

**United States Court of Appeals
for the Third Circuit**

GABRIEL ANTONIO BUELE MOROCHO,
Plaintiff-Appellee,

v.

WARDEN PHILADELPHIA FDC; et al.,
Defendants-Appellants.

WANDERSON LOPES DE ANDRADE,
Plaintiff-Appellee,

v.

DIRECTOR PHILADELPHIA FIELD OFFICE IMMIGRATION AND
CUSTOMS ENFORCEMENT; et al.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
Nos. 2:25-cv-05930 (Gallagher, J.); 2:26-cv-00603 (Costello, J.)

**BRIEF FOR STATES OF CALIFORNIA, NEW YORK, ARIZONA,
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 APPELLEES**

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INTRODUCTION AND INTEREST OF THE AMICI STATES

The undersigned 20 States¹ and the District of Columbia, herein referred to as Amici States, submit this amicus curiae brief in support of petitioners-appellees, and in opposition to defendants-appellants' new policy of mandatory detention for all noncitizens who entered the United States without inspection. That policy, instituted in July 2025, imposes detention as a categorical matter, without allowing access to bond hearings at which these individuals could demonstrate they do not pose a risk of flight or danger and thus warrant being released while their proceedings are pending. The policy is contrary to any reasonable reading of the immigration detention statutes; it expands mandatory detention in an unprecedented manner that far exceeds any categorical approach ever before sanctioned by the Supreme Court; it violates due process; and it is immensely harmful.

Amici States have a strong interest in ensuring that noncitizen residents of their States who pose no danger to society or risk of flight are

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

not subject to unnecessary civil immigration detention while they defend themselves in removal proceedings. Amici States and their residents suffer the harms that flow from excessive detention, and Amici States also have extensive experience with civil detention and pretrial detention under state laws, which generally require an individualized showing of danger or risk of flight in order to justify prolonged detention. That vast experience demonstrates that defendants' policy does not serve the purpose of protecting the community or preventing flight and is inconsistent with the Constitution's guarantee of due process, which unquestionably applies to petitioners-appellees. It is thus not surprising that the policy contravenes the statute and all evidence of Congressional intent.

Amici States are home to over six million undocumented noncitizens,² many of whom may be eligible for legal status, for instance, through asylum, cancellation of removal, or other relief claims. These individuals

² Am. Immigr. Council, *Immigrants in the United States* (n.d.) (2023 data) (total number of undocumented immigrants in the Amici States calculated by selecting each Amicus State in the "Select Location" list and adding the number of undocumented immigrants in each). (For authorities available online, full URLs appear in the table of authorities. All URLs were last visited on April 17, 2026.)

are valued and active contributors to communities and work forces. They are often the beloved spouses, parents, and other close relatives of U.S. citizens or lawful permanent residents. They are valued employees and employers and critical sources of financial and emotional support for their families. They pay billions in state, local, and federal taxes annually and contribute to their States and localities in innumerable other respects.

Detention pending removal proceedings can last many months or even years. Noncitizens' unnecessary detention during such lengthy proceedings inflicts irreparable harms on them, their families, their communities, and their States. Such harms flowing from detention of noncitizens who have long been present in the United States explain well why Congress intended to provide that such noncitizens could be released on bond during removal proceedings even if they had originally entered without inspection, *see* 8 U.S.C. § 1226(a), while Congress did not provide the same opportunity to noncitizens who have not established family, employment, and other ties in the United States, *see id.* § 1225(b)(2)(A).

But pursuant to the policy at issue in these cases, the U.S. Department of Homeland Security (DHS) and the U.S. Department of Justice (DOJ) have reversed the decades-old previously consistent

interpretation of the relevant statutes to subject noncitizens who entered without inspection to mandatory detention without access to bond hearings for the first time. *See* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10312-13, 10323 (Mar. 6, 1997). This unlawful policy inflicts substantial irreparable harms on detained noncitizens, their families, their communities, and their States.

