

No. 25-886

IN THE
Supreme Court of the United States

KENNETH GENALO, Director of the New York Field Office
of U.S. Immigration and Customs Enforcement, et al.,
Petitioners,

v.
KEISY G.M.,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

**BRIEF FOR STATES OF NEW YORK, ARIZONA, CALIFORNIA,
COLORADO, CONNECTICUT, DELAWARE, HAWAII,
ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS,
MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY,
OREGON, RHODE ISLAND, VERMONT, VIRGINIA,
AND WASHINGTON, AND THE DISTRICT OF COLUMBIA
AS AMICI CURIAE IN SUPPORT OF RESPONDENT**

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INTRODUCTION AND INTEREST OF THE AMICI STATES

The undersigned twenty States¹ and the District of Columbia, herein referred to as “Amici States,” submit this amicus curiae brief in support of respondent Keisy G.M., a noncitizen who was held in federal immigration detention pursuant to 8 U.S.C. § 1226(c) without a bond hearing for twenty-one months. In this habeas corpus proceeding, the Second Circuit correctly recognized that due process requires that an individual like respondent, who is deprived of his liberty for such an unreasonably prolonged period, must be afforded an individualized bond hearing to determine whether continued detention is justified, and that, in such circumstances, the government must demonstrate the need for continued detention by clear and convincing evidence. As Amici States know from their own experience, such hearings are standard across the many contexts in which they oversee civil and pretrial detention.

Amici States have a strong interest in ensuring that noncitizen residents of their States who do not pose a future danger to society or risk of flight are not subject to unreasonably prolonged civil immigration detention while they defend themselves in removal proceedings. Amici States are home to more than 13 million noncitizens,² many of whom are valued and active contributors to communities and workforces. Absent an individualized determination of the actual danger they may pose

¹ New York, Arizona, California, Colorado, Connecticut, Delaware, Hawai‘i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, Oregon, Rhode Island, Vermont, Virginia, and Washington.

² [Immigration Rsch. Initiative, 50 States: Immigrants by Number and Share \(Nov. 10, 2025\).](#)

to society, Amici States may be needlessly deprived of their contributions.

SUMMARY OF THE ARGUMENT

Amici States make two basic points in this brief. *First*, the holding below is consistent with the States' experience across many forms of state-law civil detention and pretrial detention: the government must ordinarily prove the need for such detention, particularly when it is unusually prolonged. This consistent state practice is a strong indicator of what is workable and satisfies due process.

Amici States are sensitive to the governmental interests supporting detention in these circumstances, from their extensive experience in law enforcement and associated detention, including for people with criminal records of the kind that trigger detention under § 1226(c). But the States' experience demonstrates that affording individualized bond hearings in cases of prolonged detention, even for individuals with such records, properly balances public safety and other governmental interests against the risk of unnecessarily depriving individuals of liberty.

Amici States' experience further shows that the government's substantial interests in promoting public safety and ensuring that noncitizens appear for future proceedings are satisfied even when the government bears the burden of proof to establish the need for detention by clear and convincing evidence.

Second, in those cases where prolonged detention pending removal proceedings is not necessary to protect the public or ensure a noncitizen's appearance at future proceedings, such detention unnecessarily and irreparably harms noncitizens, their families, their communi-

ties, and their States. Removal proceedings, and detention pending such proceedings, can last many months or even years. And removal proceedings can be especially lengthy when a noncitizen pursues defenses to removal such as asylum or cancellation of removal, or seeks other forms of immigration relief, as G.M. has through his application for relief under the Convention Against Torture and his petition for a U visa based on his assistance to law enforcement.³

While prolonged detention may sometimes be unavoidable, a bond hearing is well-suited to determine whether detention is necessary in a particular case, either to protect public safety or prevent flight. A categorical rule requiring detention pending removal proceedings regardless of the length of those proceedings, and without any individualized determination that the detention is necessary, will inflict unnecessary irreparable harm on the detained individuals, and also on their families, their communities, and their States, if detention is in fact unwarranted.⁴

³ CA2 J.A. 37, 41-42, 55, 67-68, 71, *Black v. Decker*, No. 22-70, ECF No. 35.

⁴ While Amici States agree with G.M. that this case is moot, this brief does not address that issue and is limited to the issue of whether he was entitled to a bond hearing.

ARGUMENT

I. AMICI STATES’ EXPERIENCE SUPPORTS THE CONCLUSION THAT DUE PROCESS REQUIRES THE GOVERNMENT TO PROVE THE NEED FOR PROLONGED DETENTION IN AN INDIVIDUALIZED BOND HEARING.

