

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

YANDDIRY YANETH CONTRERAS
MALDONADO,

Petitioner,

- against -

ALEXANDER CABEZAS, in his official capacity
as Acting Assistant Field Office Director for the
Newark Field Office for Immigration and Customs
Enforcement; KRISTI NOEM, in her official
capacity as Secretary of Homeland Security;
PAMELA JO BONDI, in her official capacity as
Attorney General of the United States of America,

Respondents.

Civil No. 25-13004 (JKS)

**AMENDED VERIFIED
PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. This amended petition arises out of the continued unlawful detention of petitioner Yanddiry Yaneth Contreras Maldonado, a 23-year-old asylum seeker and resident of New Jersey who has lived in the United States for over six years.

2. Yanddiry's original petition ("Original Petition") for a writ of habeas corpus was filed with this Court on July 9, 2025, the day after Yanddiry was arrested at her asylum interview at the Newark Asylum Office and while she was detained in Elizabeth, New Jersey. Since that filing, there have been multiple intervening developments that are pertinent to the lawfulness of her continued detention. Yanddiry has been transferred twice, her initial master calendar hearing before the

Immigration Court has been rescheduled twice, she has had her access to counsel repeatedly obstructed, and she has been denied a meaningful post-detention hearing concerning her release on a bond. Most notably, however, Yanddiry has been subjected to conflicting positions as to the statutory basis for her detention—the government has represented one thing to this Court and taken an inconsistent position before the Immigration Court. Accordingly, this amended petition is being filed to reflect those additional facts and to request that this Court immediately grant Yanddiry’s release from unlawful detention and facilitate her return to the District of New Jersey.¹

3. Yanddiry was detained by Immigration and Customs Enforcement (“ICE”) on July 8, 2025 at the Newark Asylum Office. On information and belief, Yanddiry’s arrest is part of a recent nationwide campaign by the Department of Homeland Security (“DHS”) to sweep up and arrest noncitizens who are dutifully attending their mandated appearances before the immigration agencies, including asylum offices.

4. On the day of her arrest, Yanddiry spent hours at her asylum interview testifying about her past abuse, persecution, and the litany of reasons she fears being

¹ This amended petition is being filed as of right pursuant to Fed. R. Civ. P. 15(a)(1). Additionally, Respondents have consented to the filing of this amended petition.

returned to Honduras. At the conclusion of the interview, three plainclothes immigration agents entered the room and detained her.

5. According to Respondents, ICE's detention of Yanddiry was *mandatory* pursuant to ICE's re-interpretation of 8 U.S.C. § 1225(b)(2). As Respondents admit, this recent re-interpretation of the statute—which was implemented by ICE *the day that Yanddiry was arrested*—represents a marked departure from decades of practice and legal interpretation.

6. Because ICE viewed Yanddiry's detention as mandatory, ICE necessarily did not conduct an individualized determination as to whether Yanddiry's detention was needed based on whether she was a flight risk or danger to the community—the two recognized bases for the agency to arrest a noncitizen pursuant to its discretionary detention authority under 8 U.S.C. § 1226(a). Rather, ICE's position at the time they took her into custody was that Yanddiry *must* remain detained and separated from her U.S. citizen fiancée, irrespective of her individualized circumstances, including her pending asylum claim before U.S. Citizenship and Immigration Services (“USCIS”), her status as a beneficiary of Special Immigrant Juvenile Status (“SIJS”), her lack of criminal convictions, and her six years building ties in the United States.

7. Despite Respondents' clear representations to this Court concerning the statutory basis for Yanddiry's detention, ICE has now taken a contradictory position.

Specifically, at hearing before the Immigration Court on August 14, 2025, ICE represented that Yanddiry was, in fact, subject to 8 U.S.C § 1226(a) and was being detained pursuant to its discretionary detention authority. In so doing, ICE conceded that it was constitutionally required to make an individualized pre-arrest assessment as to whether Yanddiry's detention was necessary. However, as is evident from Respondents' statements to this Court, no such individualized determination was made.

8. Put simply, the government cannot have it both ways. ICE's approach to Yanddiry's detention violated the Due Process Clause. As a noncitizen whose detention is properly governed by Section 1226(a), Yanddiry should have been afforded a pre-detention individualized determination concerning the bases for depriving her of her liberty, and the government's failure to conduct such an individualized determination mandates her immediate release.

9. Additionally, Respondents have violated Yanddiry's due process right to a meaningful post-deprivation review of her custody status.

10. The Immigration Judge in Otero County, New Mexico that is now presiding over Yanddiry's removal proceedings issued a lengthy written decision explaining that, as a matter of law, he believed that Yanddiry's detention was mandatory and that she was ineligible for bond. While he subsequently allowed Yanddiry to have a bond hearing, it was effectively a sham. Given the Immigration

Judge's pre-hearing decision, the outcome was a foregone conclusion and entirely inconsistent with due process.

11. Moreover, at Yanddiry's bond hearing, the Immigration Judge improperly placed the burden on Yanddiry to prove that she was *not* a flight risk or a danger to the community. As a number of other courts have found, placing the burden on a noncitizen to prove the negative in a bond hearing under Section 1226(a) violates the Due Process Clause. As such, Yanddiry's rights were again trampled upon.

12. Yanddiry seeks relief as a result of Respondents' violations of the Due Process Clause and the First Amendment of the U.S. Constitution. She has exhausted remedies for release before the Immigration Court, and asks this Court to exercise its jurisdiction to release her from continued unlawful detention.

PARTIES

13. Petitioner Yanddiry Yaneth Contreras Maldonado is a citizen of Honduras and a resident of  New Jersey. She attended her scheduled asylum hearing before the asylum office in Newark, New Jersey on July 8, 2025, accompanied by her *pro bono* counsel, and was detained by Respondents immediately after her testimony. Ex. 1.² She is currently detained in the Otero County Processing Center. Ex. 2. Yanddiry's Original Petition for habeas corpus

² Citations herein to Ex. __ are to the exhibits attached to this petition.

was filed on July 9, 2025, while she was detained at the Elizabeth Contract Detention Facility in Elizabeth, New Jersey. Ex. 3.

14. Respondent Alexander Cabezas is named in his official capacity as the Acting Assistant Field Office Director for the Newark Field Office for ICE within the United States Department of Homeland Security (“DHS”). Mr. Cabezas is a Supervisory Detention and Deportation Officer with DHS, ICE, Enforcement and Removal Operations, Newark Field Office whose duties include oversight of detention operations at the Elizabeth Contract Detention Facility in Elizabeth, New Jersey. In his official capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations, and was an immediate custodian of Yanddiry at the time the Original Petition was filed. Respondent Cabezas’ address is U.S. Immigration and Customs Enforcement, 970 Broad Street, 11th Floor, Newark, New Jersey 07102.

15. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security (“DHS”). In her official capacity, Ms. Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); routinely transacts business in the District of New Jersey; is legally responsible for pursuing any effort to remove Yanddiry; and is a legal custodian of Yanddiry. Respondent

Noem's address is U.S. Department of Homeland Security, 800 K Street N.W. #1000, Washington, D.C. 20528.

16. Respondent Pamela Jo Bondi is named in her official capacity as the Attorney General of the United States. In her official capacity, Ms. Bondi is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the District of New Jersey and is legally responsible for administering Yanddiry's removal and custody proceedings and for the standards used in those proceedings. As such, she is a legal custodian of Yanddiry. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

JURISDICTION

17. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Velasquez v. Kurzdorfer*, No. 25-cv-493-LJV, 2025 WL 1953796, at *4 (W.D.N.Y. July 16, 2025) (holding that district courts have habeas jurisdiction in immigration detention cases); *Juarez v. Moniz*, No. 25-cv-11266-MJJ, 2025 WL 1698600, at *2 (D. Mass. June 11, 2025) (asserting jurisdiction over challenges to immigration detention) (citing *Aguilar v. United*

States Immigr. & Customs Enf't Div. of Dep't. of Homeland Sec., 510 F.3d 1, 11 (1st Cir. 2007) (“[D]istrict courts retain jurisdiction over challenges to the legality of detention in the immigration context.”).

