UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

Edicson David QUINTERO CHACÓN, *Petitioner*, v. WARDEN, Stewart Detention Center, *et al.*, *Respondents*.	Civil Action No. 4:25-cv-50-CDL-AGH

PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION TO RECONSIDER ORDER FOR EXPEDITED JURISDICTIONAL DISCOVERY

REDACTED

INTRODUCTION

On June 3, 2025, this Court ordered jurisdictional discovery, approving Petitioner Quintero's specific discovery requests and depositions on the question of whether Mr. Quintero is in Respondents' constructive custody within the meaning of 28 U.S.C. § 2241. Dkt. 36 (the "Order"). After Mr. Quintero noticed depositions and propounded written requests, Respondents filed a motion to reconsider the Order; they ask the Court to allow them to "simply produce the documents produced in another case" and deny any additional discovery. Dkt. 37 at 3–4. Respondents' effort to hamstring Mr. Quintero's ability to discover relevant evidence, and to probe the credibility and completeness of the cherry-picked evidence the government has produced thus far, is an improper attempt to short-circuit this litigation and should be rejected.

I. Factual and Procedural Background

Respondents propose to limit discovery to documents produced in *J.G.G. v. Trump*, which involves a challenge to the March 2025 invocation of the Alien Enemies Act (AEA) brought on behalf of, *inter alia*, a class of people the Government sent to be detained at CECOT under the AEA (the "CECOT Class"). No. 1:25-cv-766 (JEB) (D.D.C.); *see* Dkt. 37. The *J.G.G.* Court ordered the Government to "submit any declarations . . . regarding whether the United States has constructive custody over the proposed CECOT class," after which the petitioners were to propose related jurisdictional discovery. *J.G.G.*, 2025 WL 1349496, at *3 (D.D.C. May 8, 2025). After the Government submitted a declaration and several documents under seal, the petitioners proposed a very limited set of written discovery requests and no depositions, although they asserted that the record at that time was "sufficient to establish jurisdiction." *See J.G.G.* (D.D.C. May 9, 2025), ECF No. 118; *J.G.G.* (D.D.C. May 16, 2025), ECF No. 129; *J.G.G.* (D.D.C. May 12, 2025), ECF

No. 125 & 125-1.[1] The court narrowed the requests, permitting 12 Requests for Admission ("RFA"), two Interrogatories ("ROG"), and two Requests for Production ("RFP"). *J.G.G.* (D.D.C. May 16, 2025), ECF No. 128. Production was substantially complete by late May and included responses to the RFAs and ROGs, "various redacted State Department [("DOS")] records, four congressional hearing transcripts, and a privilege log" listing 24 withheld records.[2] *J.G.G.*, 2025 WL 1577811, at *11 (D.D.C. June 4, 2025), *appeal docketed*, No. 25-5217 (D.C. Cir.).

The *J.G.G.* Court subsequently issued an order on petitioners' motion for preliminary injunction addressing constructive custody, despite unresolved "disputes over the sufficiency of the production and the propriety of the Government's privilege invocations." *Id.* It found that "[w]hile it is a close question, the current record does not support [the CECOT Class's] assertion that they are in the constructive custody of the United States." *Id.* The court applied the constructive custody standard from *Abu Ali v. Ashcroft*, 350 F. Supp. 2d 28 (D.D.C. 2004), which the Government subsequently acknowledged as the correct standard. *See J.G.G.* (D.D.C. June 10, 2025), ECF No. 152 at 6. Relying on D.C. Circuit precedent, the *J.G.G.* Court "presume[d] the truthfulness and reliability" of the declaration of DOS Senior Bureau Official Michael G. Kozak, which states that "the detention and ultimate disposition of those detained in CECOT . . . are matters within the legal authority of El Salvador in accordance with its domestic and international legal obligations." *J.G.G.*, 2025 WL 1577811, at *11. However, the court was careful to explain that the decision was based on the record at the time and, in particular, the petitioners' failure to put forward "comparably reliable evidence to rebut the Kozak Declaration." *Id*. at *12. The *J.G.G.* Court explained that additional evidence could demonstrate "that the Government has adopted and

[1] Mr. Quintero has consistently taken the opposite position, urging this Court not to decide this issue without a fair opportunity to conduct jurisdictional discovery. *See* Dkt. 28.

