UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:25-cv-24981-DSL

GERSON OCAMPO FERNANDEZ,

Petitioner,

v.

GARRETT RIPA,
Miami Field Office Director,
U.S. Immigration and Customs Enforcement, *et al.*

Respondents.
_____/

PETITIONER'S MOTION FOR ORDER TO SHOW CAUSE AND EXPEDITED CONSIDERATION

The petitioner, Gerson Ocampo Fernandez, remains in civil immigration detention after Respondents erroneously invoked 8 U.S.C. 1225(b)(2) to apply mandatory detention to him. [ECF No. 4] at ¶ 2. As such, the petitioner, by and through the undersigned, moves the Court to issue an ex parte[1] order to show cause:

(1) requiring the respondents to file a return to demonstrate the "true cause of the [petitioner's] detention," 28 U. S. C. § 2243, "within three days," *id.*, of service on an expedited basis,

[1] The habeas show cause procedure is designed to function ex parte. See Order to Show Cause, *Campbell v. Wolf*, No. 20-CV-20768-WILLIAMS, 2020 WL 2109933, at *1 (S.D. Fla. Feb. 26, 2020) ("Counsel for Respondent shall **immediately** notify the Court upon receipt of this Order of the name of the Assistant United States Attorney to whom the case is assigned.") (emphasis omitted); Limited Order to Show Cause (D.E. 29), *Robinson* v. *State of Fla.*, 1:18-cv-23821-FAM (S.D. Fla. Aug. 20, 2019) (ordering, *inter alia*, respondent to give notice of "the name and address of the attorney within the Office of the Attorney General to whom the case has been assigned") (respondent's appearance filed on Aug. 27, 2019 (D.E. 31)); *Bundy* v. *Wainwright*, 808 F. 2d 1410, 1415 (CA11 1987) ("If the writ is neither granted nor the petition dismissed for facial insufficiency, the court must issue a show cause order.").

and allowing the petitioner to file a traverse within the same period of time;

(2) requiring the respondents to produce a copy of the full record of his arrest, detention and removal proceedings, and all other records bearing upon the "true cause of the [petitioner's] detention," 28 U. S. C. § 2243, in support of their return; and

(3) order that the respondents produce the petitioner's body for the Court to take custody over the petitioner while it decides his case.[2]

Argument

I. Sitting in habeas, the Court may proceed via a summary show cause procedure notwithstanding the Rules of Civil Procedure.

The Federal Rules of Civil Procedure expressly contemplate that they only "apply to proceedings for habeas corpus . . . to the extent that the practice in those proceedings" "is not specified in a federal statute." Fed. R. Civ. P. 81(a)(4)(A); *U. S. ex rel. Goldsby* v. *Harpole*, 249 F. 2d 417, 421 (CA5 1957) ("The Federal Rules of Civil Procedure have no application, other than by analogy, to habeas corpus proceedings unless by express statutory requirement.") (citations omitted) (precedential under *Bonner* v. *City of Prichard, Ala.*, 661 F. 2d 1206, 1207 (CA11 1981)). The practice in § 2241 habeas proceedings is governed by the provisions of chapter 153 of title 28 of

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[2] See Order (D.E. 11), *Fernandez-Espinsosa* v. *Field Ofc. Dir.*, 0:21-cv-61229-WPD (S.D. Fla. July 7, 2021) ("The Government shall secure whatever writs or orders necessary to ensure the Petitioner's presence at the hearing.") (emphasis omitted); see also 28 U. S. C. § 2243 ("Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained."); *United States* v. *Wong*, 108 F. 376, 376 (CA5 1901) ("On the same day, Hon. Aleck Boarman, judge, sitting as United States circuit judge for the Western district of Texas, at El Paso, issued a writ of habeas corpus to the marshal, commanding that he produce the body of the petitioner before him in open court on the following day, and show cause for such custody.") (immigration case); *Wales* v. *Whitney*, 114 U. S. 564, 574 (1885) ("All these provisions contemplate a proceeding against some person who has the immediate custody of the party detained, with the power to produce the body of such party before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary.")

the U. S. Code, and by federal case law.