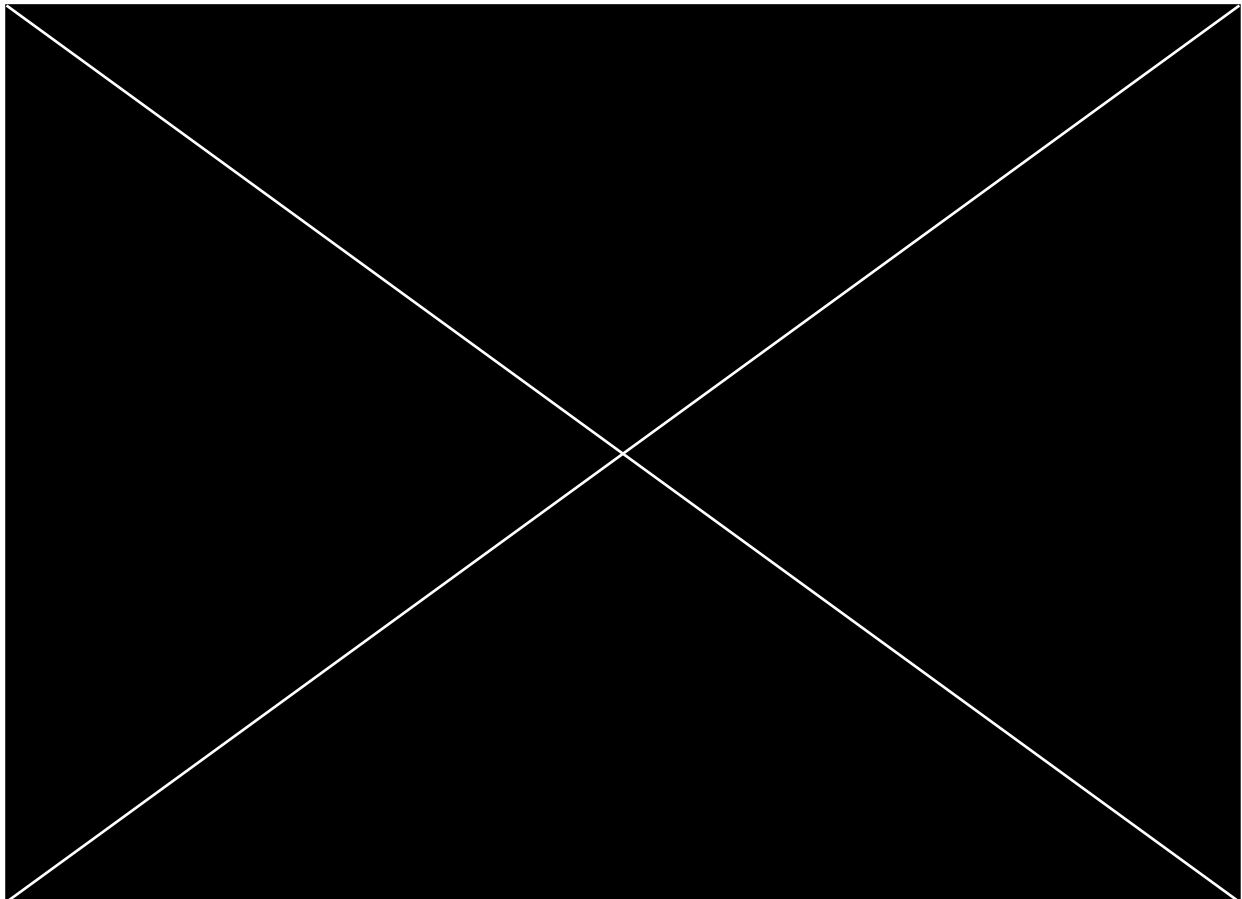
18. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 (habeas); 28 U.S.C. § 1331 (federal question); and Article I, § 9, cl. 2 of the United States Constitution. This Court has authority to grant declaratory and injunctive relief. 28 U.S.C. §, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

VENUE

19. Venue is proper in this Court because, when Yanddiry’s Original Petition was filed against her immediate custodian (among others) on July 9, 2025, Yanddiry was detained in the District of New Jersey. *See, e.g., Anariba v. Director Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 445-46 (3d Cir. 2021) (“[W]hen the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction[.]”) (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004)); *Khalil v. Joyce*, 777 F.Supp.3d 369, 396 (D.N.J. 2025) (retaining jurisdiction over habeas petition after petitioner was transferred to Louisiana, noting that “the district courts of this Circuit have treated the matter as done and settled: a habeas court with jurisdiction does not lose it

because the detainee has been moved out of the district”); *Mejia-Juarez v. Att’y Gen. of the United States*, 287 F.App’x. 204, 205 n.1 (3d Cir. 2008); *Keller v. Petsock*, 849 F.2d 839, 843 (3d Cir. 1988)).

BACKGROUND ON YANDDIRY AND HER STATUS IN THE U.S.



 Yanddiry immediately fled Honduras and escaped to the United States alone. Ex. 5.

22. On July 8, 2019,  Yanddiry entered the United States without inspection. She was arrested in the interior by border patrol agents at or near El Paso, Texas the same day. Ex. 6.

23. A warrant issued the following day stated that her arrest on July 8, 2019 was pursuant to Section 1226.³ *Id.*

24. Consistent with the foregoing, a Notice of Custody Determination issued by DHS on July 9, 2019 stated that Yanddiry's detention was pursuant to Section 1226. Ex. 7.

25. At the time of Yanddiry's arrest and detention, border patrol agents acknowledged she had arrived in the United States as an unaccompanied child ("UAC"). Ex. 8.

26. Because she was under eighteen and considered a UAC, Yanddiry was transferred to the custody of the Office of Refugee Resettlement ("ORR") in Glendale, Arizona. Ex. 9. Her aunt completed the ORR sponsor application and Yanddiry was released to her aunt's care in New Jersey on August 2, 2019.⁴ Ex. 10.

³ The INA is incorporated into and cross-referenced in the U.S. Code. The parallel citation for Section 236(a) of the INA is 8 U.S.C. § 1226(a), and the parallel citation for Section 235(b) is 8 U.S.C. § 1225(b). This Amended Petition will utilize the U.S. Code citations.

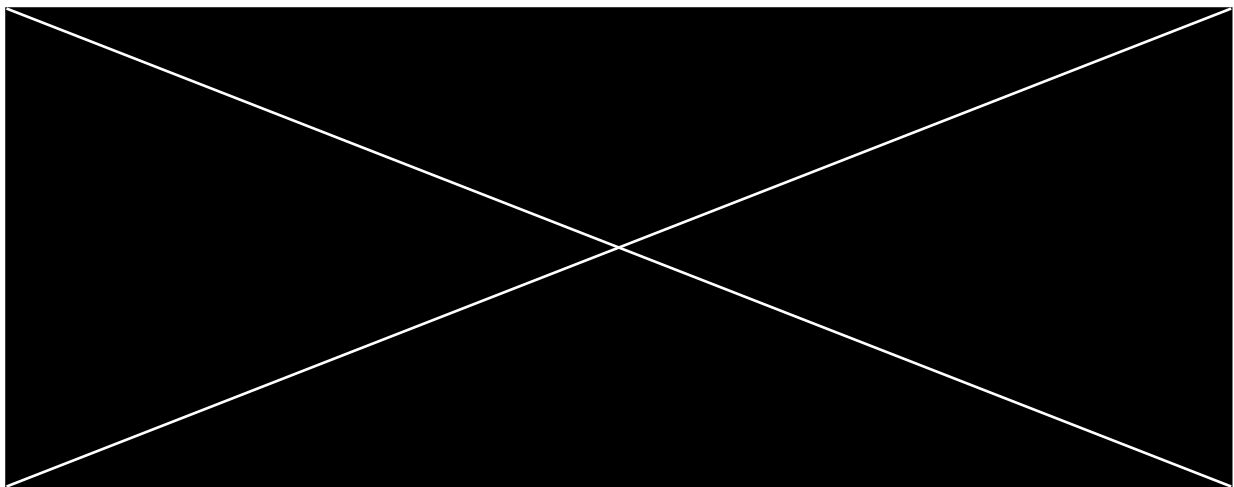
⁴ At the time of her arrest and detention, DHS issued Yanddiry a Notice to Appear ("NTA"), directing her to appear for removal proceedings under section 240 of the INA "at a place to be set" and on "a date to be set." Ex. 11. However, on information and belief, DHS did not file the NTA with an immigration court. As a result, jurisdiction did not vest with the immigration court, and Yanddiry was not scheduled for any removal hearing. *See Oliva-Ramos v. Attorney General of the United States*, 694 F.3d 259, 286 (3d Cir. 2012) (formal immigration proceedings do not begin until a notice to appear is filed with the immigration court); 8 C.F.R. § 1239.1 ("Every removal proceeding conducted under section 240 of the Act (8 U.S.C. 1229a) to determine the deportability or inadmissibility of an alien is commenced by the filing of a notice to appear with the immigration court.").

27. Thereafter, Yanddiry began to attend high school 

 where she learned English.

28. In January 2021, Yanddiry filed Form I-589, Application for Asylum and for Withholding of Removal, with USCIS. Ex. 5.

