

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

A.M.H.,

Petitioner,

v.

Warden, STEWART DETENTION CENTER, et al.,

Respondents.

Case No. 4:26-cv-719-CDL-AGH

PETITIONER'S REPLY IN SUPPORT OF MOTION FOR DISCOVERY

COMES NOW Petitioner A.M.H., through counsel ("Petitioner"), and submits his Reply to Respondents' Opposition to Petitioner's Motion for Discovery, ECF Doc. 16 ("Response to Discovery Motion").

I. Respondents' jurisdiction-based arguments are without merit.

Respondents raise jurisdictional arguments, Response to Discovery Motion at 3, 5-6, addressed by Petitioner in his Reply in Support of Amended Petition, ECF Doc. 13 ("Reply in Support of Petition"). In a nutshell, and as previously explained, *see* Reply in Support of Petition at 7-10, 14-15, Petitioner does not challenge Respondents' determination that he should be removed from the United States. Instead, he challenges their right to sidestep due process requirements that attend removal to a third country, as well as their right to keep him locked up without producing evidence his removal (to any country, including Cuba) is significantly likely to take place in the reasonably foreseeable future. As this very Court concluded last year, "[c]hallenges to [] unlawful detention are not barred by the INA," and, quoting from the *D.V.D.*

litigation, section 1252(g) cannot be used “to immunize unlawful practice from judicial review.”¹ *E.D.Q.C. v. Warden, Stewart Detention Center*, 789 F.Supp.3d 1234, 1240 (M.D. Ga. 2025).

Respondents also contend that *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999), prohibits discovery into revocation of Petitioner’s Order of Supervision (“OSUP”). Response to Discovery Motion at 5. In the Middle District of Georgia, this position has been rejected at least twice within the past twelve months. See *P.N.B. v. Warden, Stewart Detention Center*, Case No. 4:25-cv-515-CDL-CHW, 2026 WL 1671444, *3 (M.D. Ga. Mar. 25, 2026)(“[N]either Section 1252(g) nor Section 1252(a)(2)(B)(ii) bars Petitioner’s challenge to the manner in which ICE effected his OSUP revocation, to the extent that Petitioner asserts the revocation was done without adequate process and in violation of ICE’s own regulations.”), *report and recommendation adopted*, 2026 WL 1670826 (M.D. Ga. June 9, 2026); *T.C.T. v. Warden, Stewart Detention Center*, Case No. 4:25-cv-373-CDL-CHW, 2025 WL 4648417, *2, 4 (M.D. Ga. Dec. 22, 2025)(same), *report and recommendation adopted in part, rejected in part*, 2026 WL 493471 (M.D. Ga. Feb. 23, 2026)(“[T]he Court finds that it lacks subject matter jurisdiction to grant Petitioner habeas corpus relief, *assuming Respondents remedy the alleged defect as they have represented they would like an opportunity to do.*”)(emphasis supplied)(herein, *T.C.T.*). See also *Grigorian v. Bondi*, 824 F.Supp.3d 1243, 1249-50 (S.D. Fla. 2025)(challenge to manner in which ICE revoked OSUP not barred by section 1252(g)).

¹ The *D.V.D.* quote is from Judge Murphy’s 2025 memorandum order preliminarily enjoining the same practice Respondents seek to employ here, to wit, removal to a third country without notice and an opportunity to assert fear of torture. *D.V.D. v. U.S. Dep’t of Homeland Security*, 778 F.Supp.3d 355, 369-70, 394 (D. Mass. 2025). On February 25th of this year, Judge Murphy dissolved the injunction and granted summary judgment for the plaintiffs on their claim that DHS’s policy of failing to provide notice and an opportunity to challenge third country removals is arbitrary and capricious and contrary to law. *D.V.D. v. U.S. Dep’t of Homeland Security*, 821 F.Supp.3d 102 (D. Mass. 2026), *stayed pending appeal*, No. 26-1212 (1st Cir. Mar. 16, 2026).

II. Respondents' no "good cause" argument is without merit.

"Petitioner identifies no concrete factual dispute that could entitle him to habeas relief if developed through discovery," according to Respondents. Response to Discovery Motion at 4. This assertion is based, apparently, on the "transmi[ssion] [of] a travel document request to the Cuban Consul General on September 12, 2023," as well as the "issu[ance] of a new nomination on January 4, 2026." *Id.* Respondents protest that "Petitioner cites no communication from Cuba denying repatriation or permanently refusing him," *id.*, but it is not his burden to do so. It is Respondents'. See *T.C.T.*, 2025 WL 4648417 at *4 (release on OSUP pursuant to 8 C.F.R. § 241.13 means ICE has burden of establishing SLRRFF); *Thuy v. Streeval*, Case No. 1:26-cv-00633-VMC-JEM, 2026 WL 1379587, *3, 5 (N.D. Ga. May 18, 2026)(placing burden on ICE). See also Reply in Support of Petition at 3. And at this point, with Petitioner having surpassed, on July 10th, twelve consecutive months in detention, there is at the very least a factual dispute regarding Petitioner's entitlement to habeas relief. See *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)("[F]or detention to remain reasonable, as the period of prior postremoval [*sic.*] confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink.").²

