UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS MCALLEN DIVISION

K.A.R.M., a minor, by and through his next friend, Maegan Faitsch
Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents

Case No. 7:25-CV-00581

PETITIONER'S MOTION FOR ORDER TO SHOW CAUSE AND EMERGENCY HEARING

The petitioners, by and through the undersigned, move the Court to issue an order to show cause requiring the respondent to file a return and to produce evidence in order to demonstrate the "true cause of the [petitioner's] detention," 28 U. S. C. § 2243, "within three days," *id.*, on an expedited basis:

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 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). The practice in habeas proceedings is governed by the provisions of chapter 153 of

title 28 of the U. S. 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 (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."[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

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

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

First, the petitioner moves the Court to treat his petition (ECF 1) as his opening brief for summary disposition of his application for a writ of habeas corpus. See *Walker*, 312 U. S., at 284. And he requests that Court expressly permit him to file a traverse to the government's return to the petition within the same amount of time the government is ordered to file a return. 28 U. S. C. § 2248.

Second, the government should be required to file a return within three days. In his petition, the petitioner challenges his continued detention in violation of his Fifth Amendment Due Process rights, the Administrative Procedure Act, his Fourth Amendment rights, the Accardi Doctrine, the Flores Settlement, and the Trafficking Victims Protection Reauthorization Act.

Last, the petitioner believes that this case should present only a pure question of law regarding statutory interpretation, and thus, presumably, there should be no need for the Court to order the production of evidence or depositions beyond what

the government would need to show the "true cause of the [petitioner's] detention," 28 U. S. C. § 2243, in its return, or for there to be an evidentiary hearing. However, the petitioner reserves the right to propound interrogatories or to request an evidentiary hearing under 28 U. S. C. § 2246, or to request any other discovery by motion that would help "to render [this] habeas corpus proceeding effective" at a later time. *Harris*, 394 U. S., at 300, 300 n. 7.

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Respectfully submitted,

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