

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RICARDO HAYRIS PEREIRA FALEIRO
Petitioner,


v.

JESSICA SAGE, in her official capacity as
Warden of Lewisburg, FCI, Lewisburg, PA
BRIAN MCSHANE, in his official capacity as
Acting Philadelphia Field Office Director,
United States Immigration and Customs
Enforcement; TODD LYONS, in his
Official capacity as Acting Director of
Immigration and Customs Enforcement;
KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security; THE U.S. DEPARTMENT OF
HOMELAND SECURITY; PAMELA BONDI,
Attorney General of the United States

Respondents.

Case No.: 3:26-CV-00276


PETITION FOR WRIT OF HABEAS CORPUS

RICARDO HAYRIS PEREIRA FALEIRO,  submits this petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and the Suspension Clause (Article 1, Section 9, Clause 2) of the United States Constitution. Petitioner requests that this Court release him from detention by the Immigration and Customs Enforcement (“ICE”) or, alternatively, conduct or order a bond hearing

in which the Respondents bear the burden of justifying Petitioner's continued detention. Petitioner also requests that the Court set aside recent policies implemented by Respondents that are contrary to the statutory right of non-citizens like Petitioner to seek release and bail through an exercise of the Respondents' discretion.

Mr. Pereira Faleiro is a native of Brazil. He entered the United States on August 12, 2004, and has remained continuously present without departure for over 21 years.

The Petitioner is married to a United States citizen, who suffers from significant spinal injury and PTSD, the result of a physical altercation in February of 2024 at the correctional facility where she was employed, which requires ongoing medical treatment and support. Prior to her detention, Mr. Pereira Faleiro was her primary caretaker.

Mr. Pereira Faleiro is the father of a United States citizen child born in  of 2024, who depends upon him for his care, especially since his mother requires extensive medical treatment and psychological support.

Mr. Pereira Faleiro has owned and operated his business, Fast Wrap Windows & Doors, Inc., since February 28, 2019. The business employs 23 individuals and helps to support multiple contractors. Mr. Pereira Faleiro pays taxes and contributes

to the United States economy through his business. See printout from the Pennsylvania Corporation Bureau, attached as Exhibit "A".

A Notice to Appear was issued to Mr. Pereira Faleiro on October 14, 2025, on the grounds that Petitioner was an alien present in the United States who had not been admitted or paroled. See the Notice to Appear, attached hereto as Exhibit "B". A hearing was scheduled for October 27, 2025, before the immigration judge.

Mr. Pereira Faleiro was put in removal proceedings and was **granted** Non-LPR Cancellation of Removal by Order dated January 26, 2026, based upon several factors, as follows:

- a) Mr. Pereira Faleiro's good moral character and credibility;
- b) The exceptional and extremely unusual hardship of an emotional, psychological, physical and economic nature, his removal would cause his wife, who suffers from PTSD and a spinal injury, limiting the work she can perform to help support the family;
- c) the family ties that Mr. Pereira Faleiro has established in the community, especially his disabled wife and one-year old son;

d) the economic hardship Mr. Pereira Faleiro's removal would cause the US citizen contractors and their families employed by Mr. Pereira's business;

e) the economic contribution he provides to the U.S. economy by operation of his business and employment of his workers/self-contractors; and

f) length of time the Petitioner has lived in the United States and within his community (over 21 years).

See decision of the immigration judge dated January 26, 2026 (42B Order), attached as Exhibit "C".

An appeal of the 42B Order may be filed by the Department of Homeland Security within 30 days of January 26, 2026, or by February 25, 2026.

Mr. Pereira Faleiro was arrested by ICE on or about January 20, 2026, and transferred to Lewisburg, FCI, located at 2400 Robert F. Miller Drive, Lewisburg, PA 17837. See Federal Bureau of Prisons and ICE Detainee Locator, attached, collectively, and marked as Exhibit "D".