Amici States' experience makes clear that defendants' novel and indiscriminate mandatory detention policy inflicts vast harms while not serving any valid purpose, such that it cannot be what Congress intended. Amici States have extensive experience with state-law civil detention schemes, and with pretrial detention during the pendency of legal proceedings. In these schemes, States are ordinarily required to make an individualized showing that prolonged detention is warranted, consistent with due process. Amici States' experience shows that affording noncitizens individualized bond hearings properly balances public safety and other governmental interests against the risk of unnecessarily depriving individuals in the United States of their essential liberty interest. Amici States' experience also supports the conclusion that Congress 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), and thus intended for petitioners-appellees and others who are similarly situated to have access to bond hearings that allow for each individual’s circumstances to be considered and weighed.

ARGUMENT

POINT I

DEFENDANTS’ MANDATORY DETENTION POLICY IRREPARABLY HARMS NONCITIZENS, THEIR FAMILIES, THEIR COMMUNITIES, AND THEIR STATES

Unnecessary detention during removal proceedings is devastating for noncitizens, their families, their communities, and their States. The United States is home to approximately 53 million immigrants,³ including 14 million undocumented immigrants,⁴ most of whom have lived in the United States for more than a decade.⁵ More than six million undocumented immi-

³ Stephanie Kramer & Jeffrey S. Passel, *What the Data Says About Immigrants in the U.S.*, Pew Rsch. Ctr. (Aug. 21, 2025).

⁴ Jeffrey S. Passel & Jens Manuel Krogstad, *U.S. Unauthorized Immigrant Population Reached a Record 14 Million in 2023*, Pew Rsch. Ctr. (Aug. 21, 2025).

⁵ Bryan Baker & Robert Warren, U.S. Dep’t of Homeland Sec., *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2018–January 2022*, at 3-4 (Apr. 2024); Matthew
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grants live in Amici States.⁶ These many individuals are irreparably harmed by defendants' novel policy of mandatory detention, without an opportunity to prove in a bond hearing that detention is unnecessary.

Noncitizens who are subjected to immigration detention are often made to suffer overcrowding, unsanitary conditions, and inadequate medical and mental health services.⁷ Detention can disrupt the continuity of detainees' medical care,⁸ worsen preexisting medical conditions, and create

Lisiecki & Gerard Apruzzese, Ctr. for Migration Stud., *Proposed 2024 Mass Deportation Program Would Socially and Economically Devastate American Families*, at 2 (Oct. 9, 2024).

⁶ See Am. Immigr. Council, *Immigrants in the United States*, *supra*.

⁷ See Caitlin Patler, Altaf Saadi & Paola Langer, *The Health-Related Experiences of Detained Immigrants with and Without Mental Illness*, 11 J. Migration & Health no. 100302, at 4 (2025); Physicians for Hum. Rts., *"Endless Nightmare": Torture and Inhuman Treatment in Solitary Confinement in U.S. Immigration Detention* (Feb. 6, 2024); Andrea Castillo & Gabrielle LaMarr LeMee, *"It's Happening Everywhere": 1 in 3 ICE Detainees Held in Overcrowded Facilities, Data Show*, L.A. Times (Aug. 29, 2025); Jasmine Garsd, *In Recorded Calls, Reports of Overcrowding and Lack of Food at ICE Detention Centers*, NPR (updated June 6, 2025); Cal. Dep't of Just., *Immigration Detention in California: A Comprehensive Review with a Focus on Mental Health* 5-8 (2025) (documenting serious deficiencies in mental health care and conditions for persons with mental health care conditions detained in immigration detention facilities across California).

⁸ Patler, Saadi & Langer, *supra*, at 4.

new ones.⁹ Immigration detention also poses substantial risks for vulnerable detainees such as women and LGBTQ+ individuals, who experience abuse, sexual harassment, and medical neglect at disproportionately high rates while in immigration custody.¹⁰ Recent reports further show that many immigration detention facilities are operating over capacity,¹¹ and conditions of confinement are deteriorating.¹² One study found that detain-

⁹ Chanelle Diaz et al., *Harmful by Design—A Qualitative Study of the Health Impacts of Immigration Detention*, 38 J. Gen. Intern. Med. 2030, 2034-35 (2022).

