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June 15, 2026

Honorable Chief Justice and Associate Justices  
Supreme Court of New Jersey  
25 Market Street  
Trenton, New Jersey 08625

**Re: A-31-25 *Jean-Claude Wright v. New Jersey State Parole Board*  
(091603)  
Appellate Division Docket No. A-002328-24**

**Brief of Amicus Curiae the American Civil Liberties Union of  
New Jersey in Support of Plaintiff-Petitioner**

Honorable Chief Justice and Associate Justices:

Pursuant to *Rule 2:6-2(b)*, kindly accept this letter brief in the above-captioned case on behalf of amicus curiae the American Civil Liberties Union of New Jersey (“ACLU-NJ”) in the above-captioned matter.

**TABLE OF CONTENTS**

|                                                                                                                                                              |   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| PRELIMINARY STATEMENT.....                                                                                                                                   | 1 |
| STATEMENT OF FACTS AND PROCEDURAL HISTORY .....                                                                                                              | 4 |
| ARGUMENT.....                                                                                                                                                | 4 |
| I. The Tolling of State Criminal Mandatory Parole Sentences by<br>Federal Civil Immigration Detention Violates the Doctrine of<br>Fundamental Fairness. .... | 4 |
| A. It is fundamentally unfair for civil immigration detention to<br>increase the severity of a defendant’s criminal punishment.....                          | 6 |

|                                                                                                                                                                                 |    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| B. It is fundamentally unfair for the independent, third-party actions of ICE to extend and enlarge criminal defendants’ punishment.....                                        | 10 |
| C. Allowing civil immigration detention to toll the start of mandatory parole supervision has a severe and unjustifiable impact on Plaintiff without justification. ....        | 11 |
| II. Increased Immigration Enforcement Operations and the Rise in Unlawful Detentions in New Jersey Underscores the Urgent Need to Reverse the Appellate Division Decision. .... | 14 |
| III. This Court Can Avoid the Constitutional Fundamental Fairness Issue by Construing the Statute in the Way Plaintiff Suggests. ....                                           | 15 |
| CONCLUSION.....                                                                                                                                                                 | 16 |

## PRELIMINARY STATEMENT

In his brief to this Court, Plaintiff has cogently explained why the plain text of the No Early Release Act (“NERA”), N.J.S.A. 2C:43-7.2, unequivocally provides that a term of mandatory parole supervision begins upon the completion of a defendant’s sentence of incarceration, not upon a defendant’s release “into the community.” And not tolled by civil detention, or any detention other than a defendant’s sentence of incarceration. Amicus American Civil Liberties Union of New Jersey submits this brief to supplement Plaintiff’s unassailable statutory construction analysis, by focusing on a constitutional argument, an argument which amicus simultaneously asks this Court to avoid: that the tolling of a mandatory parole sentence by federal immigration detention is fundamentally unfair under Article I, Paragraph 1 of the New Jersey Constitution.

Mandatory parole supervision under NERA is part of a defendant’s sentence meted out upon a conviction for crimes within NERA’s ambit. It is part of the criminal justice system and punitive as a matter of law, imposed as a result of a defendant’s culpability, after adherence to strict constitutional safeguards. Detention pursuant to federal civil immigration authority is part of the civil justice system, is not punitive as a matter of law, and is imposed wholly by the independent actions of the U.S. Immigration & Customs

Enforcement (“ICE”), completely independent of any choice by the person detained, and without the strict constitutional safeguards required in criminal prosecutions. Tolling a mandatory parole sentence because of civil immigration detention extends the sentence beyond what was ordered at sentencing and what is required under NERA. There is no reasonable justification to increase a criminal sentence *post hoc* by virtue of a civil immigration detention.

This would be so even were the Appellate Division correct -- which it is decidedly not -- in its construction of NERA as providing that the commencement of the mandatory parole period begins when the defendant is released “into the community” or, were the Parole Board’s new “plain language” correct, that the defendant must be in the actual “custody” of the Board for NERA parole to begin. Simply put, it is fundamentally unfair to effectively extend a defendant’s sentence after he has begun to serve it based on the unilateral decision of ICE to place the defendant in civil detention.

That being said, although the constitutional argument pressed by amicus demonstrates the irrationality of the Parole Board’s tolling decision, there is no need for the Court to reach the patent and unconstitutional unfairness of the effect of the Appellate Division’s construction of NERA. Settled principles of constitutional avoidance counsel against doing so. Indeed, here, unlike in

many other cases where the Court has applied the doctrine of constitutional avoidance, the statute at issue is scarcely subject to competing constructions. Rather, as Plaintiff has so powerfully demonstrated, there is but a single valid way to read the law: mandatory parole supervision under NERA begins the moment a defendant's incarceration for the crime ends.