Respondents arbitrarily detained Mr. Pereira Faleiro despite the requirement under 8 U.S.C. § 1226(a) and its implementing regulations that immigration officials make an individualized custody determination. Moreover, Respondents have adopted policies enshrined in administrative decisions by the Board of Immigration

Appeals (“BIA”) that subject non-citizens like Mr. Pereira Faleiro to mandatory detention in violation of Section 1226(a).

Despite winning his case in the immigration court, which would grant him legal permanent residence, Mr. Pereira Faleiro remains detained at Pike County Correctional Facility, without bond or the ability to request one.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 1331 (federal question); 5 U.S.C. § 702 (Administrative Procedures Act); U.S. Const. amend. V (Due Process Clause); and U.S. Const. art. I, § 9, cl. 2 (Suspension Clause).

2. Venue is proper in the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 2241(d), because at the time of filing his Petition for Writ of Habeas Corpus (Doc. 1), Mr. Pereira Faleiro is imprisoned at the Pike County Correctional Facility in Lords Valley, PA.

PARTIES

3. Petitioner, Ricardo Hayris Pereira Faleiro, is a native of Brazil. He is detained at the Lewisburg FCI in Lewisburg, PA.

4. Respondent Jessica Sage is named in her official capacity as the Warden of Lewisburg FCI, which detains individuals suspected of civil immigration violations. Respondent is the immediate physical custodian responsible for the detention of Petitioner.

5. Respondent Brian McShane is the Acting Philadelphia Field Office Director for Immigration and Customs Enforcement's ("ICE") Enforcement and Removal Operations. In this capacity he is responsible for the custody of all noncitizens detained by ICE at Pike County Correctional Facility in Lords Valley, PA and has the authority to release Mr. Pereira Faleiro or transfer him to a different facility. He is one of Mr. Pereira Faleiro's immediate custodians and is sued in his official capacity.

6. Respondent Todd Lyons is the Acting Director of ICE. In this capacity he is responsible for enforcing immigration laws, and as such is a legal custodian of Mr. Pereira Faleiro. He is sued in his official capacity.

7. Respondent Kristi Noem is Secretary of Homeland Security. In this capacity she runs the Department of Homeland Security and is charged pursuant to 8 U.S.C. 1103(a)(1) with administering and enforcing immigration laws. She is the ultimate legal custodian of Mr. Pereira Faleiro and is sued in her official capacity.

8. The Department of Homeland Security (“DHS”) is the agency of the federal government responsible for enforcing the immigration laws. DHS is also Mr. Pereira Faleiro’s legal custodian.

9. Respondent Pamela Bondi is the Attorney General of the United States and the head of the U.S. Department of Justice, which encompasses the Board of Immigration Appeals (“BIA”) and immigration courts, known collectively as the Executive Office of Immigration Review (“EOIR”). Ms. Bondi shares responsibility for the implementation and enforcement of immigration laws along with Respondent Noem. Ms. Bondi is a legal custodian of Mr. Pereira Faleiro. She is sued in her official capacity.

LEGAL FRAMEWORK

10. For non-citizens attempting to enter the United States, the INA provides under 8 U.S.C. § 1225(b)(2)(A) that “in the case of [a non-citizen] who is an applicant from admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained.” “A noncitizen detained under Section 1225(b)(2) may be released only if he is paroled ‘for urgent humanitarian reasons or significant public benefit’ pursuant to 8 U.S.C. § 1182(d)(5)(A).” *Gomes v. Hyde*,

25 Civ. 11571, 2025 WL 1868288, at *2 (D. Mass. July 7, 2025) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018)).

11. In contrast, the Supreme Court has found that “U.S. immigration law authorizes the Government to detain certain [non-citizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).” *Jennings*, 583 U.S. at 288-89.

12. Section 236 of the INA provides in relevant part as follows:

(a) Arrest, Detention, and Release. On a warrant issued by the Attorney General, *an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States*. Except as provided in subsection (c) and pending such decision, *the Attorney General—*

(1) *may continue to detain the arrested alien*; and

(2) *may release the alien on—*

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole ...

