UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 1:25-cv-23792 BLOOM / ELFENBEIN

PIERRE REGINALD BOULOS,

Petitioner,

vs.

DIRECTOR, U.S. Department of Homeland Security Immigration and Customs Enforcement Enforcement and Removal Operations Miami Field Office; ACTING DIRECTOR, U.S. DHS ICE; SECRETARY, DHS; U.S. ATTORNEY GENERAL; ACTING DIRECTOR, U.S. Department of Justice Executive Office for Immigration Review; and U.S. SECRETARY OF STATE,

Respondents.
_______________________________________/

RESPONDENTS' RESPONSE TO PETITIONER'S MOTION FOR LEAVE TO SEEK DISCOVERY

Respondents respond as follows to Petitioner PIERRE REGINALD BOULOS' Motion for Leave to Seek Limited and Expedited Discovery [ECF 49].

BACKGROUND

Under INA § 237(a)(4)(C), an alien is deportable from the United States if the Secretary of State has reasonable grounds to believe the alien's presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States. In June 2025, U.S. Secretary of State Marco Rubio determined that Petitioner is a deportable alien under INA § 237(a)(4)(C) (8 U.S.C. 1227(a)(4)(C)). *See* Memorandum for the Secretary of Homeland Security from Secretary of State Marco Rubio ("Rubio Memorandum") [ECF 43-9]. Secretary Rubio further determined that Petitioner has engaged in a campaign of violence, gang support, and trafficking weapons and drugs that has contributed to the destabilization of Haiti. *Id.* Secretary Rubio concluded that allowing Petitioner to remain in the United States undermines U.S. foreign policy interest in stabilizing Haiti and the region, as it condones his continued actions contrary to that objective. *Id.*

On July 17, 2025, HSI Miami and ERO Miami arrested Petitioner and initiated removal proceedings. Petitioner was placed in removal proceedings via the issuance of a Notice to Appear, which charged Petitioner with removability under INA sections 237(a)(4)(C)(i) and 237(a)(1)(a).

Petitioner initiated the instant habeas case on August 22, 2025 [ECF 1]. He filed an amended petition on January 15, 2026 ("Amended Petition") [ECF 43]. The Amended Petition asserts four causes of action:

- COUNT I – Violation of the Non-Detention Act
- COUNT II – Violation of First Amendment Rights
- COUNT III – Violation of Due Process Rights
- COUNT IV – Violation of the Administrative Procedure Act

Id. Petitioner now seeks discovery of the following matters:

1. The attachment referenced in the Rubio Memorandum labeled "Tab 1 – CLASSNET Reporting."

2. All documents and communications reviewed to reach the determination that Petitioner's presence or activities in the United States "would have serious adverse foreign policy consequences for the United States" as described in the Rubio Memorandum, including but not limited to any "Action Memos" issued to Secretary of State Marco Rubio in connection with his Foreign Policy Ground determination against Petitioner, "Referral Letters" issued by the U.S. Department of Homeland Security to the U.S. State Department, and "Reports of Analysis" prepared by the U.S. Department of Homeland Security.

3. All documents and communications supporting the Rubio Memorandum's claim that Petitioner has engaged in "violence, gang support, and trafficking [of] weapons and drugs that have contributed to Haiti's destabilization."

4. Identify all persons who participated in compiling, drafting, preparing, and/or reviewing the materials that the U.S. Secretary of State relied upon to make the determination set forth in the Rubio Memorandum.

See ECF 49-5.

Petitioner's good cause argument is that the underlying record used to justify Secretary Rubio's "erroneous, unsubstantiated claims about Dr. Boulos' activities" is "woefully insufficient." Motion, p. 11. In other words, Petitioner believes that by obtaining the materials that the Department of State considered in preparing the Rubio Memorandum, its internal deliberations, and the identities of those involved in its drafting,[1] he will provide a basis for the Court to wade into this political question, disagree with Secretary Rubio's conclusions, and thus "displac[e] the Executive in its foreign policy making role" and to reverse the Secretary's determination. *Gross v. German Foundation Indus. Initiative*, 456 F.3d 363, 389-90 (3d Cir. 2006). The Court should not take up Petitioner's invitation. "The political question doctrine bars our review of claims that, regardless of how they are styled, call into question the prudence of the political branches in matters of foreign policy or national security constitutionally committed to their discretion." *El-Shifa Pharmaceutical Industries Co. v. United States*, 607 F.3d 836, 842 (D.C. Cir. 2010). As observed by the Supreme Court, "any policy towards aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952).

