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

E.D.Q.C.,

Petitioner,

v.

WARDEN, Stewart Detention Center, et al.,

Respondents.

Civil Action No. 4:25-cv-50-CDL-AGH
REDACTED

REPLY IN SUPPORT OF RESPONDENTS'
MOTION FOR A STAY OR FOR RECONSIDERATION

On June 3, 2025, this Court granted Petitioner's motion for expedited jurisdictional discovery "on the issue of whether Petitioner is within the constructive custody of the United States," and deferred issuing a recommendation on Respondents' motion to dismiss "until after such discovery is complete." ECF No. 36. Respondents filed a motion requesting the Court stay or reconsider its June 3 discovery order in light of the D.C. District Court's ruling on constructive custody in *J.G.G. v. Trump*, No. 25-766 (JEB), -- F. Supp. 3d --, 2025 WL 1577811, at *8-13 (D.D.C. June 4, 2024), and to give Respondents an opportunity to submit objections to the district court before they were required to comply with the Court's June 3 discovery order. ECF No. 37. On June 6, 2025, the Court granted Respondents' motion to stay the discovery deadlines outlined in the June 3 discovery order and limited discovery at this time to Petitioner's A-file and the documentation previously provided in *J.G.G.* under seal. ECF No. 38. The Court ordered the Parties to consult, which they did, and subsequently granted an agreed upon briefing schedule

regarding Respondents' motion to stay or reconsider the June 3 discovery order.[1] ECF Nos. 38, 40. After Respondents produced the required discovery, Petitioner filed an opposition to Respondents' motion to stay or reconsider the Court's June 3 Order, asserting among other things that the *J.G.G.* discovery is insufficient. Pet's Opp. at 6-10. Because the jurisdictional discovery produced in *J.G.G.* and this case establishes that Petitioner is not within the constructive custody of the United States, no further discovery is warranted. The Court should not reconsider its reconsideration of its June 3 discovery order, which was a proper exercise of the Court's discretion and allowed Petitioner to obtain all the jurisdictional discovery necessary to rule on the constructive custody issue. If the Court determines that additional jurisdictional discovery is warranted, the Court should stay the discovery deadlines so that Respondents may file objections.

ARGUMENT

I. Petitioner fails to show that the *J.G.G.* jurisdictional discovery documents and record evidence are insufficient to resolve the jurisdictional issue of whether constructive custody exists.

"In order to provide habeas relief . . ., the Court would have to find that the United States retains 'custody' of the [Petitioner] within the meaning of the federal habeas statute." *J.G.G.,* 2025 WL 1577811, at *6 (citing 28 U.S.C. § 2241(c)). After conducting jurisdictional discovery and considering the documentary evidence presented by the Government—evidence identical to that produced to Petitioner and filed under seal in this case[2]—the D.C. District Court reviewed the

[1] Though the Court refers to Respondents' motion solely as a motion to reconsider its June 3 discovery order, Respondents also moved to stay the discovery deadlines set forth in the June 3 order so that Respondents could timely file objections to the district court under Federal Rule of Civil Procedure 72(a). ECF No. 37. Were the Court to deny Respondents' motion to reconsider its June 3 order, Respondents' motion to stay discovery deadlines for the purpose of filing objections to the district court would remain before the Court.

[2] The discovery presented in *JGG* and in this case consists of "Defendants' responses to Plaintiffs' requests for admission and interrogatories, various redacted State Department records, four congressional hearing transcripts, and a privilege log explaining the basis for withholding 24 responsive records." *J.G.G.*, 2025 WL 1577811, at *11. This is in addition to "a redacted declaration from Michael G. Kozak, who serves as the Senior Bureau Official with the Bureau of Western Hemisphere Affairs at the State Department. *Id.*