There is, however, urgency to this case. Civil detentions as part of federal immigration enforcement have reached unprecedented numbers in this state and nationwide. Every day that the Appellate Division's ruling in this case remains the controlling law is another day that a person's sentence has been unlawfully extended. The damage may be irremediable, as is seen in this case where Mr. Wright's sentence is likely to have been served -- for a period of three years longer than it should have been -- by the time this Court rules.

For all of these reasons, more fully set forth below, we ask the Court to reverse the Appellate Division's decision and rule that civil immigration detention does not toll the start of a defendant's mandatory parole supervision under NERA.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amicus accepts the statement of facts and procedural history as set forth in Plaintiff's merits brief. (Pmb 3-9).<sup>1</sup>

## ARGUMENT

### **I. The Tolling of State Criminal Mandatory Parole Sentences by Federal Civil Immigration Detention Violates the Doctrine of Fundamental Fairness.**

“The fundamental fairness doctrine is an integral part of the due process guarantee of Article I, Paragraph 1 of the New Jersey Constitution, which protects against arbitrary and unjust government action.” *State v. Njango*, 247 N.J. 533, 537 (2021). “The ‘one common denominator’ in [this Court’s] fundamental fairness jurisprudence is ‘that someone was being subjected to potentially unfair treatment and there was no explicit statutory or constitutional protection to be invoked.’” *Id.* at 548-49 (quoting *Doe v. Poritz*, 142 N.J. 1, 109 (1995)). The doctrine “promotes the values of ‘fairness and fulfillment of reasonable expectations in the light of the constitutional and common law goals.’” *Id.* at 549 (quoting *State v. Vega-Larregui*, 246 N.J. 94, 132 (2021)).

Amicus acknowledges that the doctrine of fundamental fairness is “sparingly” applied, limited to circumstances where the interests at stake “are

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<sup>1</sup> “Pmb” refers to Plaintiff’s merits brief.

especially compelling.” *Id.* at 549 (quoting *State v. Saavedra*, 222 N.J. 39, 67 (2015)). This is such a case. Allowing federal civil immigration detention to toll the start of a state criminal defendant’s mandatory parole sentence violates New Jersey’s doctrine of fundamental fairness because the tolling extends a defendant’s criminal sentence by effectively lengthening their time subject to parole supervision.

Recognizing the overarching interest a criminal defendant has in the proper calculation of parole time, our courts have applied the doctrine of fundamental fairness in the parole context. *See, e.g., Njango*, 247 N.J. at 537 (applying fundamental fairness doctrine to remedy miscalculation of service credits for purposes of reducing defendant’s parole supervision period under NERA); *Jamgochian v. N.J. State Parole Bd.*, 196 N.J. 222, 247 n.9 (2008) (relying in part on doctrine of fundamental fairness, as coextensive with due process, so as to support right to hearing on Parole Board’s decision to impose a curfew on defendant). This case deserves no less respect.

Supplementing the Office of the Public Defender’s well-reasoned and thoughtful statutory interpretation arguments, (Pmb 10-33), the tolling of the beginning of a mandatory parole sentence is also fundamentally unfair and contrary to Article I, Paragraph 1 of the New Jersey Constitution specifically because (1) federal civil immigration detention is not intended to be punitive

so cannot be used to punish state criminal defendants by effectively lengthening time on parole, and (2) the sentence of criminal defendants cannot be effectively extended based on the independent third-party conduct of another, in this case, ICE. Thus, the Appellate Division was incorrect to hold that the Parole Board's decision "d[id] not offend the notions of fundamental fairness." *Wright v. N.J. State Parole Bd.*, 483 N.J. Super. 255, 262 (App. Div. 2026).

**A. It is fundamentally unfair for civil immigration detention to increase the severity of a defendant's criminal punishment.**

Immigration detention is *civil*, not criminal, so it is not intended to be and is not legally categorized as "punishment," and is not considered punitive as a matter of law.<sup>2</sup> See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("The proceedings at issue here [involving post-removal immigration detention] are civil, not criminal, and we assume that they are nonpunitive in purpose and effect."); see also *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020) ("Removal proceedings are civil, not criminal.");

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<sup>2</sup> Amicus emphasizes that there is a difference between federal civil immigration detention not being punitive in nature as a matter of law, on the one hand, and the lived realities of the individuals in immigration detention, on the other hand. These individuals often face inhumane and deplorable conditions that render immigration detention indistinguishable from, if not worse than, imprisonment for crimes. Issues relating to the constitutionality and legality of the conditions of immigration detention are, of course, not before this Court.