¹⁰ See Liza Doubossarskaia et al., Immigr. Equal. et al., *“No Human Being Should Be Held There”: The Mistreatment of LGBTQ and HIV-Positive People in U.S. Federal Immigration Jails* 13-14, 17-31 (June 2024); Nora Ellmann, *Immigration Detention Is Dangerous for Women’s Health and Rights*, Ctr. for Am. Progress (Oct. 21, 2019); Alice Speri, *Detained, Then Violated*, Intercept (Apr. 11, 2018); Sharita Gruberg, *ICE’s Rejection of Its Own Rules Is Placing LGBT Immigrants at Severe Risk of Sexual Abuse*, Ctr. for Am. Progress (May 30, 2018); see also Cal. Dep’t of Just., *Immigration Detention in California* iii-iv (Feb. 2019) (discussing findings including “delayed or inadequate medical care” and “inadequate mental health staffing and services” in immigration detention facilities).

¹¹ TRAC Immigr., *ICE Contractual Capacity and Number Detained: Overcapacity vs. Overcrowding*, (July 8, 2025).

¹² See Miriam Jordan & Jazmine Ulloa, *Concerns Grow Over Dire Conditions in Immigration Detention*, N.Y. Times (July 1, 2025); Garsd, *supra*; see Didi Martinez, Julia Ainsley & Laura Strickler, *Immigrants in Overcapacity ICE Detention Say They’re Hungry, Raise Food Quality Concerns*, NBC News (July 14, 2025); see also *Vazquez Perez v. Decker*, No. 18-cv-10683, 2020 WL 7028637, at *10 (S.D.N.Y. Nov. 30, 2020) (evi-

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ees perceive the poor conditions of detention as pressure to relinquish their claims, forego immigration court proceedings, and leave the United States.¹³ These concerns are only mounting as the denial of access to bond hearings has contributed to civil immigration detention reaching all-time highs.¹⁴

Moreover, many noncitizens affected by defendants' new mandatory detention policy reside in households with U.S.-citizen children, or have citizen spouses and other relatives. Indeed, a large majority of households with an undocumented individual also include at least one U.S. citizen.¹⁵ Nearly ten million U.S. citizens live in a home with one or more undocu-

dence indicates that the conditions of confinement in ICE-contracting jails in New York are “harsh . . . and the medical and mental health care provided is woefully inadequate”).

¹³ Diaz et al., *supra*, at 2033.

¹⁴ See, e.g., TRAC Immigr., *Immigration Detention Quick Facts*, (n.d.); Am. Immigr. Council, *New Report Details ICE's Expanding and Increasingly Unaccountable Detention System*, (Jan. 23, 2026);

¹⁵ See Lisiecki & Apruzzese, *supra*, at 3 (finding 4.7 million mixed-status households in the United States, which include “at least one undocumented resident and at least one citizen or legal noncitizen resident,” but only 1.1 million households containing only undocumented individuals).

mented individuals,¹⁶ while more than four million U.S.-citizen children live with an undocumented parent.¹⁷

The well-established detrimental effects of the detention of close family members on whose wages the family may depend include housing insecurity, economic instability, and food insecurity.¹⁸ The sudden separation caused by immigration detention also inflicts psychological trauma on detainees' children, and these children are more likely to suffer from depression, anxiety, and posttraumatic stress disorder.¹⁹ The psychological and emotional effects of a parent's detention negatively impact children's physical health, brain development, performance in school, and

¹⁶ *Id.*

¹⁷ Am. Immigr. Council, Press Release, [New Data: Immigrants Keep Economy Strong, As Congress Considers Wasting Billions on Mass Deportation](#), (Feb. 25, 2025).

¹⁸ See Randy Capps et al., Urban Inst. & Migration Pol'y Inst., [Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature](#) 1, 9-14, 17 (Sept. 2015); Heather Koball et al., Urban Inst. & Migration Pol'y Inst., [Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents](#) 5-9 (Sept. 2015).