[2] After filing their motion for reconsideration, on June 12, 2025, Respondents produced these documents to Mr. Quintero's counsel and filed them with the Court. *See* Dkt. 46 (hereinafter the "*J.G.G.* Production").

presented its arrangement with El Salvador as a 'ruse—and a fraud on the court—designed to maintain control over the detainees beyond the reach of the writ.'" *Id.* at *12 (quoting *Kiyemba v. Obama*, 561 F.3d 509, 515 n.7 (D.C. Cir. 2009)).

II. Argument

"Reconsideration of a previous order is an extraordinary remedy to be employed sparingly." *Norman v. Jefferson*, No. 5:21-CV-00455-TES-TQL, 2022 WL 3573241, at *1 (M.D. Ga. Aug. 19, 2022) (citation omitted). Reconsideration is only proper when a movant demonstrates: (1) "an intervening change in the law, (2) new evidence has been discovered that was not previously available to the parties at the time the original order was entered, or (3) reconsideration is necessary to correct a clear error of law or prevent manifest injustice." *Id.* (citation omitted). A motion for reconsideration is not "an opportunity to simply reargue [an] issue the Court has once determined," *Bryant v. Carter*, No. 5:09-cv-271 (HL), 2010 WL 2640600, at *1 (M.D. Ga. June 29, 2010) (citation omitted), since "judicial decisions are not intended as mere first drafts, subject to revision and reconsideration at a litigant's pleasure," *Natson v. United States*, No. 4:05-Cr-21 CDL, 2010 WL 11647166, at *1 (M.D. Ga. June 29, 2010).

A. Reconsideration Is Not Warranted Because Respondents Do Not Identify a Change in Law, New Evidence, Clear Legal Error, or Manifest Injustice.

Respondents have not made the threshold showing necessary to justify reconsideration. *See Norman*, 2022 WL 3573241, at *1. Their motion points to no intervening change in law or clear legal error. Quite the opposite. The *J.G.G.* decision they rely on adopts the legal standard for constructive custody put forward by Mr. Quintero. *J.G.G.*, 2025 WL 1577811, at *10 (adopting *Abu Ali* standard for constructive custody). Respondents do not even attempt to argue the Order works a manifest injustice; to do so would be quite extraordinary given Respondents' new position that some discovery—but only of Respondents' own choosing—is warranted after all.

Nor did Respondents discover new evidence unavailable to them during prior briefing. Respondents previously argued against any discovery whatsoever. Dkt. 32. What has changed since then? Another district court has reviewed a sliver of the evidence that may be responsive to Mr. Quintero's court-approved discovery requests and made an expressly record-dependent factual finding in the Government's favor, while acknowledging it is a "close question" and other courts have taken the opposite view on the same question. *J.G.G.*, 2025 WL 1577811, at *10–11 ("Relying on similar evidence, other courts have appeared to agree that those removed from the United States to CECOT remain in U.S. constructive custody." (citing *Abrego Garcia v. Noem*, 2025 WL 1014261, at *5–7 (D. Md. Apr. 6, 2025); *Abrego Garcia v. Noem,* 2025 WL 1021113, at *4 (4th Cir. Apr. 7, 2025) (Thacker, J., concurring)). Respondents now take the position that disclosure of that evidence alone, which they possessed all along but refused to provide until now, suits their cause. They point to this newly produced evidence in an attempt to undermine the Court's conclusion that there is good cause for a narrow set of discovery requests that go to the heart of the jurisdictional question in this case. Dkt. 36 at 14–20. This evidence "was available [to Respondents], through the exercise of due diligence," before the Court's prior Order "and therefore cannot form the basis for" reconsideration. *Oliver v. Nat'l Beef Packing Co., LLC*, No. 7:07-cv-110 (WLS), 2008 WL 11460723, at *2 (M.D. Ga. July 23, 2008).

B. Respondents' Request to Foreclose Meaningful Discovery Is Procedurally Improper.

The Court's decision that there is good cause for limited jurisdictional discovery is all the more correct, under Eleventh Circuit precedent and the Federal Rules of Civil Procedure, now that Respondents have conceded that some discovery is warranted.

