IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

FELIX E. HERNANDEZ GARCIA,

Petitioner,

v.

JASON STREEVAL, in his official capacity as warden of the Stewart Detention Center,

Respondent.

PETITION FOR A WRIT OF HABEAS CORPUS

Case No

Immigration No. [redacted]

INTRODUCTION

1. Petitioner Felix Eduardo Hernandez-Garcia ("Petitioner") is detained at the Stewart Detention Center in Lumpkin, Georgia, and has been detained there since on or about August 6, 2026.

2. Petitioner entered the U.S. without inspection on or about October 2, 2021, and never had a Credible Fear Interview. He was released from CPB custody, lived in the interior of the U.S., previously had Temporary Protected Status, and paid taxes.

3. Petitioner also affirmatively applied for asylum before he was in removal proceedings, and then again had an individual hearing to seek humanitarian protection. An Immigration Judge ordered his removal in April 2026, but he timely appealed the decision to the Board of Immigration Appeals (BIA). Therefore, the removal order is not administratively final.

4. Upon information and belief, Respondent will argue that Petitioner is "arriving" and ineligible for bond. *See, e.g., Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). In short, the BIA published this decision several months before *Yajure Hurtado* and purportedly tried to address the issue of the impact of a so-called "discretionary NTA" when a noncitizen in immigration court was not in expedited removal. 29 I&N Dec. 216 (BIA 2025).

5. Petitioner respectfully requests that this Court find that he is detained under Respondent's discretionary detention authority under 8 U.S.C. § 1226(a), and either order his release from ICE custody, or in the alternative, order the Respondent to provide a custody redetermination hearing in which the Respondent has the burden to show Petitioner is not a danger to the community or flight risk.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art I § 9, cl. 2 of the U.S. Constitution (Suspension Clause); and 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. §§2201, 2202 (Declaratory Judgment Act).

7. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

8. Administrative exhaustion is unnecessary and would be futile. *See Aguilar v.*

Lewis, 50 F. Supp. 2d 539, 542 (E.D. Va. 1999). As explained below, the Board of Immigration Appeals' decision in *Q. Li* precludes Petitioner's pursuit of a remedy in immigration court

9. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district at the Stewart Detention Center.

PARTIES

7. Petitioner is a native and citizen of Venezuela. He has been detained in ICE custody since on or about August 6, 2026, after he was detained when he went for an annual meeting at the ICE office to report.

8. Respondent Jason Streeval is the Warden of the Stewart Detention Center, a privately owned prison that contracts with ICE to detain non-citizens. He is responsible for overseeing the administration and management of that facility. Mr. Streeval is the immediate custodian of Petitioner. He is sued in his official capacity.

FACTUAL ALLEGATIONS

9. Petitioner is a native and citizen of Venezuela.

10. Petitioner entered the U.S. on or about October 2, 2021, without inspection, by crossing the border between Mexico and the United States. He did not have a Credible Fear Interview and was released from DHS custody after approximately two (2) days.

11. Since coming to the U.S., he affirmatively applied for asylum and applied for and had Temporary Protected Status.

12. DHS initiated removal proceedings by filing a Notice to Appear (NTA), and his case was pending on the non detained docket. Although none of the three boxes are checked off toward the top of the NTA, one of the factual allegations states that he entered the United States without inspection.

13. Between entering the U.S. in 2021 and being detained in the interior in August 2026, Petitioner began to develop substantial ties in the U.S. For example, he applied for an received an Employment Authorization Document (EAD), and he also applied for and received Temporary Protected Status and registered for the National TPS Alliance. He is an active member of a church in Lawrenceville, Georgia, and informed ICE and EOIR of his new address in Georgia after he moved from Texas.

14. Petitioner had an individual hearing at an immigration court in Texas on or about April 22, 2026, and an Immigration Judge denied his application for asylum, withholding of removal, and protection under the Convention Against Torture. He timely appealed the decision to the Board of Immigration Appeals within the thirty-day (30) day deadline, and the appeal remains pending.

15. On or about August 6, 2026, Petitioner reported to an office in Atlanta as part of a normal reporting process. At that time, he was detained, and ICE did not allege he violated any conditions. He was transferred to the Stewart Detention Center, where he remains detained.

16. As Petitioner has a pending appeal with the BIA, he cannot be removed to Venezuela. It is unknown how long it will take for the BIA to render a decision in his case.