¹⁹ See Am. Immigr. Council, [U.S. Citizen Children Impacted by Immigration Enforcement](#) (June 24, 2021); Randy Capps et al., Migration Pol'y Inst., [Immigration Enforcement and the Mental Health of Latino High School Students](#) 7-8 (Sept. 2020); Capps et al., *Implications of Immigration Enforcement Activities*, *supra*, at 9-10.

relationships with friends and the non-detained parent.²⁰ Fear of loved ones' detention can also profoundly shape the lives of Amici States' residents more broadly. One study found that nearly one-quarter of Latino student participants—including students born in the United States—were scared to participate in government programs, such as food assistance or educational scholarships, for fear that a loved one could be detained as a result.²¹ Out of fear of detention and deportation, some noncitizens even avoid seeking medical care, with far-reaching impacts for public health.²²

Detention of noncitizens during removal proceedings also deprives States and localities of noncitizens' substantial economic contributions. Immigrants comprise more than nineteen percent of the American workforce,²³ contribute over \$2 trillion to the United States's gross

²⁰ See Koball et al., *supra*, at 5, 11.

²¹ Capps et al., *Immigration Enforcement and the Mental Health of Latino High School Students*, *supra*, at 3, 17-18.

²² Scott D. Rhodes et al., *The Impact of Local Immigration Enforcement Policies on the Health of Immigrant Hispanics/Latinos in the United States*, 105 Am. J. Pub. Health 329, 332 (Feb. 2015).

²³ Bureau of Lab. Stat., U.S. Dep't of Lab., *Foreign-Born Workers: Labor Force Characteristics—2024*, at 1 (May 20, 2025).

domestic product,²⁴ and pay over \$650 billion in taxes.²⁵ In 2023, immigrant-owned businesses generated over \$116 billion in income, and immigrant-led households added over \$1.7 trillion to the United States economy as consumers.²⁶

Undocumented immigrants also make substantial economic contributions to their communities.²⁷ They constitute nearly five percent of the total workforce and a much larger portion of the workforce in key job sectors such as agriculture and construction.²⁸ In 2019 and 2020, nearly

²⁴ Daniel Costa et al., Econ. Pol’y Inst., *Immigrants and the Economy* (Apr. 15, 2025).

²⁵ Am. Immigr. Council, *Map the Impact* (n.d.) (2023 data).

²⁶ Am. Immigr. Council, *Immigrants in the United States*, *supra*.

²⁷ Defendants’ policy affects many immigrants who lack legal status but have valid work permits based on pending applications for relief or deferred action status, including Deferred Action for Childhood Arrivals (DACA). See 8 C.F.R. § 274a.12(c) (authorizing employment for, among others, DACA recipients, and applicants for asylum, adjustment of status, and temporary protected status); Migration Pol’y Inst., *MPI National and State Estimates of Employed Workers Among Current Deferred Action for Childhood Arrivals (DACA) Recipients* (n.d.) (estimating that nearly 400,000 DACA recipients were employed workers as of June 2021).

²⁸ Abigail Kolker & Holly Straut-Eppsteiner, Cong. Rsch. Serv., R47218, *Unauthorized Immigrants: Frequently Asked Questions* 10 (Aug. 10, 2022).

half of crop workers were undocumented.²⁹ In 2023, households headed by undocumented immigrants paid nearly \$90 billion in taxes, including approximately \$34 billion in state and local taxes, and added almost \$300 billion to the economy as consumers.³⁰ Undocumented immigrants also contribute billions of dollars to programs such as Social Security and Medicare.³¹ All these contributions are lost when these individuals are unnecessarily detained.

Unnecessary immigration detention likewise undermines Amici States' interests in public safety and the effective administration of justice. Among other things, state and local law enforcement rely on immigrant community members to report crimes to local authorities, cooperate in law enforcement investigations, and testify in legal proceedings. However, increased immigration enforcement—including immigration detention—substantially chills immigrants' interactions with law enforcement and therefore makes it much more difficult to investigate and prosecute crimes

²⁹ *Id.*

³⁰ Am. Immigr. Council, *Immigrants in the United States*, *supra*.