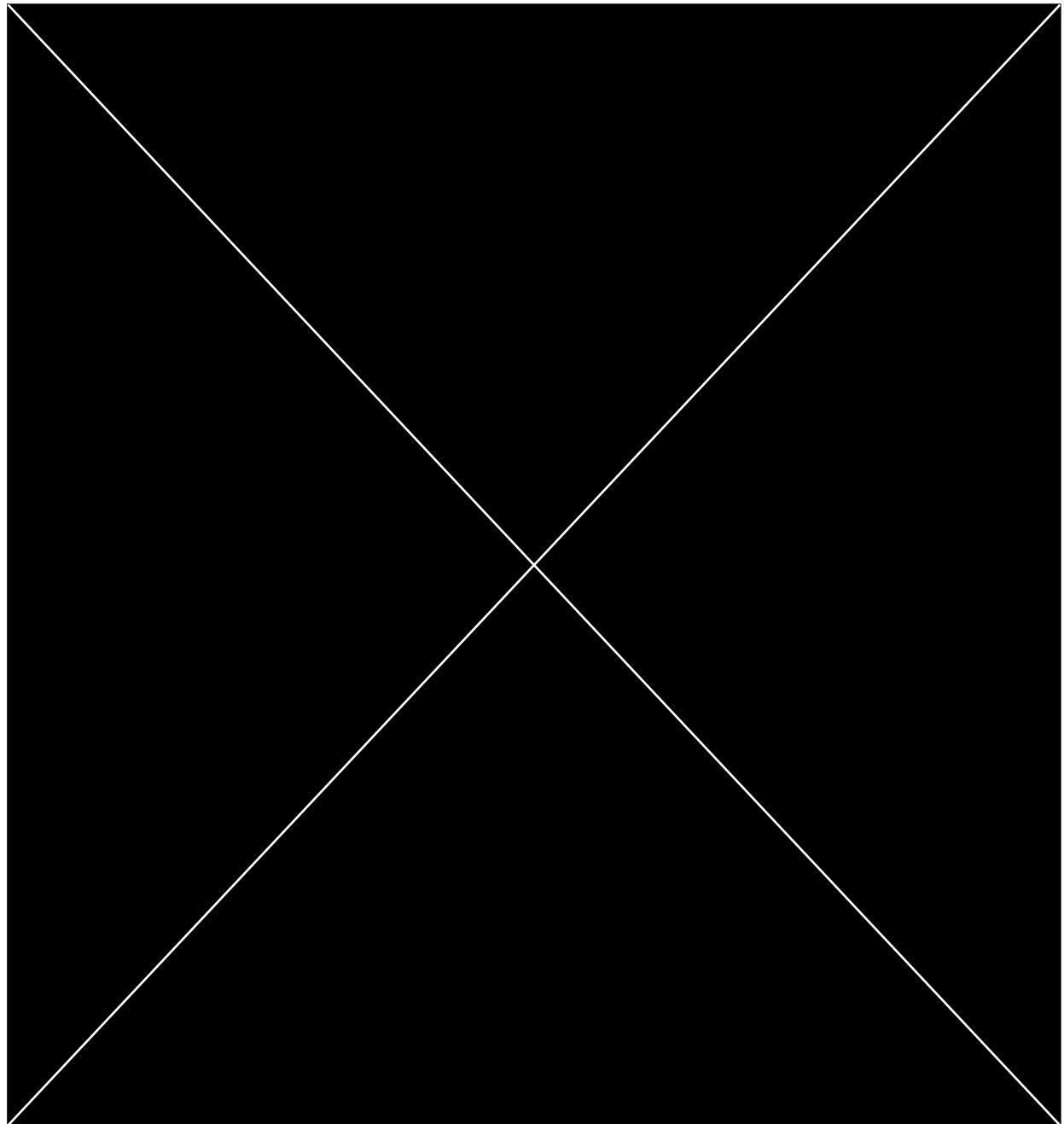
29. Yanddiry's asylum claim was based on past persecution based in her home country. 

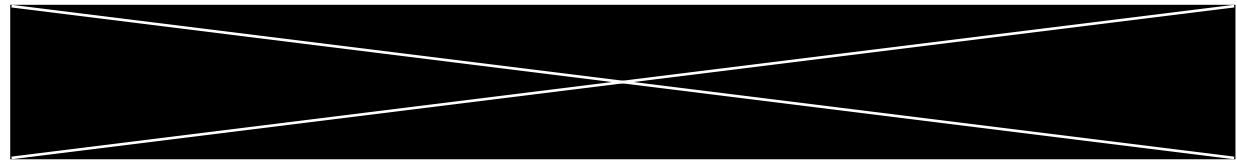


30. Individuals designated as UACs, like Yanddiry, are entitled to certain protections in their asylum processes as part of *J.O.P. v. DHS*, 19-cv-01944-SAG (D. Md. 2024). Pursuant to the November 25, 2024 settlement in *J.O.P.*, persons who were designated as UACs and filed their asylum applications with USCIS on or before February 24, 2025 are entitled to certain procedures.

31. Of note here, the settlement provides that USCIS shall accept jurisdiction over class members' I-589 Applications, forgive filings past the one-year deadline, and create a process for expedited adjudication where the individual

is detained. Moreover, under the agreement, ICE is not permitted to remove a class member, even if a final order of removal is issued, while their asylum application is pending with USCIS. *See* Ex. 12; Ex. 13 (ordering defendants “not to remove from the United States members of the certified ‘Class’”).





36. On or about June 23, 2023, Yanddiry filed a SIJS application with USCIS. Ex. 14.

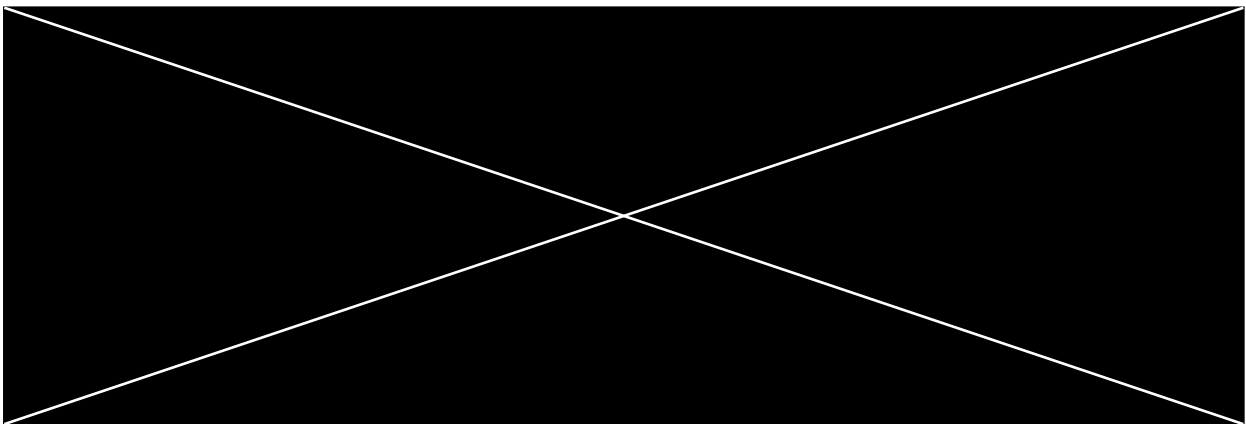
37. SIJS is a unique form of humanitarian relief for individuals under 21 years of age who have been abandoned, abused, or neglected by one or both parents. 8 U.S.C. §§ 1101(a)(27)(J), 1255(a), (h).

38. Once an application is granted by USCIS, SIJS theoretically provides a young person with the right to immediately apply for lawful permanent residence in the United States. *See* 8 U.S.C. § 1255(a), (h)(1). However, due to years-long backlogs, in practical terms, visas are not immediately obtainable and a SIJS beneficiary may not be able to adjust their status for years. Crucially, a juvenile immigrant is eligible for SIJS and adjustment of status only if he or she is “*present* in the United States.” 8 U.S.C. § 1101(a)(27)(J) (emphasis added). *Osorio-Martinez v. Att’y Gen. of the United States*, 893 F.3d 153, 172 (3d Cir. 2018) (“Despite their SIJ classification, the children, once removed, would be unable to adjust status because doing so requires physical presence within the United States”) (citing 8 U.S.C. § 1255(a)).

