

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

W.R.Y.B.,

Petitioner,

v.

Pamela BONDI, U.S. Attorney General; John TSOUKARIS, Field Office Director of Enforcement and Removal Operations, Newark Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Luis SOTO, Director of Delaney Hall ICE Detention Facility.

Respondents.

Case No. ___25-17378__

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner, W.R.Y.B.¹, is 41 years old and was born in Ecuador. W.R.Y.B. came to the United States in August 2023 with his wife and two young children. W.R.Y.B. encountered immigration agents at the U.S. border and was released and permitted to enter the U.S. However, more than two years later, on or about October 15, 2025, while attending a routine immigration court hearing at 26 Federal Plaza in New York, New York with his wife, W.R.Y.B. was abruptly seized from the hallway and forced into detention by Immigration and Customs Enforcement (ICE) agents. W.R.Y.B. was transported to the Delaney Hall Detention Facility by ICE where he remains at the time of filing this habeas petition.

2. W.R.Y.B. is unlawfully detained, without any opportunity for individualized review of his detention, because the Department of Homeland Security (“DHS”) and the Executive

¹ Motion to proceed under pseudonym filed contemporaneously with this petition.

Office of Immigration Review (“EOIR”) have reinterpreted the INA and accompanying regulations to conclude that W.R.Y.B. is subject to mandatory detention.

3. In this petition, W.R.Y.B. asserts that the applicable statute of detention is 8 U.S.C. § 1226(a), and due process requires an immediate bond hearing. Contrary to the Respondents new interpretations, 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like W.R.Y.B. who previously entered and are now residing in the United States. Respondents’ new legal interpretation, that subjects W.R.Y.B. to detention without bond under § 1225(b)(2)(A), is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to noncitizens such as W.R.Y.B.

4. Courts within this district to have considered the issue have repeatedly concluded the same. *See Rivera Zumba v. Bondi*, 2:25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Mugliza Castillo v. Lyons*, 25-cv-16219, 2025 WL 2940990 (D. N.J. October 10, 2025); *Macancela Buestan v. Chu*, 25-cv-16034, 2025 WL 2972252 (D.N.J. Oct. 21, 2025); *Bethancourt Soto v. Soto*, 25-cv-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *de Fatima Lomeu v. Soto*, 25-cv-16589, 2025 WL 2981296 (D.N.J. Oct. 23, 2025); *Lopez Lopez v. Soto*, 2:25-cv-16303, 2025 WL 2987485 (D.N.J. Oct. 23, 2025); *Contreras Maldonado v. Cabezas*, 2:25-cv-13004m 2025 WL 2985256 (D.N.J. Oct. 23); *Patel v. Almodovar*, 2:25-cv-15345, 2025 WL 3012323 (D.N.J. Oct. 28, 2025); *Ayala Amaya v. Bondi*, 25-cv-16428, 2025 WL 3033880 (D.N.J. Oct. 30, 2025).

5. Moreover, the abrupt arrest and re-detention of W.YR.B. was wholly unjustified and unrelated to any individualized consideration of his circumstances such that the detention is unlawful. W.R.Y.B. was arrested at the immigration courthouse while he was attending his scheduled court hearing on his application for asylum, two years after a previous decision by Respondents to not detain him and to allow his entry into the county. Respondents unwarranted

re-detention of W.R.Y.B., without any individualized consideration of his risk of flight or danger to the community, without evidence of changed circumstances, and without notice and opportunity to respond, violates W.R.Y.B.'s due process under the Fifth Amendment.

6. Accordingly, W.R.Y.B. seeks a writ of habeas corpus ordering that he be released because his re-detention was unlawful or, in the alternative, granting the habeas upon a determination that his detention is under § 1226(a) with an order for a bond hearing to occur within seven days.

JURISDICTION

7. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Delaney Hall Detention Facility in Newark, New Jersey.

8. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, and 5 U.S.C. § 706 (APA).

VENUE

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of New Jersey, the judicial district in which Petitioner currently is detained.

11. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of New Jersey.

