UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

Daniel VELASQUEZ-CASTREJON,	)	
	)	
Petitioner,	)	Case No. 7:26-cv-00171-WLS-AGH
	)	
v.	)	
	)	A# [redacted]
WARDEN, IRWIN COUNTY DETENTION CENTER,	)	
	)	
Respondent.	)	

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE

I. INTRODUCTION

Respondent's Response concedes the question at the center of this case. The Government no longer defends detention under 8 U.S.C. § 1225(b)(2)(A). It agrees that Petitioner is detained under 8 U.S.C. § 1226(a) and states that "Petitioner should receive a bond hearing under 8 U.S.C. § 1226(a) and the applicable regulations." Resp. 1, 4. That concession is correct. It is compelled by binding Eleventh Circuit authority holding that a noncitizen arrested in the interior, who is not seeking admission, is detained under § 1226(a) and is bond eligible. *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Mia.*, 175 F.4th 1258 (11th Cir. 2026).

The concession does not end the matter, because the Government asks the Court to do nothing. Two problems require this Court to grant relief rather than send Petitioner away. First, the Government's own declarant swears the opposite of the Government's brief. Officer Esperon states that "Petitioner remains detained at ICDC

in Ocilla, Georgia, under the detention authority of INA § 235(b)(2)(A)." Esperon Decl. ¶ 14. The Government cannot concede § 1226(a) in its brief while its officer continues to hold Petitioner under § 1225(b). Second, the remedy the Government proposes has already failed. The Government says Petitioner "may request a new bond redetermination based on this intervening change in law" before the Immigration Judge. Resp. 3. He did. On June 23, 2026, Immigration Judge Steven Fuller denied Petitioner's custody redetermination for lack of jurisdiction, relying on *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Ex. A (June 23, 2026 Bond Order); see also Resp. Ex. D (Doc. 6-5). That denial came seven weeks after the Eleventh Circuit decided *Hernandez Alvarez*.

Returning Petitioner to the same Immigration Judge who has already refused jurisdiction under *Q. Li*, after *Hernandez Alvarez*, is not a remedy. It is futility. Petitioner asks this Court to grant the writ and either (1) order his release on the Order of Release on Recognizance under which the Government released him in 2024, or (2) order a bond hearing within seven days at which the Government bears the burden of proving by clear and convincing evidence that Petitioner is a danger or a flight risk, and at which *Q. Li* and *Matter of Yajure Hurtado* may not be used to defeat the Immigration Judge's jurisdiction. Because Petitioner's detention is ongoing and unlawful, he asks the Court to rule promptly.

II. THE GOVERNMENT CONCEDES THAT § 1226(a) GOVERNS PETITIONER'S DETENTION

The Response abandons the theory that Petitioner is subject to mandatory detention under § 1225(b)(2)(A). The Government states that Petitioner "should

receive a bond hearing under 8 U.S.C. § 1226(a) and the applicable regulations," Resp. 1, and acknowledges that "[t]he Eleventh Circuit has since confirmed this interpretation," citing *Hernandez Alvarez*. Resp. 3. The Government relies on this Court's decisions in *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025), and *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025), which held that noncitizens found in the interior and arrested without inspection are detained under § 1226(a), not § 1225(b)(2). Resp. 3.

That concession resolves the statutory question. Under *Hernandez Alvarez*, § 1225(b)(2)(A) imposes two conditions: the noncitizen must be an applicant for admission and must be "seeking admission," meaning actively pursuing lawful entry after inspection by an immigration officer. Mere presence in the interior does not satisfy the second condition. 175 F.4th at 1258. Petitioner was arrested at an ICE check-in in Charlotte, North Carolina, not at a port of entry, and he was not seeking admission. Section 1226(a) governs his detention.