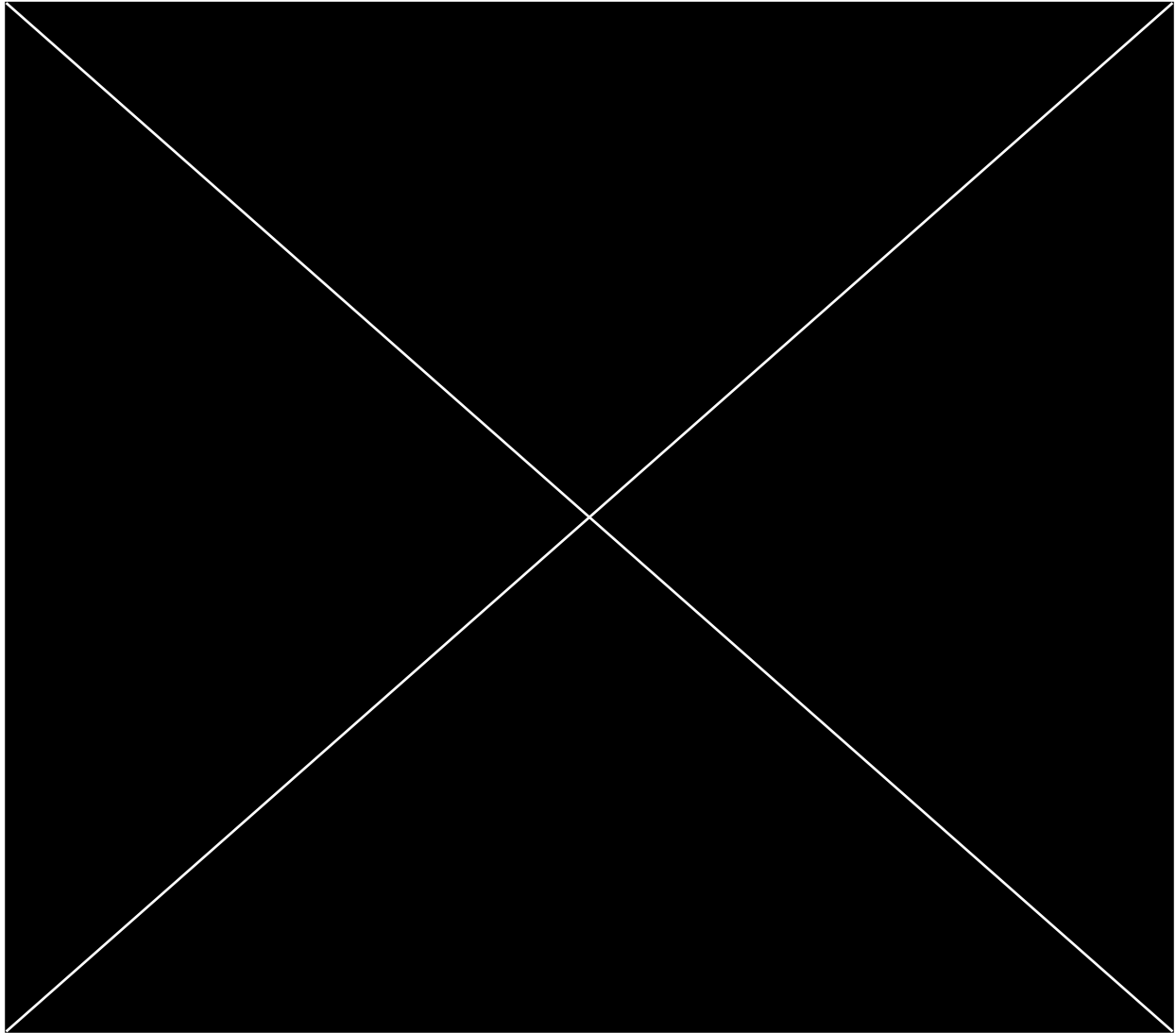
39. In order to protect vulnerable youth from deportation while they wait in line for their immigrant visas, in 2022, DHS created the SIJS Deferred Action

policy which provided SIJS grantees with deferred action—a safeguard against deportation—and work authorization while they waited for a visa to become available.⁵ The purpose of this policy was to further the objective of the SIJS statute by protecting beneficiaries from deportation while they waited in line to apply for adjustment of status to lawful permanent residence. *Osorio-Martinez*, 893 F.3d at 178.

40. USCIS approved Yanddiry's application for SIJS on November 15, 2023. USCIS further determined that Yanddiry warranted a favorable exercise of discretion to receive deferred action for a period of four years from the date of the approval notice—protecting her from removal until November 2027. Ex. 14.



⁵ See Special Immigrant Juvenile Classification and Deferred Action, PA-2022-10, issued March 7, 2022, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf>. On June 6, 2025, USCIS abruptly issued policy guidance eliminating automatic consideration of deferred action for SIJS grantees. See Special Immigrant Juvenile Classification and Deferred Action, PA-2025-07, issued June 6, 2025, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf>. Of note, the policy does not terminate deferred action status for those who are already recipients.



DHS'S CAMPAIGN OF DETENTIONS

43. In May 2025, DHS began a nationwide campaign of arresting noncitizens who were dutifully attending mandated appearances before administrative agencies, including court appearances before EOIR, supervision check-ins before ICE, and, relevant here, interviews with USCIS.

44. DHS's sudden shift in policy has swept up numerous noncitizens, including Yanddiry, who are applying for immigration relief or otherwise complying with their obligation to appear at routine immigration court hearings, check-ins and interviews.⁶ Many of those detained pursuant to this policy were previously determined not to be a flight risk or danger to the community, as evidenced by their release from initial encounters with immigration officers. *See e.g. Primero v. Mattivelo*, No. 1:25-cv-11442-IT, 2025 WL 1899115, at *2 (D. Mass. July 9, 2025); *Valdez v. Joyce*, No. 25 Civ. 4627, 2025 WL 1707737, at *1 (S.D.N.Y. June 18, 2025).

45. DHS's policy has placed noncitizens in an untenable position. They are required to appear for check-ins with ICE, hearings before the Immigration Court, and interviews—like asylum interviews—with USCIS. However, when they do, they are placed in detention and often shipped across the country away from their counsel, families, support networks, and the evidence they need for a fair resolution on their claims, as happened to Yanddiry.

46. While DHS's detention campaign was originally focused on courthouses, the agency has since expanded it, arresting noncitizens at routine and

⁶ Luis Ferre-Sadurni, Inside a Courthouse, Chaos and Tears as Trump Accelerates Deportations at 1, NY TIMES (June 12, 2025), <https://www.nytimes.com/2025/06/12/nyregion/immigration-courthouse-arrests-trump-deportation.html>

required appointments at USCIS offices. *See* Am. Immigr. Lawyers Ass’n, *Policy Brief: ICE Arrests at USCIS Field Offices Undermine U.S. Immigration Processes*, AILA at 2 (July 3, 2025), <https://www.aila.org/policy-brief-ice-arrests-at-uscis-field-offices-undermine-u-s-immigration-processes>. These include arrests following required biometrics appointments, interviews on family-based and adjustment of status petitions, and asylum interviews. *Id.*

47. In a case similar to Yanddiry’s, a noncitizen in New Jersey was detained by ICE following an asylum interview at a USCIS office. Grace Gilson, *Mayor calls for release of New Jersey synagogue custodian detained by ICE* at 1, *The Jerusalem Post* (July 1, 2025), <https://www.jpost.com/international/article-859557>. The arrest came as part of Respondents’ ongoing mass arrest campaign. *Id.*

48. In another stark example, a seven-year-old, her mother, and nineteen-year-old brother were all detained following a routine check in with ICE. Crystal Cranmore, *7-year-old NYC student detained by ICE along with mom, teen brother after immigration check in*, WABC (Aug. 16, 2025), <https://abc7ny.com/post/7-year-old-teen-brother-mother-detained-ice-routine-immigration-check-federal-plaza-lower-manhattan/17560170/>. The mother and daughter were subsequently transferred to Texas while the brother is being held in New Jersey. *Id.*

49. DHS’s far-reaching campaign to detain noncitizens going through the required process to obtain status, comply with their obligations before the

immigration agencies, and exercise their rights under U.S. law has swept up numerous noncitizens like Yanddiry, who have been indiscriminately targeted and deprived of their liberty.

**YANDDIRY'S POST-ASYLUM INTERVIEW ARREST
AND CONTINUED DETENTION**

50. On July 8, 2025, Yanddiry appeared for her scheduled asylum interview at the Newark Asylum Office accompanied by *pro bono* counsel. Ex. 1. Applicants for asylum must attend their interviews, and a failure to appear can result in the dismissal of the asylum application and referral to removal proceedings. 8 C.F.R. § 240.68.

51. Yanddiry's interview with the asylum office lasted several hours during which she recounted, in detail, the persecution she had endured and her fears of being returned to Honduras. Ex. 1.

52. At the conclusion of the interview, the asylum officer told Yanddiry to return to the office on July 22, 2025 to receive a decision on her application. *Id.* ¶ 4. Suddenly, there was a knock at the door, and three plainclothes immigration agents entered the small room. *Id.* ¶ 6. The officers stood by the door, and arrested Yanddiry. *Id.* ¶¶ 6-8.

53. Yanddiry's attorney informed the agents of Yanddiry's status as a SIJS beneficiary, and that she had been granted deferred action. *Id.* at ¶ 7. The agents acknowledged that they were aware of her status. *Id.* When Yanddiry's counsel

asked where they were taking Yanddiry, the agents refused to answer, and took Yanddiry away. *Id.* at ¶ 8.

54. Yanddiry was brought to the Elizabeth Contract Detention Facility. *Id.* at ¶ 9. On the way to the detention center the agents asked her what she thought of Donald Trump's immigration actions. Ex. 1.

55. After she arrived to Elizabeth Contract Detention Facility, Yanddiry was told that she would be moved to an undisclosed location as soon as the following day, July 9, 2025. *Id.*

56. Before business hours on July 9, 2025, on Yanddiry's behalf, undersigned counsel filed a verified petition for a writ of habeas corpus (previously defined herein as the "Original Petition") in the United States District Court for the District of New Jersey, seeking, among other forms of relief, Yanddiry's immediate release and an injunction preventing her transfer outside the District of New Jersey. Ex. 3.

57. Later that day, the Court ordered Respondents to show cause, no later than July 16, 2025, as to why Yanddiry's petition for habeas corpus relief should not be granted (the "Order to Show Cause"). *See* Ex. 18.

58. Also on the same day, July 9, USCIS issued a request for evidence on Yanddiry's asylum application requesting dispositions related to Yanddiry's contact with the criminal legal system and any other evidence she wanted to submit in

support of her claim. Ex. 1 ¶ 13. The response to the request for evidence was due days later, on July 15. *Id.* Yanddiry's detention and transfer from the jurisdiction by ICE, as described below, frustrated her attorney's ability to promptly and fully respond to the request for evidence. *Id.* ¶ 14. Ultimately, Yanddiry's attorney submitted a partial response on July 15. *Id.* ¶ 15. Yanddiry's asylum application remains pending.