*Ozturk v. Trump*, 779 F. Supp. 3d 462, 492 (D. Vt. 2025) (“[T]he immigration system, including detention, is not punitive.”); *Detention Management*, U.S. Immigr. & Customs Enf’t (Apr. 9, 2026), <https://www.ice.gov/detain/detention-management> (“Detention is non-punitive.”).

In addition, individuals are detained by ICE for a multitude of reasons that do not involve criminal activity. *See, e.g.*, Hillel R. Smith, Cong. Rsch. Serv., R45915, *Immigration Detention: A Legal Overview* 1 (2019), [https://www.congress.gov/crs\\_external\\_products/R/PDF/R45915/R45915.2.pdf](https://www.congress.gov/crs_external_products/R/PDF/R45915/R45915.2.pdf) (explaining that noncitizens may be detained by ICE “for *immigration* violations that render them removable from the United States” and that one primary reason for detention is to ensure presence at a removal hearing) (emphasis added); *The Removal System of the United States: An Overview*, Am. Immigr. Council 3 (2022), [https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/removal\\_system\\_of\\_the\\_united\\_states\\_an\\_overview.pdf](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/removal_system_of_the_united_states_an_overview.pdf) (“Individuals may be removable for a wide variety of reasons. For instance, they may be present in the country without lawful admission or parole, or they may have been admitted legally but failed to maintain their status. Noncitizens with lawful status may become removable for many reasons, such as

immigration fraud, *certain* criminal convictions, national security, or false claims to U.S. citizenship.”) (emphasis added). It does not stop there. There are cases around the country where immigrants have been detained simply for voicing political views, such as pro-Palestinian sentiments. *See, e.g.*, Phil McCausland, *Who is Mahmoud Khalil, Palestinian Student Activist Facing US Deportation?*, BBC.com (June 20, 2025), <https://www.bbc.com/news/articles/cgj5nlxz44yo>; Yash Roy, *A Palestinian Student Leader at Columbia Was Steps Away from His Final Citizenship Interview. He Instead Faces Deportation*, CNN.com (Apr. 15, 2025), <https://www.cnn.com/2025/04/14/us/mohsen-mahdawi-columbia-university-trump>.

Conversely, while immigration detention is legally civil and ostensibly intended to be nonpunitive, parole is part of the criminal system and is therefore intended to be punitive. As recognized by this Court, “‘parole is the legal equivalent of imprisonment,’ and NERA’s mandatory period of parole supervision is deemed a ‘penal consequence’ of a NERA offense.” *Njango*, 247 N.J. at 550 (internal citation omitted) (first quoting *State v. Rosado*, 131 N.J. 423, 428 (1993) and then quoting *State v. Johnson*, 182 N.J. 232, 240 (2005)). Thus, “[u]nder [this Court]’s jurisprudence, parole is . . . therefore punishment.” *Id.* at 547. Using the time spent in civil immigration to extend a sentence by tolling the start of a parole sentence thus transforms a civil,

nonpunitive action into a criminal, punitive action. That is fundamentally unfair.

Underscoring the distinct nature and operations of federal civil immigration enforcement and state criminal law enforcement in New Jersey are the restrictions against state and local law enforcement voluntarily aiding and collaborating with federal immigration enforcement. *See L. 2026, c. 5*. In enacting those restrictions, the Legislature stated, “There is a difference between State, county, and municipal law enforcement authorities, who enforce the criminal laws of this State, and federal immigration authorities, who enforce federal civil immigration law.” *L. 2026, c. 5, § 1(a)*, and that “[i]t is not the role of State, county, or municipal law enforcement to carry out federal civil immigration enforcement,” *L. 2026, c. 5, § 1(c)*).

Perhaps most importantly, people in immigration detention are denied the full panoply of rights guaranteed to people subject to criminal prosecution. *See I.N.S v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) (“Consistent with the civil nature of the proceeding, various protections that apply in the context of a criminal trial do not apply in a deportation hearing.”); *see also Pereida v. Wilkinson*, 592 U.S. 224, 242 (2021) (“Sixth Amendment concerns are not present in the immigration context.”). These include the right to government-paid counsel for those who cannot afford an attorney, *see Mayne v. Att’y Gen.*

of *U.S.*, 392 F. App'x 94, 96-97 (3d Cir. 2010); a standard of liability of proof beyond a reasonable doubt, *Lopez-Mendoza*, 468 U.S. at 1039; full discovery rights, *see Kalejs v. I.N.S.*, 10 F.3d 441, 448 (7th Cir. 1993); full Sixth Amendment right of confrontation, *see Stolaj v. Holder*, 577 F.3d 651, 659 (6th Cir. 2009); full Fifth Amendment *Miranda* rights, *see Lopez-Mendoza*, 468 U.S. at 1039; full suppression remedies, *id.* at 1034; and most notably the right to a speedy trial in immigration proceedings, *see Alfarache v. Cravener*, 203 F.3d 381, 383 (5th Cir. 2000).

