

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO. 3:26-CV-00401-KDB

ELDA JAMILETH COREA VILLANUEVA,

Petitioner,

v.

KRISTEN SULLIVAN, Field Office Director
of Enforcement and Removal Operations,
Atlanta Field Office, Charlotte Sub-Office;
TODD LYONS, Acting Director of
Immigration and Customs Enforcement;
MARKWAYNE MULLIN, Secretary of U.S.
Department of Homeland Security; and TODD
BLANCHE, Acting United States Attorney
General,

Respondents.

UNOPPOSED MOTION TO TRANSFER VENUE

NOW COMES the United States of America, by and through Russ Ferguson, United States Attorney for the Western District of North Carolina, by the appearance of the undersigned counsel who enters this special, limited appearance¹ for Respondents in the above-captioned action, and moves the Court to transfer the Petition for Writ of Habeas Corpus (“Petition”) to the U.S. District Court for the Middle District of Georgia (which is the District of Petitioner’s confinement).

¹ Respondents preserve all defenses set forth in Rule 12(b)(2)-(7), particularly to preserve the right to file a subsequent motion to dismiss on any and all grounds if necessary, including without limitation lack of personal jurisdiction, improper venue, insufficient process, insufficient service of process, and failure to join a necessary party. (*See* Doc. 2.) *See also* Fed. R. Civ. P. 12(h); *Davenport v. Ralph N. Peters & Co.*, 386 F.2d 199, 204 (4th Cir. 1967).

Upon consultation on June 1, 2026, Petitioner’s counsel represented that Petitioner does not oppose the relief requested herein, i.e., transfer of the Petition to the U.S. District Court for the Middle District of Georgia.

Should the Court grant this unopposed Motion to Transfer Venue prior to June 3, 2026, the United States further requests that the U.S. Attorney’s Office for the Middle District of Georgia be required to show cause by a date to be set by the U.S. District Court for the Middle District of Georgia.²

As background, “Petitioner Elda Jamileth Corea Villanueva is a native and citizen of Honduras presently detained by ICE.” (Doc. 1 at 2 ¶ 14.) On May 21, 2026, Petitioner was apprehended as part of her regular reporting requirements to North Carolina ICE/LRO and transferred to the Irwin County Detention Center in Ocilla, Georgia that same day. *See* Ex. A at 3 ¶ 17 (Decl. of Medrick M. Dorson (“Dorson Decl.”) (“The Petitioner left the Charlotte, North Carolina office at approximately 18:06 on April 21, 2026” and arrived at the Georgia facility later that night “at 22:50 on May 21, 2026”). Petitioner remains detained at this facility, *id.* ¶ 18, which is located in the U.S. District Court for the Middle District of Georgia. The next day (May 22, 2026), the Petition was filed in the Western District of North Carolina. (*See* Doc. 1.)

As the Court has noted, Petitioner seeks release under 28 U.S.C. § 2241. (*See* Doc. 3 at 1.) Where an immigrant seeks habeas relief under this section—specifically, release from detention—the Court must address two threshold questions before proceeding to the substance of the litigation:

² The U.S. Attorney’s Office for the Western District of North Carolina intends to meet the Court’s seven-day deadline (which the United States calculates to be June 3, 2026) to show cause unless otherwise ordered. (*See* Doc. 3 at 2.) This office would incorporate (at least in part) the contents of such response by reference to this motion as if fully set out herein, as such response includes further factual background and analysis relevant to a lack of jurisdiction and venue, as well as the underlying merits of Petitioner’s claims.

first, whether the proper respondent has been named (i.e., the warden of the facility actually detaining the immigrant) and, second, whether venue is proper (i.e., whether, at the time of filing, the Petition was filed in the District in which the immigrant was being detained).³ See *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004).

Here, the Court should transfer the instant Petition because the answer to either threshold question (indeed, both questions) is “no.” First, the Warden of the Irwin County Detention Center is not named. *Ortiz*, 3:25-cv-00314-GCM-SCR, Doc. 22 at 2; *Rumsfeld*, 542 U.S. at 439 (“In challenges to present physical confinement, we reaffirm that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.”); see *Kanai v. McHugh*, 638 F.3d 251, 255 (4th Cir. 2011) (“The proper respondent to a habeas corpus petition is the person who has custody over the petitioner, namely, the person with the ability to produce the petitioner before the habeas court.”) (citations omitted).