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

13. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

14. Petitioner W.R.Y.B. is a citizen of Ecuador who was placed into immigration detention on or about October 15, 2025. ICE arrested Petitioner at the immigration courthouse at 26 Federal Plaza, New York, New York and did not set bond. Petitioner is unable to obtain review of his custody by an Immigration Judge (IJ), pursuant to the agency’s new interpretation of the INA and the Board of Immigration Appeals’ (BIA) decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

15. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

16. Respondent John Tsoukaris is the Director of the Newark Field Office of ICE’s Enforcement and Removal Operations. As such, Respondent Tsoukaris is responsible for Petitioner’s detention. He is named in his official capacity.


17. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act

(INA), and oversees ICE, which is responsible for Petitioner's detention and removal. Respondent Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

18. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

19. Respondent Luis Soto is the Director of the Delany Hall ICE Detention Facility, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

STATEMENT OF FACTS

20. W.R.Y.B. was born in Ecuador on  He is married and is the father of two children, currently ages 7 and 13.

21. After facing persecution in his home country, W.R.Y.B. traveled to the United States with his family to seek protection.

22. After crossing the U.S. border on or about August 10, 2023, W.R.Y.B. was encountered by U.S. Border Patrol agents. He was taken to the El Centro Border Patrol Sector Processing Center where he was held for approximately one day, processed by agents, released, and permitted to enter the United States.

23. W.R.Y.B. and his family then traveled to New York where they had some friends.

24. W.R.Y.B. and his wife began the process, pro se, of filing for asylum, withholding of removal and protection under the Convention Against Torture, in the United States.

25. W.R.Y.B. attended all check-in appointments when required by ICE and attended his immigration court hearings as scheduled, at 26 Federal Plaza, New York, New York.

26. As required by ICE, W.R.Y.B. attended yearly check-ins, on approximately October 7, 2024 and October 7, 2025.

27. At the October 7, 2025 check-in, ICE fitted W.R.Y.B. with an ankle monitoring device.

28. A few days later, on October 15, 2025, W.R.Y.B. and his wife attended their immigration court Master Calendar Hearing, a preliminary case scheduling hearing. At the hearing, W.R.Y.B. was given a new date to return to court, February 11, 2026, to continue pursuing his asylum application.

29. However, as W.R.Y.B. left the courtroom and entered the hallway, ICE agents surrounded him. The agents pushed his wife away from him while the accompanying volunteers tried to provide support.

30. Scared and confused, W.R.Y.B. was grabbed by the ICE agents and taken into an elevator. W.R.Y.B. was not presented an arrest warrant and was not told the reasons for his arrest by ICE.

31. W.R.Y.B. recalls being held in a cold room with one bathroom and at least 12 other people. He was not provided any information; he was not told why he was arrested, whether he would be released or whether he would continue to be detained by ICE and moved to another location. W.R.Y.B. was concerned for his wife and children.

32. At some point that evening, W.R.Y.B. was put into a van and was driven to Delaney Hall Detention Facility in Newark, New Jersey.

33. Following his ICE detention, W.R.Y.B. was able to secure *pro bono* counsel through the New York Immigration Family Unity Project (“NYIFUP”) to assist with his removal proceedings and pursuing his application for asylum.

34. On or about November 9, 2025, W.R.Y.B. was awoken in the middle of the night, handcuffed and moved with approximately 50 other detained noncitizens. His name was read from a paper and he was placed into a van. W.R.Y.B. was told that he was going to be put on a plane to Louisiana.

35. While at the airport in ICE custody, W.R.Y.B. was told that the plane was full. He was returned to Delaney Hall and was reprocessed by ICE; he underwent a new medical exam and given a new badge. For more than 12 hours, from the midnight transfer through the hours-long process back into the facility around 4pm, W.R.Y.B. was not provided food or water. He was not permitted to call his wife or his attorney.

36. W.R.Y.B. is in fear of being imminently transferred again by ICE, to an unknown location further away from this family and his pro bono counsel.

37. W.R.Y.B. remains in ICE detention without the opportunity for bond in light of new policies by ICE and a new interpretation by EOIR of the applicable statute of detention. Without relief from this court, W.R.Y.B. will face the prospect of months, or even years, in immigration custody, separated from his family and community without any individualized review or assessment of the need for detention.

