

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
AMERICUS DIVISION**

**AGOSTINO ANTONIO TOMASELLO SALDIVIA,**  
by and through **PAOLA ALEJANDRA SANTOS RAMIREZ,**  
his wife and Next Friend,  
Petitioner,

v.

Civil Action No.: \_\_\_\_\_

**JASON STREEVAL, Warden, Stewart Detention Center;  
FIELD OFFICE DIRECTOR, ICE ERO Atlanta Field Office;  
SECRETARY, U.S. Department of Homeland Security,**

Respondents.

**PETITION FOR WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241**

***EMERGENCY RELIEF REQUESTED — IMMEDIATE RELEASE WITHIN 24 HOURS***

Petitioner Agostino Antonio Tomasello Saldivia, by and through his wife and Next Friend Paola Alejandra Santos Ramirez, respectfully petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, seeking immediate release from unlawful detention by U.S. Immigration and Customs Enforcement (ICE), ERO Atlanta Field Office, at Stewart Detention Center in Lumpkin, Georgia. Petitioner has been detained since May 1, 2026 — seventeen (17) days as of this filing — without any bond hearing, without a Notice to Appear, without any arrest warrant, and without any judicial or administrative determination of his custody status. His detention violates the Fifth Amendment, 8 U.S.C. § 1226(a), 8 C.F.R. § 208.21, and applicable federal law. As this Court recently held in an identical factual posture, release is the appropriate remedy. See *Seguerit v. FNU LNU*, No. 2:26-cv-01233-KG-LF (D.N.M. May 5, 2026).

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction pursuant to 28 U.S.C. § 2241(c)(3). See *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Preiser v. Rodriguez*, 411 U.S. 475, 485 (1973) (habeas corpus seeks 'release from unlawful physical confinement').

2. Venue is proper because Petitioner is detained at Stewart Detention Center, 146 CCA Road, Lumpkin, Georgia 31815, within the Middle District of Georgia, Americus Division. See 28 U.S.C. § 2241(d); *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).

3. This Court has authority under 28 U.S.C. § 2243 to 'dispose of [a habeas petition] as law and justice require' and possesses broad discretion to fashion appropriate relief, including immediate release. See Clayton v. Jones, 700 F.3d 435, 443 (10th Cir. 2012); Burton v. Johnson, 975 F.2d 690, 693 (10th Cir. 1992).

## II. PARTIES

4. Petitioner Agostino Antonio Tomasello Saldivia is a 37-year-old Venezuelan-Italian national, born [REDACTED] Alien Registration Number A [REDACTED] currently detained at Stewart Detention Center, Lumpkin, Georgia 31815.

5. Next Friend Paola Alejandra Santos Ramirez, A [REDACTED] is Petitioner's lawfully wedded wife, residing at [REDACTED] 08. She brings this petition pursuant to the next friend doctrine recognized in Whitmore v. Arkansas, 495 U.S. 149 (1990).

6. Respondents are the Warden of Stewart Detention Center, the Field Office Director of ICE ERO Atlanta, and the Secretary of the Department of Homeland Security, each responsible for Petitioner's unlawful custody.

## III. STATEMENT OF FACTS

7. Petitioner lawfully entered the United States and has continuously maintained legal presence and work authorization.

8. On February 13, 2025, Petitioner's wife filed Form I-589, Application for Asylum and Withholding of Removal, with USCIS (A-[REDACTED]). Petitioner was formally included as a derivative beneficiary, as was their minor son S [REDACTED] A [REDACTED]. The case remains pending before USCIS.

9. At all times relevant, Petitioner held a valid Employment Authorization Document (EAD) and worked lawfully as a commercial truck driver for Empire National Inc., generating average monthly earnings of \$4,324, as documented by contractor payment records from October 2025 through May 2026.

10. On May 1, 2026, at approximately 1:00 a.m., Officer William Fletcher detained Petitioner at the I-75 inspection weigh station, 13099 I-75, White Springs, Florida, while he was lawfully transporting commercial cargo. He presented a valid commercial driver's license, valid EAD, and all required documentation.

11. Petitioner had no criminal record, no prior immigration violations, no outstanding warrants, and was in full compliance with all immigration requirements at the time of his arrest.

12. Petitioner was taken into custody without being served with an arrest warrant (Form I-200 or I-203), without a Notice to Appear, and without being advised of his rights.

