UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 0:25-62244-CIV-SINGHAL

LAZARO RAUL ROJAS-CHAO,

Petitioner,

v.

FIELD OFFICE DIRECTOR,
Miami Field Office,
U.S. Immigration and Customs Enforcement,

Respondent.
_____/

PETITIONER'S MOTION FOR ORDER TO SHOW CAUSE,
AND FOR PRODUCTION OF EVIDENCE AND THE PETITIONER'S BODY

The petitioner, Lazaro Raul Rojas-Chao, is detained in unlawful civil immigration detention as pleaded in his First Amended Verified Petition for Writ of Habeas Corpus (D.E. 5). As such, the petitioner, by and through the undersigned, moves the Court to issue an ex parte[1] order to show cause:

(1) directing the Clerk to serve a copy of the amended habeas petition, and its appendix of exhibits (D.E. 5 & 5-1) upon the U. S. Attorney's Office;[2]

---

[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.").

[2] See Order (D.E. 9), *Sanchez* v. *Meade*, 0:21-cv-60290-RAR (S.D. Fla. Feb. 9, 2021) ("The Clerk is directed to serve the petitioner's Verified Petition for Writ of Habeas Corpus [ECF No. 1]

(2) 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, and allowing the petitioner to file a traverse within the same period of time subject to a 20-page briefing limitation;

(3) requiring the respondents to produce a copy of the full Post Order Custody Review record contemplated by 8 CFR Part 241, along with copies of all the relevant repatriation agreements, to be handled with appropriate sensitivity, for all countries to which the respondent asserts that the petitioner is significantly likely to be removed to in the reasonably foreseeable future; and

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

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

---

and Appendix [ECF No. 1-1], along with a copy of this Order, upon the Civil Division of the United States Attorney's Office for the Southern District of Florida.").

[3] 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.").

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 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."[4] "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

---

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

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-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.

1. The petitioner moves the Court to treat his amended petition (D.E. 5) 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 petition, the petitioner pleads for causes of action asserting that he is entitled to immediate release from the respondent's custody because: (1) the revocation of his Order of Supervision was not for a permissible basis under 8 CFR § 241.13(i) (D.E. 5 at 13–14); (2) the revocation of his Order of Supervision was not done in accordance with the mandatory procedures of either 8 CFR § 241.13(i) or § 241.4(*l*) (D.E. 5 at 14–16); (3) the petitioner was detained for reasons that are ultra vires of 8 U. S. C. § 1231(a)(6) (D.E. 5 at 16–17); and (4) the respondents are trying to remove the petitioner to third countries without providing for screening of fear-based claims of persecution or torture, including chain refoulement to Cuba (D.E. 5 at 17–21).

As the petitioner's claims are already set forth in detail, 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 direct the Clerk to serve the habeas petition and its exhibits upon the U. S. Attorney's Office,[5] and 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 subject to a 20-page briefing limitation.

---

[5] See, *supra*, n. 2. And although the petitioner's counsel will prepare to mail out service of process pursuant to Fed. R. Civil P. 4(i), service by the Clerk would still serve to advance the matter in the expedited manner required by 28 U. S. C. § 1657(a).

2. 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 Post Order Custody Review record contemplated by 8 CFR Part 241, along with copies of all the relevant repatriation agreements, to be handled with appropriate sensitivity, for all countries to which the respondent asserts that the petitioner is significantly likely to be removed to in the reasonably foreseeable future.

The government is required to conduct periodic custody reviews under 8 CFR §241.4, and periodic special review procedures under §241.13. Under §241.4, the respondent is required to maintain a record, accept evidence, provide written notices and other documents in connection with custody reviews, and produce written decisions. §§ 241.4(c)(1), (c)(3), (d), (d)(2), (h)(1), (h)(2), (h)(4), (i)(2), (i)(5), (i)(6) (k)(1)(i), (k)(2)(i), (k)(2)(ii), (k)(3). Further, where the agency conducts an interview as part of the custody review process, there is a record made there as well, with an opportunity for detainees to be represented by counsel and submit evidence. §§ 241.4(i)(3)(i), (ii). With regard to revoking an Order of Supervision, these regulations contemplate a notice of the "reasons for revocation," and interviews with the "opportunity to respond." §§ 241.4(*l*)(1) & (3).