LEGAL FRAMEWORK

I. Detention Authority under the Immigration and Nationality Act

A. Petitioner Is Subject To Detention Under 8 U.S.C. § 1226(a).

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

39. First, 8 U.S.C. § 1226 authorizes the discretionary detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond redetermination hearing at the outset of their detention,

see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

40. 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).

41. Third, the INA also provides for detention of noncitizens who have been ordered removed and for individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

42. The instant case concerns the discretionary detention provisions at 8 U.S.C. § 1226(a) which has historically, and accurately, applied to noncitizens like to W.R.Y.B. Respondents’ recent contrary assertion is that 8 U.S.C. § 1225(b) should instead apply.

43. 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(a) was most recently amended in early 2025 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

44. Section 1226(a) “sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of a[] [noncitizen] ‘pending a decision on whether the [noncitizen] is to be removed from the United States.’” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting § 1226(a)). Except as provided in Section 1226(c), “the Attorney General ‘may release’ a[] [noncitizen] detained under § 1226(a) ‘on ... bond’ or ‘conditional parole.’” *Id.* (quoting § 1226(a)(1)–(2)).

45. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under

8 U.S.C. § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].” W.R.Y.B. is in such removal proceedings.

46. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, noncitizen who enter without inspection and are charged with being inadmissible in removal proceedings are afforded a bond hearing under subsection (a). As one of the first courts to consider the Respondents’ new interpretation, the Western District of Washington in *Rodriguez Vazquez*, emphasized, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also* *Gomes v. Hyde*, 2025 WL 1869299 at *7 (D. Mass. July 7, 2025).

47. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole, like W.R.Y.B.

48. Under that default rule, when a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination. *See, e.g., Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496, at *5 (D.N.J. Sept. 26, 2025) (citing 8 C.F.R. § 236.1(c)(8)). If the detainee objects to the initial determination, they “may request a bond hearing before an IJ at any time before a removal order becomes final.” *Id.* at 1197 (citing 8 C.F.R. §§ 236.1(d)(1), 1003.19). A noncitizen detainee can appeal an adverse decision to the BIA. *Id.*, *see also, Nkomo v. Att’y Gen. of United States*, 986 F.3d 268 (3d Cir. 2021).

49. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who very recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287.

50. Section 1225(b)(2) requires detention of “an [noncitizen]² who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). To fall under this section, the noncitizen must be “an applicant for admission” and an immigration officer must determine that the applicant “is not clearly and beyond a doubt entitled to be admitted.” *Id.* Importantly the statutory language only applies to a “[noncitizen] seeking admission.” The “seeking admission” language, “necessarily implies some sort of present tense action.” *Martinez*, 2025 WL 2084238 at *6; *Zumba*, 2025 WL 2753496, at *6 (referring to the present tense of someone at the port of entry); *J.G.O. v. Francis*, No. 25-CV-7233 (AS), 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025) (finding that “ ‘seeking’ is written in the present-progressive tense, which ‘is used to refer to an action or a state that is continuing to happen.’”) (internal citations omitted); *see also Matter of M-D-C-V-*, 28 I. & N., Dec. 18, 23 (B.I.A. 2020) (“The use of the present progressive tense ‘arriving,’ rather than the past tense ‘arrived,’ implies some temporal or geographic limit[.]”); *US v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of verb tense is significant in construing statutes.”)

² This petition uses the term “noncitizen” as equivalent to the statutory term “alien.” See, e.g., *Santos-Zacaria v. Garland*, 598 U.S. 411, 414 n.1 (2023) (citing *Nasrallah v. Barr*, 590 U. S. 573, 578 n. 2 (2020)) (slip op., at 4, n. 2).

51. The plain language of § 1225 thus applies only to immigrants actively seeking admission into the United States at the nation’s border or another point of entry. It does not later apply to noncitizens “already present in the United States”—only Section 1226 applies in those cases. *See Jennings*, 583 U.S. at 303.

