

David Kennedy
Georgia Bar Number 414377
David Kennedy & Associates
Attorneys for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

Pedro Joaquin Romero Diaz
Petitioner,

VS.

George Sterling, Deputy Managing Director,
Atlanta Field Office, Immigration and Customs
Enforcement And Removal Operations (“ICE/ERO”)
Jason Streeval, Warden,
Stewart Detention Center;
Todd M. Lyons, Acting Director of
U.S. Immigration and Customs Enforcement;
Kristi Noem, Secretary of the U.S.
Department of Homeland Security; and
Pamela Bondi, Attorney General of the
United States,
in their official capacities,

Respondents.

Case No:
5:25-cv-00106-LGW-BWC

MOTION FOR VOLUNTARY DISMISSAL
OF PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, Petitioner Mr. Pedro Joaquin Romero Diaz (“Petitioner”), by and through undersigned counsel, and moves this Court to permit him to withdraw his Petition for Writ of Habeas Corpus filed on September 26, 2025, without prejudice.

In support, Petitioner shows as follows:

1. Petitioner filed his Petition for a Writ of Habeas Corpus on September 26, 2025, while he was detained at the Folkston ICE Processing Centre in Folkston, Georgia.
2. On or about October 3, 2025, Petitioner was released from immigration detention on an Order of Supervision or Own Recognizance.

3. As Petitioner is no longer detained, the Writ of Habeas Corpus is moot.
4. This motion for voluntary dismissal is made under Federal Rule of Civil Procedure 41(a)(1). Under Rule 41(a)(1)(A), “a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment.” *Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193 F.3d 1074, 1077 (9th Cir. 1999).
5. To counsel’s knowledge, the respondents have not yet filed a response to Petitioner’s habeas petition.
6. Even if an answer or motion for summary judgment has been filed, a plaintiff may voluntarily dismiss a suit “by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). “[A] voluntary dismissal without prejudice leaves the situation as if the action had never been filed.” *Sherer v. Construcciones Aeronauticas, S.A.*, 987 F.2d 1246, 1247 (6th Cir. 1993). A decision to grant or deny a voluntary dismissal to a plaintiff is committed to the sound discretion of the district court. *See Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir. 1994). “Generally, an abuse of discretion is found only where the defendant would suffer ‘plain legal prejudice’ as a result of a dismissal without prejudice, as opposed to facing the mere prospect of a second lawsuit.” *Ibid.* (citing *Cone v. West Virginia Pulp & Paper Co.*, 330 U.S. 212, 217 (1947); *Kovalic v. DEC Int’l, Inc.*, 855 F.2d 471, 473 (7th Cir. 1988)). Rule 41(a) applies to habeas corpus proceedings. *See Williams v. Clarke*, 82 F.3d 270, 272-73 (8th Cir. 1996); *Doster v. Jones*, 60 F. Supp. 2d 1258, 1259 (M.D.Ala. 1999) (citing cases). *See also* Rule 11, Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254 (“The Federal

Rules of Civil Procedure, to the extent that they are not inconsistent with these rules, may be applied, when appropriate, to petitions filed under these rules.”).

7. In the instant case, there is nothing to suggest that the plaintiff will suffer plain prejudice as a result of a withdrawal of the petition. The Court has not ruled on the merits of the petition, and the petition was filed in good faith while the petitioner was detained despite having valid Temporary Protected Status. Petitioner is no longer detained, and the petition is now moot.

WHEREFORE, Petitioner moves this court to allow him to withdraw his habeas petition.

Respectfully submitted this 15th day of October, 2025,

/s/ David S. Kennedy
David S. Kennedy, Esq.
Attorney for Petitioner
Georgia Bar No. 414377
David Kennedy & Associates, P.C.
675 E.E. Butler Pkwy, Suite D
Gainesville, GA, 30501
(678) 971-5888

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Pedro Joaquin Romero Diaz, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Motion for Voluntary Dismissal of Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 15th of October, 2025.

/s/ David S. Kennedy
David S. Kennedy, Esq.
Attorney for Petitioner
Georgia Bar No. 414377
David Kennedy & Associates, P.C.
675 E.E. Butler Pkwy, Suite D
Gainesville, GA, 30501
(678) 971-5888