Amici States have extensive experience with civil and pretrial detention in a variety of forms, and with the hearings before a neutral decision-maker that are ordinarily used to evaluate whether detention—and particularly prolonged detention—is necessary in any individual case. Evidence of such “widely shared” state practice has long provided “concrete indicators of what fundamental fairness and rationality,” and due process, require. *Schad v. Arizona*, 501 U.S. 624, 640 (1991) (plurality op.), *abrogated on other grounds by*, *Ramos v. Louisiana*, 590 U.S. 83 (2020); *see Estes v. Texas*, 381 U.S. 532, 540 (1965) (consistent state practice provides “weighty evidence” of what fairness requires).⁵ That evidence points squarely toward a due process requirement that unusually prolonged detention ordinarily requires proving to a neutral decision-maker, by clear and convincing evidence, that the detention is necessary.

⁵ See also Corinna Barrett Lain, *The Unexceptionalism of Evolving Standards*, 57 UCLA L. Rev. 365, 382 (2009) (“a consensus among the states (or lack thereof) has been described as ‘weighty evidence,’ ‘convincing support,’ ‘significant,’ and a ‘primary guide’” in due process analysis (footnotes omitted) (quoting *Estes*, 381 U.S. at 540; *Powell v. Alabama*, 287 U.S. 45, 73 (1932); *Schad*, 501 U.S. at 643; *Montana v. Egelhoff*, 518 U.S. 37, 43 (1996))).

A. States Consistently Require Individualized Hearings on the Need for Prolonged Civil Detention.

The Second Circuit in this case correctly held that G.M.’s twenty-one-month detention had become unreasonably prolonged and due process entitled him to an individualized hearing before a neutral decision-maker to evaluate whether continued detention is necessary, based on his specific circumstances, to protect the community or ensure his future appearance at his immigration proceedings. *Black v. Decker*, 103 F.4th 133, 151-55 (2d Cir. 2024).

Amici States’ experience demonstrates that prolonged detention without individualized assessment of the necessity of such detention is an extreme departure from state civil-detention practice. Individualized bond hearings are a routine and essential requirement of due process that are at the core of state detention practice. While individual States may vary in some of the specific procedural protections they offer to individuals facing civil detention (such as, for example, whether there is court-appointed counsel or trial by jury), they are consistent in requiring an individualized determination by a neutral decision-maker that prolonged civil detention is appropriate.

For instance, every State, as well as the District of Columbia, provides the opportunity for hearings on whether individuals pose a risk of harm to themselves or others in order to involuntarily confine them for more than a brief period for psychiatric treatment.⁶ And in

⁶ See Ala. Code § 22-52-8; Alaska Stat. § 47.30.735; Ariz. Rev. Stat. § 36-535; Ark. Code § 20-47-210; Cal. Welf. & Inst. Code § 5256; Colo. Rev. Stat. § 27-65-109; Conn. Gen. Stat. § 17a-498;

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the more than twenty jurisdictions that authorize the civil confinement of sexually dangerous or violent offenders, jurisdictions that include several Amici States and the federal government, confinement for more than a brief period is authorized only upon individualized assessments that the offenders suffer from a mental abnormality or personality disorder that predisposes them to commit future acts of sexual violence.⁷ As

Del. Code tit. 16, § 5009; D.C. Code § 21-545; Fla. Stat. § 394.467; Ga. Code § 37-3-62; Haw. Rev. Stat. § 334-60.5; Idaho Code § 66-326; 405 Ill. Comp. Stat. 5/3-611; Ind. Code § 12-26-5-9; Iowa Code § 229.11; Kan. Stat. § 59-2959; Ky. Rev. Stat. § 202A.051; La. Stat. § 28:55; Me. Stat. tit. 34-B, § 3864; Md. Code, Health-Gen. § 10-632; Mass. Gen. Laws ch. 123, §§ 5-8, 12; Mich. Comp. Laws § 330.1452; Minn. Stat. § 253B.08; Miss. Code § 41-21-71; Mo. Rev. Stat. § 632.335; Mont. Code § 53-21-120; Neb. Rev. Stat. § 71-923; Nev. Rev. Stat. § 433A.220; N.H. Rev. Stat. § 135-C:31; N.J. Stat. § 30:4-27.12; N.M. Stat. § 43-1-11; N.Y. Mental Hyg. Law § 9.39; N.C. Gen. Stat. § 122C-268(a); N.D. Cent. Code § 25-03.1-26; Ohio Rev. Code § 5122.141; Okla. Stat. tit. 43A, § 5-415; Or. Rev. Stat. § 426.095; 50 Pa. Stat. and Cons. Stat. § 7303; 40.1 R.I. Gen. Laws § 40.1-5-8; S.C. Code § 44-17-410; S.D. Codified Laws § 27A-10-5; Tenn. Code § 33-6-413; Tex. Health & Safety Code § 574.005; Utah Code § 26B-5-332; Vt. Stat. tit. 18, § 7615; Va. Code § 37.2-814; Wash. Rev. Code § 71.05.170; W. Va. Code § 27-5-2; Wis. Stat. § 51.20; Wyo. Stat. § 25-10-109; *see also* [Lisa Dailey et al., Treatment Advoc. Ctr., *Grading the States: An Analysis of U.S. Psychiatric Treatment Laws* 9-10, 18 \(2020\).](#)