13. Petitioner has been held at Stewart Detention Center for seventeen days without any bond hearing, bond determination, or any judicial or administrative review of his custody status.



14. Petitioner has strong community ties in Gainesville, Florida. He has a U.S. citizen sponsor — his uncle Hugh Edward Johnston Reyes, U.S. Passport No. A85716042 — who has formally committed to housing him and ensuring compliance with all release conditions. Five community members have submitted signed support letters attesting to his character. He presents no flight risk and no danger to the community whatsoever.

15. Petitioner's detention has left his wife without any income, his 6-year-old son without his father, and his parents — including his father who suffers from prostate cancer (diagnosed at Shands at the University of Florida, December 7, 2023) — without their primary financial support.

#### **IV. LEGAL CLAIMS**

##### ***CLAIM ONE: § 1226(a) Governs — Petitioner Is Entitled to Immediate Release***

16. Section 1226(a) sets forth 'the default rule' for detaining noncitizens 'already in the country.' *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). It authorizes detention 'pending a decision on whether [the noncitizen is] to be removed,' and entitles them to 'an individualized bond hearing at the outset of detention.' *Id.* at 306.

17. Consistent with the overwhelming majority of district courts nationwide, § 1226(a) governs here. See *Barco Mercado v. Francis*, 2025 WL 3295903, at \*13 (S.D.N.Y.) (collecting 362 district-court opinions and noting challengers prevailed in at least 350 of them). Critically, this very Court has already established that § 1226(a) governs cases arising from Stewart Detention Center. See Standing Order No. 2026-01 (M.D. Ga. Jan. 29, 2026) (Chief Judge Clay D. Land); *J.A.M. v. Streeval*, No. 4:25-CV-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025). Petitioner entered the United States lawfully, has a pending asylum case, has lawfully worked and complied with all immigration requirements. Therefore, Petitioner is detained 'pending a decision on whether [he is] to be removed,' governed by § 1226(a). See *Seguerit v. FNU LNU*, No. 2:26-cv-01233-KG-LF, at 3 (D.N.M. May 5, 2026); *Patel v. Noem*, 2026 WL 103163 (D.N.M.); *Arroyo Lopez v. Noem*, 2026 WL 776332 (D.N.M.).

18. Because § 1226(a) governs and Petitioner has received no bond hearing, 'the Government offers no new basis for Petitioner's continued detention, Petitioner is entitled to relief.' *Seguerit*, No. 2:26-cv-01233-KG-LF, at 4. The appropriate remedy is release. See *Singh v. Carnes*, 2026 WL 446579, at \*1 (D.N.M.) (ordering release where government 'failed to articulate a legitimate interest in Petitioner's continued detention'); *Palomeque-Carrion v. Bondi*, 2026 WL 895567, at \*2 (D.N.M.) (same); *Seguerit*, No. 2:26-cv-01233-KG-LF, at 5 (ordering release within 24 hours).

##### ***CLAIM TWO: Unlawful Detention of Derivative Asylum Beneficiary — 8 U.S.C. § 1158 and 8 C.F.R. § 208.21***

19. Under 8 U.S.C. § 1158(b)(3)(A) and 8 C.F.R. § 208.21, a formally included derivative beneficiary on a pending I-589 possesses a cognizable legal interest in the asylum proceedings and is afforded the same procedural protections as the principal applicant. ICE's detention of a derivative beneficiary while a principal's asylum case is actively

pending before USCIS constitutes unlawful interference with a federal administrative proceeding.

20 Furthermore, Petitioner's inclusion as a derivative beneficiary falls within the exception under INA § 208(a)(2)(B) for persons whose presence is protected by a pending asylum application, including those who entered under the Visa Waiver Program. See 8 C.F.R. § 217.4; Matter of D.K., 25 I&N Dec. 761 (RIA 2012). The VWP limitation on contesting removal applies only where no asylum-based protection is available — which is not the case here.

***CLAIM THREE: Violation of the Fifth Amendment Due Process Clause***

21. The Fifth Amendment's Due Process Clause prohibits deprivation of liberty without due process. 'Freedom from imprisonment — from government custody, detention, or other forms of physical restraint — lies at the heart of the liberty that [the Due Process] Clause protects.' *Zadvydas*, 533 U.S. at 690. 'It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.' *Reno v. Flores*, 507 U.S. 292, 306 (1993). 'Once an alien gains admission to our country and begins to develop the ties that go with permanent residence his constitutional status changes accordingly.' *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Petitioner's continued detention without any individualized review 'constitutes an ongoing violation of [his] right to due process.' *Cortez-Gonzalez v. Noem*, 2025 WL 3485771, at \*5 (D.N.M.).

