UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:25-cv-23665-JB

PEDRO BELLO-RUBIO, *et al.*,

Plaintiffs,

v.

KRISTI NOEM, in her official capacity as the United States Secretary of the Department Homeland Security (DHS), *et al.*,

Defendants.
_____/

PLAINTIFFS' REPLY IN SUPPORT OF THEIR OPPOSED MOTION FOR ORDER TO SHOW CAUSE, AND FOR ENLARGED BRIEFING PAGE LIMITS

The plaintiffs, by and through the undersigned, submit this reply memorandum in support of their Motion for Order to Show Cause, and for Enlarged Briefing Page Limits (D.E. 25).

Argument

In response to the plaintiffs' motion, the defendants argue that "an order to show cause is unnecessary because Defendants already have dispositive deadlines in the immediate future: their deadline to file a responsive pleading to the complaint is November 10, 2025, and their deadline to file an opposition to the motion for class certification is November 27, 2025." (D.E. 36 at 2 (citations omitted)). However, an order to show cause would relieve the defendants of their need to file a responsive pleading to the complaint by November 10, 2025, because a return filed under 28 U. S. C. § 2243 functions as an omnibus substitute for responsive pleadings and motions. See *Browder v. Dir., Dep't of Corr. of Illinois*, 434 U.S. 257, 269 n. 14 (1978) ("Respondent's conception—which lies at the heart of his view that the lack of an evidentiary hearing

rendered the order of October 21 nonfinal—seems to have been that a Rule 12(b)(6) motion is an appropriate motion in a habeas corpus proceeding, and that upon denial of such a motion, the case should proceed through answer, discovery, and trial. This view is erroneous.") (citation omitted).

Thus, not only would there not be any duplicated efforts, but an order to show cause as requested by the plaintiffs would in effect give the defendants an extension of their response deadline, while simplifying the overall management of the case.

The defendants also point out that Counts II and III of the amended complaint (D.E. 22) are not habeas causes of action, and that they have a right to file a motion to dismiss under Federal Rule of Civil Procedure 12(b). (D.E. 36 at 1–2.) However, Rule 81(a)(4) provides:

> *Special Writs*. These rules apply to proceedings for habeas corpus and for quo warranto to the extent that the practice in those proceedings:
>
> (A) is **not specified in a federal statute**, the Rules Governing Section 2254 Cases, or the Rules Governing Section 2255 Cases; and
>
> (B) has previously conformed to the practice in civil actions.

Fed. R. Civ. P. 81(a)(4) (emphasis added); accord *U. S. ex rel. Goldsby* v. *Harpole*, 249 F. 2d 417, 421 n. 3 (CA5 1957) ("The Federal Rules of Civil Procedure have no application, other than by analogy, to habeas corpus proceedings unless by express statutory requirement.") (precedential under *Bonner* v. *City of Prichard, Ala.*, 661 F. 2d 1206, 1207 (CA11 1981)) (citations omitted). With regard to federal statutes, 28 U. S. C. § 2243 also provides that "[t]he court shall summarily hear and determine the facts, and **dispose of the matter as law and justice require**." (Emphasis added.)

"Federal Courts, in their habeas role, have the power and duty to fashion appropriate relief 'as law and justice require.' " *Byrd* v. *Smith*, 407 F. 2d 363, 366 n. 8 (CA5 1969) (citing 28

U.S.C.A. § 2243; and *Peyton* v. *Rowe*, 391 U.S. 54 (1968)) (precedential under *Bonner*, 661 F. 2d, at 1207). "[T]o ascertain its meaning and the appropriate use of the writ in the federal courts, recourse must be had to the common law * * * and to the decisions of this Court interpreting and applying the common-law principles * * *." *Peyton*, 391 U. S., at 59 (citation omitted) (punctuation in original). "The injunction to hear the case summarily, and thereupon 'to dispose of the party as law and justice require,' does not deprive the court of discretion as to the time and mode in which it will exert the powers conferred upon it." *Ex parte Royall*, 117 U. S. 241, 251 (1886).

As previously noted in the plaintiffs' motion, "[t]he second and third counts are in aid of the principal habeas claim under Count I." (D.E. 25 at 3.) Though those causes of action under the APA (Counts II and III) can stand independently of the habeas cause of action under Count I, all three counts seek to remedy the same ultimate problem — that the plaintiffs and the proposed class are being treated as if they have not been paroled under 8 U. S. C. § 1182(d)(5)(A) even though that is the only lawful explanation for their current physical liberty in the United States.

The Court has the discretion and the authority to manage this case as the plaintiffs have requested, and the plaintiffs respectfully submit that doing so would be in accordance with "as law and justice require." 28 U. S. C. § 2243.

Conclusion

The Court should grant the plaintiffs' motion (D.E. 25), and issue an order to show cause requiring the defendants to file a return to demonstrate the "true cause of the [plaintiffs'] detention," 28 U. S. C. § 2243, within ninety days of the Court's order, and allowing the plaintiffs to file a traverse within thirty days after the defendants' submission of their return, with each party

being allowed to submit up to 30 pages for their respective briefs.

Respectfully submitted,

Dated: October 28, 2025

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