UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

N.S.P.,	)	
Petitioner,	)	
	)	CASE NO.:
vs.	)	7:26-cv-218-LAG-CHW
	)	
DAVID PAULK, *Warden, Irwin County Detention Center*	)	
KRISTEN SULLIVAN, *Field Office Director for ICE Atlanta Field Office*, and	)	
DAVID VENTURELLA, *in his official capacity as Acting Director of Immigration and Customs Enforcement*; and	)	
MARKWAYNE MULLIN, *Secretary of Homeland Security; and*	)	
TODD BLANCHE, *U.S. Attorney General.*	)	
	)	
Respondents.	)	
	)	

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

Petitioner, N.S.P., has been unlawfully detained in civil immigration detention. 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 the Court's order, 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 three (3) days after service of Respondents' return; and

(2) Requiring Respondents to produce, with their return, the immigration A-file and all records bearing upon the true cause of Petitioner's detention, including all records reflecting the statutory basis asserted for detention, any Form I-200 warrant; any Form I-286 Notice of Custody Determination; any custody classification or bond-jurisdiction determination; any revocation memorandum; any cancellation of Petitioner's Form I-220A/OREC; any document identifying the official who authorized revocation or re-detention; any document reflecting alleged changed circumstances or violation of release conditions; any EOIR custody-status notification; and any records Respondents contend authorize Petitioner's arrest, re-detention, or current custody classification.

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," "[U]nless it appears from the application that the applicant or person detained is not entitled thereto." § 2243. "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 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. Binding Eleventh Circuit Precedent Forecloses Respondents' Apparent Mandatory-Detention Theory Under § 1225(b).

Upon information and belief, Respondents are detaining Petitioner under 8 U.S.C. § 1225(b)(2)(A) as an "arriving alien" or "applicant for admission" subject to mandatory detention without bond. That theory is foreclosed by binding Eleventh Circuit authority.

In *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, 175 F.4th 1258 (11th Cir. 2026), the Eleventh Circuit held that 8 U.S.C. § 1226 supplies the default detention rule for noncitizens arrested and detained in the interior, while 8 U.S.C. § 1225(b)(2)(A) applies to a distinct group of applicants for admission seeking admission at the border. The court affirmed habeas relief where petitioners had been held without bond under § 1225(b)(2)(A), holding instead that § 1226 governed their detention and rendered them eligible for bond. The Eleventh Circuit rejected the Government's broader reinterpretation of § 1225(b)(2)(A), explaining that the statutory text, structure, immigration-detention history, and longstanding executive practice support limiting no-bond detention under that provision to arriving or border-related applicants seeking lawful admission—not interior arrestees who are merely present in the United States.

That holding controls here. Upon information and belief, Petitioner was apprehended in the interior of the United States, not at the border while seeking admission. Those circumstances place him within the category addressed by *Hernandez Alvarez*: an interior arrestee whose detention is governed, if at all, by § 1226 rather than mandatory no-bond detention under § 1225(b)(2)(A). Respondents therefore may not rely on § 1225(b)(2)(A), *Matter of Yajure Hurtado*, or any materially identical mandatory-detention theory to deny Petitioner release or bond consideration.

A. If § 1226 Governs, Respondents Must Produce the Warrant and Custody Basis.

If Respondents now contend that § 1226 governs, they must identify the statutory and factual basis for Petitioner's arrest and continued detention. Section 1226(a) authorizes arrest and detention pending removal proceedings only "[o]n a warrant issued by the Attorney General." 8 U.S.C. § 1226(a). The governing regulation likewise provides that a respondent may be arrested and taken into custody under Form I-200, Warrant of Arrest, issued and served by authorized immigration officers. 8 C.F.R. § 236.1(b)(1). Absent proof that a valid warrant was issued and served, Respondents have not established the statutory predicate for discretionary custody under § 1226(a).

The narrow warrantless-arrest exception under 8 U.S.C. § 1357(a)(2) is not available unless Respondents can establish an individualized basis to believe Petitioner was likely to escape before a warrant could be obtained. Here, Petitioner appeared as directed for a scheduled ICE check-in, had previously complied with ICE

reporting obligations, and was already under ICE supervision. See ECF No. 1 and supporting exhibits. Respondents should therefore be required to produce any Form I-200, custody determination, warrantless-arrest justification, notice of custody determination, bond-jurisdiction determination, revocation decision, cancellation of the Form I-220A/ORFC, or other record they contend supplies lawful authority for Petitioner's arrest and continued detention.

B. Respondents Have Not Shown They Exercised Lawful Discretionary Custody Authority Under § 1226(a).

Even if § 1226(a) could supply authority for Petitioner's detention, Respondents have not shown that they exercised lawful discretionary custody authority under that provision. Respondents have not produced any custody determination showing that DHS made an individualized assessment before detaining Petitioner, identified any danger or flight-risk basis, or considered Petitioner's compliance with prior release conditions.

That omission matters because, to the extent Respondents previously treated Petitioner as subject to mandatory no-bond detention under § 1225(b)(2)(A) rather than as a person entitled to individualized custody consideration under § 1226(a), that classification is now foreclosed by *Hernandez Alvarez*. Noncitizens detained under § 1226 are generally entitled to custody review before an immigration judge under federal regulations. Respondents should therefore be required to certify whether they continue to rely on § 1225(b)(2)(A) or any related custody classification to deny Petitioner release or bond consideration, and if so, to explain how that position

survives *Hernandez Alvarez*.