59. On July 10, 2025, the Original Petition and Order to Show Cause were served on Respondents via USPS Certified Mail and FedEx Priority Overnight. *See* Ex. 19.

60. On July 10, 2025, Yanddiry's attorney asked her ICE deportation officer if Yanddiry would be transferred from the Elizabeth Contract Detention Facility and the officer said that ICE had "no current plans" to move her. Ex. 1 ¶ 19.

61. On July 11, 2025, DHS issued Yanddiry a Notice to Appear (previously defined herein as an "NTA") in immigration court, charging her as removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), for being present in the United States without being admitted or paroled. The NTA directed Yanddiry to appear before an Immigration Judge in Elizabeth, New Jersey on July 21, 2025 at 1:30 PM. Ex. 20.

62. Yanddiry's hearing was also added to the EOIR public portal, showing a master calendar hearing before Immigration Judge Leo A. Finston in Elizabeth Immigration Court on July 21, 2025 at 9:00 AM. Ex. 21, Ex. 22.

63. The same day, on July 11, 2025, DHS issued a backdated Termination Notice informing Yanddiry that USCIS had terminated her deferred action. Ex. 23. The notice did not contain any information about why USCIS had terminated her deferred action. *Id.* Further, the termination notice did not affect Yanddiry's grant of SIJS. *Id.*⁷

64. Also, on Friday, July 11, 2025, Yanddiry's counsel visited her at the Elizabeth Contract Detention Facility. Ex. ¶ 20.

65. Yanddiry spent five (5) days at the Elizabeth Contract Detention Facility, where she had a bed and was housed in a room with approximately five other women. *Id.* ICE's Form I-213 noted that she would continue to be detained at Elizabeth Contract Detention Facility pending a hearing before an immigration judge. Ex. 27.

⁷ On June 6, 2025, USCIS abruptly issued policy guidance eliminating automatic consideration of deferred action for SIJS grantees. *See* Special Immigrant Juvenile Classification and Deferred Action, PA-2025-07, issued June 6, 2025, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf>. Of note, the policy does not terminate deferred action status for those who are already recipients.

66. On or about Sunday, July 13, 2025—despite the pendency of the Original Petition and the Order to Show Cause in this Court, the NTA’s filing in Elizabeth Immigration Court, the initial hearing scheduled before an Immigration Judge in that court, the apparent availability of bed space at the detention facility where Yanddiry had spent the previous four nights, and the deportation officer’s assurance that ICE had “no current plans” to transfer her just days earlier—Yanddiry was transferred to the El Paso Enhanced Hardened Facility in El Paso, Texas.⁸ Ex. 20; Ex. 22; Ex. 1 ¶¶ 19-21 Sauter Decl.

67. Despite having a G-28, Notice of Entry of Appearance as Attorney on file with ICE and being in regular communication with Yanddiry’s deportation officer, Yanddiry’s counsel did not receive any advance notice of her transfer. Instead, she received a panicked call from Yanddiry’s fiancée, who had tried to visit her at the Elizabeth Contract Detention Facility, but found she had been transferred. Ex. 1 ¶ 21.

68. The El Paso Enhanced Hardened Facility is known to contain a staging facility from which noncitizens are transferred and deported. Ex. 1 ¶ 23.

69. Yanddiry’s counsel reached out to detention officers at the El Paso Enhanced Hardened Facility seeking video calls with Yanddiry. While the website

⁸ That Yanddiry spent five days in detention at the Elizabeth Contract Detention Facility belies any potential argument that bed space was the reason for Yanddiry’s sudden transfer.

for the facility states that video calls are available, the officers indicated that video visits with Yanddiry were impossible because she was being held in a “staging facility.” *Id.* ¶ 27.

70. Despite repeated efforts by Yanddiry’s counsel to arrange legal visits to discuss Yanddiry’s case and upcoming hearings, while Yanddiry was at the El Paso Enhanced Hardened Facility, communication with Yanddiry was difficult. *Id.* ¶¶ 28-30. Counsel was only able to speak with Yanddiry on the phone on a few occasions, the connection was frequently poor, and it was impossible to share documents with Yanddiry. *Id.* ¶ 30.

71. While at the El Paso Enhanced Hardened Facility, Yanddiry was held with sixteen other women. *Id.* ¶ 29. She slept on a bare mattress on the ground with an aluminum blanket, and had no opportunity to go outside. *Id.* Yanddiry was unable to sleep because the lights were never fully turned off in the room which prevented her from sleeping. *Id.* at ¶ 50.

72. On July 15, 2025, the government served Yanddiry with a new Notice of Hearing that scheduled a master calendar hearing for August 14, 2025 in the El Paso Immigration Court. Ex. 25. Yanddiry’s hearing in Elizabeth, New Jersey was canceled. Ex. 1 ¶ 25.

73. However, shortly thereafter, on July 27, 2025, Yanddiry was again transferred, this time to the Otero County Processing Center in Otero County, New Mexico. Ex. 2.

74. Once in Otero County, Yanddiry received a hearing notice for a hearing on August 6, 2025, before Immigration Judge Brock E. Taylor in Otero Immigration Court. Ex. 26.

75. Although Yanddiry's counsel immediately resumed efforts to contact Yanddiry's new deportation officer and arrange legal visits, these efforts were met with limited success. Ex. 1 ¶ 36.

76. On July 30, 2025, Respondents filed their Answer to Petition for Writ of Habeas Corpus (the "Answer") with this Court (Docket No. 10). Ex. 27. In their Answer, Respondents explained that Yanddiry was detained pursuant to 8 U.S.C. § 1225, which provides for mandatory detention for applicants for admission into the United States. Ex. 27 at 2 ("Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2), which provides that an 'applicant for admission' within the meaning of that statute 'shall be detained' until the conclusion of removal proceedings.").

77. Further, Respondents conceded that their justification for Yanddiry's detention was inconsistent with long standing past practice and statutory interpretation. For years, the government did not interpret 8 U.S.C. § 1225(b)(2) to

apply to noncitizens (like Yanddiry) who were already present in the United States but originally entered without inspection. Ex. 27 at 10-11.

78. However, as of July 8, 2025—the date Yanddiry was arrested at her asylum interview—ICE began taking “a different position” that “all applicants for admission, including those who are present without admission, are subject to mandatory detention under § 1225(b)(2).” *Id.* at 11.⁹

79. Thus, according to Respondents, “ICE’s position . . . is that it must detain [Yanddiry] under § 1225(b)(2) because she is present without being admitted. *Id.*

80. Because ICE’s position was that Yanddiry’s detention was mandatory, by definition, no pre-detention individualized determination was made based on Yanddiry’s circumstances. *See Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *11 (S.D.N.Y. Aug. 13, 2025) (“assertion [of mandatory detention] is precisely the *opposite* of an exercise of discretion, which entails some sort of judgment”) (emphasis in original).

81. Finally, Respondents confirmed that, “[b]ecause [Yanddiry] is detained under § 1225(b), she is not entitled to a bond hearing.” *Id.* at 12.

⁹ As noted in Respondents’ Answer, numerous courts have rejected this recent re-interpretation of the law. *See* Ex. 27 at 11 n.5.

82. On August 6, 2025, the immigration court held a master calendar hearing in Yanddiry's case, with counsel for Yanddiry appearing by Webex videoconference. Ex. 1 ¶ 37. Because of issues arranging legal visits during her detention, she did not have a meaningful opportunity to consult with counsel to prepare for the hearing. *Id.* at ¶ 36.

83. At the hearing, Immigration Judge Brock Taylor embraced ICE's disavowal of past practice and re-interpretation of 8 U.S.C. § 1225(b). *Id.* at ¶ 42. He stated that, while Yanddiry could make a bond request, he did not have jurisdiction to release a noncitizen on bond if they entered without inspection. *Id.* In other words, the Immigration Judge believed that her continued detention was mandatory. *Id.*

84. The Immigration Judge also indicated that, despite the *J.O.P.* settlement agreement's vesting of initial jurisdiction in USCIS over asylum applications filed by class members—including Yanddiry—and her pending asylum claim before USCIS, he would take initial jurisdiction over Yanddiry's asylum application. He ordered counsel to file an asylum application with the immigration court prior to Yanddiry's next hearing, warning that he would otherwise order her removed from the United States. The Immigration Judge set Yanddiry's next hearing for August 27, 2025. Ex. 1 ¶ 39-41.

85. On August 8, 2025, Yanddiry's counsel filed a motion for bond on her behalf. Ex. 28. As telegraphed, the Immigration Judge denied the motion on August 11, 2025. Ex. 29. The Immigration Judge held that, as a procedural matter, the motion should have been filed on the separate bond docket. *Id.* at 1. Despite these procedural grounds for denying the motion, the Immigration Judge explained, in the alternative, that he lacked jurisdiction to consider releasing Yanddiry because she entered without inspection and was mandatorily detained under Section 1225(b). The Immigration Judge set forth his reasoning in detail with a four-page, single-spaced order, reflecting the same underlying legal theory Respondents have advanced before this Court. *Id.*

86. Despite his denial of bond jurisdiction on August 11, and following counsel's attempts to call the clerk for clarity, the Immigration Judge held a bond hearing on August 14, 2025. Ex. 1 ¶ 44. Immigration Judge Taylor appeared positioned to again rule on jurisdictional grounds, *i.e.*, that Yanddiry's detention was mandatory and he did not have jurisdiction to consider releasing her on bond. However, in the middle of argument, the attorney for ICE changed its position on the spot and stated—for the first time in removal proceedings—that the statutory basis for Yanddiry's detention was Section 1226 and, therefore, Yanddiry was bond eligible. This position is directly contrary to the position Respondents have taken before this Court. Ex. 27.