13. The Supreme Court has interpreted similar “may” language in other provisions of the INA to require “some level of individualized determination.” *I.N.S. v. Nat’l Ctr. For Immigrants’ Rights*, 502 U.S. 183, 194 (1991). The regulation implementing Respondents’ authority to arrest non-citizens present in the United States reads:

“Any officer authorized to issue a warrant of arrest may, in the officer’s discretion, release an alien not described in [8 U.S.C. §

1236(c)(1)] of the Act, under the conditions at section [8 U.S.C. § 1236(a)(2) and (3)]; *provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.*”

8 U.S.C. § 1236.1(c)(8).

14. Noncitizens may request a review of an initial custody determination before an Immigration Judge (“IJ”). 8 C.F.R. § 1236.1(d)(1); 8 C.F.R. § 1002.19(a). At this hearing an IJ may make the decision “upon any information that is available to the [Immigration Judge] or that is presented to him or her by the [non-citizen] or the [government].” 8 C.F.R. § 1003.19(d); *see also Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006). Non-citizens may appeal a negative decision in a custody review before an IJ to the Board of Immigration Appeals. 8 C.F.R. § 1236.1(d)(3)(i). The current statutory scheme was created through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”).

15. For the first time in nearly three decades, Respondents have taken the position through a series of precedential decisions by the Board of Immigration Appeals that non-citizens residing in the interior of the United States are not entitled to a custody redetermination (a “bond hearing”) before an Immigration Judge.

16. First, in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the BIA held that a non-citizen who had been apprehended at the border and subsequently released into the United States is subject to mandatory detention without a possibility of bail upon re-detention, pursuant to 8 U.S.C. § 1225(b), even if that re-detention occurs years after their initial release from custody. The BIA reasoned that “an applicant for admission who is arrested and detained without a warrant while in the process of arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section [1225(b)] [], and is ineligible for any subsequent release on bond under section [1226(a)].” *Q. Li*, 29 I&N Dec. at 74.

17. Then in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA stated that all non-citizens who are present in the United States without admission are subject to mandatory detention under Section 1225(b), regardless of how long they have been residing in the U.S. and absent any prior interaction with immigration authorities.

FACTS AND PROCEDURAL HISTORY

18. Mr. Pereira Faleiro is a native of Brazil.

19. On or about 2003, Mr. Pereira Faleiro entered the United States via the US border with Mexico.

20. Mr. Pereira Faleiro was issued a Notice to Appear on October 24, 2025, charging him as removable from the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) (“A [non-citizen] present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible”). See Exhibit B.

21. Mr. Pereira Faleiro applied for Cancellation of Removal for non-legal permanent residents and was granted relief by the immigration court on January 26, 2026.

22. The Department of Homeland Security has the right to appeal the decision of the immigration judge until February 25, 2026.

23. Despite winning his case, the Respondent remains detained in Lewisburg, FCI.

CLAIM FOR RELIEF

COUNT ONE

VIOLATION OF DUE PROCESS, U.S. CONST. AMEND. V

24. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

25. The Fifth Amendment's Due Process Clause prevents the Government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V.

26. The Due Process Clause extends to noncitizens residing in the United States, whether they have lawful status or not. *See Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Specifically, "[i]t is well established that the Fifth Amendment entitles [non-citizens] to due process of law in deportation proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *see also Abdulai v. Ashcroft*, 239 F.3d 542, 549 (3d Cir. 2001) ("[Non-citizens] facing removal are entitled to due process"); *Calderon-Rosas v. Atty' Gen.*, 957 F.3d 378, 386 (3d Cir. 2020) ("In sum, petitioners seeking discretionary relief are entitled to fundamentally fair removal proceedings, which constitutes a protected interest supporting a due process claim.

27. Evaluating the adequacy of the process provided to a non-citizen requires a balancing of factors. "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or

substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

28. First, Mr. Pereira Faleiro faces “the most significant liberty interest there is—the interest in being free from imprisonment.” *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Second, Respondents have erroneously deprived Mr. Pereira Faleiro of his liberty without any individualized assessment of his circumstances. Third, Respondents did not make any individualized finding that Mr. Pereira Faleiro was a danger or flight risk, so there does not appear to be a significant government interest in detaining Mr. Pereira Faleiro.