Given the differences between the two systems, it is fundamentally unfair to allow the fact of immigration detention to toll the start of a mandatory parole sentence, effectively delaying the end of a criminal defendant's sentence.

**B. It is fundamentally unfair for the independent, third-party actions of ICE to extend and enlarge criminal defendants' punishment.**

It is a basic principle of criminal law that for liability to attach, there must be a voluntary act by the defendant. *See* 33 Robert Ramsey, *N.J. Practice, Criminal Law* § 1:06 (5th ed. 2025) ("In New Jersey, criminal liability is conditioned, at a minimum, upon a voluntary act and a culpable state of mind."); *see also State v. Molchor*, 464 N.J. Super. 274, 296 (App. Div.

2020), *aff'd sub nom.*, *State v. Lopez-Carrera*, 245 N.J. 596 (2021) (“Under our system, a person must be responsible for an act, to be punished for it.”).<sup>3</sup>

As this Court recently acknowledged, however, detention as a result of federal civil immigration enforcement is not a volitional act by the detained individual, but is instead the result of independent action by a third-party, ICE. *State v. Lopez-Carrera*, 245 N.J. 596, 601 (2021) (“[T]he language, structure, purpose, and history of the CJRA [Criminal Justice Reform Act] reveal the Act was designed to address a defendant's own choice not to appear in court, not *independent actions by third parties like the U.S. Immigration and Customs Enforcement (ICE)*.”) (emphasis added). The doctrine of fundamental fairness dictates that there is no more basis to extend a defendant’s sentence based on the actions of ICE than there is to punish a defendant for not appearing in court because of the actions of ICE.

**C. Allowing civil immigration detention to toll the start of mandatory parole supervision has a severe and unjustifiable impact on Plaintiff without justification.**

Mr. Wright was sentenced to an aggregate term of eleven years in prison, with five years of mandatory parole supervision pursuant to NERA, N.J.S.A.

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<sup>3</sup> Even so-called strict liability offences are based on culpable conduct, such as engaging in the manufacturing of controlled dangerous substances that lead to a person’s death, N.J.S.A. 2C:35-9, and vehicular homicide caused by a person driving while under the influence, N.J.S.A. 2C:11-5.3.

2C:43-7.2. (Pmb 3). He completed his sentence and was released from state custody on November 20, 2018, but was immediately detained by ICE until December 1, 2021. (Pmb 4). As a result of the Parole Board's decision to toll the start of his parole supervision, as affirmed by the Appellate Division, instead of Mr. Wright beginning his mandatory parole sentence in 2018, he began it in 2021. Thus, in effect, the Parole Board's decision lengthened his mandatory parole sentence from five years to eight years. Solely because Mr. Wright was detained by ICE, he must continue to serve "the legal equivalent of imprisonment," *Njango*, 247 N.J. at 550 (quoting *Rosado*, 131 N.J. at 428), for three extra years, in clear contravention of his "reasonable expectations" of the time he anticipated serving at sentencing, *id.* at 549 (quoting *Vega-Larregui*, 246 N.J. at 132).

There is no justification for the Board's decision. As Plaintiff explains, (Pmb-26-28), the singular punitive goal of NERA parole, *State v. Friedman*, 209 N.J. 102, 119-20 (2012), is "serve[d] precisely the same" way by confinement as it is by NERA parole, such that it can be served while a defendant remains detained. *Njango*, 247 N.J. at 549-50. Contrary to the Board's speculations, (Rmb 15-16),<sup>4</sup> the Department of Corrections ("DOC") has means to supervise a defendant who is in federal immigration detention,

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<sup>4</sup> "Rmb" refers to Respondent's merits briefing.

“including through telephonic or remote check-ins,” (Pmb 28), can get updates from ICE about a defendant and their location, and can seek reincarceration if necessary, (Pmb 29).

In this context, even were the Appellate Division correct -- which it was not -- in its elevation of the “in the community” language of N.J.S.A. 2C:43-7.2(c) as the standard for evaluating the effect of Mr. Wright’s immigration detention on the commencement of his mandatory parole sentence, there is no better reason to consider immigration detention as not being released “into the community” than any other situation that a defendant finds himself in post-release from incarceration, whether they be on the street or long-term hospitalized.