responses and documents, and "[r]ather than adjudicate the parties' disputes over the sufficiency of the production and the propriety of the Government's privilege invocations, . . . believe[d] it ha[d] enough information to resolve the jurisdictional question[.]" *Id.* In doing so, it found "that, while the United States and El Salvador have struck a diplomatic bargain *vis-à-vis* the detainees, the ongoing detention of the CECOT Class is not solely at the 'behest' of the United States, nor is El Salvador 'indifferent' to their detention. *Id.* (quoting, *Abu Ali v. Ashcroft*, 350 F. Supp. 2d 28, 68 (D.D.C. 2004) (noting factors to be considered when determining the existence of constructive custody include whether the petitioner: (i) was detained at the behest of United States officials; (ii) is continuing to be detained at the direction of the United States enlisting a foreign state as an agent or intermediary who is indifferent to the detention of the prisoner; (iii) is being detained in the foreign state to deny him an opportunity to assert his rights in a United States tribunal; and (iv) would be released upon nothing more than a request by the United States)). The D.C. District Court determined that "the picture that emerges from the current record is that El Salvador has chosen — in negotiation with the United States and for reasons far outside the ken of a federal district court — to detain Plaintiffs at CECOT, and it can choose to release them as well." *J.G.G.*, 2025 WL 1577811. The D.C. District Court, thus, found it lacked habeas jurisdiction. *Id.* The same evidence is sufficient to resolve the jurisdictional question in the present case, which is factually identical to *J.G.G.*—except that the Petitioner in this case was removed pursuant to Title 8, *see* ECF. No. 10-1, ¶ 8, and not the Alien Enemies Act, 50 U.S.C. § 51, which is a distinction without a difference for purposes of determining the existence of constructive custody. Petitioner does not claim otherwise.

Petitioner instead argues that the *J.G.G.* jurisdictional discovery does not resolve the custody question because it does not include information specifically about Petitioner "since he is

neither a named party nor a *J.G.G.* class member," and the *J.G.G.* discovery "refers generally to [redacted] Pet.'s Opp. at 6, 7, n.4. But Respondents submitted evidence that on March 15, 2025, Petitioner was "removed from the United States to El Salvador . . . by charter on a flight carrying immigration detainees, all of whom had final orders of removal," and that "he was removed pursuant to the authority vested in DHS under Title 8 of the U.S. Code." ECF Nos. 10-1, Flores Decl. at ¶8; 10-2, IJ Order; and 10-3, Form I-205. Further, as noted in the *J.G.G.* decision, "[a] third plane took off from Harlingen[, Texas] approximately ten minutes [after the first two planes], which the Government maintains carried only noncitizens subject to final orders of removal under the Immigration and Nationality Act." *J.G.G.*, 2025 WL 1119481, at *4. Petitioner was on the third plane. *See* ECF No. ECF 10-1, Flores Decl., at ¶ 8. Thus, the *J.G.G.* documents clearly apply to Petitioner's removal and detention at CECOT.

Petitioner also argues the discovery production "does not include any DHS or ICE documents," Pet.'s Opp. at 7, to show whether his transfer to CECOT was "like an ordinary third-country Title 8 removal." These documents are completely irrelevant to whether his detention at CECOT constitutes constructive custody. *See Abu Ali,* 350 F. Supp. 2d at 68, nn. 38-41 (collecting cases on factors to be considered in constructive custody inquiry). Regardless, not only are there DHS/ICE documents in the record before this Court, but Respondents produced Petitioner's A-file and Record of Proceedings to Petitioner's counsel. These productions contained numerous documents from DHS/ICE and establish that Petitioner was identified as a member or active in the Tren de Aragua criminal organization and removed pursuant to Title 8. *See* Ex. 1, Notice of Filing at Tab A and Tab B; ECF Nos. 25 at 2, 26.

Petitioner claims he needs "insight into Respondents' process for identifying [him] for transfer to CECOT, his transport there. . ., and Respondents' knowledge about his current

detention." Pet's Opp. at 6. But Petitioner fails to articulate why this information is relevant to whether he is in the constructive custody of the United States based upon its agreement with El Salvador. Further, Petitioner claims that evidence showing "DHS did not handle Petitioner's transfer may be probative of whether his ongoing detention is at Respondent's request or behest[.]" Pet's Opp. at 8. But record evidence shows that DHS handled his transfer. ECF Nos. 10-1 at ¶8, 10-3, Form I-205. Petitioner also fails to state why documents dated [redacted] are relevant or necessary when the documents produced clearly outline the parameters of the final agreement with El Salvador.