Second, Petitioner was detained in Georgia at the time the Petition was filed. “The Petitioner left the Charlotte, North Carolina office at approximately 18:06 on May 21, 2026, and arrived at the Irwin County Detention Center in Ocilla, Georgia at 22:50 on May 21, 2026.” Ex. A at 3 ¶ 17 (Dorson Decl.). The Petition was filed in the Western District of North Carolina on May

³ Courts have found the “district of confinement” rule holds true even when a petitioner is in the process of being screened and transported. For instance, in *Khalil v. Joyce*, the petitioner was initially arrested in New York City, screened in the Southern District of New York, transferred to a temporary holding facility in New Jersey, and ultimately transferred to and detained at a facility in Louisiana within a three-day span. 771 F. Supp. 3d 268, 275-77 (S.D.N.Y. 2025). The Court determined that venue was improper because, when the petition was filed “at 4:40 a.m. on March 9, 2025, . . . [Khalil] was detained in New Jersey. A straightforward application of the district-of-confinement and immediate-custodian rules therefore dictates that Khalil’s [p]etition should have been filed in the United States District Court for the District of New Jersey, not in this Court.” *Id.* at 273; see *Ortiz v. Director of U.S. Citizenship & Immigr. Servs.*, 3:25-cv-00314-GCM-SCR, Doc. 22 at 2 (W.D.N.C. July 7, 2025) (citing to, *inter alia*, *Khalil* when dismissing § 2241 habeas petition).

22, 2026. (*See* Doc. 1.) As Petitioner is not—and at the time of the Petition’s filing, was not—detained in the Western District of North Carolina, the Court should transfer the Petition.

Although the Court could alternatively dismiss the instant case without prejudice for these same reasons, the United States requests a transfer because it may afford Petitioner the opportunity to litigate her Petition in a more expeditious manner in a District where the presiding Court would have proper venue and jurisdiction over the warden of the facility of her detainment. It is not uncommon in this District for such cases to be transferred to the proper venue or dismissed without prejudice. *See, e.g., Ortiz*, 3:25-cv-00314-GCM-SCR, Doc. 22 at 1-2 (dismissing § 2241 habeas petition seeking an immigrant’s release because the petitioner failed to meet either the “district of confinement” or “immediate custodian” rules established in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004)); *Scott v. United States*, No. 3:02-CR-00193-GCM-4, 2020 WL 1249390, at *1 (W.D.N.C. Mar. 16, 2020) (“Because he is confined in Gilmer, West Virginia, Petitioner was required to file his § 2241 in the Northern District of West Virginia and to name the warden of FCI Gilmore as the respondent.”); *Wamala as next friend Malachi v. US Immigr. & Customs Enf’t*, No. 3:19-CV-00067-FDW, 2019 WL 6713246, at *1 (W.D.N.C. Dec. 9, 2019) (“Wamala has not named a proper respondent. Additionally, the person in Georgia with immediate custody of Wamala is not within the personal jurisdiction of this Court.”); *United States v. Ali*, No. 3:19-CR-00080-RJC-DSC, 2024 WL 3836755, at *1 (W.D.N.C. Aug. 15, 2024) (“[A] petition for a writ of habeas corpus pursuant to § 2241 challenging present physical confinement must be filed in the district of confinement.”) (citations omitted).

Upon consultation with Petitioner’s counsel in accordance with Local Rule 7.1(b), counsel represented that Petitioner does not oppose a transfer of venue to the U.S. District Court for the Middle District of Georgia.

Respectfully submitted this 1st day of June, 2026.

RUSS FERGUSON
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s/Jonathan M. Warren
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CERTIFICATION

Pursuant to the Standing Order of this Court entered June 18, 2024 and published to the Bar of the Western District on June 27, 2024, the undersigned hereby certifies:

1. No artificial intelligence was employed in doing the research for the preparation of this document, with the exception of such artificial intelligence embedded in the standard on-line legal research sources Westlaw, Lexis, FastCase, and Bloomberg;

2. Every statement and every citation to an authority contained in this document has been checked by an attorney in this case and/or a paralegal working at his/her direction (or the party making the filing if acting pro se) as to the accuracy of the proposition for which it is offered, and the citation to authority provided.

This the 1st day of June, 2026.

s/JONATHAN M. WARREN
Assistant United States Attorney