

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHER DISTRICT OF GEORGIA**

WILSON PALACIOS DIAZ,	)	
Petitioner,	)	
	)	
-against-	)	
	)	
MICHAEL BRECKON, Warden of Folkston D.	)	
Ray Immigration and Customs Enforcement	)	
Detention Center	)	
	)	
KRISTIN SULLIVAN, Acting Field Office	)	
Director, Immigration and Customs Enforcement	)	
And Removal Operations Atlanta Field Office	)	
	)	
KRISTI NOEM, in her official capacity as	)	
Secretary Of the U.S. Department of Homeland	)	
Security	)	
	)	
PAMELA BONDI, in her official capacity as	)	
U.S. Attorney General.	)	
Respondents.	)	

**Docket No:**

**PETITION FOR WRIT  
OF HABEAS CORPUS**

**PETITION FOR WRIT OF HABEAS CORPUS**

1. Petitioner, WILSON PALACIOS DIAZ, hereby petitions this Court under 28 U.S.C. § 2241, *et seq.*, to issue a Writ of Habeas Corpus ordering his immediate release from immigration detention under the Department of Homeland Security, United States Immigration and Customs Enforcement (“ICE”) at the Folkston D. Ray Detention Center in Folkston, GA. Petitioner seeks immediate release from immigration detention as: (1) no removal order has ever been issued

against him, (2) his ongoing presence in the United States is without any U.S. immigration or criminal infractions, (3) he has repeatedly, regularly, and in full compliance attended his ICE check-ins as scheduled by ICE, (4) he is in removal proceedings and has an application for U.S. asylum on file with the U.S. immigration court, (5) the Government has not provided any particularized assessment for his arrest or detention, and (6) until his arrest on December 29, 2025 Petitioner was noticed to appear in Newark, NJ immigration court on January 20, 2028.

### **JURISDICTION**

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), the Administrative Procedure Act (5 U.S.C. § 706), and Article I, Section 9, Clause 2 of the U.S. Constitution; the requirement that an alien released from ICE detention is non-discretionary. See *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).

### **VENUE**

3. Venue is proper in that Petitioner is currently being detained at an ICE facility in Folkston, Georgia, which is within Charlton County in the Waycross Division of the U.S. District Court for the Southern District of Georgia.

**PARTIES**

4. Petitioner, WILSON DIAZ, is a native and citizen of the Ecuador. He is currently under ICE custody.

5. Respondent, MICHAEL BRECKON, is the warden of the Folkston D. Ray Detention Center, where Petitioner is currently detained.

6. Respondent, KRISTIN SULLIVAN, is duly appointed and employed by U.S. Immigration and Customs Enforcement and Removal Operations as the Acting Director of the Atlanta Field Office. She is responsible for the administration and enforcement of ICE functions relating to detention and removal of aliens, including maintaining and enforcing Petitioner's conditions of supervision.

7. Respondent, KRISTI NOEM, is the Secretary of the Department of Homeland Security ("DHS"). Secretary Noem's responsibilities are set forth in 8 U.S.C. §§1103(a)(1)-(3), among which are: to administer and enforce the Immigration Act and all other laws relating to the immigration and naturalization of aliens; to control, direct and supervise all employees; to establish such regulations, issue such instructions, and perform such other acts deemed necessary for carrying out his authority; and to require any employee of the Service of the Department of Justice to perform or exercise any other the powers, privileges, or duties conferred

or imposed by this Act or regulations issued there under upon any other employee of the Service.

8. Respondent, PAMELA BONDI, is the duly appointed, qualified, and confirmed Attorney General of the United States, and as such is the official charged with the enforcement of the laws of the United States.

### **BACKGROUND**

9. Petitioner, Wilson Diaz, is a native and citizen of Ecuador. He was born on June 6, 2002 and is currently 23 years old.

10. Mr. Diaz entered the United States in Arizona on or around April 4, 2024 seeking asylum in the U.S. after [REDACTED]

11. Mr. Diaz upon his U.S. entry promptly sought out ICE, presented himself to ICE, and informed ICE of his fear of returning to Ecuador, his fear of persecution or torture, and his intention to apply for asylum in the U.S.

12. Notwithstanding the foregoing, upon information and belief ICE in violation of 8 U.S.C. § 1225(b)(1)(A)(ii) failed to refer Petitioner for a credible fear interview.

13. ICE arrested and detained Petitioner in Arizona under Immigration and Nationality Act (“INA”) § 236, 8 U.S.C. § 1226. See, annexed hereto as Exhibit B,

ROR.