² For examples of government action sufficient to show a SLRRFF, compare *Thuy*, 2026 WL 1379587 at *5-6 (no SLRRFF where ICE provided no "information about how many requests [for travel documents] are denied, or pending awaiting a response from Vietnam"), with *T.C.T.*, 2025 WL 4648417 at *6 (SLRRFF where ICE officer's declaration detailed concrete steps taken and also explained that "[s]ince February 2025, Vietnam has issued a [travel document] in response to every request submitted by ICE"), and *V.H.N. v. Warden, Stewart Detention Center*, Case No. 4:25-cv-514-CDL-CHW, 2026 WL 1127847, *3 (M.D. Ga. Mar. 4, 2026)(SLRRFF where ICE officer's declaration provided number of Vietnamese nationals removed to Vietnam during fiscal year and also averred "that ICE/ERO ha[d] sent a travel document request form to ERO headquarters and that in 2026 travel documents ha[d] been issued with [*sic.*] 30 days from presenting the request to the government of Vietnam")(internal quotes omitted).

Respondents also continue to misrepresent the record insofar as they claim Petitioner's "refus[al] to comply" was the sole reason they were unable to send him to Mexico. Response to Discovery Motion at 4. *See also* Respondent's Response [to Amended Petition], ECF Doc. 12 at 4 ("ICE/ERO returned Petitioner to Stewart solely because of [his] refusals [to comply]"). Respondents contend their attempts to send Respondent to Mexico "failed only because Petitioner refused to comply with boarding procedures," citing to paragraphs 17-18 of Officer Scott's declaration. Response to Discovery Motion at 4. This is what paragraphs 17-18 of Officer Scott's declaration say:

17. On February 21, 2026, Petitioner refused to sign third country removal notice and indicated that he refused to go to Mexico.
18. On February 25, 2026, Petitioner again refused to exit holding room and stated that he would not go to Mexico.

ECF Doc. 12-1 at 3. If Officer Scott knew that Mexico did not reject Petitioner because of his age and health issues, as Petitioner contends, but only because Petitioner "refused to comply," as Respondents contend, then he presumably would have said so in his declaration. He did not, and there is, accordingly, a factual dispute regarding Petitioner's entitlement to habeas relief. *See Phouk v. Warden, Stewart Detention Center*, 378 F.Supp.3d 1209, 1213 (M.D. Ga. 2019)(finding good cause for discovery where petitioner "ma[de] specific allegations that are both capable of further factual development and fundamental to the merits of his claim for relief"); *Singh v. U.S. Atty. Gen.*, 945 F.3d 1310, 1315 (11th Cir. 2019)("It is well-established that a court may not decide a habeas corpus petition based on affidavits alone when there are factually contested issues.").

Further, even assuming without conceding Petitioner's "refus[al] to comply" is in fact the sole reason he is not today in Mexico, this does not "resolve[] the determinative *Zadvydas* issues." Response to Discovery Motion at 4. Respondents cite *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th

Cir. 2002), for the proposition that “[a] petitioner cannot obstruct his own removal and then use the resulting delay to claim detention is indefinite.” *Id. Akinwale* is inapposite. *See Akinwale*, 287 F.3d at 1052 n.4 (habeas petitioner “interrupted the running of time under *Zadvydas* by moving... for a stay of deportation in his prior appeal”). And Respondents cite no authority for the proposition that the conduct at issue here suspends the removal period under 8 U.S.C. § 1231(a)(1)(C). Refusing to go voluntarily to a country where Petitioner, a 62-year-old man with serious medical issues, has no connections and knows no one is quite different from, say, refusing to complete a passport application. *See Rivero-Tapanes v. Rokosky*, Case No. CV-26-01542-PHX-RM (CDB), 2026 WL 1469826, *4 (D. Ariz. May 26, 2026)(contrasting petitioner’s “refus[al] to affirmatively agree to his removal to a third country to which he has no ties” with “obstructionist conduct” in other cases where removal period was suspended).

III. Discovery is also warranted based on Respondents’ failure to identify specific third country or to respond to allegations regarding OSUP revocation.

Respondents still have not provided evidence addressing, much less refuting, Petitioner’s allegations that revocation of his OSUP violated due process and the *Accardi* doctrine. *See* Verified Amended Petition for Writ of Habeas Corpus, ECF Doc. 10 at ¶¶ 14-20, 66-76. And it remains unclear where exactly Respondents intend to send Petitioner. They claim Rwanda, Response to Discovery Motion at 1, 4, 6, 7, but there is no concrete evidence of this. Officer Scott’s declaration does not identify a specific third country. *See* ECF Doc. 12-1 at ¶ 24 (referring only to an unnamed third country for which Petitioner supposedly meets “the nomination criteria”). Admittedly, the record includes a Notice of Removal to Rwanda, *see* ECF Doc. 13-1, but its existence does not foreclose the possibility that Officer Scott was referring to a different third country in his declaration.

WHEREFORE, for all the foregoing reasons, Petitioner requests that his Motion for Discovery be GRANTED.

Respectfully submitted, this 4th day of August, 2026.

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