Lastly, Petitioner claims the Kozak Declaration is not dispositive and Mr. Quintero should have the opportunity to test its credibility. *Id.* at 8-9. The D.C. District Court addressed its decision to rely upon the Kozak Declaration:

> The Court nonetheless follows the lead of the Supreme Court, the D.C. Circuit, and other courts within this district in taking Kozak at his word. In *Munaf*, the Supreme Court instructed federal district courts not to "second-guess" assessments of the political branches as to the nature of detention under a foreign sovereign. *See* 553 U.S. at 702, 128 S.Ct. 2207. Applying that principle, our Circuit has found governmental submissions similar to the Kozak Declaration to be conclusive on the question whether ongoing detention is "on behalf of the United States." *Kiyemba v. Obama*, 561 F.3d 509, 515 (D.C. Cir. 2009) (quoting declaration from Deputy Assistant Secretary of Defense for Detainee Affairs); *see Gul v. Obama*, 652 F.3d 12, 18 & n.* (D.C. Cir. 2011) (quoting declaration from different Deputy Assistant Secretary of Defense for Detainee Affairs that detainees were "transferred entirely to the custody and control of the [receiving] government") (alteration in original). So, too, have other judges in this district. *See, e.g., In re Petitioners Seeking Habeas Corpus Relief*, 700 F. Supp. 2d at 127–28; *Al Hajji v. Obama*, 2009 WL 4251108, at *1–2 (D.D.C. Nov. 23, 2009).

J.G.G., 2025 WL 1577811, at *11. Mr. Kozak is the Senior Bureau Official within the Bureau of Western Hemisphere Affairs (WHA), which is responsible for diplomatic relations between the United States and countries in the Western Hemisphere, including El Salvador and Venezuela. *See* ECF No. 46, Ex. 21 at ¶1. He is a charter member of the Senior Executive Service, serving since

1971 in a variety of senior positions in the Department of State. *Id.; see also,* https://www.state.gov/biographies/michael-kozak/. He has received numerous awards and honors, including the Department of State's Superior Honor Award, Presidential Rank of Distinguished Executive, Presidential Rank of Meritorious Executive and the Young Federal Lawyer Award. *See* https://www.state.gov/biographies/michael-kozak/. Petitioner fails to present any "comparably reliable evidence" to rebut Mr. Kozak's declaration. The fact that the agreement [redacted] simply is not sufficient to undermine Mr. Kozak's credibility.[3] *See* Pet's Opp. at 9. And, contrary to Petitioner's claim that [redacted] what the documents show is that [redacted] *See* ECF No. 46, Ex. 21 at ¶¶7-8; *see also,* Ex. 7, 8, 9, 10, 12.

Ultimately, the documents produced in *J.G.G.* and in this case establish that "El Salvador is the legally responsible sovereign for the CECOT Plaintiffs' ongoing detention[, a]nd [Petitioner] — who bear[s] the burden of establishing habeas jurisdiction, *In re Petitioners Seeking Habeas Corpus Relief*, 700 F. Supp. 2d at 127 — ha[s] pointed the Court to no robust evidence to the contrary." *J.G.G.*, 2025 WL 1577811, at *13.

[3] Petitioner claims that the credibility of Mr. Kozak's declaration was undermined by the return of Mr. Abrego Garcia to the United States. Pet's Opp. at 10. Yet, El Salvador only agreed to return Abrego-Garcia after he was criminally indicted. *See Abrego Garcia v. Noem,* No. 8:25-CV-00951, ECF 200, at 3, 6–7 (D. Md.); *see also* https://x.com/nayibbukele/status/1931084729840800096?s=46, (June 6, 2025) (Salvadoran President Bukele explaining what motivated him to release Abrego Garcia: "As I said in the Oval Office . . . I would never smuggle a terrorist into the United States [and] I would never release a gang member onto the streets of El Salvador [but] we work with the Trump administration, and if they request the return of a gang member to face charges, of course we wouldn't refuse."). Ultimately, the court's order in *Abrego* effectively required the Secretary of State to engage in foreign policy and thus interfered with the Executive Branch's foreign-affairs power and its prosecution power.

