

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG DIVISION

ERICK LEONEL CRISTAL CUMES, by
and through his next friend, LAUREN
PELLIEN,

Petitioner,

v.

TODD M. LYONS, Acting Director, United
States Immigration and Customs
Enforcement; MARKWAYNE MULLIN,
Secretary of Homeland Security; TODD
BLANCHE, Acting United States Attorney
General; JOHN RIFE, Field Office
Director, Philadelphia Field Office, United
States Immigration and Customs
Enforcement; TODD BLANCHE, Acting
United States Attorney General, *in their
official capacities*,

Respondents.

Civ. Act. No.: 1:26-cv-00056-TSK
Hon. Thomas S. Kleeh

MOTION FOR IMMEDIATE
ORDER TO SHOW CAUSE AND
IMMEDIATE ORDER
PREVENTING REMOVAL OR
TRANSFER OF PETITIONER
PENDING DISPOSITION OF
PETITION

EXPEDITED HANDLING
REQUESTED

**MOTION FOR IMMEDIATE ORDER TO SHOW CAUSE AND IMMEDIATE ORDER
PREVENTING REMOVAL OR TRANSFER OF PETITION
PENDING DISPOSITION OF PETITION**

Petitioner Erick Leonel Cristal Cumes is an individual who, on information and belief, is being unlawfully detained by Immigration and Customs Enforcement ("ICE") without an individualized custody determination. *See* Petition for Writ of Habeas Corpus ("Habeas Pet."), ECF No. 1.

In this action, Petitioner accordingly challenges his detention as violative of the Due Process Clause of the Fifth Amendment, the Immigration and Nationality Act ("INA"), and the Suspension Clause of the United States Constitution. *See generally* Habeas Pet., ECF No. 1. In

this petition, Petitioner respectfully request that this Court order Respondents to immediately release Petitioner from custody.

In the instant motion, Petitioner now respectfully move the Court for expeditious resolution of his habeas petition to ensure that Respondents do not continue violating his constitutional and statutory rights and further seeks injunctive relief against removal from the United States or transfer from, or further away from, the Northern District of West Virginia to protect this Court's jurisdiction pending disposition of the petition.

First, pursuant to 28 U.S.C. § 2243, Petitioner requests that the Court immediately issue an Order to Show Cause directing Respondents to file a return by a date certain of the Court's order, showing cause, if any, why the writ of habeas corpus should not be granted. In accordance with the plain text of 28 U.S.C. § 2243 and the practice employed in numerous cases in the Southern District of West Virginia, Petitioner respectfully requests that the time for Respondent's turn required by this Court not exceed three days. *See, e.g., Mehari v. Mason*, Civil Action No. 2:26-cv-00036, ECF No. 10 (Johnston, J.) (ordering responses to immigration-related habeas petition three days after filing of petition); *Gonzalez-Pablo v. Mason*, 788 F.Supp.3d 759, 761 (S.D. W. Va. 2025) (Goodwin, J.) (reciting procedural history wherein this Court ordered responses to immigration-related habeas petition and set matter for dispositional hearing two business days and four calendar days after filing of petition); *Simanca Gonzalez v. Aldridge*, Civil Action No. 3:26-cv-00055, ECF No. 6 (Chambers, J.) (ordering responses to immigration-related habeas petition three days after filing of petition).

Expeditious resolution is consistent with the purpose of habeas petitions. Habeas "is a swift and imperative remedy in all cases of illegal prestraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963), *overruled on other grounds by Wainwright v. Sykes*, 433 U.S. 72 (1977). The

requirement for an expeditious remedy is codified by statute. The federal habeas corpus statute provides that “[a] court, justice or judge entertaining a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

