


IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ZU PING CHEN)
Reg NO. )
)
Petitioners,)
)
v.) Civil Action No.: 3:25-cv-00970-BL
)
MELISSA B. HARPER Field Director)
New Orleans Field Office, *et al*)
)
Respondents.)

RESPONDENTS' RESPONSE TO MOTION
REQUESTING ORDER TO SHOW CAUSE

Comes now the Respondents, by and through Kevin P. Davidson, Acting United States Attorney for the Middle District of Alabama, and hereby submit this opposition to the Petitioner's *Motion for an Order to Show Cause*. (the "Motion" Doc. 30). The Court should not issue the writ or grant any relief under the Motion until Mr. Chen responds to the Court's show cause order (Doc. 27) or files a motion for leave to amend the petition in this action pursuant to Federal Rule of Civil Procedure 15(a)(2). The Court should not grant expedited relief in an action that may soon be dismissed.

In the alternative, if the Motion is granted, the United States respectfully requests more than three days to provide the requested materials and information. To the extent there is an emergency, it was caused by Mr. Chen's decision to file three cases seeking functionally-identical relief in two Alabama federal district

courts. Further, the United States has pressing litigation deadlines in other civil matters pending in this district including other habeas matters in prisoner litigation. Being required to respond to Mr. Chen in three days would hamper the United States' ability to obtain complete and accurate information regarding his detention.

FACTS

Mr. Chen filed a Petition for Writ of Habeas Corpus in this district on December 9, 2025. *See Chen v. Harper*, 3:25-cv-00970-BL-JTA (“Chen I”) Doc. 1. Mr. Chen simultaneously filed a motion for preliminary injunctive relief. Doc. 5. The Court denied the motion for injunctive relief on January 21, 2026. Doc. 26. The Court later ordered Mr. Chen to show cause why the Petition should not be dismissed. Doc. 27. Mr. Chen has not yet responded to this motion because the deadline is March 2, 2026. *See id.*

On February 24, 2026, Mr. Chen emailed the Court to let it know that Mr. Chen had been detained. In the email, Mr. Chen alerted the Court of a forthcoming TRO. Rather than seek relief in this action, Mr. Chen filed a new action in this district. *See Chen v. Bullock*, 2:26-cv-125-ECM (“Chen II”). When it was learned that Chen was being detained in Pickens County, he filed a third action, this time in the Northern District of Alabama. *See Chen v. Powell*, 7:26-cv-320-LCB (Chen III). The Petitions in Chen II and Chen III are substantively identical.

Judge Marks denied the motion for a TRO and ordered Chen II to be dismissed and the petition from that matter filed in this action as an Amended Petition. Chen II Docs. 5–6. Chen voluntarily dismissed Chen III. Chen III Doc. 2.

ARGUMENT

I. **THE COURT SHOULD NOT GRANT THE MOTION UNTIL IT DECIDES WHETHER THE CASE SHOULD BE DISMISSED OR WHETHER THE PETITION MAY BE AMENDED.**

The Court should deny the Motion and not issue a show cause to the United States before it answers major pending procedural questions. Under the statutory system, a court should screen habeas petitions to determine if there is sufficient merit to require a response. *See* 28 U.S.C. § 2243 (requiring the Court to screen habeas petitions before requiring the respondent to make an unnecessary answer); *see also Bundy v. Wainwright*, 808 F.2d 1410, 1414-15 (11th Cir. 1987); *Bey v. Gordon*, No. CV 20-00385-KD-B, 2020 WL 7775447, at *3 (S.D. Ala. Dec. 2, 2020). The Court should not make this determination until it rules (1) whether the action should be dismissed pursuant to its earlier show cause order or (2) whether Mr. Chen should be allowed to amend his petition. Until these issues are decided, the relief requested in the Motion is premature.

Mr. Chen has not yet responded to the Court's order to show cause why this matter should not be dismissed. Doc. 27. No writ should issue before the Court determines whether the action should be dismissed. If the Court dismisses the case, the Motion would be as moot.

Further, Mr. Chen has not filed a motion to amend his petition pursuant to Federal Rule of Civil Procedure 15(a)(2). Thus, it is unclear whether the

amendment should be allowed and which petition is operative in this matter. The United States should not be required to respond to the merits of this case or produce discovery until after Mr. Chen seeks and obtains leave to amend. Denying the Motion until after the Court rules on its show cause order and any motion to amend the petition would conserve the parties and judicial resources. Thus, denying the Motion promotes the “just, speedy, and inexpensive determination of this action.” Fed. R. Civ. P. 1.