³¹ Carl Davis, Marco Guzman & Emma Sifre, Inst. on Tax'n and Econ. Pol'y, [*Tax Payments by Undocumented Immigrants*](#) 3 (2024).

such as domestic violence, human trafficking, and labor violations.³² Additionally, 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 even defendants, in criminal cases when detained.³³ Detained individuals also face significant barriers to participation in custody proceedings, which under certain circumstances can result in the termination of parental rights.³⁴

Further, detention hurts a noncitizen's prospects of obtaining immigration relief, even when the individual is legally entitled to remain

³² See Meg Anderson, *Some Legal Experts Say ICE in Criminal Courts Means a Slower Path to Justice*, NPR (Aug. 8, 2025); Daniela Alulema & Jacquelyn Paviol, Ctr. for Migration Stud., *Immigrants' Use of New York City Programs, Services, and Benefits: Examining the Impact of Fear and Other Barriers to Access* 5, 38-39 (Jan. 2022); *New York v. U.S. Immigr. & Customs Enf't*, 431 F. Supp. 3d 377, 381-82, 391 (S.D.N.Y. 2019); Immigr. Def. Project, *Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State* (2019).

³³ See Ben Markus & Allison Sherry, *ICE Detention, Deportation Can Deny Justice in Local Criminal Cases, Frustrating Prosecutors*, CPR News (Apr. 10, 2025); see also Proposed Amicus Br. of New York Dist. Att'ys in Support of Defs.' Mot. to Dismiss Compl. at 5, *United States v. New York*, No. 25-cv-744 (N.D.N.Y. 2025), ECF No. 30.

³⁴ See Am. Immigr. Council, *U.S. Citizen Children Impacted by Immigration Enforcement*, *supra*.

in the United States, by impeding their ability to obtain counsel³⁵ and gather evidence.³⁶ Noncitizens who are represented in removal proceedings are far more likely to pursue immigration relief than noncitizens who lack representation, and far more likely to obtain such relief if they do pursue it.³⁷ Moreover, detention's impediments to noncitizens' ability to obtain immigration relief are amplified because DHS regularly transfers detained individuals to detention centers and jails in other states,³⁸ which can further disrupt a detainee's ability to obtain, or retain, an attorney.³⁹

Unnecessary detention of noncitizens also imposes needless costs on taxpayers that can often be avoided by less restrictive alternatives such as

³⁵ See Am. Immigr. Council, *Access to Counsel in Immigration Court* (Sept. 27, 2016).

³⁶ See, e.g., *Moncrieffe v. Holder*, 569 U.S. 184, 201 (2013) (noncitizen's ability to locate witnesses may be further complicated by detention).

³⁷ Am. Immigr. Council, *Access to Counsel in Immigration Court*, *supra*; see also Vera Inst. of Just., *Immigration Court Legal Representation Dashboard* (n.d.) (data through January 2026).

³⁸ See Leon Yin et al., *The Rising Cost of ICE Flying Immigrants to Far-Flung Detention Centers*, Bloomberg (May 1, 2025); Eric Levenson & Gloria Pazmino, *Why ICE Is Really Moving Detainees Over a Thousand Miles from Where They Were Arrested*, CNN (Apr. 10, 2025); Am. Immigr. Council, *Council and RMIAN File FOIA Seeking Information About Detrimental Transfers of People in ICE Custody* (Feb. 9, 2025).