Respondents' motion for reconsideration seeks to bar discovery of all information other than the documents Respondents want the Court to see. If the Court were to grant Respondents'

motion, Respondents would be able to rely on evidence extrinsic to the pleadings in support of their Rule 12(b)(1) motion without giving Mr. Quintero a chance to discover information that might contradict that evidence. This is improper because Respondents make a factual attack on jurisdiction, and in response, Mr. Quintero "must have ample opportunity to present evidence bearing on the existence of jurisdiction." *ACLU of Fla., Inc. v. City of Sarasota*, 859 F.3d 1337, 1340 (11th Cir. 2017) (reversing denial of jurisdictional discovery as an abuse of discretion); *accord Eaton v. Dorchester Dvlpt. Inc.*, 692 F.2d 727, 729–31 (11th Cir. 1982) (reversing district court dismissal prior to completion of noticed depositions because jurisdictional discovery is "not entirely discretionary" and the "Plaintiff must be given an opportunity to develop facts sufficient to support a determination on the issue of jurisdiction"). Respondents have made no argument that could overcome circuit precedent on this point or any other argument undermining the Court's prior finding of good cause for jurisdictional discovery.

Prematurely cutting off Mr. Quintero's opportunity to discover relevant evidence, as Respondents request, would allow them to inappropriately manipulate the discovery process. "[T]he purpose of the broad discovery rules is to 'make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.'" *Higgs v. Costa Crociere S.P.A. Co.*, 969 F.3d 1295, 1305 (11th Cir. 2020) (citation omitted). Under operation of normal discovery rules, a party seeking discovery (here, with the Court's approval) fashions discovery requests, and information requested is discoverable unless the responding party shows it is privileged, irrelevant, or not proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). Mr. Quintero seeks information regarding this Court's jurisdiction "which would be in [Respondents'] possession if it exists, and thus [is] only available to [Mr. Quintero] through discovery." *Phouk v. Warden, Stewart Detention Ctr.*, 378 F. Supp. 3d 1209, 1213 (M.D. Ga.

2019). Respondents' unsupported request to disclose only a self-selected subset of this information would be plainly insufficient to overcome a motion to compel, let alone to overcome the prior finding of good cause for discovery in the first place. *See, e.g.*, *Hicks v. Bd. of Regents of the Univ. Sys. of Ga.*, 3:11-cv-94, 2012 WL 3065897, at *1 (M.D. Ga. July 27, 2012) (granting motion to compel when party failed to respond to discovery requests); *Singleton v. Garden City, Georgia*, 4:19-cv-106, 2020 WL 8991691, at *2 (S.D. Ga. Mar. 2, 2020) (granting motion to compel where interrogatory response was "simply incomplete and evasive," and responding party had "offered no valid reason why" the plainly relevant information sought should be withheld).

Respondents cannot have their cake and eat it too, especially given the gravity of the issues here. Respondents apparently believe the *J.G.G.* Production will let them prevail in their motion to dismiss, but Mr. Quintero is "not simply required to take [their] word for it." *A.S.M. v. Donahue*, No. 7:20-CV-62 (CDL) (M.D. Ga. May 7, 2020), ECF No. 50 at 4. He must be allowed to discover relevant evidence that might undermine Respondents' self-serving account of the facts.[3]

C. The *J.G.G.* Production Does Not Resolve the Custody Question Before This Court.

The *J.G.G.* Production is plainly incomplete and insufficient to resolve the specific jurisdictional question before this Court: whether Mr. Quintero is in Respondents' constructive custody. The *J.G.G.* Production is missing broad categories of documents and information that very likely exist and relate directly to Mr. Quintero's case. Additionally, the *J.G.G.* Production undermines the Kozak declaration upon which the *J.G.G.* Court relied. Nothing about the *J.G.G.* Production gives rise to a basis for reconsidering the Order.

1. Critical Information Is Missing from the J.G.G. *Production*

[3] The parties expressly reserved the opportunity for post-discovery briefing prior to decision on Respondents' Motion to Dismiss, Dkt. 25 at 2. Thus, the question of what the *J.G.G.* Production may ultimately prove, in light of any potential rebuttal evidence, is not yet before the Court.

First, the *J.G.G.* Production does not include information specifically about Mr. Quintero since he is neither a named party nor a *J.G.G.* class member. *See J.G.G.*, 2025 WL 1577811, at *29 (defining the CECOT Class). The *J.G.G.* Production instead [redacted][4] The Production therefore provides no insight into Respondents' process for identifying Mr. Quintero for transfer to CECOT, his transport there by Respondents, and Respondents' knowledge about his current detention. Mr. Quintero's noticed Rule 30(b)(6) depositions, RFAs, RFP Nos. 4–7, and ROG Nos. 1 and 3[5] seek this information, which goes directly to the question of Respondents' knowledge, direction, and control of Mr. Quintero's transfer to and detention at CECOT. *See Abu Ali*, 350 F. Supp. 2d at 68. In opposing jurisdictional discovery, Respondents had argued that the requested discovery was "overly broad as it does not pertain solely to Petitioner," Dkt. 32 at 11–12; now they argue that Mr. Quintero is *only* entitled to information that does not relate specifically to him at all. Respondents cannot have it both ways. The Court properly granted jurisdictional discovery that relates to Mr. Quintero's case, Dkt. 36, and nothing about the *J.G.G.* decision or Production gives rise to a reason to alter the Order.