87. Based on ICE's new position, and despite not appearing to be familiar with the over-200 pages of briefing and factual support for Yanddiry's application for bond (including sixteen letters outlining her community ties and detailed explanations of now-dismissed criminal charges), the same Immigration Judge that declined to consider bond on jurisdictional grounds days earlier denied Yanddiry bond on the grounds that she failed to meet her burden of showing that she is not a flight risk or danger to the community. Ex. 1 ¶¶45-47.

88. Yanddiry has been detained for nearly six weeks. In that time, she has lost significant weight, no longer fitting into the suit she wore for her asylum interview on the day of her arrest. [REDACTED]

[REDACTED]
[REDACTED] She is distraught over being separated from her U.S. citizen fiancée and support system. *See Id.* ¶ 51.

LEGAL FRAMEWORK

I. The Government's Statutory Authority to Detain Noncitizens

89. The two primary provisions of the United States Code that govern the detention of noncitizens prior to an order of removal are 8 U.S.C. § 1226(a) and 8 U.S.C § 1225(b).¹⁰

¹⁰ Section 1226(c) concerns mandatory detention for noncitizens who have been convicted, or in some circumstances arrested, for certain criminal offenses, and is irrelevant to Yanddiry's petition as none of her arrests have been for qualifying crimes. Exs. 16, 17.

90. Section 1226(a) governs the detention of most noncitizens who are already in the United States and subject to formal removal proceedings before an immigration court under 8 U.S.C. § 1229a. 8 U.S.C. § 1226(a); *see also Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (“[U.S. immigration law] authorizes the Government to detain certain *aliens already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).”) (emphasis added). “Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an alien ‘pending a decision on whether the alien is to be removed from the United States.’” *Jennings*, 583 U.S. at 287-89.

91. Detention under Section 1226(a) is discretionary, not mandatory; the government “may release the alien on—(A) a bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole[.]” 8 U.S.C. § 1226(a)(2)(A)-(B).

92. Pursuant to regulation, prior to detention pursuant to Section 1226(a), immigration officers must allow a noncitizen to “demonstrate to the satisfaction of the officer that . . . release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding.” 8 C.F.R. § 1236.1(c)(8).

93. If, after an individualized consideration, ICE chooses to detain the noncitizen pursuant to Section 1226(a) pending removal proceedings, the individual

may ask for a bond redetermination hearing before the immigration judge. 8 C.F.R. § 1003.19.

94. Until several weeks ago, DHS typically detained individuals who entered without inspection, like Yanddiry, pursuant to DHS' discretionary authority under Section 1226. Ex. 27 at 11.

95. In contrast with Section 1226, which applies to “certain aliens *already in the country*,” *Jennings*, 583 U.S. at 289 (emphasis added), Section 1225(b) governs detention of noncitizens seeking entry into the United States (*i.e.*, “applicants for admission”).

96. Section 1225(b)(2)(A) provides that, “if the examining officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b). (emphasis added). In other words, Section 1225(b) mandates detention for those noncitizens subject to it, and they are not eligible to be considered for release.

97. Multiple federal courts have recently held that the government cannot unilaterally reclassify a noncitizen's detention as mandatory pursuant to Section 1225 after arresting them under the discretionary authority of Section 1226. *See, e.g., Lopez Benitez*, 2025 WL 2371588, at *5 (where arrest warrants and the record referenced Section 1226 as a basis for detention, in reply to a habeas petition,

the government could not justify said detention as mandatory pursuant to Section 1225); *Martinez v. Hyde*, No. 25-11613-BEM, 2025 WL 2084238, at *3-4 (D. Mass. July 24, 2025) (rejecting the government’s attempt to reclassify its detention authority where the documentation supporting arrest referred to Section 1226).

II. Noncitizens’ Procedural Due Process Rights

98. The Due Process Clause of the Fifth Amendment entitles noncitizens to due process of law. *Reno v. Flores*, 507 U.S. 292, 306 (1993). As clearly enunciated by the Supreme Court, the protection of the Due Process Clause applies to noncitizens in the United States “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citations omitted).

99. Stated simply, “while [DHS] might want to enforce this country’s immigration laws efficiently, it cannot do that at the expense of fairness and due process.” *Cesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *1 (W.D.N.Y. May 2, 2025) (citing *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-68 (1954)).

100. Further, noncitizens are entitled to procedural due process protections, even in the face of policy shifts between administrations. While a “new administration can change the rules . . . it cannot change them and make up new rules

as it goes along when the new rules abridge constitutional rights.” *Velasquez*, 2025 WL 1953796, at *14.

101. In the context of immigration detention due process claims, the Third Circuit has applied the three-factor balancing test set forth in *Mathews v. Eldridge* to determine what due process requires. 424 U.S. 319 (1976). These factors are: (i) “the private interest that will be affected by the official action”; (ii) “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 (iii) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Gayle v. Warden Monmouth Cnty. Corr. Inst.*, 12 F.4th 321, 331 (3d Cir. 2021) (citing *Mathews*, 424 U.S. at 335).

A. Due Process Right to Pre-Detention Individualized Determination

102. In light of a noncitizen’s due process rights and the procedural rights conferred by Section 1226(a) and the implementing regulations, a decision to detain a noncitizen requires an individualized determination as to the noncitizen’s risk of flight and danger to the community. *See e.g. Velesaca v. Decker*, 458 F. Supp. 3d 224, 235 (S.D.N.Y. 2020); *Lopez Benitez*, 2025 WL 2371588, at *10; Order, *Kelly v. Almodovar*, 25 civ. 6448, 2025 WL 2381591 (S.D.N.Y. Aug. 15, 2025); *Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099, at *13 (D. Ariz. Aug. 11, 2025),

report and recommendation adopted, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Pinchi v. Noem*, 5:25-cv-05632, 2025 WL 2084921, at *1 (N.D. Cal. July 24, 2025).

103. Under the *Mathews* rubric, freedom from imprisonment, physical restraint, or other forms of government custody is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Lopez Benitez*, 2025 WL 2371588, at *9 (“[Petitioner] invokes “the most significant liberty interest there is—the interest in being free from imprisonment.” (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Hamdi*, 542 U.S. at 529)); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (noncitizens in immigration custody had an arguably even greater liberty interest in remaining out of detention than criminal parolees who required due process protections).

104. With respect to the second *Mathews* factor, given the strong liberty interest at stake, the Fifth Amendment’s guarantee of due process requires at least some notice and an opportunity to be heard before a person can be placed in immigration detention. Further, due process requires that “notice must be afforded within a reasonable time and in such manner as will allow [noncitizens] to actually seek . . . relief[.]” *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025).

105. For the third *Mathews* factor, “the Attorney General’s discretion to detain individuals under 8 U.S.C. § 1226(a) is valid where it advances a legitimate government purpose.” *Velasco Lopez*, 978 F.3d at 854. The recognized government

interests in immigration detention are “ensuring the appearance of [noncitizens] at future immigration proceedings” and “preventing danger to the community.” *Zadvydas*, 533 U.S. at 690. Absent evidence in the record that a noncitizen is dangerous, and in situations when the noncitizen has appeared for immigration proceedings, district courts have held that government cannot demonstrate a significant interest in their detention. *See Lopez Benitez*, 2025 WL 2371588, at *13; *Valdez*, 2025 WL 1707737, at *4.

106. Recent decisions by federal courts in various jurisdictions confirm that due process requires the government to make individualized determinations to detain noncitizens and give them notice and a meaningful opportunity to be heard when challenging their detention. *See Lopez Benitez*, 2025 WL 2371588, at *13 (“Respondents’ ongoing detention of [Mr. Lopez Benitez] with no process at all, much less prior notice, no showing of changed circumstances, or opportunity to respond, violates his due process rights.”) (citations omitted); *Kelly*, 2025 WL 2381591, at *4 (ordering immediate release based on violation of petitioner’s due process rights where he was re-arrested at his ICE check-in without notice, opportunity to respond or showing of changed circumstances); *Valdez*, 2025 WL 1707737, at *4 (ordering immediate release where noncitizen, previously released on recognizance, was re-arrested after appearance in immigration court with no explanation for re-detention); *see also Chipantiza-Sisalema v. Francis*, No. 25 Civ.

5528, 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (granting habeas petition based on violation of Fifth Amendment where noncitizen was detained without an individualized determination of changed circumstances justifying detention); *Rosado*, 2025 WL 2337099, at *13, *19 (ordering immediate release and return to jurisdiction where “Rosado’s re-detention, after six years of being released on recognizance from an initial detention on inspection, was without prior notice, a showing of changed circumstances, or a meaningful opportunity to object” and finding it was a procedural due process violation) (citations omitted).