LEGAL BACKGROUND

17. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings

18. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Generally, noncitizens are entitled to a bond hearing at the outset of their detention. 8 U.S.C. § 1226(a), *see also* 8 C.F.R. §§ 1003.19(a), 1236.1(d). However, there are several categories of noncitizens who are subject to mandatory detention under the INA.

19. First, noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention until their removal proceedings are concluded, 8 U.S.C. § 1226(c).

20. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals "seeking admission" referred to under § 1225(b)(2).

21. Last, the INA also provides for detention of noncitizens who have received a final order of removal from the U.S., including individuals in withholding only proceedings, 8 U.S.C. § 1231(a) (b).

22. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

23. Following IIRIRA's enactment, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and were instead detained under § 1226(a), making them eligible to be released on bond. See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite 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").

24. In the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an immigration judge, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the U.S., even if without inspection, were entitled to a custody hearing before an immigration judge or other hearing officer. *See e.g., Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (discussing Section 1226(a) as the "default rule" for detaining noncitizens "already present in the United States"); *Miranda v. Garland*, 34 F.4th 338, 346 (4th Cir. 2022) (same); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025, at *9 (D. Md. Aug. 24, 2025) ("Since at least 1996, the INA has mandated the detention of arriving aliens and certain criminal non-citizens detained in the United States."). The Board of Immigration Appeals has long held to this interpretation. For everyone else, 8 U.S.C. § 1226(a) provides DHS the discretion to detain noncitizens, subject to review during a custody hearing before an immigration judge."); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD),

2025 WL 2682255, at *9 (E.D. Va. Sept. 19, 2025) ("Before July 8, 2025, 'DHS's long-standing interpretation has been that § 1226(a) applie[d] to those who have crossed the border between ports of entry and are shortly thereafter apprehended.'") (quoting Transcript of Oral Argument at 44:24–45:2, Biden v. Texas, 597 U.S. 785 (2022)). *See also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a))

25. Starting last year, Respondents have adopted an entirely new interpretation of the statute. On May 15, 2025, the BIA issued an unpublished decision holding that all noncitizens who entered the U.S. without admission or parole are considered applicants for admission and are therefore ineligible for immigration judge bond hearings under 8 U.S.C. § 1225(b)(2)(A). *Matter of Q. LI*, 29 I&N Dec. 66 (BIA 2025).

26. On September 5, 2025, the BIA issued a second decision seemingly reiterating its holding in *Matter of Q-LI*, that any noncitizen who is present in the U.S. without having been inspected or admitted is subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

27. This court, as well as the Eleventh Circuit, determined that a noncitizen in removal proceedings who entered without inspection, is eligible for bond absent disqualifying criminal history. *J.A.M. v. Streeval* (Case No. 4.25-cv-342), *Fidencio Alvarez v. Warden, Federal Detention Center Miami*, 25-14065, (11th Cir., 2026).

28. DHS, and the Immigration Judge, adopted the view that the Eleventh Circuit's decision does not include someone like Petitioner, who entered the U.S. without inspection but was in contact with DHS.

29. Petitioner understands that if he had a Credible Fear Interview or was ever in expedited removal, he would be considered arriving. *See, e.g., Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). Further, if Petitioner presented himself at a Port of Entry and was paroled into the U.S., he would not be included in *Fidencio Alvarez*. Parole is not "admission" to the U.S., and the non-citizen is considered an arriving alien. 8 U.S.C. § 1182(a)(7)(A)(i). This constitutes what several courts have referred to as the "entry doctrine fiction," including this Circuit. *See Gisbert v. U.S. Atty. Gen.*, 988 F.2d 1437, 1440 (5th Cir. 1993), amended, 997 F.2d 1122 (5th Cir. 1993) (recognizing as an "entry fiction" that while "aliens seeking admission into the United States may physically be allowed within its borders pending a determination of inadmissibility, such aliens are legally considered to be detained at the border and hence as never effected entry into this country"); *Jean v. Nelson*, 727 F.2d 957, 969 (11th Cir. 1984) (stating that "an alien's legal status is not altered by detention or parole under the 'entry doctrine fiction.'"). *See also Kaplan v. Tod*, 267 U.S 228, 230 (1925) (opinion by Oliver Wendel Holmes); *Leng May Ma v. Barber*, 357 US 185, 1988 (1958) (U.S. Supreme court affirms "entry doctrine fiction.").

30. Petitioner does not contest that he was paroled from DHS custody and resided in the U.S. for more than four years before his detention at Stewart. However, DHS and Respondent have the right to release any non-citizen from parole, not just someone who is arriving. Thus, for an Immigration Judge to have jurisdiction to review one's custody redetermination, DHS must first review a non-citizen's custody status, normally by filling out an I-286.