⁷ *See* Ariz. Rev. Stat. §§ 36-3705, 36-3706, 36-3707; Cal. Welf. & Inst. Code §§ 6602(a), 6603; Fla. Stat. §§ 394.915, 394.916; 725 Ill. Comp. Stat. 207/30, 207/35; Iowa Code §§ 229A.5, 229A.7; Kan. Stat. §§ 59-29a05, 59-29a06; Mass. Gen. Laws ch. 123A, §§ 12, 14; Minn. Stat. §§ 253B.07, 253D.07; Mo. Rev. Stat. §§ 632.489, 632.492; Neb. Rev. Stat. § 71-1208; N.H. Rev. Stat. §§ 135-E:7(II), 135-E:9; N.J. Stat. §§ 30:4-27.29, 30:4-27.32; N.Y. Mental Hyg. Law §§ 10.06, 10.07; N.D. Cent. Code §§ 25-03.3-11, 25-03.3-13; 42 Pa. Stat. and Cons. Stat. § 6403; S.C. Code §§ 44-48-80, 44-48-90; Tex. Health & Safety Code § 841.061; Va. Code §§ 37.2-906, 37.2-908;

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with § 1226(c), the civil detention of these individuals is generally premised on their having prior criminal convictions,⁸ yet Amici States recognize that procedural safeguards are constitutionally necessary to justify civil confinement after the individuals have completed their sentence.

Moreover, States may require a neutral decision-maker to regularly reassess the need for civil detention. For example, in New York, a court must assess the need for continued detention of a psychiatric patient within sixty days of the patient's initial confinement.⁹ If the court determines that the patient's condition requires further involuntary detention, the court may authorize such detention for up to one year, at which point the court must again assess the need for continued detention.¹⁰ Additionally, patients may request hearings to determine the need for continued detention, and a court is generally required to hold such a hearing within five days of the request.¹¹ Similarly, sex offenders subject to civil confinement have a right to annual review of their detention, and may at any time petition the court for

Wash. Rev. Code §§ 71.09.040, 71.09.050; Wis. Stat. §§ 980.04, 980.05; 18 U.S.C. §§ 4247, 4248; *see also* [Trevor Hoppe et al., UCLA Sch. L., Williams Inst., *Civil Commitment of People Convicted of Sex Offenses in the United States* 6-9 \(2020\)](#); [National Dist. Att'ys Ass'n, *Civil Commitment of Sex Offenders* \(updated Apr. 2012\)](#).

⁸ *See* Hoppe et al., *supra*, at 1.

⁹ N.Y. Mental Hyg. Law § 9.33(a), (d).

¹⁰ *Id.* § 9.33(d).

¹¹ *Id.* §§ 9.31(a)-(d), 9.33(c).

release.¹² Other States similarly require periodic assessments of the need for continued civil detention.¹³

Likewise, in criminal pretrial detention, every State, as well as the District of Columbia and the federal government, in most cases requires an individualized assessment of the appropriateness of detention or pretrial release conditions, even where the defendant has a prior criminal record.¹⁴ Mandatory pretrial detention is reserved for defendants charged with the most serious crimes, such as capital offenses, and only where the government first provides sufficient evidence of the defendant's guilt.¹⁵ Moreover, these criminal defendants have the additional procedural protection of a right to speedy proceedings. *See* U.S. Const., amend. VI; *United States v. Salerno*, 481 U.S. 739, 747 (1987). By contrast, noncitizens detained under § 1226(c) may experience years in civil detention while their removal proceedings remain pending, with no speedy trial protection. *See infra* at 15-16.

The individualized hearing requirement is also deeply rooted in history. Individualized assessments of the necessity of detention have been required throughout centuries of state practice. *See, e.g., In re Oakes*, 8 Law Rep. 122, 125 (Mass. 1845) (civil commitment

¹² *Id.* § 10.09(a), (b), (d), (f).

¹³ *See, e.g.,* Mo. Rev. Stat. §§ 632.355, 632.498; N.J. Stat. §§ 30:4-27.16, 30:4-27.35; 50 Pa. Stat. and Cons. Stat. § 7305(a); 42 Pa. Stat. and Cons. Stat. § 6404(b).

¹⁴ *See* [Lisel Petis, R St. Inst., Navigating Bail Reform in America: A State-by-State Overview 13-62 \(2024\)](#); [National Conf. of State Legislatures, Pretrial Release: Detention \(updated June 20, 2022\)](#); John P. Gross, *The Right to Counsel But Not the Presence of Counsel: A Survey of State Criminal Procedures for Pre-Trial Release*, 69 Fl. L. Rev. 831, 841-57 (2017); 18 U.S.C. § 3142(e)-(f).