14. ICE on April 7, 2024 released Petitioner whereby Petitioner was “released on [his] own recognizance provided [he compl[ies] with” ICE check-ins among other conditions (the “ROR”). See, *Id.*

15. Mr. Diaz fully complied with all of his ice check-ins as scheduled by ICE, which upon information and belief occurred in Newark, NJ on April, 2025 and in New York City on June 25, 2025 and December 29, 2025.

16. Respondents commenced removal proceedings against Mr. Diaz in U.S. immigration court on or around April 6, 2024, entitling Mr. Diaz to present an asylum claim with the due process rights under 8 U.S.C. § 1229a. See, annexed hereto as Exhibit A, DHS Notice to Appear.

17. Respondent under his NTA had been scheduled to appear in Newark, NJ Immigration Court on January 20, 2028 at 8:30 am. See, *Id.*

18. After his release from ICE detention in April, 2024 under section 1226 and while in removal proceedings, Mr. Diaz filed a Form I-589, Application for Asylum or Withholding of Removal (“Asylum Application”) with the Newark, NJ Immigration Court, clearly indicating his fear of persecution. See, annexed hereto as Exhibit C, Petitioner’s current ECAS portal data.

19. **MR. DIAZ HAS BEEN COMPLYING WITH ICE CHECK-INS AS REQUIRED OF PETITIONER.**

20. **MR. DIAZ HAS NEVER VIOLATED THE TERMS OF HIS RELEASE.**

21. **NO REMOVAL ORDER HAS EVER BEEN ISSUED AGAINST MR. DIAZ.**

22. **MR. DIAZ HAS THROUGH THE DATE HEREOF NEVER RECEIVED THE OPPORTUNITY TO APPEAR FOR HIS INDIVIDUAL (MERITS) HEARING IN IMMIGRATION COURT.**

23. **MR. DIAZ HAS NO CRIMINAL HISTORY.**

24. **RESPONDENTS FAILED TO PROVIDE ANY INDIVIDUALIZED ASSESSMENT FOR MR. DIAZ'S ARREST AND DETENTION.**

25. **MR. DIAZ WAS SCHEDULED FOR HIS INDIVIDUAL (MERITS) HEARING BEFORE THE U.S. IMMIGRATION COURT IN NEWARK, NJ ON JANUARY 20, 2028. See, *Id.***

26. Notwithstanding the foregoing, in a deceptive and brazen sleight of hand, when Mr. Diaz attended his mandatory ICE check-in on December 29, 2025 in New York City, Respondents arrested Mr. Diaz, detained Mr. Diaz, and then

swiftly transferred Mr. Diaz to ICE detention in Folkston, GA.

27. Respondents now seek to eject Mr. Diaz from his own asylum case, to continue his detention, and possibly to deport Mr. Diaz expeditiously in contravention of Mr. Diaz's Fifth Amendment due process rights.

28. Today, January 20, 2026, Mr. Diaz remains detained by ICE in Folkston, GA.

29. Upon information and belief, Petitioner from Georgia is now scheduled for an appearance in U.S. immigration court on January 23, 2026, while Petitioner resides in and his U.S. immigration attorneys are based in the New York City area.

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

30. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. See, 28 U.S.C. § 2241(a), (c)(3); *Villa v. Normand*, 2025 U.S. Dist. LEXIS 224656 (S.D. Georgia, 2025); see *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (“[T]he writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.”); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (section 2241 habeas corpus proceedings are available to challenge the lawfulness of immigration-related detention).

31. In making that decision, the Court should consider the urgency of the need for immediate review. “Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

32. Where the agency has predetermined a dispositive issue, no further action with the agency is necessary. *See, e.g., Monestime v. Reilly*, 704 F. Supp. 2d 453, 456-57 (S.D.N.Y. 2010) (holding that administrative challenges to a noncitizen’s classification under the mandatory detention statute would be futile given the agency’s precedent on the issue); *Garcia*, 615 F. Supp. 2d at 180 (same).

33. Moreover, as the instant petition does not arise from “the decision or action by the Attorney General to commence proceedings” against Petitioner, to adjudicate Petitioner’s case, or to execute a removal order against Petitioner, this court retains jurisdiction over the instant petition. *See*, 8 U.S.C. § 1252(g); *Villa*, 2025 U.S. Dist. LEXIS 224656, at 15-17.

### **LEGAL GROUNDS FOR RELIEF**

#### **A. FIFTH AMENDMENT DUE PROCESS VIOLATION**

34. The Supreme Court has long recognized that the Fifth and Fourteenth Amendments refer to all “persons,” not just “citizens.” Aliens, even inadmissible or

removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (“The Fourteenth Amendment to the Constitution is not confined to the protection of citizens.”). As stated by the Court, the provisions of the Fourteenth Amendment “are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality....” *Id.* (emphasis added).