The Government cannot take that concession back through its declarant. Officer Esperon's statement that Petitioner "remains detained ... under the detention authority of INA § 235(b)(2)(A)", Esperon Decl. ¶ 14, is irreconcilable with the Government's brief and with *Hernandez Alvarez*. To the extent the Government continues to detain Petitioner under § 1225(b), that detention is unlawful. The Court should enter that conclusion so that the Government cannot revert to the § 1225(b) theory once this petition is resolved.

III. THE GOVERNMENT'S PROPOSED REMEDY IS FUTILE AND INADEQUATE

A. The Immigration Judge already denied bond for lack of jurisdiction under *Q. Li*, after *Hernandez Alvarez*.

The Government proposes that Petitioner "may request a new bond redetermination based on this intervening change in law," citing 8 C.F.R. § 1003.19(e). Resp. 3. That course has already been tried, and it failed. On June 23, 2026, Immigration Judge Steven Fuller denied Petitioner's request for custody redetermination, "finding the court lacked jurisdiction to redetermine custody." Esperon Decl. ¶ 13; Ex. A. The order rests entirely on *Matter of Q. Li*. It recites that an applicant for admission "arrested and detained without a warrant while arriving in the United States … and subsequently placed in removal proceedings is detained under section 235(b) … and is ineligible for any subsequent release on bond under section 236(a)." Ex. A at 1. The order does not mention *Hernandez Alvarez*.

That sequence establishes futility. The Eleventh Circuit decided *Hernandez Alvarez* on May 6, 2026. The Immigration Judge denied jurisdiction on June 23, 2026, seven weeks later, on the very theory the Eleventh Circuit had rejected. The Immigration Judge sits within the Eleventh Circuit, yet applied *Q. Li* instead of the controlling decision of the court of appeals for the circuit in which Petitioner is confined. Requiring Petitioner to return to that same forum, on the same legal question, would accomplish nothing.

B. A new request under 8 C.F.R. § 1003.19(e) is not an adequate remedy.

Section 1003.19(e) allows a subsequent bond request on a showing of materially changed circumstances after an initial bond determination on the merits. Here there was no determination on the merits. The Immigration Judge did not weigh danger or flight risk. He refused jurisdiction outright. A regulation directed to reconsidering a discretionary bond amount cannot cure a categorical, jurisdictional refusal to hold a hearing at all. And the Government continues to press *Q. Li* before the immigration courts in this circuit, as it did in this very case. The futility here is not hypothetical. It is documented in this record.

C. Habeas relief from this Court is warranted now.

Section 2241 has no statutory exhaustion requirement in the Eleventh Circuit, and any prudential exhaustion is excused where resort to the agency is futile or the question is purely legal. *Santiago-Lugo v. Warden*, 785 F.3d 467, 475-76 (11th Cir. 2015); *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). Both conditions are satisfied. Petitioner has been detained since May 14, 2026, on a theory the Government now concedes is wrong and the Eleventh Circuit has rejected. The Court should not return him to a forum that has already refused to hear him.

IV. *MATTER OF Q. LI* DOES NOT SUPPORT CONTINUED DETENTION

Even apart from the Government's concession, *Q. Li* does not apply. *Q. Li* involved a noncitizen apprehended without a warrant on the day she crossed the border, processed under § 235(b), and released on humanitarian parole under 8

U.S.C. § 1182(d)(5). When her parole was revoked, the Board held she returned to the § 235(b) custody from which she had been paroled. 29 I&N Dec. at 69-72. That parole-to-custody sequence has no application here. The Government did not parole Petitioner. It released him on a Form I-220A Order of Release on Recognizance issued "in accordance with section 236 of the Immigration and Nationality Act." Ex. B to Pet. That is a § 1226(a) release, not a § 235(b) parole. Under *Hernandez Alvarez*, the controlling question is whether Petitioner was seeking admission when arrested, not whether he was once encountered near the border. He was not. *Q. Li* does not change that analysis, and the Government's brief does not argue otherwise.

