

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
ESTHER SALAS
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING
COURTHOUSE
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NEWARK, NJ 07101
973-297-4887

June 4, 2020

LETTER ORDER

Re: *Republic of Turkey v. Cicek*
Civil Action No. 19-20107 (ES) (SCM)

Dear counsel:

On November 8, 2019, petitioner Republic of Turkey initiated this action seeking an *ex parte* petition for an order directing discovery from respondent Hamit Cicek pursuant to 28 U.S.C. § 1782. (D.E. No. 1 (“Petition”). On December 10, 2019, Magistrate Judge Mannion issued an order granting the petition (D.E. No. 9 (“Initial Order”)), and this case was terminated on January 10, 2020. On January 21, 2020, counsel for Cicek entered an appearance and filed a motion to vacate the Initial Order or to quash the subpoenas. (D.E. Nos. 10 & 11 (“Motion to Vacate or Quash”). Briefing on the Motion to Vacate or Quash concluded on February 26, 2020. In an order dated March 16, 2020, Judge Mannion requested supplemental briefing from the parties. (D.E. No. 36 (“Briefing Order”). Republic of Turkey supplemented its briefing (D.E. Nos. 37 & 39), but Cicek did not substantively respond and instead appealed the Briefing Order. (D.E. No. 38). After reviewing Republic of Turkey’s responses, Judge Mannion concluded that he had enough information to render a decision and vacated the portion the Briefing Order requiring a supplemental response from Cicek, thereby mooting Cicek’s appeal. (D.E. Nos. 42 & 43). On May 18, 2020, after holding a telephonic oral argument, Judge Mannion issued an opinion and order denying the Motion to Vacate or Quash. (D.E. No. 48 (“Opinion & Order”). The Opinion & Order required Cicek to respond to certain discovery requests within 14 days, and to other discovery requests within 21 days, from the date of issuance. (Opinion & Order at 17). On May 28, 2020, Cicek filed an appeal of the Opinion & Order and requested a stay of the discovery deadlines pending appeal. (D.E. Nos. 49 & 50).¹

Despite this extensive history, and repeated appearances before Judge Mannion, Cicek now challenges for the first time in his appeal Judge Mannion’s jurisdiction to issue opinions and orders in this case. (D.E. No. 49 at 14–22). In particular, Cicek asserts that no order of referral was ever made to grant Judge Mannion jurisdictional authority over the Petition or the Motion to Vacate or Quash, and even if there was a referral, a report and recommendation, rather than an opinion, was

¹ On May 29, 2020, Judge Mannion ordered Republic of Turkey to respond to Cicek’s request for a stay and extended Cicek’s time to respond to the subpoenas to June 5, 2020. (D.E. No. 51).

the appropriate course of action. (*Id.*). Cicek also challenges other substantive portions of Judge Mannion’s Opinion & Order. (*Id.* at 23–33).

Having reviewed the parties’ arguments on this issue,² and after reviewing relevant case law, the Court will grant-in-part Cicek’s appeal and vacate Judge Mannion’s prior orders (D.E. Nos. 9, 36 & 48). The Court is guided by the Third Circuit’s decision in *Equal Employment Opportunity Comm’n v. City of Long Branch*, 866 F.3d 93 (3d Cir. 2017). There, the Third Circuit was faced with an appeal of a district court’s order affirming a Magistrate Judge’s order enforcing a subpoena. *Id.* at 96. Although the EEOC raised two substantive issues on appeal, the Court vacated the district court’s order based on a “procedural defect pertaining to the treatment of the motion to enforce under the Federal Magistrates Act.” *Id.* In the context of the administrative subpoena at issue, the Third Circuit explained that “because a proceeding to enforce an administrative subpoena ‘is over regardless of which way the court rules,’ a motion to enforce an administrative subpoena is a dispositive motion,” *id.* at 100 (quoting *NLRB v. Frazier*, 966 F.2d 812, 817–18 (3d Cir. 1992)), requiring the Magistrate Judge “to submit to a judge of the court proposed findings of fact and recommendations for the disposition.” *Id.* (quoting 28 U.S.C. § 636(b)(1)(B)). As such, the Third Circuit held that the district court erred by considering the issue as non-dispositive and applying the clearly erroneous or contrary to law standard, rather than conducting a *de novo* review. *Id.* at 100–101.

Although the procedural posture of this case is different because the Undersigned has not yet conducted a review of Magistrate Judge Mannion’s Opinion & Order, the Court heeds the Circuit’s guidance. Thus, out of an abundance of caution, the Court will vacate Judge Mannion’s prior orders (D.E. Nos. 9, 36 & 48), and the Undersigned will “consider the motion to enforce in the first instance.” *Equal Employment Opportunity Comm’n*, 866 F.3d at 101; *see also In re Application for Discovery for Use in Foreign Proceeding Pursuant to 28 U.S.C. § 1782*, No. 17-4269, 2019 WL 168828, at *4 (D.N.J. Jan. 10, 2019) (acknowledging a split among courts as to whether decisions on discovery applications under § 1782 are dispositive or non-dispositive, but applying a *de novo* standard of review out of an abundance of caution).

However, considering the initial motion to enforce was brought *ex parte* and Cicek has since appeared and challenged the propriety of that motion and the underlying subpoena, a renewed motion and streamlined briefing is necessary to aid the Undersigned’s review. In particular, the Court notes that the Petition did not address certain issues raised by Cicek in the Motion to Vacate or Quash that must now be addressed in any new petition—namely, the relevance of pending criminal charges against Cicek in the Republic of Turkey. (*See generally* Motion to Vacate or Quash). On the other hand, Cicek’s Motion to Vacate or Quash and his subsequent appeal raise issues that are mooted by this Order and need not be rehashed—namely, whether the Initial Order was procured by misrepresentations or fraud, whether the Initial Order deprived Cicek of due process, and the propriety of Magistrate Jurisdiction over the motion. (*See id.*; D.E. No. 49 at 14–22). In sum, the renewed petition and any briefs in support of or in opposition to the petition shall focus on whether this Court can grant relief to Republic of Turkey pursuant to 28 U.S.C. § 1782.

² The Court notes that Republic of Turkey responded briefly to the jurisdictional arguments in its brief opposing the request for a stay, but has not yet substantively responded to Cicek’s appeal. (*See* D.E. No. 52 at 4 n.3).

Accordingly, IT IS on this 4th day of June 2020,

ORDERED that Cicek's appeal of the Opinion & Order is GRANTED-IN-PART and Judge Mannion's orders (D.E. Nos. 9, 36 & 48) are VACATED; the remainder of the appeal is DENIED as moot; and it is further

ORDERED that Republic of Turkey shall file a new petition pursuant to 28 U.S.C. § 1782 on or before **June 9, 2020**; Cicek shall file his opposition to any new petition on or before **June 15, 2020**; and any reply brief is due on or before **June 17, 2020**; and it is further

ORDERED that the Clerk of Court shall TERMINATE docket entry number 49 and shall make a new and separate entry marking this matter RE-OPENED.

s/Esther Salas _____
Esther Salas, U.S.D.J.