³⁹ See Emily Ryo & Ian Peacock, *A National Study of Immigration Detention in the United States*, 92 So. Cal. L. Rev. 1, 39 (2018).

electronic monitoring and community supervision.⁴⁰ For example, in fiscal year 2024, \$3.4 billion was allocated to detain a daily average of 41,500 noncitizens.⁴¹ By contrast, only \$470 million was allocated for the federal government's Alternatives to Detention Program.⁴² The federal government has estimated that the program costs less than \$4.20 each day per participant, compared with the cost to detain such person of \$152 each day.⁴³

Community release on bond likewise helps state and local governments avoid costs associated with providing additional social services to families that are affected by the detention of noncitizen family 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,

⁴⁰ See Michael D. Nicholson, Ctr. for Am. Progress, *The Facts on Immigration Today: 2017 Edition* (Apr. 20, 2017) (discussing a 2017 study estimating that the federal government would save \$1.4 billion annually by releasing more low risk detainees pending removal hearings).

⁴¹ Am. Immigr. Lawyers Ass'n, *Featured Issue: Immigration Detention and Alternatives to Detention* (Mar. 14, 2025).

⁴² *Id.*

⁴³ U.S. Immigr. & Customs Enf't, *Alternatives to Detention* (n.d.).

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.⁴⁴

While, to be sure, the government has legitimate interests in promoting public safety and ensuring that noncitizens appear at future proceedings, the degree to which that interest is served, if any, by the detention of noncitizens like petitioners-appellees cannot be ascertained without an individualized bond hearing. And there is every reason to believe that detention of noncitizens with close ties to the United States—who were routinely considered for and granted bond without issue before defendants’ recent policy change—will very often not serve any

⁴⁴ See Matthew Lisiecki, Kevin Velasco & Tara Watson, Brookings Inst. & Ctr. for Migration Stud., *What Will Deportations Mean for the Child Welfare System?* (Apr. 22, 2025); Am. Immigr. Council, *U.S. Citizen Children Impacted by Immigration Enforcement*, *supra*; Mark Greenberg et al., Migration Pol’y Inst., *Immigrant Families and Child Welfare Systems: Emerging Needs and Promising Policies* 17-19 (2019).

governmental interest.⁴⁵ Indeed, empirical evidence shows that undocumented immigrants commit less crime than citizens in the United States,⁴⁶ and most show up at their immigration court hearings, including while released on bond.⁴⁷

For all these reasons, defendants' unprecedented and arbitrary policy of mandatory detention without access to bond hearings for noncitizens living in the United States causes irreparable harm and is detrimental to the public interest. Thus, it is unsurprising that there is no evidence Congress intended to permit it.

⁴⁵ See Ariel G. Ruiz Soto, Migration Pol'y Inst., *Explainer: Immigrants and Crime in the United States* (Oct. 2024); Nina Siulc & Noelle Smart, Vera Inst. of Just., *Evidence Shows That Most Immigrants Appear for Immigration Court Hearings* 1-4 (Oct. 2020).

⁴⁶ See Ruiz Soto, *supra*; Nat'l Inst. of Just., *Undocumented Immigrant Offending Rate Lower Than U.S.-Born Citizen Rate* 2-4 (Sept. 12, 2024).

⁴⁷ Siulc & Smart, *supra*, at 1-2.

POINT II

AMICI STATES' EXPERIENCE SHOWS THAT MANDATORY DETENTION WITHOUT INDIVIDUALIZED BOND HEARINGS IS NOT NECESSARY TO PREVENT DANGER OR FLIGHT, CONTRAVENES CONGRESS'S INTENT, AND RAISES SERIOUS DUE PROCESS CONCERNS

As correctly explained at the district court level, noncitizens who have lived in the United States for years should not be subject to mandatory detention under § 1225(b), without any opportunity to show a neutral adjudicator that they should be released because they are not dangerous or a flight risk. *See Lopes de Andrade v. Rose*, No. 26-cv-603, 2026 WL 401189 (E.D. Pa. Feb. 10, 2026) (Costello, J.); *Buele Morocho v. Jamison*, No. 25-cv-5930, 2025 WL 3296300 (E.D. Pa. Nov. 26, 2025) (Gallagher, J.).

