

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

J.B.S.S.,
Petitioner,

vs.

TONY NORMAND, *in his official capacity as
Warden of Folkston D. Ray Detention center; and*
LADEON FRANCIS, *Field Office Director for ICE)*
Atlanta Field Office, and
TODD LYONS, *in his official capacity as Acting
Director of Immigration and Customs Enforcement; and*
KRISTI NOEM, *Secretary of Homeland Security; and*
PAMELA BONDI, *U.S. Attorney General.*

Respondents.

CASE NO.:
5:26-cv-00158-LGW-BWC

PETITIONER'S MOTION FOR ORDER TO SHOW CAUSE,
AND FOR PRODUCTION OF EVIDENCE
ON AN EMERGENCY BASIS

The Petitioner, J.B.S.S., has been unlawfully detained in civil immigration detention. As such, Petitioner, by and through the undersigned, moves the Court to issue an order to show cause on an emergency basis:

- (1) Requiring Respondents to file a return, within three (3) days of service, certifying the 'true cause of [Petitioner's] detention,' 28 U.S.C. § 2243, and showing cause why he should not be released, and permitting Petitioner to file a traverse within the same period; and
- (2) Requiring Respondents to produce, with their return, the immigration A-file, all records reflecting the statutory basis asserted for Petitioner's detention, any administrative warrant(s) or custody determinations, and other records bearing upon

the ‘true cause of [Petitioner’s] detention’ in support of their return.

Argument

I. Sitting In Habeas, the Court May Proceed Via a Summary Show Cause Procedure Notwithstanding the Rules of Civil Procedure.

Because this is a § 2241 detention-only habeas petition, the governing statute—28 U.S.C. § 2243—contemplates exactly the summary show-cause procedure and expedited schedule Petitioner seeks here. 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 (5th Cir. 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 (11th Cir. 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 (D.C. Cir. 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.”¹ “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 (9th Cir. 1965).

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 (5th Cir. 1989) (“Where the petitioner raises only questions of law, or questions regarding the legal implications of

¹ “[U]nless it appears from the application that the applicant or person detained is not entitled thereto.” § 2243.

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 (D.C. Cir. 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 expedite disposition, Petitioner moves the Court to treat this verified Petition (ECF No. 1) and its supporting documentation as Petitioner’s opening brief, so that Respondents’ return can squarely address the legal theories already set forth therein. See *Walker*, 312 U.S. at 284. As explained in the Petition, Petitioner is being unlawfully held in civil immigration custody without a meaningful opportunity to be heard.

Upon information and belief, Petitioner is being held by Respondents as an “arriving alien” or “applicant for admission” pursuant to 8 U.S.C. § 1225(b) subject to mandatory detention instead of detained pursuant to a warrant under 8 U.S.C. § 1226(a). Since Respondents already have standard briefs and responses prepared on these issues, and undersigned counsel has litigated the same questions before multiple federal courts, including within the Southern District of Alabama, this case can be resolved quickly.

In light of the statutory requirement for expedited treatment of habeas petitions, 28 U.S.C. §

1657(a), and the U.S. Attorney's Office's prompt notice of this Petition, Petitioner respectfully requests that the Court order Respondents to show cause, via a return filed within three (3) days of the Court's order, see 28 U.S.C. § 2243. Petitioner further requests leave to file a traverse within an equal period following Respondents' return.

To enable the Court and Petitioner to evaluate the "true cause of the detention," 28 U.S.C. § 2243, Petitioner moves the Court to order Respondents to produce, with their return, his complete immigration A-file, any administrative warrants or custody classification records, and other reasonably identifiable records bearing on the statutory and factual basis for Petitioner's continued detention. Because Petitioner was only recently taken into ICE custody and removal proceedings are at their inception, the volume of such records should be modest.

Last, the Petitioner preserves the 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.

Respectfully Submitted,

This 5th Day of February 2026.

/s/ Karen Weinstock

Karen Weinstock

Attorney for Petitioner

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th Day February, 2026, this Foregoing Document was served, via electronic delivery to Respondents' counsel via CM/ECF system which will forward copies to Counsel of Record.

/s/ Karen Weinstock
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