35. The Supreme Court has held that “even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]” *Mathews v. Diaz*, 426 U.S. 67, 75 n.7 (1976); *see also Plyler v. Doe*, 457 U.S. 202, 210 (1982) (“Whatever his status under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that term.”); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (“Persons within the territory of the United States... even aliens... [may not]... be deprived of life, liberty or property without due process of law.”).

36. An individual released from government custody “retain[s] a weighty liberty interest under the Due Process Clause in avoiding reincarceration. *Id.* at 18 (citing *Young v. Harper*, 520 U.S. 143, 146–147 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–782; *Morrissey v. Brewer*, 408 U.S. 471, 482–483 (1972)).” *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at \*3 (E.D. Cal.

July 14, 2025). *See also Barbecho v. Decker*, No. 20-CV-2821 (AJN), 2020 WL 2317876, at \*5 (S.D.N.Y. May 11, 2020) (must balance the equities and the public interest where re-detention is concerned).

37. Moreover, re-detention is not justified where removal is not reasonably foreseeable; removal is not reasonably likely in the foreseeable future. *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 706 (S.D. Tex. 2020).

**B. PETITIONER MUST BE IMMEDIATELY RELEASED AS HE IS NOT SUBJECT TO MANDATORY DETENTION PURSUANT TO *VILLA V. NORMAND* OR *BAUTISTA V. SANTACRUZ*.**

38. This Court in *Antonio Aguirre Villa v. Normand*, 2025 U.S. Dist. LEXIS 217348 (S.D. Georgia, 2025), held that the *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 216 (BIA 2025), is “unpersuasive” and Respondents cannot subject any non-citizen to mandatory detention under 8 U.S.C. § 1225 when a non-citizen is “not an arriving alien actively seeking admission to the United States.” *Villa*, at 30. See, annexed hereto as Exhibit D and incorporated herein by reference, *Antonio Aguirre Villa v. Normand*, 2025 U.S. Dist. LEXIS 217348 (S.D. Georgia, 2025).

39. See, also, annexed hereto as Exhibit E and incorporated herein by reference, *Bautista v. Santacruz*, 2025 U.S. Dist. LEXIS 262265 (C.D. California, 2025), wherein the Court in December, 2025 declared as a nationwide class those individuals detained under INA § 236(a), 8 U.S.C. § 1226(a) must be considered for

bond eligibility and not subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b)(2); explicitly vacating the DHS memo dated July 8, 2025 upon which *Hurtado* is based, and in effect overruling *Hurtado*.

40. More, as Petitioner upon his U.S. entry immediately informed ICE of his fear of returning to Ecuador, his fear of persecution or torture, and his intention to apply for asylum in the U.S., and as Petitioner has in fact filed his Asylum Application, Petitioner has clearly established his fear of returning to his home country and cannot be removed on an expedited basis. See, 8 U.S.C. § 1225(b)(1)(A)(ii), (B); 8 C.F.R § 235.3(b)(4). This Court must order Petitioner's release so as to obviate any possibility for an erroneous deportation based on expedited removal.

#### **PRAYER FOR RELIEF**

33. WHEREFORE, Petitioner respectfully requests that the Court:
- A. Order Mr. Diaz's immediate release from Detention;
  - B. Order Mr. Diaz's immediate return to Newark, NJ, at Respondent's sole expense, within 24 hours;
  - C. Order Respondents to show cause why Mr. Diaz is being subjected to unlawful and unconstitutional detention;
  - D. Declare Mr. Diaz's continued detention unlawful;

- E. Declare the continued detention of Mr. Diaz without a tenable justification a violation of the Due Process Clause of the U.S. Constitution;
- F. Order Mr. Diaz's bond hearing to occur in U.S. immigration court in New York, NJ, to the extent the Court requires a bond hearing;
- E. Grant any other relief that may be fit and proper.

Dated:

January 20, 2026

/s/ Rachel Sharma  
DreamPath Law, LLC  
Rachel Efron Sharma  
Attorney for Petitioner  
5425 Peachtree Parkway NW  
Norcross, GA 30092  
rachel@dreampathlaw.com  
470-273-3444

**28 U.S.C. § 2242 VERIFICATION STATEMENT**

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioner's family members and have reviewed various documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

Date: January 20, 2026

/s/ Rachel Effron Sharma  
DreamPath Law, LLC  
5425 Peachtree Parkway NW  
Norcross, GA 30092  
rachel@dreampathlaw.com  
470-273-3444  
(404) 981-0608 (cell)