Immigration Judge. It is sought so that the Court can decide the independent constitutional question actually presented which is whether Respondents may continue detention based on allegations that have never been independently verified or sustained.

For the foregoing reasons, Cruz respectfully requests that the Court order Respondents to provide the discovery requested or explain why they cannot provide the requested items.

Dated this 30th day of July 2026.

Respectfully submitted,

s/ Skylar M. Larson
Skylar M. Larson, Esq.
8275 E. 11th Ave. # 200176
Denver, CO 80220
Tel: (970) 692-3156
Email: skylarmlarsonesq@gmail.com

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2026, I electronically filed the foregoing **Petitioner's Motion for Leave for Expedited Limited Discovery** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Abby Weinberg
U.S. Attorney's Office
Abby.Weinberg@usdoj.gov

s/ Skylar M. Larson
Skylar M. Larson, Esq.

ATTORNEY FOR PETITIONER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-03331-SKC

EVER CRUZ CRUZ,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility;
GEORGE VALDEZ, in his official capacity as Acting Field Office Director, Denver Field Office of U.S. Immigration and Customs Enforcement;
DAVID VENTURELLA, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;
MARKWAYNE MULLIN, in his official capacity as Secretary of U.S. Department of Homeland Security; and
TODD BLANCHE, in his official capacity as Attorney General of the United States.

Respondents.

PETITIONER'S ATTACHMENTS TO MOTION FOR LEAVE FOR EXPEDITED LIMITED DISCOVERY

ATTACHMENT A. Proposed Expedited Limited Discovery Requests

A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-03331-SKC

EVER CRUZ CRUZ,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility;
GEORGE VALDEZ, in his official capacity as Acting Field Office Director, Denver Field Office of U.S. Immigration and Customs Enforcement;
DAVID VENTURELLA, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;
MARKWAYNE MULLIN, in his official capacity as Secretary of U.S. Department of Homeland Security; and
TODD BLANCHE, in his official capacity as Attorney General of the United States.

Respondents.

PETITIONER'S PROPOSED REQUEST FOR PRODUCTION

Pursuant to Federal Rule of Civil Procedure 34, 28 U.S.C. § 2246, and Rule 6 of the Rules Governing Section 2254 Cases, as applied under Rule 1(b), Cruz requests the following limited production within the time ordered by the Court.

DEFINITIONS

1. "ISAP communications" or "Smartlink communications" means every message, response, notification, attachment, automated communication, or other communication transmitted through the ISAP application involving Cruz from December 1 through December 5, 2025, together with the immediately preceding and following communications necessary to show the complete thread.

2. "Respondents" includes the named Respondents, ICE, ERO, DHS, OPLA, their officers and employees, and any contractor or agent acting on their behalf, including BI

Incorporated, to the extent the requested information is within Respondents' possession, custody, control, or practical ability to obtain.

3. Electronically stored information shall be produced in a reasonably usable form that preserves message content, timestamps, sender and recipient information, and available metadata. Screenshots or PDF printouts may supplement, but should not replace, an available native export or complete system report.

REQUEST FOR PRODUCTION NO. 1

1. Produce the actual Smartlink/ISAP text messages referred to in Paragraph 12 of the Declaration of Deportation Officer Grace Miles filed in *Cruz v. Baltazar*, No. 1:26-cv-01451-SKC, ECF No. 9-1, and described in the Form I-213 as "threatening text messages" allegedly sent by Cruz to a BI Incorporated staff member, including:

   a. The exact text of every message sent by Cruz;

   b. The messages immediately preceding and following them to the extent necessary to show the context of the exchange; and

   c. The timestamps and sender or recipient labels displayed with the messages.

2. The communications shall be produced in native, exported, screenshot, printout, or other reasonably usable form that accurately displays the complete and unaltered text of the messages.

3. If Respondents contend that the complete Smartlink communications are not presently within their possession, custody, or control, they shall obtain them from BI Incorporated or any other contractor that administered Cruz's Alternatives to Detention supervision or maintained the Smartlink/ISAP platform.

4. If Respondents are unable to produce the complete Smartlink messages, Cruz requests leave to depose Deportation Officer Grace Miles for no more than ninety minutes, limited to: (1) whether she reviewed the actual messages; (2) the records and persons on which she relied

in preparing the declaration; (3) the identity of the person who characterized the messages as threatening; and (4) the location, preservation, and availability of the messages.