Second, consistent with the standard practice of the District Court for the Southern District of West Virginia’s practice in recent cases, and numerous other cases outside this jurisdiction enjoining the transfer and/or removal of immigration-related habeas petitioners, Petitioner respectfully requests that this Court enter an immediate order pursuant to the All Writs Act, 28 U.S.C. § 1651, preventing his removal from the United States or transfer from the Northern District of West Virginia, or alternatively to a location geographically further from the Northern District of West Virginia than where he is currently located, while the petition is considered, to preserve this Court’s jurisdiction over his habeas claims. *See, e.g., Gonzalez-Pablo*, 788 F.Supp.3d at 761 (noting that the court had “ordered that, pursuant to the All Writs Act, the parties were to (1) maintain the status quo [and] (2) not remove the Petitioner from the jurisdiction”); *Mehari*, Civil Action No. 2:26-cv-00039, ECF No. 10 (enjoining Petitioner’s transfer outside Southern District of West Virginia pending further order of the Court); *Simanca Gonzalez*, Civil Action No. 3:26-cv-00055, ECF No. 6 (same); *Serna Zarate v. Mason*, Civil Action No. 2:26-cv-00069, ECF No. 10 (Johnston, J.) (“To the extent Petitioners have already been removed from this jurisdiction, Respondents shall not transport Petitioners to a geographically further location or remove Petitioners from the United States pending further order of the Court.”); *Linarez Vilchez v. Kluemper*, Civil Action No. 3:26-cv-00261, ECF No. 6 (Chambers, J.) (“Respondents **SHALL NOT** remove or facilitate the removal of Petitioner and/or his property from the United States, or

transfer Petitioner to a location further from the Southern District of West Virginia than where he is presently located, pending further order of the Court.”).

See also SAS Inst., Inc. v. World Programming Ltd., 952 F.3d 513, 521 (4th Cir. 2020) (quoting *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1099-1100 (11th Cir. 2004)) (“The rationale behind the AWA’s broad grant of authority is clear. ‘[The AWA] is a codification of the federal courts’ traditional, inherent power to protect the jurisdiction they already have.’”); *Klay*, 376 F.3d at 1097 (“The requirements for a traditional injunction do not apply to injunctions under the All Writs Act because the historical scope of a court’s traditional power to protect its jurisdiction, codified by the Act, is grounded in entirely separate concerns.”).

Third, Petitioner requests that the show cause order also direct that, upon receipt of the order, Respondents promptly ensure that all of Petitioner’s property seized incident to detention is accounted for and that all such property can be immediately made available to Petitioner **at the time of his release** in the event Petitioner is released. *See Linarez Vilchez*, Civil Action No. 3:26-cv-00261, ECF No. 6, at ¶ 6.

Fourth, to facilitate prompt disposition of the Petition and avoid any undue delay, Petitioner respectfully requests an order requiring that Respondents file any such objection(s) based on jurisdiction and/or venue within one (1) business day of receipt of the Court’s show cause order, to the extent Respondents intend to assert that jurisdiction and/or venue in the Northern District of West Virginia is improper in this case. *See Linarez Vilchez*, Civil Action No. 3:26-cv-00261, ECF No. 6, at ¶ 3; *Gonzalez Falla v. Oddo*, Civil Action No. 3:26-cv-00172, ECF No. 6, p. 2 (Johnston, J.) (March 3, 2026, order that “Respondents shall file a written response to this Order on the matter of jurisdiction and venue no later than **Wednesday, March 4, 2026, at 5:00 p.m.**”) (emphasis in original).

Fifth, Petitioner requests that this Court order that Respondents afford Petitioner a reasonable opportunity to confidentially consult with counsel forthwith, immediately, and in no event later than twenty-four (24) hours from the time this order is served upon the United States Attorney's Office for the Northern District of West Virginia.¹ See *Linarez Vilchez*, Civil Action No. 3:26-cv-00261, ECF No. 6, at ¶ 5; *Rodriguez-Flores v. Oddo*, Civil Action No. 3:26-cv-00169, ECF No. 10, p. 5.

Dated: May 29, 2026

Respectfully submitted,
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¹ As of the time of filing, it appears that Petitioner is present in the Moshannon Valley Processing Center ("MVPC") in Pennsylvania.