"In a habeas corpus proceeding the court sits as a court of law to determine 'in a summary way' whether the petitioner is unlawfully restrained of his liberty." *Overholser* v. *Treibly*, 147 F. 2d 705, 708 (CADC 1945) (footnotes and citations omitted); accord *Walker* v. *Johnston*, 312 U. S. 275, 283–84 (1941) ("The court or judge 'shall proceed in a summary way to determine the facts of the case, by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require.' ") (citation omitted). Given this summary nature, 28 U. S. C. § 1657(a) provides that "court[s] shall expedite the consideration of any action brought under chapter 153 . . . of this title."

The petitioner is seeking a general writ of habeas corpus under 28 U. S. C. § 2241, as opposed to one filed under § 2254, or § 2255. As per § 2243, when a court "entertain[s] an application for a writ of habeas corpus," it "shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted."[3] "The person to whom the writ or order is directed shall make a return certifying the true cause of the detention." § 2243.

"The writ, or order to show cause . . . shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed." § 2243. "Granted that dispatch is the keynote in all phases of habeas corpus and that the statutory limitation of time is clearly directed to that end," it is still true that the "court possesse[s] th[e] inherent power" to "gran[t] respondent additional time." *Wallace* v. *Heinze*, 351 F. 2d 39, 40 (CA9 1965); see *e.g.*, *Frick* v. *Quinlin*, 631 F. 2d 37, 40 (CA5 1980) (holding that the "district court was free to either consider or disregard the response" of the respondent where the "government did not respond until thirty-

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[3] "[U]nless it appears from the application that the applicant or person detained is not entitled thereto." § 2243.

five days had passed" after "the magistrate ordered the United States to show cause within thirty days why the writ should not be granted") (footnote and citations omitted).

In response, a petitioner may "traverse[]" "[t]he allegation of a return to the writ of habeas corpus or of an answer to an order to show cause," § 2248, and may "deny any of the facts set forth in the return or allege any other material facts" and file "suggestions made against" the return, § 2243. Once fully briefed, a "convenient" "practice has long been followed" where "the petition and traverse are treated, as [the Supreme Court] think[s] they should be, as together constituting the application for the writ, and the return to the rule as setting up the facts thought to warrant its denial." *Walker*, 312 U. S, at 284. "[O]n the facts admitted, it may appear that, as matter of law, the prisoner is entitled to the writ and to a discharge." *Id.*; accord *Tijerina* v. *Thornburgh*, 884 F. 2d 861, 866 (CA5 1989) ("Where the petitioner raises only questions of law, or questions regarding the legal implications of undisputed facts, a hearing becomes duplicative and unnecessary.")

But, "if the petition, the return, and the traverse raise substantial issues of fact it is the petitioner's right to have those issues heard and determined in the manner the statute prescribes." *Walker*, 312 U. S., at 286; see also *Stewart* v. *Overholser*, 186 F. 2d 339, 342 (CADC 1950) ("[T]he denial by an answer or return of factual allegations set forth in a petition for the writ would not require a traverse to raise the issue."); *Walton* v. *Hill*, 652 F. Supp. 2d 1148, 1171 (D. Or. 2009) (same); *Whitehead* v. *Richardson*, 580 F. Supp. 44, 46 n. 3 (N.D. Ind. 1984) (same).

In such cases, "documentary evidence" "shall be admissible in evidence." 28 U. S. C. § 2247. "[E]vidence may be taken orally or by deposition, or, in the discretion of the judge, by affidavit." § 2246. "If affidavits are admitted any party shall have the right to propound written interrogatories to the affiants, or to file answering affidavits." *Id.* Further, "the power of

inquiry on federal habeas corpus is plenary." *Harris* v. *Nelson*, 394 U. S. 286, 292 (1969) (punctuation and citation omitted).

But "the Federal Rules' discovery rules do not apply completely and automatically" to habeas proceedings, as those rules are "ill-suited to the special problems and character of such proceedings" because "their literal application would be to invoke a procedure which is circuitous, burdensome, and time consuming." *Id.*, at 296–98. For example, with regard to "Rule 26(b)," its "broad-ranging preliminary inquiry is neither necessary nor appropriate in the context of a habeas corpus proceeding." *Id.*, at 297.