¹⁵ Petis, *supra*.

requires an individualized assessment of dangerousness and consideration of “whether restraint is necessary for [their] restoration, or will be conducive thereto”); *Case of Brickway*, 80 Pa. 65, 66 (1875) (civil commitment requires court-appointed commission to review evidence and determine whether “it is a suitable case for confinement”); Act of July 8, 1869, ch. 80, § 3, 1869 Conn. Pub. Acts 304, 305 (civil commitment requires court to determine whether “it is a suitable case for confinement”).

Amici States’ experience in affording these individualized hearings also has shown that such due process protections are compatible with the overall goals of our detention schemes. Even with respect to individuals considered to be more dangerous or high-risk by state legislatures, these individualized assessments have been provided without issue. For instance, as explained, consistent state practice provides that individuals with serious criminal convictions for sexually based offenses are entitled to individualized assessments before they may be deprived of their liberty for a prolonged period in civil confinement. That *some* of these offenders may be deemed unsafe for release does not justify detaining *all* offenders for unreasonably prolonged periods based on broad categorical judgments. Amici States’ experience demonstrates that the procedural protection of an individualized assessment strikes the proper balance between the individual interest in liberty and the legitimate state interests motivating the civil confinement schemes.

The Second Circuit’s decision and longstanding state detention practice are also consistent with this Court’s precedent, which has long recognized that “civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979). When

upholding state civil detention schemes, this Court has relied heavily on the fact that the schemes are limited to a narrow group that poses a serious risk if not detained *and* there is an individualized assessment that detention is necessary. *See, e.g., Kansas v. Hendricks*, 521 U.S. 346, 352-53, 357 (1997). Regarding civil commitment for those with mental health issues, this Court has made clear that a State may not “lock[] a person up against his will and keep[] him indefinitely” without a demonstration that detention is necessary. *O’Connor v. Donaldson*, 422 U.S. 563, 575 (1975). In fact, this Court has held that civil detention schemes violate due process when individualized hearings are not robust enough. *See Addington*, 441 U.S. at 432-33; *Foucha v. Louisiana*, 504 U.S. 71, 80-82 (1992). Likewise, in the context of criminal pretrial detention, this Court has upheld detention on the basis of future dangerousness in reliance, in part, on the availability of a “prompt detention hearing” before a neutral decision-maker. *Salerno*, 481 U.S. at 747; *see id.* at 751.

Moreover, this Court has made clear that the length of detention is a highly relevant factor in determining the adequacy of a detention statute’s procedural protections. *See, e.g., id.* at 747; *Jackson v. Indiana*, 406 U.S. 715, 733 (1972); *see also Schall v. Martin*, 467 U.S. 253, 269 (1984). Where detention has, or may, become prolonged, this Court has looked to the availability of periodic review to ensure that continued detention is necessary. *See Hendricks*, 521 U.S. at 363-64; *Foucha*, 504 U.S. at 79-83; *cf. Jackson*, 406 U.S. at 738 (detention on the ground of incompetence to stand trial “must be justified by progress toward” regaining competency or else government must establish a new ground for continued detention).

Further, as this Court has recognized, this civil detention precedent is instructive in the context of civil immigration detention, because due process protections apply to “all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see id.* at 690-91.

Demore v. Kim, 538 U.S. 510 (2003), is not to the contrary, as petitioners’ brief might suggest. *Demore* did not hold that immigrants detained pursuant to § 1226(c) may be detained for months or years without due process protections. Rather, *Demore* held that § 1226(c) is facially constitutional precisely because it authorizes only detention limited to the “*brief period* necessary for the[] removal proceedings” to reach completion. *Id.* at 513 (emphasis added). As the Court carefully explained, that period was “brief” because, at the time *Demore* was decided, the federal government estimated that the overwhelming majority of “removal proceedings [were] completed in an average time of 47 days and a median of 30 days,” with cases involving appeals taking an average of four months in total.¹⁶ *Id.* at 529. As Justice Kennedy recognized in his concurring opinion, a noncitizen detained under § 1226(c) “could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified” because “the Due Process Clause prohibits arbitrary deprivations of liberty.” *Id.* at 532 (Kennedy, J., concurring).

¹⁶ The federal government later acknowledged that at least the appeal time estimate was significantly understated. *See Letter from Ian Heath Gershengorn, Acting U.S. Sol. Gen., to Hon. Scott S. Harris, Clerk, U.S. Sup. Ct.* (Aug. 26, 2016).

Detention for months or years on end, without any individualized assessment of the need for such detention, constitutes an unprecedented deprivation of liberty that finds no parallels among other civil detention schemes. Though the federal government has plenary power to create immigration law, that power is nevertheless confined by the Due Process Clause. *See Zadvydas*, 533 U.S. at 695; *cf. INS v. Chadha*, 462 U.S. 919, 940-42 (1983) (Congress must choose a “constitutionally permissible means of implementing” its authority over immigration law).