In short, Petitioner has not met his burden to demonstrate that discovery is proper in this action. His motion for leave to seek discovery should be denied. Should

[1] As a threshold matter, Petitioner's demand for the identities of "all persons who participated in compiling, drafting, preparing, and/or reviewing the materials that the U.S. Secretary of State relied upon" falls well outside the bounds of Rule 26(b)(1), as entirely irrelevant to either party's claim or defense, and is not proportional to the needs of the case.

the Court grant Petitioner's motion, Respondents respectfully reserve their right to timely assert objections to the merits of any permitted discovery.

ARGUMENT

Before the Court can determine whether Petitioner is entitled to discovery, it "must first identify the essential elements of [his] claim." *Bracy v. Gramley*, 520 U.S. 899, 904 (1997) Respondents address each cause of action raised in the Amended Petition in turn.

1. Legal Standard for Permitting Discovery in Habeas Actions

The liberal discovery mechanisms contained in the Federal Rules of Civil Procedure do not automatically apply to habeas actions. "A habeas petitioner . . . is not entitled to discovery as a matter of ordinary course." *Bracy*, 520 U.S. at 904; *see also Harris v. Nelson*, 394 U.S. 286, 295 (1969) (holding that the "broad discovery provisions" of the Federal Rules do not apply in habeas corpus proceedings). Instead, Rule 6(a) of the Rules Governing Section 2254 Cases provides that "[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." Under this "good cause" standard, a district court may grant leave to conduct discovery in habeas corpus proceedings only "'where specific allegations before the court show reason to believe that the petitioner may, if the facts are more fully developed, be able to demonstrate that he is . . . entitled to relief." *Bracy*, 520 U.S. at 908-09 (quoting *Harris*, 394 U.S. at 300). "Thus, good cause for discovery cannot arise from mere speculation." *Arthur v. Allen*, 459 F.3d 1310, 1311 (11th Cir. 2006), *cert. denied*, 549 U.S. 1338 (2007). In other words, Rule 6 does not authorize what is commonly referred to as "fishing expeditions" and it is not enough for a petitioner to speculate that the discovery she seeks might yield information that would support one of her claims or that it would give support to a new claim. *See, e.g., Deputy v. Taylor*, 19 F.3d 1485, 1493 (3d Cir. 1994) (quoting with approval *Munoz v. Keane*, 777 F. Supp. 282, 287 (S.D.N.Y. 1991) ("petitioners are not entitled to go on a fishing expedition through the government's files in hopes of finding some damaging evidence").

The burden rests upon the petitioner to demonstrate that the sought-after information is pertinent and that there is good cause for its production. *Williams v. Beard*, 637 F.3d 195, 209 (3d Cir. 2011). Other courts have held that, to determine whether a petitioner has established "good cause" under Rule 6, "a habeas court must identify the essential elements of the petitioner's substantive claim, evaluate whether specific allegations show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that [she] is entitled to relief, and, if the petitioner has made such allegations, provide the necessary facilities and procedures for an adequate inquiry." *Newton v. Kemna*, 354 F.3d 776, 783 (8th Cir. 2004) (citation modified) (citing *Bracy*, 520 U.S. at 904). If a court authorizes discovery on a habeas claim, "[t]he scope and extent of such discovery is a matter confided to the discretion of the [court]." *Bracy*, 520 U.S. at 904. Requests for discovery also are subject to relevance and proportionality considerations. *Id.* at 908-09; FED. R. CIV. P. 26(b)(1) (matters of discovery must be relevant to a party's claim or defense and proportional to the needs of the case).

2. Count I - Violation of the Non-Detention Act

Petitioner does not argue that the requested discovery is relevant to his first cause of action arising from his "colorable claim to being a United States citizen." Amd. Pet., ¶ 1. The requested information does not pertain to his U.S. citizenship or lack thereof, nor does Petitioner claim that he lacks sufficient documentation to prove or disprove this claim. Discovery is not warranted where "the facts relevant to the limited questions currently facing the court...are not in dispute." *Khalil v. Joyce*, 771 F. Supp. 3d 268, 286 n. 6 (S.D. N.Y. 2025). Therefore, Petitioner's first cause of action does not provide good cause to seek the requested discovery.

