Ysabel Williams (PA 2000242 and NJ 6062005)
Law Office of Ysabel Williams
4300 Bergenline Ave.
Ste 204
Union City, NJ 07087
Tel. 201 758-7880
Email: ysabelwilliams@gmail.com
Local Counsel

Veronica Cardenas (NJ022052010)
CARDENAS IMMIGRATION LAW, LLC
2 Arnot St., Ste 6, Unit 122
Lodi, NJ 07644
Phone: (201) 470-4599
Email: **veronica.cardenas@cardenasimmigrationlaw.com**

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LEVAN TETELOSHVILI, Petitioner, v. MICHAEL KUNES, *in his official capacity* as Warden of the Clinton County Correctional Facility; BRIAN MCSHANE, *in his official capacity* as Field Office Director of the Philadelphia Field Office of Enforcement and Removal Operations, U.S. Immigrations and Customs Enforcement; TODD M. LYONS, *in his official capacity* as Acting Director, U.S. Immigration and Customs Enforcement (ICE); and KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security. Respondents.	Case No. 3:26-CV-00314

PETITIONER'S MOTION FOR ORDER TO SHOW CAUSE

Petitioner, by and through undersigned counsel, respectfully moves the Court to issue an order to show cause requiring Respondents to file a return and produce evidence demonstrating the "true cause of [Petitioner's] detention" within three days, on an expedited basis. 28 U.S.C. § 2243.

I. REQUEST FOR EXPEDITED SUMMARY SHOW-CAUSE PROCEEDINGS

A. In a habeas proceeding, the Court may proceed by a summary show cause procedure notwithstanding the Federal Rules of Civil Procedure.

The Federal Rules of Civil Procedure expressly provide that they apply to habeas corpus proceedings only "to the extent that the practice in those proceedings. . . is not specified in a federal statute." FED. R. CIV. P. 81(a)(4)(A). Habeas practice is governed by the provisions of chapter 153 of title 28 of the United States Code.

"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."

Petitioner, in the instant case, is seeking a general writ of habeas corpus under 28 U.S.C. § 2241, rather than under §§ 2254 or 2255. Under § 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 statute further provides that "[t]he person to whom the writ or order is directed shall make a return certifying the true cause of the detention." 28 U.S.C. § 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." 28 U.S.C. § 2243 While "dispatch is the keynote in all phases of habeas corpus and [] the statutory limitation of time is clearly directed to that end," a "court possesse[s] th[e] inherent power" to "grant[] respondent additional time." *Wallace v. Heinze*, 351 F.2d 39, 40 (9th Cir. 1965); *see also Frick v. Quinlin*, 631 F.2d 37, 40 (5th Cir. 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

[1] "[U]nless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

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 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.

B. The Court should order Respondents to show cause within three days, with leave for Petitioner to file a traverse within an additional three days.

First, Petitioner moves the Court to treat his petition (ECF No. 1) as his opening brief for the summary disposition of his application for a writ of habeas corpus. *See Walker*, 312 U.S. at 284. He further requests that the Court expressly permit him to file a traverse to the Respondents' return to the petition within the same period the Court orders for the filing of the return. 28 U.S.C. § 2248.

Second, Respondents should be required to file a return within three days. In his petition, Petitioner challenges the lawfulness of his detention under 8 U.S.C. § 1225(b), arguing that, during a routine check-in, he was neither seeking admission at a port of entry nor an applicant for admission under inspection. Instead, Petitioner's proper detention authority is § 1226(a), which permits an individualized bond assessment, because he was arrested in the interior *after* his initial entry.

The petition shows that Respondents have advanced the same argument in other cases opposing habeas relief for persons seeking release under 8 U.S.C. § 1226(a), relying on a July 8, 2025, policy change titled "Interim Guidance Regarding Detention Authority for Applicants for Admission to all ICE Employees," as well as a recent Board of Immigration Appeals decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). For these reasons, three days should be sufficient for Respondents to file a return to the petition for habeas relief.

Finally, Petitioner contends that this case presents a pure question of law regarding statutory interpretation, and therefore there should be no need for the Court to order the production of evidence or depositions beyond what the government must provide to show the "true cause of the [petitioner's] detention," 28 U.S.C. § 2243, in its return, nor for an evidentiary hearing. Nevertheless, Petitioner reserves the right to propound interrogatories, request an evidentiary hearing under 28 U.S.C. § 2246, or request any other discovery by motion that may be necessary "to render [this] habeas corpus proceeding effective." *Harris*, 394 U.S. at 300, 300 n.7.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court order Respondents to immediately release Petitioner. In the alternative, Petitioner requests that Respondents be ordered to conduct a bond hearing at which the government must bear the burden of justifying Petitioner's continued detention by clear and convincing evidence. Absent this Court's intervention, Petitioner will remain unlawfully detained and forced to endure preventable suffering.

Dated: February 8, 2026

Respectfully
Submitted,

/s/ Veronica Cardenas
Veronica Cardenas, Esq.*
NJ Bar No. 02205-2010

Cardenas Immigration
Law
Veronica Cardenas, Esq.
2 Arnot St., Ste 6, Unit
122
Lodi, NJ 07644

Attorney for Petitioner

*Pro hac pending
/s/Ysabel Williams
Ysabel Williams, Esq.
PA 2000242 and NJ 6062005
Law Office of Ysabel Williams
4300 Bergenline Ave.
Ste 204
Union City, NJ 07087
Tel. 201 758-7880
Email: ysabelwilliams@gmail.com

Local Counsel