31. The facts presented here suggest that DHS considered Petitioner to not be arriving. When he entered the U.S. in 2021 without inspection, he was never in expedited removal. He did not have a Credible Fear Interview, and the NTA states he was not paroled into the U.S. Additionally, DHS prepared an I-200 alien arrest warrant in 2021, as opposed to preparing an

expedited removal form (I-860) or conducting the so-called "border interview," reflected in the I-867A and I 867B.

CLAIMS FOR RELIEF

Count I:
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Bond Redetermination Hearing and Unlawful Detention Without a Warrant

32. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

33. Petitioner is a noncitizen who has been "already present in the United States" for years prior to his immigration detention. *Jennings*, 583 U.S. at 303. He is not, nor has he ever been classified as an "arriving alien," has no disqualifying criminal arrests or convictions, and is therefore entitled to a bond redetermination by an immigration judge pursuant to 8 U.S.C. § 1226(a).

34. Upon information and belief, Respondents have misclassified Petitioner as subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A), and Respondent Bondi and her designees will not give Petitioner a bond redetermination pursuant to *Q. Li*, 29 I&N Dec. at 66.

35. Respondent's misclassification of Petitioner under §1225(b)(2)(A) unlawfully mandates his continued detention and violates the Immigration and Nationality Act.

36. Upon information and belief, Respondents have detained Petitioner without a warrant as required by the plain language of 8 U.S.C. § 1226(a). Respondent's detention of Petitioner in violation of the warrant requirement also violates the INA.

Count II:
Violation of the Fifth Amendment to the U.S. Constitution
Unlawful Detention

37. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

38. The Fifth Amendment provides that "[n]o person" shall be "be deprived of life, liberty, or property, without due process of law."

39. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas,* 533 U.S. at 690.

40. Moreover, "[t]he Due Process Clause applies to all 'persons' within the U.S., including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.

41. The government's mandatory detention of Petitioner without consideration for release on bond or access to a bond hearing violates his due process rights.

Count III:
Violation of the Administrative Procedures Act
Unlawful Denial of Release on Bond

42. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

43. Courts must "hold unlawful and set aside agency action" that is "arbitrary capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

44. In subjecting Petitioner to mandatory detention under §1225(b)(2)(A), Respondents have violated the INA, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, and adopted a new policy that contradicts its regulations without providing meaningful notice or opportunity to comment, despite the substantive rights of noncitizens, such as Petitioner.

45 Moreover, Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

46. The application of 8 U.S.C. §1225(b)(2)(A) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such violates the APA. *See* 5 U.S.C. §706(2).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully asks that this Court:

a. Assume jurisdiction over the matter;

b. Order that Petitioner shall not be transferred outside of the Middle District of Georgia while this case is pending;

c. Issue a writ of habeas corpus within three days of the filing of this petition, requiring that Respondents show cause why the relief Petitioner seeks should not be granted, and set a hearing on this matter within five days of Respondents' return on the order to show cause, pursuant to 28 U.S.C. § 2244;

d. Order Petitioner's immediate release, subject to any appropriate conditions, or require that he be provided a bond hearing pursuant to 8 U.S.C. §1226(a),

e. Declare that the continued immigration detention of Petitioner violates 8 U.S.C. § 1226(a);

f Declare that the continued immigration detention of Petitioner violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution,

g. Set aside Respondents' unlawful no bond policy under the APA, 5 U.S.C. § 706(2), as contrary to law, arbitrary and capricious, and contrary to constitutional right;

h. Grant any other and further relief this Court deems just and proper.

Dated: August 17, 2026

/s/ Jameel Manji
Jameel Manji, Esq.
Attorney for Petitioner
Georgia Bar: 205003
5745 Lawrenceville Hwy,
Tucker, GA 30084
Email: Jameel@manjilaw.com
Phone number: 678-210-3018
Fax: 404-410-4922

VERIFICATION OF PETITION

I am submitting this verification on behalf of Petitioner because I am the attorney for Petitioner. I have discussed with Petitioner's immigration counsel the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Respectfully submitted,

Dated: August 17, 2026

/s/ Jameel Manji
Jameel Manji, Esq.
Attorney for Petitioner
Georgia Bar: 205003
5745 Lawrenceville Hwy,
Tucker, GA 30084
Email: Jameel@manjilaw.com
Phone number: 678-210-3018
Fax: 404-410-4922