3. Count II - Violation of First Amendment Rights

The black letter elements of a claim of retaliation in violation of the First Amendment are (1) that the speech or conduct at issue was protected, (2) that the defendant took an adverse action against the plaintiff, and (3) that there was a causal connection between the protected speech and the adverse action. *Demarest v. Town* *of Underhill*, 2025 U.S. App. LEXIS 796, 2025 WL 88417, at *2 (2d Cir. 2025) (summary order) (quoting *Gonzalez v. Hasty*, 802 F.3d 212, 222 (2d Cir. 2015).

Broadly speaking, aliens enjoy First Amendment rights in this country to the same extent as United States citizens. *See, e.g., Bridges v. Wixon*, 326 U.S. 135, 148, (1945) (holding that a noncitizen who published communist literature was protected by First Amendment); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 n.5 (1953) (noting that the First Amendment does not distinguish "between citizens and resident [noncitizens]"); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 270 (1990) (confirming that resident noncitizens "enjoy certain constitutional rights," including "First Amendment rights"). Thus, the best reading of the relevant First Amendment case law entitles noncitizens to the protection of the Court's post-Cold War development of an "incitement test" requiring "a likelihood of imminent harm" in order to render otherwise lawful political speech subject to adverse government action. *See Brandenburg v. Ohio*, 395 U.S. 444 (1969).

On its face, the Rubio Memorandum forecloses Petitioner's First Amendment claim, along with any concomitant discovery, as the memorandum does not implicate any First Amendment protected activities of Petitioner. Instead, it is premised upon Petitioner's "campaign of violence, gang support and trafficking weapons and drugs that has contributed to Haiti's destabilization." *See* Rubio Memorandum, ECF 43-9 at p. 2. The Supreme Court has, "on many occasions [] recognized that certain kinds of speech are less central to the interests of the First Amendment than others." *Dun & Bradstreet v. Greenmoss Builders*, 472 U.S. 749, 758 n.5 (1985). It has long been the rule, of course, that physical violence and the threat of violence are not constitutionally protected: "The First Amendment does not protect violence." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982); *cf. Harisiades*, 342 U.S. at 591-592 (1952) (advocating violent overthrow of the Government is unprotected speech).

Here, Petitioner has not presented sufficient evidence that either 1) he was targeted because of any specific First Amendment-protected speech, or 2) that there was a causal connection between his claimed protected speech and the issuance of the Rubio Memorandum. Nor would the requested discovery address this nexus. Thus, Petitioner has not demonstrated good cause to seek the requested discovery to support his second cause of action. Petitioner's proposal—to go on a "a fishing expedition through the government's files in hopes of finding some damaging evidence" in the materials that the Department of State considered in preparing the Rubio Memorandum, its internal deliberations, and the identities of those involved in its drafting—does not pass muster. *Deputy*, 19 F.3d at 1493.

4. Count III – Violation of Due Process Rights

Petitioner asserts a variety of bases for his contention that the Respondents violated his due process rights: that the immigration judge did not conduct an appropriate hearing to determine if he is a U.S. citizen; that 8 U.S.C. § 1227(a)(4)(C)(i) is unlawfully vague and/or unconstitutional, and that U.S. Immigration and Customs Enforcement violated its internal procedures for investigating potential citizenship claims. *See* Amd. Pet., ¶¶ 181-192. None of these issues would be addressed by the sought discovery, which seeks information held by the Department of State. Therefore, Petitioner's third cause of action does not provide good cause to seek the requested discovery.

5. Count IV – Violation of the Administrative Procedure Act[2]

"The focal point for judicial review of an administrative agency's action should be the administrative record." *Marllantas, Inc. v. Rodriguez*, 806 F. App'x 864, 866 (11th Cir. 2020) (quoting *Pres. Endangered Areas of Cobb's Hist., Inc. v. U.S. Army Corps of Eng'rs*, 87 F.3d 1242, 1246 (11th Cir. 1996) [hereinafter *PEACH*]). As such, the "task of the reviewing court is to apply the appropriate . . . standard of review . . . to the agency decision based on the record the agency presents to the reviewing