B. States Consistently Require the Government to Show by Clear and Convincing Evidence That Prolonged Civil Detention Is Necessary.

The Second Circuit also correctly recognized that, at the point at which a noncitizen’s detention under § 1226(c) becomes unreasonably prolonged, the Due Process Clause requires that the government demonstrate the necessity of continued detention by clear and convincing evidence. *Black*, 103 F.4th at 155.

In “a variety of government-initiated proceedings that threaten the individual involved with a ‘significant deprivation of liberty,’” the Due Process Clause has required the government to prove by “clear and convincing evidence” that such deprivation is appropriate because the individual interests in such a case “are both ‘particularly important’ and ‘more substantial than mere loss of money.’” *Santosky v. Kramer*, 455 U.S. 745, 756 (1982) (quoting *Addington*, 441 U.S. at 424). For example, because “civil commitment for *any purpose* constitutes a significant deprivation of liberty,” due process requires the government to justify such detention by clear and convincing evidence. *Addington*, 441 U.S. at 425 (emphasis added); *see id.* at 431-32.

Indeed, in *Foucha*, this Court held that a state civil commitment statute failed to satisfy due process standards, in part because “the State need[ed to] prove nothing to justify continued detention” and instead “place[d] the burden on the detainee to prove that he is not dangerous.” 504 U.S. at 81-82. And this Court has upheld state civil detention schemes as constitutional in part because they “plac[e] the burden of proof upon the State.” *Hendricks*, 521 U.S. at 353; *see id.* at 353-56. Similarly, in the context of federal criminal pretrial detention, this Court concluded that detention on the basis of future dangerousness comported with due process where, in addition to other procedural protections, the government was required to prove “by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community.” *Salerno*, 481 U.S. at 751.

States have long adhered to these procedural requirements, overwhelmingly placing the burden of demonstrating the necessity of detention—even if not for an unreasonably prolonged period—on the party seeking detention.¹⁷ And States generally require the

¹⁷ *See Collins v. Williams*, 967 So. 2d 91, 94 (Ala. 2007); *In re Declan P.*, 538 P.3d 318, 324 (Alaska 2023); *In re Larry B.*, No. 1 CA-MH 13-0089, 2014 WL 2462813, at *1 (Ariz. Ct. App. May 29, 2014); *Bates v. State*, 2016 Ark. App. 326, at 6-7 (2016); *People in Interest of Harris*, No. 25CA1642, 2025 WL 3034741, at *2 (Colo. App. Oct. 30, 2025); *State v. Foster*, 353 Conn. 1, 27 (2025); *State v. Topolski*, 303 A.3d 338, 346 (Del. 2023); *In re D.D.*, 303 A.3d 935, 940 (D.C. 2023); *D.F. v. State*, 251 So. 3d 276, 279 (Fla. Dist. Ct. App. 2018); *Pitts v. State*, 151 Ga. App. 691, 692 (1979); *State v. Miller*, 84 Hawai‘i 269, 276 (1997); *State v. Chilton*, 112 Idaho 823, 829 (1987); *In re Nancy A.*, 344 Ill. App. 3d 540, 579-80 (2003); *B.N. v. Community Health Network, Inc. (In re B.N.)*, 137 N.E.3d 330, 335-36 (Ind. Ct. App. 2019); Iowa Code § 229.12(3)(a); *In re Snyder*,

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party seeking civil detention to demonstrate its necessity by *at least* clear and convincing evidence,¹⁸ and

308 Kan. 626, 639 (2018); *R.L.P. v. Commonwealth*, 733 S.W.3d 265, 284 (Ky. 2026); *In re D.J.W.*, No. 2016CA0715, 2017 WL 1450425, at *2 (La. Ct. App. Apr. 20, 2017); *In re Kevin C.*, 2004 ME 76, ¶ 12, 850 A.2d 341, 344-45 (2004); *In re C.C.*, No. 19-ADMH-117WE, 2022 WL 4232586, at *1 (Mass. App. Ct. Aug. 1, 2022); *In re Wagstaff*, 93 Mich. App. 755, 760 (1979); *In re Rhone*, No. A18-0943, 2018 WL 6165252, at *2 (Minn. Ct. App. Nov. 26, 2018); *In re Bauman*, 878 So. 2d 1033, 1037 (Miss. Ct. App. 2004); *In re N.B.*, 672 S.W.2d 191, 191 (Miss. Ct. App. 1984); *In re J.S.*, 388 Mont. 397, 412 (2017); *Vu v. Second Jud. Dist. Ct.*, 132 Nev. 237, 245 (2016) (Pickering, J., dissenting); Neb. Rev. Stat. § 71-925(1); *In re B.T.*, 153 N.H. 255, 260 (2006); *In re J.R.*, 390 N.J. Super. 523, 529-30 (2007); *In re Valdez*, 88 N.M. 338, 342 (1975); *In re Gary F.*, 143 A.D.3d 495, 496 (N.Y. App. Div. 2016); *In re B.E.G.*, No. COA25-1168, 2026 WL 1741837, at *3 (N.C. Ct. App. 2026); *In re B.D.*, 510 N.W.2d 629, 631 (N.D. 1994); *State v. Gelichak*, 8 Ohio App. 3d 200, 201 (1982); *In re M.T.*, 308 Or. App. 448, 452 (2021); *In re S.M.*, 176 A.3d 927, 939 (Pa. 2017); *State v. Fuller-Balletta*, 996 A.2d 133, 144 (R.I. 2010); *Doe v. South Carolina Dep't of Soc. Servs.*, 407 S.C. 623, 638 (2014); *S.D.W. v. State*, 730 S.W.3d 509, 514 (Tex. App. Austin 2026); *State v. Lindquist*, 674 P.2d 1234, 1238 (Utah 1983); Wash. Rev. Code § 71.05.310; *State v. Bias*, 177 W. Va. 302, 306 (1986); Wis. Stat. § 51.20(13)(e).