Thus, the petitioner moves the Court to order the respondent to produce a full and complete copy of the record and related documents relating to any and all of his prior custody review proceedings conducted under § 241.4 in the past, and any and all revocation records conducted under § 241.4(*l*) as part of the respondent's return. This includes the record and related documents regarding the agency's efforts to secure travel documents under § 241.4(g).

Further, under § 241.13, the respondent is required to produce a record, accept written

requests for review and supporting evidence, produce acknowledgments of receipts and explanations of the procedures used, permit the detainee an opportunity to rebut the agency's evidence, take all facts into consideration, and issue written decisions based on the record. §§ 241.13(d)(1), (e)(1), (e)(4), (f), (g). Interviews may be conducted in connection with the special review proceedings as well. § 241.13(e)(5). Additionally, the review process may involve "forward[ing] a copy of the alien's release request to the Department of State for information and assistance." § 241.13(e)(3). If the agency "bases its decision, in whole or in part, on information provided by the Department of State, that information shall be made part of the record." § 241.13(e)(3). As for revocation of release on supervision, this regulation also contemplates interview and a record. § 241.13(i)(3).

Thus, the petitioner moves the Court to order the respondent to produce a full and complete copy of the record and related documents relating to any and all of his prior custody review proceedings conducted under § 241.13 in the past, and any and all revocation records conducted under § 241.13(i) as part of the respondent's return, including any Department of State information provided in the course of those proceedings.

Additionally, in connection with the respondent's required efforts to secure travel documents, the petitioner requests that the Court order the respondent to produce the relevant "repatriation agreements," to be "handled with appropriate sensitivity,"[6] in the course of the Court's "effort to determine the likelihood of repatriation." *Zadvydas* v. *Davis*, 533 U. S. 678, 696 (2001).

Last, the petitioner requests further production of all other records bearing upon the "true cause of [his] detention." 28 U. S. C. § 2243.

---

[6] For example, the fact that immigration habeas cases are subject to restricted dockets in accordance with Fed. R. Civ. P. 5.2(c), that fact serves the goal of handling the repatriation agreements with appropriate sensitivity.

3. 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. See, *supra*, n. 3.

4. 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 7, 2025

s/ Mark A. Prada
Fla. Bar No. 91997
Anthony Richard Dominguez
Fla. Bar No. 1002234
Maitte Barrientos
Fla. Bar No. 1010180
Prada Dominguez, PLLC
12940 SW 128 Street, Suite 203
Miami, FL 33186
o. 786.703.2061
c. 786.238.2222
mprada@pradadominguez.com
adominguez@pradadominguez.com
maitte@pradadominguez.com

Erica L. Perdomo
Florida Bar No. 105466
Andrew Rossman
New York State Bar No. 2561751
(*applicatoin for pro hac vice forth-coming*)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
2601 South Bayshore Drive, Suite 1550
Miami, Florida 33133
Tel.: 305-402-4880
ericaperdomo@quinnemanuel.com
andrewrossman@quinnemanuel.com

Counsel for Petitioner

Certificate of Conferral

This habeas petition was filed earlier today, and followed by an amendment today as well. Service of process is pending in that the undersigned will drop off certified mail packages for the U. S. Attorney's Office and the other entities required under Fed. R. Civ. P. 4(i) in his building's USPS mail drop box after the submission of this motion. Thus, the undersigned has not had an opportunity to know who the government will assign to this case, and thus has not been able to confer with opposing counsel about this motion.

However, initial show cause proceedings in habeas petitions are designed to operate in an ex parte fashion,[7] 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/ Mark Andrew Prada
Fla. Bar No. 91997

[7] See, *supra*, n. 1.