Similarly, that, as the Parole Board posits, NERA indicates that the defendant is deemed to be “in the *legal* custody” of the Board (Rmb 8-11; emphasis added), does not diminish the fundamental unfairness of its position. The “legal” status of the defendant under New Jersey’s criminal laws is not changed by the fact of civil detention by ICE. It remains fundamentally unfair to individuals like Mr. Wright to use civil immigration detention as a punishment tool to impose the “penal consequence” of a longer time under parole supervision, which here, means that Mr. Wright had to wait eight years to complete his full sentence, rather than the ordered five.

## **II. Increased Immigration Enforcement Operations and the Rise in Unlawful Detentions in New Jersey Underscores the Urgent Need to Reverse the Appellate Division Decision.**

In New Jersey, “the number of individuals taken by ICE agents . . . nearly tripled from the last year of the Biden administration to more than 8,300 last year” and “[t]his year is likely to be more.” Ted Sherman, *What ICE Doesn’t Want You to Know About Its N.J. Operations*, NJ.com (May 7, 2026), <https://www.nj.com/politics/2026/04/what-ice-doesnt-want-you-to-know-about-its-nj-operations.html>. Additionally, the federal government has been criticized for carrying out those enforcement operations unlawfully, including illegal detentions. *See Hueso v. Soto*, No. 26-1455 (ZNQ), 2026 WL 539271, at \*3 (D.N.J. Feb. 26, 2026)<sup>5</sup> (“The Government’s handling of Petitioner’s detention is emblematic of its approach to immigration enforcement in this state. On the merits, its detentions are illegal. The Government knows this.”); *see also* Nikita Biryukov, *Judge Excoriates Feds After Another Migrant Detention Ruled Illegal*, N.J. Monitor (Feb. 26, 2026), <https://newjerseymonitor.com/2026/02/26/judge-excoriates-feds-migrant-detention-illegal/>. Thus, there are large, and likely increasing, numbers of New Jerseyans who are, and who will

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<sup>5</sup> Pursuant to R. 1:36-3, amicus includes this unpublished opinion in its appendix. Counsel is aware of no cases with contrary holdings.

continue to be, adversely affected by the Appellate Division's decision because of the growing amount of immigration detentions in our state.

The federal government's heightened and often unlawful immigration enforcement operations in New Jersey demonstrate the urgency of correcting the Appellate Division's decision approving the tolling of the start of mandatory parole sentences because of immigration detention. Every day that the Parole Board follows the Appellate Division's decision and allows civil immigration detention to delay the start of mandatory parole means another day that a person is subjected to a longer sentence than constitutionally permissible. And the longer this situation continues, the more likely it is that there will be people like Mr. Wright -- whose unlawfully extended mandatory parole sentence ends this December -- who will be irreparably injured.

**III. This Court Can Avoid the Constitutional Fundamental Fairness Issue by Construing the Statute in the Way Plaintiff Suggests.**

That applying the time Mr. Wright spent in civil immigration detention to toll the start of his mandatory parole sentence violates the doctrine of fundamental fairness appears certain. Equally so, if not more so, is the clear textual construction of NERA advanced by Plaintiff as prohibiting such tolling. Under these circumstances, this Court may choose to stay its hand and not rule on the constitutional argument presented by this case.

“The doctrine of constitutional avoidance comes into play when a statute is susceptible to two reasonable interpretations, one constitutional and one not.” *State v. Pomianek*, 221 N.J. 66, 90-91 (2015). The Court “then assume[s] that the Legislature would want [it] to construe the statute in a way that conforms to the Constitution.” *Id.* at 91; *see also Right to Choose v. Byrne*, 91 N.J. 287, 311 (1982) (“Appraisal of a constitutional defect begins with the assumption that the Legislature intended to act in a constitutional manner.”).

Applying the doctrine of constitutional avoidance is even easier in this case because, for the reasons laid out by Plaintiff in its brief to this Court, there is but one sound, plain language construction of NERA. And that construction prohibits the tolling of the commencement of Plaintiff’s mandatory parole sentence as occurred in this case. But even were the State’s construction given credence, constitutional avoidance would be a prudent response, and the Court can manifest that prudence by adopting Plaintiff’s proffered construction. This Court should so rule.

## CONCLUSION

For the reasons set forth above and in Plaintiff’s brief, this Court should reverse the decision of the Appellate Division and rule that the start of a mandatory parole sentence under NERA is not tolled by time spent by a defendant in civil immigration detention. Such tolling not only is contrary to

the plain language of NERA, but also violates the doctrine of fundamental fairness.

Respectfully submitted,



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