52. Regulations promulgated nearly three decades ago provide that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination” under §1226. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Until now, Respondents consistently adhered to this interpretation. *See, e.g., Matter of Garcia-Garcia*, 25 I&N, Dec. 93 (BIA 2009); *Matter of D-J-*, 23 I&N., Dec. 572 (A.G. 2003); *see also* Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ([Solicitor General]: “DHS’s long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.”).

53. In the three decades that followed IIRIRA, people who entered without inspection and were subsequently placed in removal proceedings received bond hearings if ICE chose to detain them, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *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)).

54. “The idea that a different detention scheme would apply to noncitizens ‘already in the country,’ as compared to those ‘seeking admission into the country,’ is consonant with the core logic of our immigration system.” *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D.

Mass. July 24, 2025); *see also Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. August 8, 2025) (“the Court need not reach the outer limits of the scope of the phrase ‘seeking admission’ in § 1225(b)—it is sufficient here to conclude that it does not reach someone who has been residing in this country for more than two years, and that as someone ‘already in the country,’ *Jennings*, 583 US at 289, [Petitioner] may be subject to detention only as a matter of discretion under § 1226(a)”).

B. EOIR and ICE’s New, Erroneous Interpretation.

55. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”³ claims that all persons who entered the United States without inspection shall now be subject to the mandatory detention provision of § 1225(b)(2)(A). ICE argues that this new interpretation applies to all people who enter without inspection and are alleged to be inadmissible under § 1182. The policy affects those who have resided in the United States for months, years, and even decades and applies regardless of when a person is apprehended and their case specifics, including—though historically relevant to custody determinations—when, why, or how they entered, criminal convictions, community danger or flight risk, medical conditions, family dependency, and community best interest.

56. Then, on September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that all noncitizens

³ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last visited 11/12/25).

who entered the United States without admission or parole are ineligible for bond hearings before an IJ.

57. Respondents' position on their own detention authority contradicts the statutory language as well as decades of settled precedent that individuals who entered the U.S. without inspection are governed by 8 U.S.C. § 1226(a).

58. In decision after decision, federal courts—both nationwide and here in the District of New Jersey—have rejected Respondents' sudden reinterpretation of the statutory scheme in *Matter of Yajure Hurtado*, and have instead held that § 1226(a), not § 1225(b), applies to noncitizens like W.R.Y.B. who are not “seeking admission” to the United States. *See, e.g., Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (rejecting the government's position); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. Jul. 24, 2025) (same); *Guerrero Orellana v. Moniz*, 2025 WL 2809996 (D. Mass. Oct. 3, 2025) (same); *Lepe v. Andrews*, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025) (same); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (same); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425

(E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Palma Perez v. Berg*, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same); *Rivera Zumba*, 2025 WL 2753496; *Mugliza Castillo*, 2025 WL 2940990; *Macancela Buestan*, 2025 WL 2972252; *Bethancourt Soto*, 2025 WL 2976572; *de Fatima Lomeu v. Soto*, 2025 WL 2981296; *Lopez Lopez*, 2025 WL 2987485; *Contreras Maldonado*, 2025 WL 2985256; *Patel*, 2025 WL 3012323; *Ayala Amaya*, 2025 WL 3033880.

59. Courts have rejected DHS’s and EOIR’s new interpretation because it defies the INA—the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like W.R.Y.B. who are not at the border “seeking admission.” “The idea that a different detention scheme would apply to noncitizens’ already in the country,’ as compared to those ‘seeking admission into the country,’ is consonant with the core logic of our immigration system.” *Martinez*, 2025 WL 2084238 at *8 (citing *Jennings*, 583 U.S. at 289); *see also Lopez Benitez*, 2025 WL 2371588 at *9 (“[T]he Court need not reach the outer limits of the scope of the phrase ‘seeking admission’ in § 1225(b)—it is sufficient here to conclude that it does not reach someone who has been residing in this country for more than two years, and that as someone already in the country . . . [Petitioner] may be subject to detention only as a matter of discretion under § 1226(a).”) (attribution omitted).

60. Ultimately, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like W.R.Y.B., who have already entered and were residing in the United States at the time they were apprehended.

