

Separately, Congress has authorized habeas courts to receive evidence “orally or by deposition, or, in the discretion of the judge, by affidavit” in deciding applications for the writ. 28 U.S.C. § 2246. Section 2246 thus confirms that oral testimony is a proper mode of proof in habeas cases and commits the choice among oral, deposition, and affidavit evidence to the Court’s discretion. The authority to take oral testimony necessarily carries with it the authority to require the presence of relevant witnesses through appropriate process.

The Supreme Court has repeatedly recognized that federal habeas courts have a duty and power to hold evidentiary hearings and take evidence when material facts have not been reliably found in prior proceedings. Those circumstances include situations in which the merits of a factual dispute were not resolved in the prior hearing, the state factual determination is not fairly supported by the record, the fact-finding procedure was inadequate, material facts were not adequately developed, or the state trier of fact otherwise failed to afford a full and fair hearing.

In *Kaufman v. United States*, 394 U.S. 217 (1969), addressing federal prisoners’ post-conviction claims under 28 U.S.C. § 2255, the Court explained that federal collateral review is an original civil proceeding and that, where the applicant alleges facts which, if proved, would entitle him to relief, the federal court has “plenary” power to receive evidence and determine those facts anew. The Court further emphasized that a hearing under § 2255 is required unless the motion and the existing record conclusively show that the prisoner is entitled to no relief.

In *Matta-Ballesteros v. Henman*, 896 F.2d 255 (7th Cir. 1990), the court explained that under *Townsend* and 28 U.S.C. § 2254(d), an evidentiary hearing is mandatory when material facts were not adequately developed or resolved, but unnecessary when the facts essential to the constitutional issue are already before the court and undisputed. The court also noted that the Rules Governing Habeas Corpus authorize discovery and expansion of the record as tools to avoid

unnecessary evidentiary hearings, but that such tools do not eliminate the obligation to hold a hearing when material factual disputes exist.

Similarly, in *Sosa v. United States*, 550 F.2d 244 (5th Cir. 1977), the court discussed § 2255's hearing requirement and concluded that no evidentiary hearing is required when there is no factual dispute and the motion can be conclusively resolved on the existing record. At the same time, it emphasized that the remedies under § 2255 are "exactly commensurate" with those previously available by habeas corpus, and that evidentiary hearings remain required where factual disputes must be resolved.

The Supreme Court's decision in *Pennsylvania Bureau of Correction v. United States Marshals Service*, 474 U.S. 34 (1985), further confirms that testimonial habeas writs are a traditional means of securing live witness testimony. In that case, the Court held that a writ of habeas corpus ad testificandum must be directed to the custodian under 28 U.S.C. § 2243 and that the custodian, and not a third party such as the Marshals Service, bears the statutory duty to produce the prisoner at the hearing. In reaching that conclusion, the Court relied on the statutory command that the writ "shall be directed to the person having custody" and that "the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained," confirming that federal courts possess and use habeas process to compel prisoners' presence as witnesses.

II. RULE 6'S GOOD-CAUSE STANDARD IS SATISFIED; THE SUBPOENA IS A NARROWLY TAILORED REQUEST FOR ESSENTIAL TESTIMONY, NOT A FISHING EXPEDITION

Respondents are correct that habeas petitioners are not entitled to discovery as a matter of ordinary course and that discovery under Rule 6 of the Rules Governing Section 2254 Cases requires good cause. Courts applying Rule 6 have consistently held that good cause exists where specific allegations show reason to believe that, if the facts are fully developed, the petitioner may

be able to demonstrate entitlement to relief, and that discovery is improper when the additional facts, even if proven, would not change the constitutional analysis.

Rule 6(a) of the Rules Governing Section 2254 Cases provides, “[a] judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Civil Procedure and may limit the extent of discovery.” “Good cause is demonstrated where specific allegations ... show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he ... is entitled to relief.” *Arthur v. Allen*, 459 F.3d 1310, 1310–1311 (11th Cir.2006) (citations and internal quotation marks omitted).