Second, the *J.G.G.* Production does not appear to include any DHS or ICE documents. All of Mr. Quintero's requests, on the other hand, seek to discover, among other things, whether and to what extent DHS/ICE handled Mr. Quintero's transfer to CECOT like an ordinary third-country Title 8 removal, as Respondents claim it was. Dkt. 27 at 3. For example, RFP No. 6 seeks (presumably DHS) documents that Mr. Quintero was provided or signed in the72 hours before or after his transfer to CECOT. Cassler Decl. Ex. C at 4–5. Mr. Quintero may have been provided the

[4] It is not clear that the *J.G.G.* Production relates to Mr. Quintero at all, [redacted]. *E.g.*, Dkt. 46 Exs. 9–11. Respondents averred that Mr. Quintero was removed under Title 8, not the AEA Dkt. 10-1 ¶ 8. Mr. Quintero has no known ties to TdA, and Respondents have not asserted that his transfer to CECOT was on account of any alleged gang membership. Dkt. 24 ¶¶ 36, 46; Dkt. 24-6 (bond denial based solely on flight risk).

[5] *See* Decl. of Rebecca Cassler, ¶¶ 3–7 & Exs. A–E (served discovery requests and deposition notices).

typical documents given during Title 8 removals, or something entirely different, or nothing at all. Evidence that DHS did not handle Mr. Quintero's transfer to CECOT like an ordinary Title 8 removal may be probative of whether Mr. Quintero's ongoing detention is at Respondents' behest or direction. Additionally, given the near certainty that DHS/ICE officials communicated amongst themselves and with DOS about the transfers to CECOT, DHS/ICE likely has responsive documents detailing the agreement with El Salvador and transfer plans. *See* Dkt. 10-1 ¶¶ 7-8.

Third, the *J.G.G.* Production does not include any documents dated earlier than March 13, 2025, two days before Mr. Quintero was transferred to CECOT. Given that DOS has stated publicly that Respondent Rubio discussed the arrangement with Salvadoran President Bukele on February 3, 2025, it is implausible that no documents regarding the agreement were generated before March 13, 2025. U.S. Embassy in El Salvador, U.S. Dep't of State, *Secretary Rubio's Meeting with Salvadoran President Nayib Bukele* (Feb. 5, 2025), https://perma.cc/2PHG-KDKU.[6]

2. The Kozak Declaration Is Not Dispositive and, Regardless, Mr. Quintero Should Have the Opportunity to Test Its Credibility, Especially in Light of Subsequent Events

The *J.G.G.* Court based its preliminary custody findings on a single declaration from DOS official Michael Kozak.[7] If anything, that declaration and the *J.G.G.* Production further demonstrate why there is good cause for jurisdictional discovery here.

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[6] Beyond the lack of information (1) specific to Mr. Quintero, (2) from DHS/ICE, and (3) pre-March 13, 2025, the extent to which the *J.G.G.* Production otherwise provides complete responses to any of Mr. Quintero's requests is unclear. Moreover, the Production contains unexplained redactions, *e.g.* Dkt. 46 Exs. 18–20, and the ROG responses are not verified, *id.* Ex. 5 at 6. The *J.G.G.* privilege log is also woefully deficient. *Id.*, Ex. 1. Twenty of 24 entries list no dates; nine list no authors, recipients, or custodians. *See S.P.S. ex rel. Snyder v. Instant Brands, Inc.*, No. 4:19-CV-212, 2021 WL 1989933, at *3 (M.D. Ga. May 18, 2021) (explaining a privilege log must "describe the nature of the documents, communications, or tangible things not produced or disclosed" so as to "enable other parties to assess the claim" (citation omitted)); *In re Mentor Corp. ObTape Transobturator Sling Prods. Liab. Litig.*, 632 F. Supp. 2d 1370, 1382 (M.D. Ga. 2009) ("Defendant has made no effort to explain who authored the memorandum and to whom the memorandum was distributed. It is Defendant's burden to provide this information.").