II. Due Process and Immigration Detention.

61. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

62. Due Process requires that there be “adequate procedural protections” to ensure that the government’s asserted justification for a noncitizen’s physical confinement “outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Id.* (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing danger to the community and mitigating the risks of flight. *Id.*; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

63. “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To determine what process is due, this Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government’s interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

A. Respondents’ Detention of Petitioner Without an Individualized Bond Hearing Violates Due Process.

64. Although civil immigration detention is authorized by statute, that detention serves only two legitimate purposes: mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690.

65. DHS makes initial custody determinations pursuant to 8 C.F.R. § 1236.1(c)(8), which requires that noncitizens be released from custody “if they demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” *See Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) (“8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination”); *see also Lopez Benitez*, 2025 WL 2371588 at *20.

66. A person’s liberty cannot be infringed upon without “adequate procedural protections.” *Zadvydas*, 533 U.S. at 690-91. The Third Circuit has held that the *Mathews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *Gayle v. Warden Monmouth Cnty. Corr. Inst.*, 12 F.4th 321, 331 (3d Cir. 2021), *see also, Contreras Maldonado v. Cabezas*, No. CV 25-13004, 2025 WL 2985256, at *5 (D.N.J. Oct. 23, 2025) (“In the Third Circuit, the three-factor balancing test set forth in *Mathews v. Eldridge* applies to determine what due process requires when faced with immigration detention due process claims.”)

67. This test requires process sufficient to mitigate the risk of erroneous deprivation of a liberty interest.

68. Revocation of conditional release from confinement, even civil immigration confinement, infringes on a protected liberty interest. The liberty interest in even conditional release is well-established in the context of parole; probation; and freedom from civil immigration

confinement. *See Contreras Maldonado*, 2025 WL 2985256, at *5 (“As to the first factor, freedom from imprisonment is “the most elemental of liberty interests.” Here, the record is uncontested that Respondents detained Petitioner without an individualized determination as to factors such as her flight risk or dangerousness.”)(citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); *see also*, *Valdez v. Joyce*, 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) (finding immigration petitioner’s “liberty interest is clearly established”); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying case law from the probation and parole contexts to conclude that the non-citizen petitioner had a “liberty interest in remaining out of [immigration] custody”).

69. Due process, in the context of revocation of civil release, requires that, at a minimum, “an individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing.” *Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022).

70. Despite these baseline requirements, Respondents detained W.R.Y.B. without according any notice or process whatsoever.

71. Respondents re-detained W.R.Y.B. notwithstanding an earlier determination to release him. Respondents’ re-detained W.R.Y.B. without according any notice or process whatsoever, and without any evidence of a change in circumstances, and as result violated W.R.Y.B.’s right to due process. *See Chipantiza-Sisalema*, 2025 WL 1927931 at *3 (ordering the immediate release of a petitioner redetained by ICE because her sudden redetention violated her right to due process); *Valdez*, 2025 WL 1707737 at *4 (ordering the release of petitioner redetained after an immigration court hearing and concluding “Respondents ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights.”); *Vargas Ramos v. Rokosky*, No.

25CV15892 (EP), 2025 WL 3063588, at *9 (D.N.J. Nov. 3, 2025) (“Petitioner is unlawfully detained under § 1225(b)(2) and the Court will accordingly order his release. If Petitioner is arrested and re-detained under Section 1226(a), the statute and the Fifth Amendment’s Due Process Clause require that he be provided a bond hearing pursuant to 8 C.F.R. § 236.1(d) and immediately released from detention if he is determined not to pose a flight risk or danger to the community”); *Contreras Maldonado*, 2025 WL 2985256, at *6 (holding that “Petitioner’s due process rights were violated when she was detained without an individualized determination under § 1226(a) and its implementing regulations.)

CLAIMS FOR RELIEF

COUNT I **VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT**

72. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

73. Section 1226(a) of Title 8 of the U.S. Code grants IJs the authority to redetermine custody status unless mandatory detention applies. The INA also empowers the BIA to review IJ’s custody redeterminations.

74. Respondents are unlawfully detaining W.R.Y.B. without the opportunity for bond by unlawfully applying the detention provision at 8 U.S.C. § 1225(b)(2)(A), instead of § 1226(a).