¹⁸ See Ala. Code § 22-52-10.1; Alaska Stat. § 47.30.735; Ariz. Rev. Stat. § 36-540; Ark. Code § 20-47-214; Colo. Rev. Stat. § 27-65-108.3; Conn. Gen. Stat. § 17a-498; Del. Code tit. 16, § 5011; *In re D.D.*, 303 A.3d at 940; Fla. Stat. § 394.467; *Pitts*, 151 Ga. App. at 694; Haw. Rev. Stat. § 334-60.5; Idaho Code § 66-329; 405 Ill. Comp. Stat. 5/3-808; Ind. Code § 12-26-5-11; Iowa Code § 229.12(3)(c); *In re Snyder*, 308 Kan. at 639; La. Stat. § 28:55; Me. Stat. tit. 34-B, § 3864; *Bell v. Chance*, 460 Md. 28, 39 (2018); Mich. Comp. Laws § 330.1465; Minn. Stat. §§ 253B.09, 253B.18; Miss. Code § 41-21-73; Mo. Rev. Stat. § 632.335(4); Mont. Code § 53-21-126; Neb. Rev. Stat. § 71-925; Nev. Rev. Stat. § 433A.310; *In re B.T.*, 153 N.H. at 260; N.J. Stat. § 30:4-27.15; N.M. Stat. § 43-1-11; *In re Daniel C.*, 207 A.D.3d 539, 540 (N.Y. App. Div. 2022); N.C. Gen. Stat. § 122C-268; *In re B.D.*, 510 N.W.2d at 631; Ohio Rev. Code § 5122.15; Okla. Stat. tit. 43A, § 5-415; *In re M.T.*, 308 Or. App. at 452; *Common-*

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sometimes even by proof beyond a reasonable doubt.¹⁹ Even where civil detention may be premised on a detainee's prior criminal conviction, as in the context of the civil confinement of sexually violent offenders, those States generally require clear and convincing evidence at a minimum, and often proof beyond a reasonable doubt, of the necessity of such detention following completion of a criminal sentence.²⁰

II. ABSENT BOND HEARINGS, MANY DETAINEES WHO POSE NO PUBLIC SAFETY RISK WILL BE DETAINED FOR PROLONGED PERIODS, UNNECESSARILY HARMING THE DETAINEES, THEIR FAMILIES, THEIR COMMUNITIES, AND THEIR STATES.

The current backlog in immigration courts means that, absent a bond hearing, § 1226(c) detainees pursuing defenses to removal may be detained for many months or even years while they await the conclusion of their removal proceedings. The latest available estimates suggest that nearly 3.2 million immigration cases are currently pending.²¹ During this 2026 fiscal year, cases of detained individuals resulting in a grant of relief from removal are taking an average of 391 days to

wealth v. Romett, 372 Pa. Super. 41, 46 (1988); 40.1 R.I. Gen. Laws § 40.1-5-8; S.C. Code § 44-17-580; S.D. Codified Laws § 27A-10-9.1; *Director, TVHS, Murfreesboro Campus v. Hartman*, No. M2013-01141-COA-R3-CV, 2014 WL 793712, at *3 (Tenn. Ct. App. 2014); Tex. Health & Safety Code § 574.034; Utah Code § 26B-5-332; Vt. Stat. tit. 18, § 7616; Va. Code § 37.2-817; Wash. Rev. Code § 71.05.310; W. Va. Code § 27-5-4; Wis. Stat. § 51.20; Wyo. Stat. § 25-10-110.

¹⁹ Haw. Rev. Stat. § 334-60.5(j); *S.W. v. S.W.M.*, 647 S.W.3d 866, 869 (Ky. Ct. App. 2022); *In re C.C.*, 2022 WL 4232586, at *1.