V. ANY BOND HEARING MUST PLACE THE BURDEN ON THE GOVERNMENT BY CLEAR AND CONVINCING EVIDENCE

The Government asks the Court to order a bare bond hearing under the default regulatory framework, in which the noncitizen carries the burden. Resp. 2 (citing *In re Guerra*, 24 I&N Dec. 37 (BIA 2006)). That is not the hearing due process requires, and it is not the hearing this Court has ordered in materially identical cases.

When this Court orders a § 1226(a) bond hearing on habeas, it requires the Department of Homeland Security to bear the burden of establishing by clear and convincing evidence that the detainee is a danger to the community or a flight risk. *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1338-40 (M.D. Ga. 2020). This Court has entered that precise requirement in recent habeas grants in this District. See *Paz Barahona v. Warden*, No. 7:26-cv-00153-WLS-AGH (M.D. Ga. May 18, 2026) (Doc. 5) (ordering a bond hearing at which "the Department of Homeland

Security shall bear the burden of establishing by clear and convincing evidence that Petitioner is either a danger to the community or a flight risk"); *D.Y.E.H. v. Warden*, No. 7:25-cv-00201-WLS-AGH (M.D. Ga. Apr. 6, 2026); *Lopez Perez v. Paulk*, No. 7:26-cv-00029-WLS-ALS (M.D. Ga. Apr. 6, 2026).

The allocation follows from the interest at stake. Physical liberty is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The clear and convincing standard is the intermediate standard of proof reserved for deprivations of particularly important interests. *Addington v. Texas*, 441 U.S. 418, 424 (1979). And civil detention is permissible only when it bears a reasonable relation to a legitimate regulatory purpose, established through adequate procedures. *United States v. Salerno*, 481 U.S. 739, 747 (1987); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Weighing the private interest in physical liberty, the high risk of erroneous deprivation without a meaningful hearing, and the Government's interest, *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the burden must rest on the Government by clear and convincing evidence, as this Court has already held.

VI. RELIEF REQUESTED

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Grant the petition for a writ of habeas corpus;
2. Order Respondent to release Petitioner on the Order of Release on Recognizance under which he was released in 2024, on such conditions as the Court deems appropriate; or, in the alternative,

3. Order Respondent to provide Petitioner a bond hearing before an Immigration Judge within seven days, at which (a) the Department of Homeland Security bears the burden of establishing by clear and convincing evidence that Petitioner is a danger to the community or a flight risk, and (b) *Matter of Q. Li*, *Matter of Yajure Hurtado*, and 8 U.S.C. § 1225(b) may not be invoked to defeat the Immigration Judge's jurisdiction to redetermine custody;

4. Enjoin Respondent from transferring Petitioner outside the jurisdiction of this Court during the pendency of these proceedings;

5. Retain jurisdiction to enforce its order; and

6. Grant such other and further relief as the Court deems just and proper.

Because Petitioner remains in custody on a detention theory the Government has conceded is incorrect, Petitioner respectfully requests that the Court rule as promptly as possible.

Respectfully submitted this 7th day of July, 2026.

/s/ Eszter Bardi
Eszter Bardi
Sonoda Law Firm
1849 Clairmont Road
Decatur, Georgia 30033
Phone: 470-755-9520
ebardi@sonodalaw.com
GA Bar # 200449
Attorney for Petitioner

/s/ Jeremy L. McKinney
Jeremy L. McKinney
McKinney Immigration Law
910 N. Elm St. (P.O. Box 1800)
Greensboro, NC 27402
Phone: 336-275-5885
jeremy@mckinneyimmigration.com
NC Bar # 23318
Attorney for Petitioner (Pro Hac Vice)

CERTIFICATE OF SERVICE

I certify that on this 7th day of July, 2026, I electronically filed the foregoing Reply with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing to Respondent's counsel of record, including:

Travis D. Lynes
Assistant United States Attorney
United States Attorney's Office, Middle District of Georgia
P.O. Box 1702, Macon, Georgia 31202
travis.lynes@usdoj.gov

/s/ Jeremy L. McKinney
Jeremy L. McKinney
Attorney for Petitioner