That is clear not only from the text, structure, and legislative history explained by petitioners-appellees, but also from the background context of settled state law, practice, and procedure of civil and pretrial detention, informed by the Due Process Clause. Amici States have extensive experience with those matters, through their common experience with civil and pretrial detention in a variety of forms, and with the hearings before a neutral adjudicator that are ordinarily used to evaluate

whether detention is necessary in given individual cases. Evidence of “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), *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).⁴⁸ And Congress presumably did not intend to defy fairness, rationality, and due process in enacting §§ 1225(b)(2)(A) and 1226(a). Petitioners-appellees’ and the district court’s construction of these provisions avoids the serious constitutional infirmities of defendants’ interpretation and should be adopted under the canon of constitutional avoidance. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) (courts avoid reading statutes in a manner that would render them unconstitutional).

⁴⁸ *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 (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))).

Amici States' experience demonstrates that the policy challenged in these cases is an extreme departure from the process that normally accompanies civil detention, raising serious due process concerns. While individual States may vary in the specific procedural protections they offer to respondents facing civil detention (such as, for example, court-appointed counsel or trial by jury), they are consistent in requiring an individualized determination by a neutral decisionmaker that prolonged civil detention is appropriate. For instance, every State and 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 psychiatric treatment.⁴⁹ And in the more

⁴⁹ See Ala. Code § 22-52-8(a) (2025); Alaska Stat. § 47.30.735(a) (2025); Ariz. Rev. Stat. Ann. § 36-535 (2025); Ark. Code Ann. § 20-47-210(a)(1) (2025); Cal. Welf. & Inst. Code § 5256(a)-(b) (West 2025); Colo. Rev. Stat. § 27-65-109(6) (2025); Conn. Gen. Stat. § 17a-498 (2025); Del. Code Ann. tit. 16, § 5009 (2025); D.C. Code § 21-545(a) (2025); Fla. Stat. § 394.467(7), (11) (2025); Ga. Code Ann. § 37-3-62(a)-(b) (2025); Haw. Rev. Stat. § 334-60.5 (2025); Idaho Code § 66-326 (2025); 405 Ill. Comp. Stat. 5/3-611 (2025); Ind. Code § 12-26-5-9 (2025); Iowa Code § 229.11(1) (2025); Kan. Stat. Ann. § 59-2959(b) (2025); Ky. Rev. Stat. Ann. § 202A.051 (West 2025); La. Stat. Ann. § 28:55(A) (2025); Me. Stat. tit. 34-B, § 3864 (2025); Md. Code Ann., Health-Gen. § 10-632(a) (West 2025); Mass. Gen. Laws ch. 123, §§ 5-8, 12 (2024); Mich. Comp. Laws § 330.1452(1)-(2) (2025); Minn. Stat. § 253B.08 (2025); Miss. Code Ann. § 41-21-71 (2025); Mo. Rev. Stat.

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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 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.⁵⁰ 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

§ 632.335(1) (2025); Mont. Code Ann. § 53-21-120 (2025); Neb. Rev. Stat. § 71-923 (2025); Nev. Rev. Stat. § 433A.220(1) (2025); N.H. Rev. Stat. Ann. § 135-C:31 (2025); N.J. Stat. Ann. § 30:4-27.12(a) (West 2025); N.M. Stat. Ann. § 43-1-11(A) (2025); N.Y. Mental Hyg. Law § 9.39(a)(3) (McKinney 2025); N.C. Gen. Stat. § 122C-268(a) (2025); N.D. Cent. Code § 25-03.1-26(3) (2025); Ohio Rev. Code Ann. § 5122.141 (West 2025); Okla. Stat. tit. 43A, § 5-415(A)-(E) (2025); Or. Rev. Stat. § 426.237(4)(b) (2025); 50 Pa. Stat. and Cons. Stat. § 7303(b) (West 2025); 40.1 R.I. Gen. Laws § 40.1-5-8(d) (2025); S.C. Code Ann. § 44-17-410 (2025); S.D. Codified Laws § 27A-10-5 (2025); Tenn. Code Ann. § 33-6-413(a) (2025); Tex. Health & Safety Code Ann. § 574.005(a) (West 2025); Utah Code Ann. § 26B-5-332(9) (West 2025); Vt. Stat. Ann. tit. 18, § 7615(a)(1) (West 2025); Va. Code Ann. § 37.2-814 (2025); Wash. Rev. Code § 71.05.170 (2025); W. Va. Code § 27-5-2(f) (2025); Wis. Stat. § 51.20(2)-(12) (2025); Wyo. Stat. Ann. § 25-10-109(c) (West 2025); Lisa Dailey et al., Treatment Advoc. Ctr., *Grading the States: An Analysis of U.S. Psychiatric Treatment Laws* 9-10, 18 (2020).

