

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA DIVISION**

Ihar Yurkin,	:	
	:	Case No. <u>2:26-cv-385-NIQA</u>
Petitioner,	:	
	:	
v.	:	
	:	
Warden , Philadelphia Federal Detention Center,	:	
Philadelphia, PA, David O’Neill , Acting Field	:	
Office Director, Philadelphia Field Office	:	
Immigration and Customs Enforcement, Kristi	:	
Noem , Secretary U.S. Department of Homeland	:	
Security Pam Bondi , Attorney General, U.S.	:	
Department of Justice, Executive Office for	:	
Immigration Review,	:	
	:	
Respondents.	:	
	:	

**PETITIONER’S SUPPLEMENTAL BRIEFING ON DEFECTIVE NOTICE TO
APPEAR**

I. INTRODUCTION

Consistent with the arguments presented at the February 5, 2026 hearing and the Court’s Order of the same date [ECF 11], Petitioner Ihar Yurkin submits this supplemental briefing addressing the defective Notice to Appear (“NTA”) issued by the Department of Homeland Security (“DHS”).

Respondents’ sole basis for detaining Mr. Yurkin—a resident arrested in the interior of the United States—without a bond hearing is the claim that his parole revocation caused him to "revert" to the status of an applicant for admission under 8 U.S.C. § 1225(b)(2). This legal fiction relies entirely on the validity of the underlying NTA characterizing him as an arriving alien.

However, that NTA is factually defective: it incorrectly identifies his country of origin as Russia, rather than Belarus (See attached **Exhibit A**). Petitioner does not hold any other citizenship and the claim that he is Russian is materially incorrect.

Because the Government bears the burden of proving that mandatory detention applies, and because they rely on a defective charging document to sustain that burden, the "reversion" to § 1225(b)(2) status fails. Consequently, Mr. Yurkin's detention status must default to the reality of his apprehension: he is a noncitizen arrested in the interior of the United States, governed by 8 U.S.C. § 1226(a), and is entitled to a bond hearing.

II. ARGUMENT

A. The Notice to Appear is Factually Defective.

The Notice to Appear (Form I-862) is the critical charging document that commences removal proceedings and establishes the factual allegations against a noncitizen. *See* 8 C.F.R. § 1003.13. In this case, the NTA served on Mr. Yurkin contains a material factual error. As evidenced by Petitioner's passport and I-94 record, Mr. Yurkin is a citizen and national of Belarus. *See* Petition, Ex. A. However, the NTA issued by DHS incorrectly alleges his country of citizenship and nationality is Russia. *See* Petition, Ex. B.

This is not a harmless clerical error; it is a fundamental misidentification of the Petitioner's nationality, which forms the basis of his deportability and the potential country of removal.

B. Respondents Cannot Rely on a Defective NTA to Sustain the "Legal Fiction" of Arriving Alien Status.

Respondents argue that upon parole termination, Mr. Yurkin legally "reverted" to the status of an arriving alien at the border, subjecting him to mandatory detention under § 1225(b)(2). This argument depends on a legal fiction: treating a person physically present in

Pennsylvania for years as if he were currently standing at the border threshold. To sustain this fiction against a liberty interest, the Government's paperwork must be in order.

The NTA is the instrument DHS uses to assert this status. If the NTA is defective, it cannot serve as the valid anchor for the § 1225(b)(2) classification.

- **Burden of Proof:** The Government bears the burden of establishing that mandatory detention applies. By presenting a charging document that contradicts the Petitioner's actual identity documents (*Belarus vs. Russia*), the Government has failed to produce a valid instrument sustaining the "arriving alien" charge for detention purposes.
- **Strict Compliance:** The Supreme Court has increasingly demanded strict adherence to statutory and regulatory requirements for NTAs when they trigger adverse consequences. *See, e.g., Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021) (requiring a single compliant document). While *Niz-Chavez* addressed the stop-time rule, the principle applies with equal force here: the Government cannot strip Mr. Yurkin of his fundamental right to a bond hearing based on a sloppy, factually erroneous document.

C. Because the "Reversion" to § 1225(b)(2) Fails, Detention is Governed by § 1226(a).

If the NTA is defective, the Government's attempt to classify Mr. Yurkin as an "arriving alien" under § 1225(b)(2) is legally insufficient. When the legal fiction of "reversion" fails due to a defective charging document, the Court must look to the physical reality of the detention.

1. **Physical Reality:** Mr. Yurkin was arrested by ICE agents outside his home in Pennsylvania, years after entering the United States.
2. **Default Statute:** The detention statute governing noncitizens arrested in the interior of the United States is 8 U.S.C. § 1226(a).

3. **Result:** Because the Government has failed to validly perfect the § 1225(b)(2) classification via a proper NTA, Mr. Yurkin defaults to the standard processing for interior apprehensions: discretionary detention under § 1226(a).

Under § 1226(a), Mr. Yurkin is eligible for immediate release or is entitled to a hearing before an Immigration Judge to determine flight risk and danger. The Government's reliance on a defective document to deny him this process is ultra vires and violates due process.

III. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court find the Notice to Appear defective for purposes of mandating detention, declare that Mr. Yurkin is detained pursuant to 8 U.S.C. § 1226(a), and order Respondents to release Petitioner forthwith.

Respectfully Submitted,

/s/ David M. Bercovitch
David M. Bercovitch, Esquire
Attorney for Petitioner
Bercovitch Law Offices, P.C.
100 S Broad Street
Land Title Building, Suite 1902
Philadelphia, PA 19110
Phone: 215-220-6310
Fax: 215-501-5788
Email: david@berclaw.com
EOIR No.: HH306610

Dated: February 9, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February 2026, a true and correct copy of the foregoing Petitioner's Supplemental Briefing on Notice to Appear was served upon counsel for Respondents via the Court's electronic filing system (ECF).

/s/ David M. Bercovitch
David M. Bercovitch, Esquire
Attorney for Petitioner

ИШЫЯ АЛЗНАКИ/ ДРУГИЕ ОТМЕТКИ
OTHER NOTES