[7] Indeed, even the *J.G.G.* Court noted its hesitation to presume the truthfulness of Mr. Kozak's declaration given "the Government's troubling conduct throughout [the] case." *J.G.G.*, 2025 WL 1577811, at *11.

Although the *J.G.G.* Court found that it had sufficient evidence to decide constructive custody and that Mr. Kozak's declaration was wholly unrebutted by comparably reliable evidence, it is not a forgone conclusion that after post-discovery briefing, this Court will make the same findings. Documents in the *J.G.G.* Production do not squarely support Mr. Kozak's statement that "**the detention and ultimate disposition of** those detained in CECOT . . . are matters within the legal authority of El Salvador in accordance with its domestic and international legal obligations." *Id.* at *11 (quoting Kozak Decl. ¶ 9) (emphasis added). [redacted] Dkt. 46 Ex. 10 (emphasis added); *see id.* Ex. 9 [redacted] the sole and ultimately dispositive authority Mr. Kozak suggests El Salvador retains. [redacted] *Id.* Ex. 20 (emphasis added); *see id.* Ex. 11 (similar). Notably, [redacted] the *Abrego Garcia* Court ordered Mr. Abrego Garcia's return and [redacted] the May 6 publication of El Salvador's vice president's statement that the "status" of those transferred to CECOT "is determined by the state that requests the service," that is, the U.S., which directly contradicts Mr. Kozak's declaration. Dkt. 31-1 at 13; *see Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1018 (April 10, 2025) (largely affirming April 4, 2025, preliminary injunction); Dkt. 46 Ex. 7 at 2 [redacted]

[redacted] Mr. Quintero's court-approved discovery requests will elucidate the murky paper trail that Respondents have only partially revealed.

Moreover, the record before this Court at the motion to dismiss stage will invariably differ from the *J.G.G.* preliminary injunction record, as there have been significant developments that undermine Mr. Kozak's declaration since it was filed in *J.G.G.* On June 6, 2025, two days after the *J.G.G.* Court found no constructive custody, Mr. Abrego Garcia was returned to the United States from a Salvadoran prison for a criminal prosecution without, according to reports, the use of formal extradition procedures.[8] This development calls into question Respondents' representations that they have no power or control over the custody of the people they have sent to be imprisoned in El Salvador and provides further good cause for jurisdictional discovery.

Mr. Quintero should have the opportunity to test the credibility of Mr. Kozak's declaration through further discovery, including the Court-ordered depositions, especially given the contents of the *J.G.G.* Production and Respondents' subsequent return of Mr. Abrego Garcia. The alternative—concluding that Respondents' extraordinary decision to send a Venezuelan man to indefinite detention in a Salvadoran prison cannot be challenged in this habeas action based solely on a single official's untested declaration—would deprive Mr. Quintero of basic due process.

CONCLUSION

The Court should deny Respondents' motion for reconsideration.

[8] *See* Katherine Faulders et al., *Kilmar Abrego Garcia brought back to US, appears in court on charges of smuggling migrants*, ABC News (June 6, 2025), https://bit.ly/ABCAbrego (Respondent Bondi: "Our government presented El Salvador with an arrest warrant and they agreed to return him to our country.").

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Respectfully submitted,

/s/ Rebecca M. Cassler
Rebecca M. Cassler
GA Bar No. 487886
Michelle Lapointe
GA Bar No. 007080
American Immigration Council
PMB 2026
2001 L ST. NW, Ste. 500
Washington, DC 20036
T: (202) 507-7514
rcassler@immcouncil.org
mlapointe@immcouncil.org

Caitlin J. Sandley
GA Bar No. 610130
Jessica Myers Vosburgh*
Center for Constitutional Rights
P.O. Box 486
Birmingham, AL 35201
T: (212) 614-6443
csandley@ccrjustice.org
jvosburgh@ccrjustice.org

Ayla Kadah*
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
T: (212) 614-6491
akadah@ccrjustice.org

Stephanie M. Alvarez-Jones
GA Bar No. 237979
Yulie Landan*
National Immigration Project of the National Lawyers Guild
1763 Columbia Road NW
Ste 175 #896645
Washington, DC 20009
T: (202) 470-2082
stephanie@nipnlg.org
yulie@nipnlg.org

*Admitted pro hac vice
Counsel for Petitioner