II. Reconsideration of the June 3 discovery order is warranted where another Court subsequently considered specific discovery documents to resolve the same jurisdictional questions in an almost factually identical case.

Petitioner argues that reconsideration of the June 3 discovery order is not warranted. Pet's Opp. at 3-4. Yet the D.C. District Court subsequently issued a decision addressing the very same issue presented in this case after considering specific discovery documents produced by the Government. This subsequent decision warranted a request for reconsideration of the Court's June 3 discovery order. The decision to grant or deny a motion to reconsider is left to the discretion of the trial court. *Chapman v. AI Transp.,* 229 F .3d 1012, 1023–24 (11th Cir. 2000) (en banc). While *J.G.G.* is not controlling on this Court, it does offer guidance on a novel question of law as applied to almost identical facts. Further, Respondents' request that the Court reconsider its discovery order served judicial efficiency, as opposed to thwarting it, in the sense that consideration of the *J.G.G.* discovery documents and the D.C. District Court's findings could save the Parties and the Court significant time and streamline the litigation of the habeas petition.

III. Respondents' motion to reconsider was not procedurally improper.

Petitioner argues Respondents' request to foreclose meaningful discovery is procedurally improper. Pet.'s Opp. at 4-6. First, Respondents object to Petitioner's characterization of the motion to reconsider as a request to foreclose meaningful discovery. A "habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course." *Phouk v. Warden, Stewart Det. Ctr.*, 378 F. Supp. 3d 1209, 1211 (M.D. Ga. 2019) (internal citations and quotation marks omitted). The discovery at issue in this case involved diplomacy at the highest levels of government, necessarily involving sensitive foreign policy information that the must be handled with great care. Thus what Petitioner characterizes as foreclosing meaningful discovery, Respondent argues is limiting discovery to that which is necessary and relevant. Respondent produced information the Government was ordered to produce, not, as Petitioner

claims, "a self-selected subset" of information. As Petitioner notes, Respondent initially objected to producing any discovery due to the irregular nature of discovery in the habeas setting and the highly sensitive nature of the discovery at issue. Petitioner has failed to articulate why any evidence beyond that which has been produced is necessary or relevant to the constructive custody issue.

Lastly, Petitioner notes that the Parties "reserved the opportunity for post-discovery briefing prior to decision on Respondents' Motion to Dismiss." Pet's Opp. at 6 citing ECF No. 25 at 2. What the Parties stated in their very first Joint Status Report is, "[t]o the extent post-discovery briefing is necessary, the Parties anticipate submitting a joint proposal to the Court addressing that briefing schedule as well as the Parties' positions regarding the need for an evidentiary hearing." ECF No. 25 at 2. Respondents do not agree with Petitioner's claim that "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." Pet's Opp. at 6, n.3. The burden is on Petitioner to establish jurisdiction. Respondents have produced the A-file, the entire Record of Proceedings, and over [redacted] pages of sensitive, diplomatic discovery. It is unclear what Petitioner means when he says the issue of what the *J.G.G.* discovery documents may prove is not before the Court. Unless Petitioner can articulate specific discovery relevant to the jurisdictional issue, then now is the time for the Court to determine if the *J.G.G.* documents establish constructive custody. If the Court determines, as the D.C. District Court determined, that there is no constructive custody then the Court lacks jurisdiction over the habeas petition and no further discovery is necessary.

CONCLUSION

For the foregoing reasons, Respondent requests that the Court not reconsider its grant of Respondent's motion to reconsider its June 3 discovery order or to stay any discovery deadlines

so that Respondent may timely file objections to the Court's order pursuant to Rule 72(a) of the Federal Rules of Civil Procedure.

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Respectfully submitted,

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