II. ALTERNATIVELY, THE COURT, FOR GOOD CAUSE SHOWN, SHOULD GRANT THE UNITED STATES ADDITIONAL TIME TO RESPOND TO ANY SHOW CAUSE ORDER.

But, if the Court grants the Motion, good cause exists to allow the Court more than three days to respond to the issuance of a writ. If the Court issues a writ, “it shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.” 28 U.S.C. § 2243. Since this statute was enacted in 1948, the time requirements have been superseded by the 1976 Rules Governing Section 2254 Cases in United States District Courts (the “2254 Habeas Rules”). *Castro v. Noem*, No. 1:25-CV-01129 KWR-LF, 2025 WL 3226973, at *1 (D.N.M. Nov. 19, 2025) (citing Pub.L. 94–426, § 1, 90 Stat. 1334 (1976)). These rules apply both to habeas petitions filed under § 2254 and § 2241. *See Castro*, 2025 WL 3226973 at *2. Specifically, “Habeas Rule 4 grants a district judge discretion to set a time for respondents to answer or otherwise respond to the habeas petition.” *Id.* Federal courts have routinely held that Habeas Rule 4 has loosened the three day requirement in § 2243. *Bradin v. Thomas*, 823 F. App’x 648, 656-57 (10th Cir. Aug. 13, 2020) (unpublished) (as to § 2241 petition, finding no abuse of discretion in the

district court's ruling that "28 U.S.C. § 2243's time limit for filing an answer is subordinate to Habeas Rule 4, which contains no fixed time requirement but instead gives district courts considerable discretion in setting deadlines for responses to habeas petitions."); *Bleitner v. Welborn*, 15 F.3d 652, 653–54 (7th Cir. 1994) (noting that Rule 4, which has force of superseding statute, loosened up deadline for responses and has the force of a superseding statute); *Clutchette v. Rushen*, 770 F.2d 1469, 1474 (9th Cir. 1985) (Habeas Rule 4 supersedes § 2243's timeline requirement); *Bramson v. Winn*, 136 F. App'x 380, 382 (1st Cir. 2005) (applying Habeas Rule 4 to § 2241 petition to supersede § 2243's timeline requirements); *see also France v. State*, No. 1:13CV250, 2014 WL 11997461, at *2 (M.D.N.C. Apr. 30, 2014) (finding Rule 4 superseded § 2243)); *see also Hudson v. Harvanek*, No. CIV 22-290-RAW-JAR, 2023 WL 5533526, at *1 (E.D. Okla. Aug. 28, 2023). Courts in immigration cases have granted respondents up to thirty-days to respond to writs. *See Castro*, 2025 WL 3226973 at *5 (setting thirty-day response time); *Malave v. Noem*, No. 3:26-CV-253-JEP-LLL, 2026 WL 352908, at *1 (M.D. Fla. Feb. 9, 2026) (granting thirty-day response time).

Good cause for an extension of time exists here. As a preliminary matter, if the case has been delayed, it was delayed by Mr. Chen's decision to file two new federal cases seeking relief. *See Chen II & Chen III*. This led to both this Office and the U.S. Attorney's Office for the Northern District of Alabama having to devote resources to his two cases including the undersigned attending a hearing yesterday.

Further, the United States has multiple pressing deadlines in other matters, including other 28 U.S.C. § 2241 petitions, and this Office requires time to consult with its client agencies to obtain information necessary to file any response. This Office also has limited resources. Among other things, for example, the United States has an expert deposition scheduled in Atlanta on February 27, 2026. This deposition was originally scheduled for late December but was rescheduled due to pressing deadlines in Mr. Chen's original action. For this reason, to the extent the Court grants the Motion, the United States respectfully requests the Court to use its discretion of Rule 4 to set a reasonable response deadline if the Motion is granted.

CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's Motion should be denied.

Respectfully submitted this 26th day of February, 2025.

Respectfully submitted,

KEVIN P. DAVIDSON
Acting United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that I have filed this case with the CM/ECF system which provided a copy of the same to all counsel of record.

Dated this 26th day of February, 2025.

/s/ Stephen D. Wadsworth
Assistant United States Attorney