²⁰ See Hoppe et al., *supra*, at 1, 7.

²¹ [Transactional Records Access Clearinghouse \(TRAC-Immigr.\)](#), *Immigration Court Quick Facts* (n.d.) (June 2026 data).

resolve.²² Resolution can take even longer for parties who choose to appeal any adverse ruling by an Immigration Judge. Indeed, the current backlog of appeals pending before the Board of Immigration Appeals (BIA) has reached its highest figure yet, with more than 282,000 pending cases.²³

There is no credible claim that every one of these individuals requires prolonged detention in order to protect public safety or prevent flight. While noncitizens subject to detention under § 1226(c) may have a criminal conviction in their past, in many cases the crime was long ago. They have served their criminal sentences, and their further detention may be demonstrably unnecessary to protect public safety or prevent flight.²⁴ A bond hearing is well-suited for determining whether or not further prolonged detention is necessary. And absent bond hearings, there will inevitably be prolonged

²² [TRAC-Immigr., *Outcomes of Immigration Court Proceedings* \(n.d.\)](#) (June 2026 data). Nondetained individuals' cases where relief was granted took substantially longer: an average of 1,460 days—or more than three years. *See id.*

²³ [Executive Off. for Immigr. Review, U.S. Dep't of Just., *Adjudication Statistics* \(July 24, 2026\)](#). This backlog may increase given that the Department of Justice has reduced the number of BIA members hearing cases, despite a growing number of appeals. *See id.* (reporting an increase in newly filed BIA appeals); [Ximena Bustillo & Rahul Mukherjee, *An Immigration Court Few Have Heard of Is Quietly Shaping Policy Behind the Scenes*, NPR \(Mar. 20, 2026\)](#) (discussing reduction by nearly half of BIA judge positions).

²⁴ *Cf.* [Ariel G. Ruiz Soto, Migration Pol'y Inst., *Immigrants and Crime in the United States* \(Oct. 2024\)](#) (immigrants commit crimes at lower rates than U.S. born individuals); [Nina Siulc & Noelle Smart, Vera Inst. of Just., *Evidence Shows That Most Immigrants Appear for Immigration Court Hearings 1-4* \(2020\)](#) (immigrants overwhelmingly appear at their immigration hearings).

detention of individuals for whom no detention is necessary.

Unnecessary prolonged detention during removal proceedings is likely to have detrimental societal effects. The United States is home to approximately 53 million immigrants.²⁵ That total includes approximately 13 million lawful permanent residents,²⁶ 14 million undocumented immigrants,²⁷ and 3.2 million holders of temporary visas.²⁸ Many of these individuals, like G.M., reside in a household with U.S. citizen children, or have citizen spouses and other family members. And in many of those households the noncitizen may be the sole or principal source of financial or other vital support, such as, for instance, care for children or elderly or disabled family members.

The well-established detrimental effects of the detention of close family members, like G.M., on whose wages and other support the family may depend, include housing insecurity, economic instability, and food insecurity.²⁹ And the separation caused by immigration

²⁵ [Stephanie Kramer & Jeffrey S. Passel, Pew Rsch. Ctr., *What the Data Says About Immigrants in the U.S.* \(Aug. 21, 2025\).](#)

²⁶ [U.S. Department of Homeland Sec., *Estimates of the Lawful Permanent Resident Population in the United States and the Subpopulation Eligible to Naturalize: 2025 and Revised 2024 \(2026\)*.](#)

²⁷ [Jeffrey S. Passel & Jens Manuel Krogstad, Pew Rsch. Ctr., *U.S. Unauthorized Immigrant Population Reached a Record 14 Million in 2023* \(Aug. 21, 2025\).](#)

²⁸ [Cecilia Esterline & Jeanne Batalova, Migration Pol’y Inst., *Frequently Requested Statistics on Immigrants and Immigration in the United States* \(Mar. 17, 2022\).](#)

²⁹ [See Randy Capps et al., Urb. Inst. & Migration Pol’y Inst., *Implications of Immigration Enforcement Activities for the Well-*](#)

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detention inflicts psychological trauma on detainees' children.³⁰

Unnecessary prolonged detention of noncitizens during removal proceedings also deprives States and localities of noncitizens' substantial economic contributions. Immigrants constitute more than nineteen percent of the American workforce,³¹ contribute over \$2 trillion to the United States' gross domestic product,³² and pay over \$650 billion in taxes.³³ Immigrants often fill important but unskilled or low-skilled jobs that other workers may decline to take, especially in burgeoning sectors such as home health work.³⁴ These contributions are lost when these individuals are unnecessarily detained.

Prolonged immigration detention can likewise undermine States' interests in public safety and the

Being of Children in Immigrant Families: A Review of the Literature 1, 9-14, 17 (2015); Heather Koball et al., Urb. Inst. & Migration Pol'y Inst., *Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents* 5-9 (2015).