***CLAIM FOUR: Arrest Without Probable Cause — 8 C.F.R. § 287.3***

22. Under 8 C.F.R. § 287.3, an immigration arrest requires specific articulable facts giving rise to a reasonable belief that the person is removable. At the time of arrest, Petitioner held a valid EAD and was a formally included derivative beneficiary in a pending asylum case. No arrest warrant (Form I-200 or I-203) was ever served, as required by regulation. The arrest lacked probable cause and was unlawful at its inception.

***CLAIM FIVE: No Flight Risk — Sponsor, Community Ties, and Irreparable Harm***

23. Petitioner presents zero risk of flight and no danger to the community. He has a U.S. citizen sponsor — his uncle Hugh Edward Johnston Reyes, U.S. Passport No. A85716042, residing at 4440 SW Archer Rd., Apt. 1505, Gainesville, Florida 32608 — who has formally committed to housing him and ensuring compliance with all release conditions and immigration hearings. Petitioner's wife, 6-year-old son, and parents all reside in Gainesville, Florida. Five community members have submitted sworn support letters. He has no criminal history in any country, has maintained continuous lawful employment, and has never violated any immigration requirement. The government cannot articulate any legitimate interest in his continued detention. Release is warranted. See *Seguerit*, No. 2:26-cv-01233-KG-LF, at 5; *Singh v. Carnes*, 2026 WL 446579, at \*1 (D.N.M.).

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**V. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

24. Respondents have denied Petitioner any administrative remedy by failing to provide any bond hearing, Notice to Appear, or other process through which he could seek relief.



On May 15, 2026, a formal humanitarian parole request was submitted via email to ERO.Atlanta@ice.dhs.gov and Atlanta.Outreach@ice.dhs.gov. A follow-up complete package was submitted on May 16, 2026. No substantive response has been received. Respondents' inaction demonstrates that further administrative pursuit is futile. Exhaustion is therefore satisfied or excused. See *McCarthy v. Madigan*, 503 U.S. 140 (1992).

## VI. RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests that this Court:

- a) GRANT the Writ of Habeas Corpus and ORDER Respondents to release Petitioner within 24 hours of this Order, without imposing any new conditions of release beyond those in place prior to detention. See *Seguerit v. FNU LNU*, No. 2:26-cv-01233-KG-LF (D.N.M. May 5, 2026);
- b) ENJOIN Respondents from redetaining Petitioner absent a predetention hearing before a neutral immigration judge under § 1226(a), at which the Government must establish by clear and convincing evidence that Petitioner poses a danger or flight risk;
- c) ISSUE a Temporary Restraining Order immediately prohibiting Respondents from removing, transferring, or deporting Petitioner from the Middle District of Georgia pending resolution of this petition;
- d) DECLARE that Petitioner's detention without a bond hearing violates the Fifth Amendment and 8 U.S.C. § 1226(a); and
- e) In the alternative, if this Court declines to order immediate release, ORDER that Petitioner receive an immediate individualized bond hearing before an Immigration Judge, at which the Government must establish by clear and convincing evidence that Petitioner poses a danger to the community or a risk of flight; and grant such other and further relief as this Court deems just and proper.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Respectfully submitted,

Signature: *Paola Santos*  
**Paola Alejandra Santos Ramirez**

*Next Friend for Petitioner Agostino Antonio Tomasello Saldivia*

Email: 

Date: May 18, 2026

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 18, 2026, a true and correct copy of the foregoing was served upon Respondents by U.S. Certified Mail, Return Receipt Requested, to: (1) Warden, Stewart Detention Center, 146 CCA Road, Lumpkin, Georgia 31815; (2) Field Office Director, ICE ERO Atlanta, 180 Ted Turner Drive SW, Atlanta, Georgia 30303; (3) Secretary, DIIS, 2707 Martin Luther King Jr. Ave. SE, Washington, D.C. 20528; and (4) U.S. Attorney's Office, Middle District of Georgia, 201 W. Broad Avenue, Albany, Georgia 31701.

Signature: Duola Santos Date: 05/21/26

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