107. Further, if a noncitizen does not receive individualized consideration pre-deprivation, her due process rights are irrevocably violated, and no amount of procedure provided post-detention can remedy that violation. *See, e.g., Lopez Benitez*, 2025 WL 2371588, at *14 (“Given the nature of the constitutional violation Mr. Lopez Benitez sustained here—i.e., Respondents’ failure to conduct any kind of individualized assessment before detaining him—any post-deprivation review by an immigration judge would be inadequate.”); *see also Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (finding bond “hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause.”) (citation modified); *Kelly*, 2025 WL 2381591, at *3 (same).

108. As a result, courts have ordered a noncitizen's immediate release where their pre-detention due process rights have been violated. *See, e.g., Lopez Benitez*, 2025 WL 2371588, at *15. *See also Maklad v. Murray*, 1:25-cv-946, 2025 WL 2299376, at *10 (E.D. Cal. Aug 8, 2025); *Pinchi*, 2025 WL 2084921, at *7; *Velasquez*, 2025 WL 1953796, at *18; *Singh v. Andrews*, 1:25-cv-00801, 2025 WL 1918679, at *10 (E.D. Cal. July 11, 2025); *Kelly*, 2025 WL 2381591, at *8; *Rosado*, 2025 WL 2337099, at *19; *Valdez*, 2025 WL 1707737, at *5.

B. Due Process Right to Meaningful Post-Deprivation Review

109. The *Mathews v. Eldridge* framework also governs due process claims post-deprivation, including when a noncitizen is detained.

110. One recognized way to protect the post-detention due process rights of detained noncitizens is to provide a bond hearing. Moreover, merely holding the hearing is not enough—it must be constitutionally sufficient.

111. To determine if a bond hearing provided constitutionally-sufficient procedure under *Mathews*, the Third Circuit considers whether three conditions were satisfied. *Abdulai v. Ashcroft*, 239 F.3d 542, 549 (3d Cir. 2001). Specifically, a noncitizen “(1) is entitled to factfinding based on a record produced before the decisionmaker and disclosed to him or her; (2) must be allowed to make arguments on his or her own behalf; and (3) has the right to an individualized determination of his [or her] interests.” *Id.* (citation modified) (second alteration in original).

112. The burden of proof is also relevant to determining whether a bond hearing comported with due process. Many federal courts have held that forcing a noncitizen to bear the burden of establishing bond eligibility (*i.e.*, that they are not a flight risk or danger to the community), as opposed to placing the burden on the government to show why release is inappropriate, is a violation of the Due Process Clause under the *Mathews* factors.

113. In considering a due process challenge to placing the burden on the noncitizens in a Section 1226(a) bond proceeding, the First Circuit found that the first *Mathews* factor—the private interests at stake—weighed heavily in the noncitizen’s favor given their restrained liberty. *Hernandez-Lara v. Lyons*, 10 F.4th 19, 30 (1st Cir. 2021). The court also found that the second *Mathews* factor—risk of erroneous deprivation and probable value of additional procedure—weighed in the noncitizen’s favor because noncitizens may not have counsel, their detention impairs their ability to gather their own evidence, they often lack English proficiency, the government knows the procedures better than they do, and proving a negative is difficult to do. *Id.* at 30-32. The court determined the third *Mathews* factor—the Government’s interest—was not particularly strong given that the additional onus on the government to have the burden was minimum, and unnecessary detention has societal costs. *Id.* at 32-33. To remedy the due process violation of placing the burden

on the detained noncitizen, the Court ordered a new bond hearing where the government would bear the burden to prove flight risk and danger. *Id.* at 46.

114. When considering the appropriate allocation of burden, the Second Circuit reached a similar outcome applying the *Mathews* factors. *Velasco Lopez*, 978 F.3d at 855. It held that the first *Mathews* factor “cuts sharply in [Petitioner’s] favor” due to the detention. *Id.* at 851-52. On the second factor, the Second Circuit emphasized the difference in resources between the government and detained noncitizens, and how the government’s response that it sometimes lacked sufficient information to support detention is exactly why it should be the one with the burden. *Id.* at 852-54. On the third *Mathews* factor, the Court noted that the Government had not convinced it that shifting the burden undermined its interests or caused undue administrative burden, and it found the public interest favors releasing individuals the Government cannot show are a bail risk. *Id.* at 854-55. The Court affirmed the ordering of a new bond hearing where the Government needed to show by clear and convincing evidence that the noncitizen was a flight risk or danger. *Id.* at 855.

115. Various district courts have engaged in similar analyses and have come to the same conclusions—that, in order to satisfy the Due Process Clause, the burden belongs with the government in Section 1226(a) bond hearings. *See, e.g., L.G. v. Choate*, 744 F. Supp. 3d 1172, 1186 (D. Colo. 2024); *Hulke v. Schmidt*, 572 F. Supp. 3d 593, 601 (E.D. Wis. 2021); *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp.

3d 1331, 1342 (M.D. Ga. 2020); *Ayobi v. Castro*, No. SA-19-CV-01311-OLG, 2020 WL 13411861, at *9 (W.D. Tex. Feb. 25, 2020).¹¹

116. Where a bond proceeding did not comport with due process or violated the detained noncitizen's constitutional rights, this Court has authority to order a new bond hearing. *See, e.g., Garcia v. Green*, No. 16-0565, 2016 WL 1718102, at *3 (D.N.J. Apr. 29, 2016) ("The Court may order a bond hearing where the bond hearing was conducted unlawfully").

117. Additionally, federal courts have authority to hold a curative bond hearing rather than remanding to the immigration court that originally violated the noncitizen's rights. *See, e.g., Akinola v. Weber*, No. 09-3415, 2010 WL 376603, at *5 (D.N.J. Jan. 26, 2010) (bond hearing by a district court, rather than an immigration judge, was appropriate given immigration judge's pattern of decisions); *see also L.G.M. v. LaRocco*, No. 2:25-CV-2631, 2025 WL 2092027, at *5 (E.D.N.Y.

¹¹ The Third Circuit has not decided the issue in a precedential opinion. In *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 279 (3d Cir. 2018), the Third Circuit suggested, in *dicta*, that placing the burden on noncitizens to show lack of danger or flight risk was permissible in bond hearings held under Section 1226(a). But the Court made clear that the petitioner had "alleg[ed] no constitutional defect" in his prior bond hearing so it "need not decide when, if ever, the due process clause might entitle an alien detained under § 1226(a) to a new bond hearing." *Id.* at 279-80. More recently, the Third Circuit determined that the government bears the burden and must prove by clear and convincing evidence that continued detentions are justified in the context of 1226(c) detainees. *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203 (3d Cir. 2020). This holding "casts doubt on the continuing validity of" the aforementioned *dicta* in *Borbot*. *See Hernandez Lara*, 10 F.4th at 34-35.

June 25, 2025) (“[t]o spare all parties potential additional dissatisfaction and grievance in a process that has already proved protracted, the Court chooses to cut to the chase and hold the bail hearing, so it can assess the witnesses and other evidence for itself”).

118. Noncitizens have essential protections under the Due Process Clause in connection with any restrictions on their liberty, and federal courts like this one must act as the bulwark to protect these constitutional rights when they are infringed upon.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION (Failure to Conduct an Individualized Pre-Detention Assessment)

119. Yanddiry realleges and incorporates by reference each and every allegation contained above.

120. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. *See generally Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

121. Accordingly, Yanddiry was entitled to due process of law in advance of any detention.

122. The Third Circuit applies the *Mathews v. Eldridge* factors to determine what due process requires in the context of immigration detention, balancing: (i) “the private interest that will be affected by the official action”; (ii) “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 (iii) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Gayle*, 12 F.4th at 331 (citation modified) (quoting *Mathews*, 424 U.S. at 335)

123. Yanddiry’s private interests here are strong: she has been deprived of her liberty after being released from DHS custody over six years ago. *See Rosado*, 2025 WL 2337099, at *18 (“A basic principle—that individuals placed at liberty are entitled to due process before the government *again* imprisons them—has particular relevance here, where Rosado’s detention was previously found to be unnecessary to serve any purpose.”) (emphasis added).

124. Further, Respondents detained Yanddiry without notice to her or her counsel, without an opportunity to respond, and without any meaningful evaluation as to her particular circumstances, including whether she poses a flight risk or a danger to the community. The risk of erroneous deprivation is high and additional procedure would have proven valuable. *Valdez*, 2025 WL 1707737, at *4 (finding

respondents “re-detained Petitioner with no notice, explanation, or opportunity for Petitioner to be heard. Petitioner’s re-detention without any change in circumstances or procedure establishes a high risk of erroneous deprivation of his protected liberty interest.”) (citation omitted).

125. With respect to the government’s interest, Respondents have not offered any permissible purpose for Yanddiry’s detention. *Zadvydas*, 533 U.S. at 690-91. Rather, according to Respondents, Yanddiry’s detention was obligatory pursuant to Section 1225(b). Ex. 27 at 1.