³⁰ See American Immigr. Council, *U.S. Citizen Children Impacted by Immigration Enforcement* (June 23, 2021); Randy Capps et al., Migration Pol'y Inst., *Immigration Enforcement and the Mental Health of Latino High School Students* 7-8 (2020); Capps et al., *Implications of Immigration Enforcement Activities*, *supra*, at 9-10; Koball et al., *supra*, at 5, 11.

³¹ Bureau of Lab. Stat., U.S. Dep't of Lab., *Foreign-Born Workers: Labor Force Characteristics—2025*, at 1 (May 19, 2026).

³² Daniel Costa et al., Econ. Pol'y Inst., *Immigrants and the Economy* (Apr. 15, 2025).

³³ American Immigr. Council, *Map the Impact* (n.d.) (2023 data).

³⁴ Dan Kosten, National Immigr. Forum, *Immigrants as Economic Contributors: They Are the New American Workforce* (June 5, 2018).

effective administration of justice. Among other things, prolonged detention impedes the ability of criminal, family, and other state courts to resolve cases involving the detained individual. Noncitizens often cannot appear as witnesses, or defendants, in criminal cases when detained by immigration authorities.³⁵ The failure of prosecutors to obtain the appearance of a defendant in immigration detention may necessitate adjournments in the criminal proceedings and even result in dismissal of the case on speedy trial grounds.³⁶

Community release on bond, where a noncitizen does not pose a flight risk or danger to the community, also helps state and local governments avoid costs associated with providing additional social services to families that are affected by the detention of noncitizen family

³⁵ See [Ben Markus & Allison Sherry, *ICE Detention, Deportation Can Deny Justice in Local Criminal Cases, Frustrating Prosecutors*, CPR News \(Apr. 10, 2025\)](#); see also Br. of 20 N.Y. Dist. Att'ys in Supp. of Appellees at 6-8, *United States v. New York*, No. 26-104 (2d Cir. 2026), ECF No. 45; [Immigrant Def. Project, *Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State* 18-19 \(2019\)](#).

³⁶ See, e.g., *People v. Morris*, 2026 N.Y. Slip Op. 26087, at *2, *5, 259 N.Y.S.3d 911, 913-14, 916-17 (N.Y. Sup. Ct. 2026); *People v. Nes-Rodriguez*, 88 Misc. 3d 702, 706-07 (N.Y. Dist. Ct. 2025). While a separate group of amici States here assert that bond hearings for § 1226(c) detainees could burden their law enforcement agencies by permitting the return of noncitizens with criminal records to their States, they cite no concrete evidence of such a burden. See Br. of Iowa et al. as Amici Curiae at 1, 7, 15. And any burden is likely to be minimal when any returned noncitizens will have been found in a bond hearing not to be dangerous or a flight risk. Nor should those States be heard to complain about possible burden in locating absconding noncitizens, because doing so is the responsibility of federal immigration authorities, *not* States, and any assistance States might provide pursuant to section 287(g) agreements is entirely voluntary, see 8 U.S.C. § 1357(g)(9).

members. As noted, families that lose a wage-earning parent or relative to immigration detention are at substantially greater risk of losing their housing and being unable to pay for basic needs such as groceries, heating, and medical care. These consequences are likely to increase reliance on state and local resources such as homeless shelters, Medicaid, and other safety net programs—thus imposing substantial costs on taxpayers. In addition, some children whose parents are detained may be forced into foster care, which would impose additional burdens on already strained state foster-care budgets.³⁷

* * *

Amici States urge this Court to reaffirm that noncitizen members of our communities are entitled to fundamental due process. While the Due Process Clause may permit some reasonable variation in the process due to individuals who are civilly detained, at a minimum, the Constitution requires the government to demonstrate the necessity of detention where, as here, a noncitizen has been deprived of his physical liberty for an unreasonably prolonged period. Indeed, without such a requirement, noncitizens subject to detention under § 1226(c), including longtime permanent residents, would receive less process than virtually anyone else in civil confinement, including serial sexual offenders who the government believes are likely to commit future acts of sexual violence. And there simply is no basis to make prolonged detention pursuant to § 1226(c) a unique

³⁷ See [Matthew Lisiecki et al., Brookings Inst. & Ctr. for Migration Stud., *What Will Deportations Mean for the Child Welfare System?* \(Apr. 22, 2025\)](#); American Immigr. Council, *U.S. Citizen Children*, *supra*; [Mark Greenberg et al., Migration Pol’y Inst., *Immigrant Families and Child Welfare Systems: Emerging Needs and Promising Policies* 17-19 \(2019\)](#).

Constitution-free zone—sanctioning needless deprivation of liberty for an indefinite time in a manner foreign to state and federal practice in any other context.

CONCLUSION

If this Court determines that the case is not moot, it should affirm the decision below.

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