C. Respondents Must Produce Any Revocation, Cancellation, Changed-Circumstances, and EOIR Custody-Status Records.

Petitioner was not an initial custody case. DHS had previously released him on an Order of Release on Recognizance and placed him on ATD/ISAP conditions. The governing custody regulations therefore make the revocation and custody-classification record central to the Court's review.

Release after arrest and custody may be revoked only in the discretion of specified officials, including the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge. 8 C.F.R. § 236.1(c)(9). The regulations also provide for immigration judge custody review after an initial custody determination before the removal order becomes final. 8 C.F.R. § 236.1(d)(1). DHS must notify the Immigration Court of any change in custody location, release from custody, or subsequent taking into ICE custody, and an immigration official may issue a Form I-286 Notice of Custody Determination while removal proceedings remain pending. 8 C.F.R. § 236.1(f), (g)(1).

Respondents have identified no changed circumstance justifying revocation of Petitioner's prior release status. Petitioner did not miss an immigration hearing, miss an ICE check-in, violate any identified condition of release, commit any crime, or present any new danger or flight-risk facts. To the contrary, Petitioner appeared as directed for the very ICE check-in at which he was detained. See ECF No. 1 and

supporting exhibits. DHS cannot convert Petitioner's compliance with supervision into the occasion for unexplained incarceration.

Respondents should therefore be required to produce any document identifying the official who authorized revocation or re-detention, any written revocation or cancellation of Petitioner's OREC/Form I-220A, any Form I-286, any Form I-200, any written statement of changed circumstances, any document identifying a release-condition violation, any custody-classification record, and any written notification to the Immigration Court of Petitioner's subsequent taking into custody or change in custody location.

D. A Bond Hearing Is Not an Adequate Substitute for Immediate Release.

Because Respondents apparently lacked lawful authority to detain Petitioner under § 1225(b)(2)(A), the proper remedy is immediate release—not a belated bond hearing. When a person's liberty is taken without legal authority, the only just remedy is to restore that liberty. See *Donalson Choc Cu v. Bullock*, No. 2:26-CV-02530-SHL-ATC, 2026 WL 1396216, at *1 (W.D. Tenn. May 19, 2026) (rejecting bond hearing remedy and ordering immediate release, explaining that "ICE's decision to detain him without a bond hearing violated that liberty interest, which cannot be casually tossed aside"); *Villafranca Lara v. Ladwig*, No. 26-CV-02079, 2026 WL 401204, at *10 (W.D. Tenn. Feb. 12, 2026) ("Because ICE purported to detain [Petitioner] under § 1225(b)(2)(A), which includes no provision for a bond hearing, the Court will not now order a bond hearing under § 1226(a)."); *Ronny Jose Viloria Campos v. Bullock*, No. 2:26-CV-02318-TLP-ATC, 2026 WL 1195595, at *7 (W.D. Tenn. May 1, 2026) (ordering release as the proper

remedy for detention without a bond hearing); *Rodriguez v. Woosley*, No. 4:25-CV-168-RGJ, 2026 WL 36345, at *11–12 (W.D. Ky. Jan. 6, 2026) (collecting cases and finding immediate release the appropriate remedy).

Allowing Respondents to provide a bond hearing now—after having refused Petitioner bond based on an unlawful mandatory-detention classification—would merely extend an illegal confinement and give Respondents a second opportunity to justify a detention they had no statutory authority to initiate. de *Jesus Aguilar v. Eng*, No. 3:25-CV-898 DRL-SJF, 2025 WL 3280219, at *9 (N.D. Ind. Nov. 25, 2025) (declining to order a bond hearing and explaining that "the government's failure [to follow its own regulations] means that Mr. De Jesús Aguilar should not be detained any longer"). See also *Cardona v. Ladwig*, No. 3:25-CV-01451, 2025 WL 3722009, at *7 (M.D. Tenn. Dec. 3, 2025) (explaining that "a bond hearing after the fact, by definition, would not and cannot cure that constitutional violation" and ordering release as the remedy that "comes closest to" restoring the unlawfully taken liberty)

III. The Court should order Respondents 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).

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. Those records should include, at minimum, any Form I 200, Form I 286, custody classification record, bond-jurisdiction determination, revocation memorandum, cancellation of the Form I-220A/OREC, document identifying changed circumstances or release-condition violations, document identifying the official who authorized revocation or re-detention, EOIR custody-status notification, and any record Respondents contend supplies lawful authority for Petitioner's arrest, re-detention, or current custody

classification. Because Petitioner was only recently taken into ICE custody and removal proceedings are pending, 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.

WHEREFORE, Petitioner respectfully requests that this Court issue an emergency order to show cause requiring Respondents to file a return within three (3) days, produce the records identified above with their return, permit Petitioner to file a traverse within three (3) days after service of the return, and grant such other and further relief as the Court deems just and proper.

Respectfully Submitted,

This 6th Day of August, 2026.

/s/ Karen Weinstock
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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August, 2026, the foregoing document was served, via electronic delivery through the CM/ECF system, which will transmit notice to Counsel of Record.

/s/ Karen Weinstock
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