Here, Respondents themselves identify a concrete factual dispute concerning the revocation of Mr. Chen’s order of supervision (“OSUP”) and the circumstances of his current detention. Respondents acknowledge that Petitioner asserts his OSUP was previously revoked in December and that ICE disputes that assertion, while taking the position that this prior revocation is immaterial because detention of six months or less is presumptively reasonable. There is also a factual dispute as to the informal interview, the reasons for the revocation, etc. That acknowledged disagreement about what ICE did and when is a specific, focused factual dispute that may bear on questions of government good faith, the foreseeability of removal, and the propriety of the current detention that are central to the habeas petition and the motion for preliminary injunction.

The subpoena at issue does not seek broad documentary discovery or a series of depositions; it calls a single ICE officer—apparently the officer involved in the OSUP revocation—to appear and testify at the already-scheduled hearing. This officer has familiarity with Petitioner’s case and works for the ICE Montgomery Field Office. That request is directly tied to the disputed facts Respondents have placed in issue and is limited to testimony that may

enable the Court to “hear and determine the facts” as contemplated by § 2243 and to exercise its evidentiary authority under § 2246.

III. ANY DEFECT IN HOW THE WITNESS IS IDENTIFIED IS CURABLE AND DOES NOT WARRANT QUASHING THE SUBPOENA

Respondents argue that the subpoena is defective because it refers only to “Officer Mario” and does not make clear whether “Mario” is a first or last name. At the same time, Respondents’ motion assumes that the subpoena is directed to the ICE officer involved in the revocation of Mr. Chen’s OSUP and addresses the substance of the anticipated testimony on that premise. To the extent there is any genuine uncertainty about the officer’s full identity, it can be remedied by directing Respondents to identify the ICE officer or officers who participated in the OSUP revocation so that the subpoena can be clarified, rather than quashed. There are not that many ICE officers in the Montgomery field office and it is not such a leap for Respondents to identify the correct officer. Unfortunately, the officer’s full name is unknown to Chen and his counsel.

Courts routinely permit amendment or clarification of process where the underlying request is substantively proper, particularly in the habeas context where § 2243 requires the Court to set a prompt hearing and “summarily hear and determine the facts” and § 2246 expressly authorizes oral testimony. Respondents’ concern about nomenclature therefore provides no basis to foreclose the Court’s ability to hear from the officer most directly involved in the disputed events.

IV. THE REQUESTED TESTIMONY IS RELEVANT AND WILL ASSIST THE COURT IN FULFILLING ITS HABEAS FACT-FINDING ROLE

Respondents contend that no ICE officer could provide “necessary” testimony and characterize Petitioner’s request as a “fishing expedition” aimed at developing evidence for other cases. Yet their motion underscores that Mr. Chen’s detention is under a final order of removal, that he has recently been detained following revocation of an OSUP, that he alleges an earlier

revocation in December, and that ICE disagrees with that allegation. Those are concrete, case-specific facts that go directly to the history and basis of Petitioner's custody.

Section 2243 instructs the Court, once the return is filed, to set a hearing within a short period and to "summarily hear and determine the facts" unless only issues of law are presented. Section 2246 authorizes the Court to take that evidence orally where appropriate. Under the afore-mentioned cases, when the existing record does not reliably resolve the key facts underlying a habeas claim, the Court must supplement that record and, if necessary, hold an evidentiary hearing, including calling witnesses.

Respondents' own description of the dispute regarding the timing and circumstances of Mr. Chen's OSUP revocation demonstrates that the application and return do not present purely legal issues and that relevant facts remain in contention. Hearing directly from the ICE officer involved is the most straightforward way for the Court to develop an accurate record on those points in a single, focused evidentiary session, consistent with §§ 2243 and 2246 and the Supreme Court's habeas jurisprudence.

Moreover, as *Pennsylvania Bureau of Correction* recognizes, federal courts routinely employ habeas process to secure witnesses' presence as part of their adjudicative function, and Congress has long provided mechanisms for courts to obtain live testimony through writs ad testificandum.

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court deny Respondents' Emergency Motion to Quash the subpoena directed to Officer Mario. In the alternative, if the Court finds the current description of the witness insufficiently specific, Petitioner requests that the Court direct Respondents to identify the ICE officer or officers who participated in the revocation of Mr. Chen's OSUP and permit Petitioner to amend the subpoena

accordingly, while preserving the Court's ability to hear that officer's testimony at the scheduled hearing.

Respectfully Submitted,

This 18th day of March, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of March, 2026, this Foregoing Document was served, via electronic delivery to Respondents' counsel via CM/ECF system which will forward copies to Counsel of Record.

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