75. Section 1225(b)(2)(A) does not apply to W.R.Y.B. because he is not “seeking admission” to the United States.

76. Instead, W.R.Y.B. is subject to the discretionary detention provisions of 8 U.S.C. § 1226(a).

77. Respondents application of § 1225(b)(2) to W.R.Y.B. unlawfully mandates his continued detention and violates the INA.

COUNT II
**VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT AND THE ACCARDI
DOCTRINE 5 U.S.C. § 706(2)**

78. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

79. The APA enables courts to “hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law.” 5 U.S.C. § 706(2). An agency is bound to adhere to its own regulations. *Accardi*, 347 U.S. at 260. And under this principle, an agency must also follow its internal agency policies. *Morton*, 415 U.S. at 199.

80. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. 62 Fed. Reg. at 10323. The agencies thus made clear that noncitizens who had entered without inspection were eligible for consideration for bond and bond redetermination hearings before IJs under 8 U.S.C. § 1226(a) and its implementing regulations.

81. Respondents have acted arbitrarily and capriciously in abruptly changing the asserted statute of detention authority that would apply to W.R.Y.B. in issuing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), to hold that all noncitizens who entered the United States without admission or parole are ineligible for bond hearings. Respondents have arbitrarily and capriciously upended long-standing agency practice and precedent and their actions are contrary to law in violation of the APA.

COUNT III
**VIOLATION OF SUBSTANTIVE DUE PROCSES (DETENTION WITHOUT
INDIVIDUALIZED REVIEW)**

82. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

83. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

84. Petitioner has a fundamental interest in liberty and being free from official restraint.

85. Respondents’ detention of Petitioner without the opportunity for a bond redetermination hearing to determine whether he is a flight risk or danger to the community violates his right to due process.

COUNT IV
VIOLATION OF SUBSTANTIVE DUE PROCESS (REDETENTION WITHOUT JUSTIFICATION)

86. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

87. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

88. “[G]overnment detention violates the [Due Process Clause] unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow nonpunitive circumstances, where a special justification . . . outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks and citations omitted).

89. W.R.Y.B. has a fundamental interest in liberty and being free from official restraint. He was determined not to pose danger or flight risk when he was released from custody at the border. Respondents have never provided any justification for the re-detention and have never appeared before a neutral arbiter to demonstrate a change in circumstances or detention is necessary to prevent flight or danger to the community.

90. Respondents' detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

COUNT V
**VIOLATION OF PROCEDURAL DUE PROCESS (REDETENTION WITHOUT
NOTICE OR OPPORTUNITY TO RESPOND)**

91. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

92. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

93. Petitioner has a fundamental interest in liberty and being free from official restraint.

94. Petitioner was also not accorded sufficient process prior to his sudden re-detention by ICE. Petitioner has received neither notice nor an opportunity to be heard as to whether a change in custody status was warranted. *See Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *12 (S.D.N.Y. June 12, 2018) ("Petitioner's re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment"); *see also Chipantiza-Sisalema*, 2025 WL 1927931, at *3; *Valdez*, 2025 WL 1707737, at *4; *Contreras Maldonado*, 2025 WL 2985256, at *6.

95. The government’s detention of W.R.Y.B. without individualized review is impermissibly punitive, lacks substantial relation to the purpose of the immigration statute, and violates his right to due process.

PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside the District of New Jersey while this habeas petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
- e. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- f. Grant any other and further relief that this Court deems just and proper.

DATED this 12th of November, 2025.

FOR THE PETITIONER,
/s/ Sharone Kaufman
Sharone Kaufman, Esq.
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**pro hac vice admission forthcoming*

EXHIBITS

Exhibit A – Declaration of W.R.Y.B.

Exhibit B – Declaration of S.A.O.

Exhibit C – Witness Letters

VERIFICATION

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I have discussed the events described in this Petition and Complaint with Petitioner. On the basis of those discussions, I hereby verify that the statements made in this Petition are true and correct to the best of my knowledge.

/s/ Bryanna Rainwater
Bryanna Rainwater, Esq.
The Legal Aid Society
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New York, NY 10013