29. An application of these factors requires that Mr. Pereira Faleiro should have been provided with additional process before being detained.

COUNT TWO

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a)

30. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

31. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds

of inadmissibility. As, relevant here, it does not apply to those who have been residing in the United States at liberty after being briefly detained at or near the border. Such noncitizens, if detained, are done so under § 1226(a), and are generally eligible release on bond.

32. Respondents' authority to detain Mr. Pereira Faleiro is derived from 8 U.S.C. § 1226(a) as Mr. Pereira Faleiro is already present in the United States.

33. Respondents have detained Mr. Pereira Faleiro without making an individualized determination regarding whether he posed a danger or flight risk as required by 8 U.S.C. § 1226(a) and its regulations.

34. Moreover, Respondents' current policies as set forth in the BIA's decisions in *Matter of Q. Li* and *Matter of Yajure Hurtado* unlawfully prevent Mr. Pereira Faleiro from obtaining a custody redetermination in front of an Immigration Judge as is his right by statute.

COUNT THREE

VIOLATION OF THE BOND REGULATIONS, 8 C.F.R. § 236.1, 1236.1 and 1003.19

35. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

36. In 1997, after Congress amended the INA through IIRIRA, EOIR the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Non-citizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond and bond redetermination.*” 62 Fed. Reg. at 10323 (emphasis added). Thus, the agencies made clear that non-citizens present in the United States would be eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

37. Yet, Respondents have adopted a policy and practice of applying § 1225(b)(2) to non-citizens like Mr. Pereira Faleiro who are present in the United States without being admitted or paroled.

38. The application of § 1225(b)(2) to Mr. Pereira Faleiro unlawfully mandates his continued detention in violation of 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT FOUR

**VIOLATION OF THE ADMINISTRATIVE
PROCEDURE ACT (“APA”), 5 U.S.C. § 701, *et. seq.***

39. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as is fully set forth herein.

40. Mr. Pereira Faleiro is aggrieved by agency action under the Administrative Procedure Act, 5 U.S.C. §§ 701 *et. seq.* Specifically, Respondents have acted arbitrarily in detaining Mr. Pereira Faleiro without conducting an individualized determination into his circumstances. In other words, Respondents have not presented any indication that Mr. Pereira Faleiro’s circumstances have changed such that he is now a danger or flight risk in a way that he was not when he was released from detention at the border in August of 2004.

41. Additionally, Respondents’ recent policies announced through administrative decisions issued by the BIA unlawfully withhold the right to a bond hearing under 8 U.S.C. § 1226(a) to Mr. Pereira Faleiro.

42. These policies are arbitrary, capricious, and not in accordance with the text of the INA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody immediately on his own recognizance or under parole, bond or reasonable conditions of supervision, on the ground that his continued detention by the Department of Homeland Security violates his Due Process rights;

Set aside Respondents' unlawful detention policy contained *Matter of Q. Li* and *Matter of Yajure Hurtado* under the APA, 5 U.S.C. § 706(2), as contrary to law, arbitrary and capricious, and contrary to constitutional right;

Issue a writ requiring an immediate, constitutionally adequate hearing before an Immigration Judge, at which: (i) DHS bears the burden to demonstrate, by clear and convincing evidence, that Petitioner's continued detention is necessary, and (ii) the immigration judge considers Petitioner's ability to pay a bond.

While this petition is pending, order Petitioner's immediate release pursuant to the Court's inherent authority to release habeas corpus petitioners on bail;

Enter a judgment declaring that Respondents' detention of Petitioner is unauthorized by statute and contrary to law and the U.S. Constitution;

Award Petitioner reasonable costs and attorneys' fees; Grant any further relief that this Court may deem fit and proper.

Dated: February 4, 2026

Respectfully submitted,

s/Jose C. Campos, Esq.

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