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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

United States District Court  
Southern District of Texas  
ENTERED

NOV - 5 1998

Michael N. Milby  
Clerk of Court

ELIZAPHAN NTAKIRUTIMANA,

Petitioner,

v.

JANET RENO, et al.,

Respondents.

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CIVIL ACTION NO. L-98-76

ORDER

Pending before the Court is Petitioner's Motion to Propound Interrogatories (Dkt. #7). Petitioner seeks leave to propound interrogatories "to resolve factual inconsistencies appearing on the face of the documents filed by the Tribunal that are crucial to the credibility of Mr. Mostert's two declarations." Having considered the motion, the response, the entire record and the applicable legal authorities, the Court believes that the motion should be DENIED.

The Court agrees that, in appropriate cases, it may exercise its inherent power to order necessary discovery in extradition and habeas corpus cases. *See Harris v. Nelson*, 394 U.S. 286, 290 (1969) ("[I]n appropriate circumstances, a district court, confronted by a petition for habeas corpus which establishes a prima facie case for relief, may use or authorize the use of suitable discovery procedures, including interrogatories, reasonably fashioned to elicit facts necessary to help the court to 'dispose of the matter as law and justice require.'"); *Natural Gas Pipeline Co. of America v. Energy Gathering, Inc.*, 2 F.3d 1397, 1408 & nn.27 & 29 (5th Cir. 1993) (courts have inherent power to issue discovery orders necessary for determination of matters in extradition and habeas corpus proceedings), *cert. denied, Fox v. Natural Gas Pipeline Co. of America*, 510 U.S. 1073 (1994). However, while a court has the inherent power to

approve of such discovery requests in extradition cases, judges “act within [their] discretion in declining to do so at risk of converting the hearing into a ‘dress rehearsal trial.’” *Gill v. Imundi*, 747 F. Supp. 1028, 1036, 1040 (S.D.N.Y. 1990) (the magistrate granted leave to direct interrogatories to the Indian government’s affiants where the interrogatories were limited to “whether the affiants in fact executed the affidavits and, if so, whether the affidavits were altered in any way after execution,” but denied other requests for discovery). The Court believes that this same principle applies in habeas proceedings concerning extraditions.

In light of the relevant legal principles and the record in this case, the Court does not believe that this habeas action is an appropriate candidate for the proposed discovery order. First, the discovery sought by Petitioner has to do merely with Petitioner’s allegation that Mostert’s first declaration, submitted in both extradition proceedings, has indicia of unreliability. Specifically, Petitioner believes (1) that Mostert may have falsely stated that he signed the declaration on August 12, 1996 and (2) that Mostert may have falsely stated that all of the pages of his original declaration are exactly the same as when he signed the declaration. Petitioner has repeatedly raised these allegations for two years in two separate extradition proceedings. As noted in the Court’s Order certifying extraditability to the Tribunal, Mostert’s supplemental declaration affirms that the original declaration submitted by the Government was complete, unaltered, true, and identical to the declaration he signed on August 12, 1996. The Court fails to see how any discovery will advance the Petitioner’s case since Mostert has already provided answers to the charges made and since the Court has already found the answers sufficient; in other words, the limited discovery allowed in *Gill*, the case cited by Petitioner, is simply unnecessary in this case.



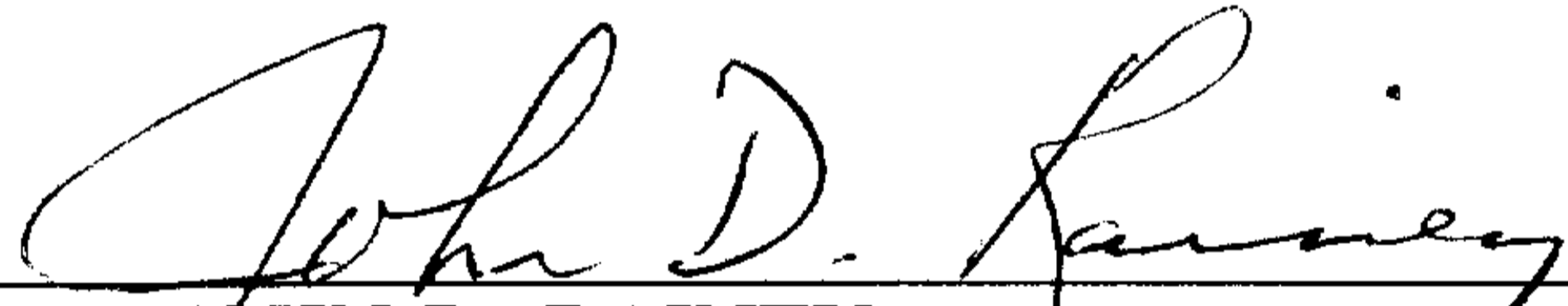
Second, the Court believes that it is inappropriate to conduct discovery in this habeas proceeding since Ntakirutimana has never sought such discovery before. As the Government noted in its response, this is the first time that Ntakirutimana has sought to propound interrogatories concerning the Mostert declaration despite the fact that he repeatedly challenged the declaration in both of the extradition proceedings. Ntakirutimana has provided no explanation for his two-year delay.

For all of the above reasons, the Motion to Propound Interrogatories (Dkt. #7) is DENIED.

So ORDERED.

The clerk shall enter this order and provide a true copy to all parties.

SIGNED this 4<sup>th</sup> day of November, 1998.

  
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JOHN D. RAINEY  
UNITED STATES DISTRICT JUDGE