126. Necessarily, therefore, based on ICE’s view that Yanddiry’s detention was mandatory, an individualized assessment of the factors in her case—including her entrance to the U.S. as an unaccompanied child, her status as a SIJS beneficiary with a pathway to lawful permanent residence, her status as a *J.O.P.* class member with a pending asylum application before the Newark Asylum Office who cannot be deported before USCIS adjudicates her claim, her engagement to a U.S. citizen, and her lack of criminal convictions—was not made prior to her detention. *See Lopez Benitez*, 2025 WL 2371588, at *11 (“The problem is that Respondents have not offered any explanation for Mr. Lopez Benitez’s detention other than their initial assertion that it is mandatory—that is, that it is *non-discretionary*. Such an assertion is precisely the *opposite* of an exercise of discretion, which entails some sort of judgment.”) (emphasis in original).

127. Subsequently, however, ICE took an inconsistent position before the Immigration Court, confirming that Yanddiry is detained pursuant to Section 1226(a). Accordingly, ICE has now conceded it was constitutionally required to conduct an individualized assessment prior to depriving Yanddiry of her liberty, which it did not do. Ex. 1 ¶ 46.

128. For the foregoing reasons, Respondents' detention of Yanddiry violated the rights guaranteed to her by the Due Process Clause of the Fifth Amendment to the United States Constitution. As multiple courts have held, no amount of post-deprivation process can cure the foregoing violation, and Yanddiry must be released.

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION (Failure to Receive Constitutionally Sufficient Bond Hearing)

129. Yanddiry realleges and incorporates by reference each and every allegation contained above.

130. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. *See generally* *Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

131. Yanddiry is currently being deprived of her liberty as she remains in an immigration detention center. Accordingly, Yanddiry was entitled to due process following her detention.

132. The Third Circuit has determined that, to satisfy *Mathews v. Eldridge* in the bond hearing process, “[a]n alien: (1) is entitled to factfinding based on a record produced before the decisionmaker and disclosed to him or her; (2) must be allowed to make arguments on his or her own behalf; and (3) has the right to an individualized determination of his [or her] interests.” *Abdulai*, 239 F.3d at 549 (citation modified) (second alteration in original); *see also Quinteros v. Warden Pike Cnty. Corr. Facility*, 784 F. App’x 75, 78 (3d Cir. 2019) (reiterating same standard).

133. Yanddiry’s bond hearing failed to meaningfully provide any of these required protections.

134. First, Yanddiry did not receive “factfinding based on a record produced before the decisionmaker.” *Abdulai*, 239 F.3d at 549. Specifically, while the government argued that Yanddiry was a flight risk for her failure to appear at previous criminal proceedings, the government conceded that these records were never submitted to the Immigration Court. However, undeterred by the lack of record evidence, the Immigration Judge nonetheless recited Yanddiry’s failure to appear at previous proceedings as a basis for denying bond.

135. Second, Yanddiry was not properly “allowed to make arguments on . . . her own behalf[.]” *Abdulai*, 239 F.3d at 549. The facility failed to schedule requested legal calls between Yanddiry and her counsel in the lead up to her bond hearing, and she did not have sufficient time with counsel to prepare to present her case.

136. Yanddiry’s ability to make arguments on her own behalf was further undermined by the Immigration Judge’s decision three days prior that it lacked jurisdiction to adjudicate bond. Ex. 29. The expectation going into the August 14 hearing based on the Respondents’ position in this Court and the Immigration Judge’s August 11 order was not that Yanddiry would be permitted to make arguments as relevant to flight risk and danger, but that bond would again be summarily denied on jurisdictional grounds.

137. Third, and perhaps most glaring, Yanddiry did not receive a “individualized determination of [her] interests.” *Abdulai*, 239 F.3d at 549. Given the Immigration Judge’s four-page, single-spaced order—issued just days earlier—which denied bond on jurisdictional grounds, it is evident that the no-bond outcome was pre-ordained.

138. Additionally, Yanddiry’s due process rights were violated at the bond hearing when the burden was placed upon Yanddiry to prove that she was not a flight risk and is not a danger to the community.

139. Under the first *Mathews* factor, Yanddiry's private interests are strong in re-obtaining her liberty. On the second factor, as the First Circuit articulated in *Hernandez-Lara*, 10 F.4th at 31, the bond process is inaccessible to detained noncitizens in ways that it is not to the government, and so the additional measure of placing the burden on the government instead would safeguard Yanddiry's constitutional rights. On the third factor, the additional burdens on the government will be minimal and are outweighed by the public's interest in not unlawfully detaining members of society without sufficient reason.

140. This Court should follow many other federal courts in deciding that placing the burden on the detained noncitizen during a Section 1226(a) bond hearing to prove a negative of flight risk and danger is a violation of their due process rights.

141. For the foregoing reasons, Respondents' detention of Yanddiry violated the rights guaranteed to her by the Due Process Clause of the Fifth Amendment to the United States Constitution.

COUNT THREE
VIOLATION OF THE FIRST AMENDMENT

142. Yanddiry realleges and incorporates by reference each and every allegation contained above.

143. The First Amendment to the United States Constitution provides in part that "Congress shall make no law . . . abridging the freedom of speech . . . or the

right of the people . . . to petition the Government for a redress of grievances.”

U.S. Const. amend. I.

144. “The Supreme Court has consistently held that an individual’s constitutional right of access to court is protected by the First Amendment’s clause granting the right to petition the government for grievances.” *Anderson v. Davila*, 125 F.3d 148, 161 (3d Cir. 1997); *see also California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) (“The right of access to the courts is indeed but one aspect of the right of petition.”) (citations omitted).

145. “To plead retaliation for the exercise of First Amendment rights, a plaintiff must allege (1) constitutionally protected conduct, (2) retaliatory action sufficient to deter a person of ordinary firmness from exercising his constitutional rights, and (3) a causal link between the constitutionally protected conduct and the retaliatory action.” *Mirabella v. Villard*, 853 F.3d 641, 649 (3d Cir. 2017) (citations omitted); *see also Mack v. Warden Loretto FCI*, 839 F.3d 286, 297 (3d Cir. 2016) (applying this test to a claim of retaliation for the exercise of the right to petition).

146. Yanddiry filed her Original Petition for writ of habeas corpus on July 9, 2025, and the Court issued the Order to Show Cause shortly afterwards. Ex. 3, Ex. 18.

147. The filing of a petition for a writ of habeas corpus is constitutionally protected pursuant to the First Amendment.

148. Days later, the government: (a) relocated Yanddiry to Texas; and (b) failed to notify her counsel (and only later provided a misdated change of address form to her counsel). Ex. 1 ¶ 21-24.

149. Subsequently, the government: (a) relocated Yanddiry to New Mexico; and (b) again failed to notify counsel of her relocation until after it happened. Ex. 1 at ¶ 31-32.

150. Yanddiry's access to counsel has also been severely restricted in detention, despite her need to communicate with counsel about her removal proceedings and bond proceedings, as well as her potential T-Visa and her habeas petition before this Court. Ex. 1 at ¶ 54.

151. Each of these acts independently constitute retaliatory action sufficient to deter a person of "ordinary firmness" from exercising their First Amendment rights; together, the chilling effect is even stronger. *See O'Connor v. City of Newark*, 440 F.3d 125, 128 (3d Cir. 2006) (explaining that the "deterrence threshold" for First Amendment retaliation claims is "very low" and "a cause of action is supplied by all but truly de minimis violations") (citations omitted).

152. A causal link between a constitutionally protected act and the retaliatory action may be demonstrated by the timing and proximity of the adverse action to the protected conduct, a pattern of antagonism, and other evidence "gleaned

from the record as a whole.” *Conard v. Pennsylvania State Police*, 902 F.3d 178, 184 (3d Cir. 2018) (citation omitted).

153. The timing of the government’s repeated transfers without notice, failure to provide video calls at the El Paso facility, and repeated cancellations of master calendar hearings shortly after Yanddiry’s filing of the writ of habeas corpus constitutes an “unusually suggestive” temporal connection between Yanddiry’s protected conduct and her relocation to Texas. *Watson v. Rozum*, 834 F.3d 417, 424 (3d Cir. 2016).

154. The government’s retaliation is causing Yanddiry immediate and irreparable harm through ICE’s continued detention of her in New Mexico—away from her home, loved ones, and legal counsel. Ex. 1 ¶¶ 51-54.

155. It also caused harm in limiting her access to counsel in advance of her bond hearing, during which bond was ultimately denied. *Id.* ¶¶ 47, 54.

PRAYER FOR RELIEF

WHEREFORE, Yanddiry respectfully requests that this Court:

- a. Order Respondents to show cause why the writ should not be granted and order briefing and a hearing consistent with the parties’ agreed upon scheduling letter;
- b. Declare that Yanddiry’s detention violates the Due Process Clause of the Fifth Amendment;

- c. Declare that Respondents' actions violate the First Amendment;
- d. Order Yanddiry's return to the District of New Jersey;
- e. Grant a writ of habeas corpus ordering Respondents to immediately release Yanddiry from custody;
- f. In the alternative, hold a curative bond hearing in this Court;
- g. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
- h. Grant such further relief as this Court deems just and proper.

Dated: Washington, D.C.
August 18, 2025

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**VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S
BEHALF PURSUANT TO 28 U.S.C. § 2241**

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

Dated: August 18, 2025
Jackson Heights, New York

Respectfully submitted,

Jaqueline Pearce