Rather, "a district court may, in an appropriate case, arrange for procedures which will allow development, for purposes of the hearing, of the facts relevant to disposition of a habeas corpus petition." *Id.*, at 298. "[I]f the court concludes that the petitioner is entitled to an evidentiary hearing," "it shall order one to be held promptly," using the statutes' "[f]lexible provision . . . for taking evidence," and may do so by "fashion[ing] appropriate modes of procedure, by analogy to existing rules or otherwise in conformity with judicial usage." *Id.*, at 299; *id.*, at 300 ("[I]n exercising this power, the court may utilize familiar procedures, as appropriate, whether these are found in the civil or criminal rules or elsewhere in the 'usages and principles of law.' ") (footnote omitted). Thus, on a case-by-case basis "where specific allegations before the court show reason," the "courts in the exercise of their discretion" may "require discovery when essential to render a habeas corpus proceeding effective." *Id.*, at 300 & 300 n. 7.

II. The Court should order the respondent to show cause within three days and to produce documents showing the true cause of the petitioner's continued detention, with leave for the petitioner to file a traverse within an equal time period.

To begin with, the petitioner moves the Court to treat his amended petition (ECF No. 4) as his opening brief for summary disposition of his application for a writ of habeas corpus. *See*

Walker, 312 U. S., at 284. In his amended petition, the petitioner explains how he is being held pursuant to the erroneous interpretation of the immigration statutes. [ECF No. 4.] The petitioner argues that Respondents have no authority to arrest and detain Petitioner pursuant to the detention provisions of 8 USC §1225(b)(2)(A).

Based upon the above, the petitioner asks the Court grant him a writ of habeas corpus ordering that he be immediately released from the respondent's custody or granted an individualized bond hearing under 1226(a). As the petitioner's claims are already set forth in his habeas petition, and in light of the statutory requirement for expedited treatment of habeas petitions, 28 U. S. C. § 1657(a), the petitioner moves the Court to order the respondent to show cause via the submission of a return within three days, see 28 U. S. C. § 2243, of the Court's order. And, the petitioner in turn moves the Court to grant him leave to file a traverse to the respondents' return within a time equal to the time given to the respondents to file their return.

With respect to the respondent's need to show cause why the petitioner should not be released, and to show "the true cause of the [petitioner's] detention," 28 U. S. C. § 2243, the petitioner moves the Court to order the production of evidence. Specifically, this includes the full record of any removal proceedings instituted against him and all other records bearing upon the "true cause of the [petitioner's] detention," 28 U. S. C. § 2243.

III. Petitioner requests oral argument and an opportunity to supplement the record

Following briefing, the petitioner requests a hearing on the matter. In aid of that hearing and of the Court's ability to order swift and effective relief, the petitioner requests that the Court order that the respondent produce the petitioner's body for the Court to take custody over the petitioner while it decides his case.

Last, the petitioner preserves his right to propound interrogatories under 28 U. S. C. § 2246,

or to request any other discovery by motion that would help "to render [this] habeas corpus proceeding effective," *Harris*, 394 U. S., at 300, 300 n. 7.

Dated: November 3, 2025

s/ Felix A. Montanez
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Certificate of Conferral

This amended habeas petition was filed today, and the court clerk last week notified the United States Attorney's Office of this case through the usafls-immigration@usdoj.gov email when the initial petition was filed, but no Assistant U.S. attorney has yet entered an appearance. Petitioner's counsel has corresponded with Assistant U.S. Attorney Ron Davidson by email last week and conveyed that he intended to file a motion for expedited consideration, but Petitioner's counsel has not conferred with opposing counsel specifically about his position on this motion.

However, initial show cause proceedings in habeas petitions are designed to operate in an ex parte fashion,[4] and per the ECF notices in this case, the government is already receiving notice by email of this case at usafls-immigration@usdoj.gov.

s/ Felix A. Montanez
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[4] See, *supra*, n. 1.