[2] Respondents reiterate their position that Petitioner's APA claim is not properly before the Court, as Petitioner did not pay the required filing fee for this non-habeas claims. *See* ECF 1, $5.00 filing fee receipt no. AFLSDC-18727618. *See King v. Carlton*, No. 21-cv-21634, 2021 U.S. Dist. LEXIS 83778, at *4 (S.D. Fla. Apr. 30, 2021) (*Bloom, J.*) (finding that petitioner could not circumvent filing fee requirements by filing a "joint or hybrid" habeas action); *see also Hernandez-Balacaza v. Smith*, No. 25-cv-177, 2025 U.S. Dist. LEXIS 232534, at *10 (W.D. Ky. Nov. 26, 2025) (noting that the "statutory scheme at least arguably suggests that APA review is unavailable in a district court exercising habeas jurisdiction under 28 U.S.C. § 2241.")

court." *PEACH*, 87 F.3d at 1246 (quoting *Fla. Power & Light Co. v. Lorian*, 470 U.S. 729, 743-44 (1985)).

As a general rule, a district court reviewing an agency's decision pursuant to the APA is limited to the administrative record before that agency at the time of its decision, and parties seeking to reverse an agency decision are not commonly allowed to supplement the administrative record through discovery. *See, e.g., PEACH*, 87 F.3d at 1246. There are exceptions to the general rule. *Id.* at 1246-47 & n. 1 (citing *Animal Defense Council v. Hodel*, 840 F.2d 1432, 1436-37 (9th Cir.1988)). Such exceptions are "narrowly construed," however, and the party seeking discovery has "a heavy burden to show that supplementation is necessary." *United States v. Amtreco, Inc.*, 806 F. Supp. 1004, 1006 (M.D. Ga. 1992) (citing *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415 (1971)). Indeed, "[t]hough certain circumstances may justify the district court going beyond the administrative record, it is not generally empowered to do so." *Alabama-Tombigbee Rivers Coal. v. Kempthorne*, 477 F.3d 1250, 1262 (11th Cir. 2007) (citing *PEACH*, 87 F.3d at 1246). "This 'principle reflects the recognition that further judicial inquiry into executive motivation represents a substantial intrusion into the workings of another branch of Government and should normally be avoided.'" *Marllantas, Inc.*, 806 F. App'x at 867 (quoting *Dep't of Com. v. New York*, 588 U.S. 752, 780-81 (2019)).

The district court may only go beyond the administrative record "where there is initially 'a strong showing of bad faith or improper behavior' by the agency." *Ala.-Tombigbee Rivers Coal.*, 477 F.3d at 1262 (quoting *Citizens to Preserve Overton Park, Inc.*, 401 U.S. at 416; *accord Marllantas*, 806 F. App'x at, 867 (11th Cir. 2020) (finding no error in the district court's decision not to allow discovery to supplement the administrative record produced by USCIS because the plaintiff did not make "a strong showing of bad faith or improper behavior"). Moreover, district courts have granted motions for protective orders prohibiting discovery in APA proceedings. *Int'l Jr. Coll. of Bus. & Tech., Inc. v. Duncan*, 937 F. Supp. 2d 202, 206 (D. P.R. 2012) (holding that plaintiffs' argument that the administrative record did not fully explain the agency's reasoning with regard to the challenged actions did not entitle plaintiffs to engage in fact-finding). This is because "[i]f the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it, the proper course . . . is to remand to the agency for additional investigation or explanation." *Marllantas, Inc.*, 806 F. App'x at 867 (quoting *Fla. Power & Light*, 470 U.S. at 744).

Here, Petitioner's APA claim provides no basis for additional supplementary discovery. Petitioner did not allege any bad faith on behalf of Respondents—much less make a "strong showing" of such. Thus, there is no legal basis for the Court to go beyond the administrative record when reviewing the challenged agency action

CONCLUSION

Petitioner has not met his burden to demonstrate that discovery is proper in this action. His motion for leave to seek discovery should be denied. Should the Court grant Petitioner's motion, Respondents respectfully reserve their right to timely assert objections to the merits of any permitted discovery.

Respectfully submitted,

JASON A. REDING QUIÑONES
UNITED STATES ATTORNEY

By: *John S. Leinicke*
JOHN S. LEINICKE
ASSISTANT UNITED STATES ATTORNEY
Fla. Bar No. 64927
United States Attorney's Office
Southern District of Florida
99 N.E. 4th Street, 3rd Floor
Miami, Florida 33132
Tel: (305) 961-9212
E-mail: john.leinicke@usdoj.gov