⁵⁰ See Trevor Hoppe et al., UCLA Sch. L., Williams Inst., *Civil Commitment of People Convicted of Sex Offenses in the United States* 6-9 (Oct. 2020); Nat'l Dist. Att'ys Ass'n, *Civil Commitment of Sex Offenders* (updated Apr. 2012).

appropriateness of detention or pretrial release conditions, reserving mandatory pretrial detention for, at most, only a small category of individuals charged with the most serious crimes or having a record of criminal conduct or flight while on pretrial release.⁵¹

This consistent state practice is in turn consistent with the Supreme Court's precedent which, when upholding state civil detention schemes, has relied heavily on the fact that they 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). The Supreme 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 (striking down preponderance of the evidence standard and imposing clear and convincing evidence standard in civil commitment hearing); *Foucha v. Louisiana*, 504 U.S. 71, 80-82 (1992) (striking down civil commitment scheme where government

⁵¹ *See* Lisel Petis, R Street, *Navigating Bail Reform in America: A State-by-State Overview* (Feb. 2024); Nat'l Conf. of State Legislatures, *Pretrial Release: Detention* (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 (May 2017); 18 U.S.C. § 3142(e), (f).

did not need to prove that detainee was dangerous at hearing). Likewise, in the context of criminal pretrial detention, the Supreme 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 decisionmaker. *United States v. Salerno*, 481 U.S. 739, 747, 751 (1987).

In fact, Amici States’ experience shows that individualized hearings to determine the necessity of detention are often required even when the prospective detainees at issue likely pose a substantially greater risk to public safety than individuals like petitioners-appellees, who have been living in the United States for many years, face no criminal charges, and have no criminal record. For instance, as explained, consistent state practice and due process laws provide that even individuals who are serial sexual offenders, or who have been arrested for serious violent crimes, are ordinarily entitled to individualized assessments of the need for detention. In contrast, the challenged mandatory detention policy provides less process to petitioners-appellees than nearly anyone else—under this policy, there is no individualized assessment at all.

Moreover, there is no reason to believe that Congress intended to impose such outlier mandatory civil detention on noncitizens living in the

United States like petitioners-appellees. When Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), it left in place existing due process protections—including the opportunity to be considered for release on bond pending removal proceedings—for noncitizens like petitioners-appellees. *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (explaining that § 1226(a) merely “restate[d] the current provisions”); H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (similar).

When Congress expressly subjected certain noncitizens to mandatory detention without a bond hearing, it did so for a limited category of persons, including noncitizens who have committed certain enumerated crimes, *see* 8 U.S.C. § 1226(c), in order to address a specific problem that is inapplicable to petitioners-appellees and others now being detained under the new policy. Empirical evidence before Congress suggested that noncitizens living in the United States who had previously engaged in criminal activity were committing further crime while out on bond and were failing to appear in court for their removal proceedings at an “unacceptable rate.” *See Demore v. Kim*, 538 U.S. 510, 517-521 (2003). Further evidence demonstrated that these issues stemmed from a “failure to

detain those [noncitizens] during their deportation proceedings” and would continue to occur if bond remained available to these noncitizens, “even with individualized screening[s].” *Id.* at 519-20. Accordingly, Congress adopted a “narrow” solution to accommodate the federal government’s heightened interest in detaining this specific group. *See id.* at 526. And, in light of this context, the Supreme Court found the statute’s narrow categories for mandatory detention consistent with due process. *See id.* at 527-28, 531. But petitioners-appellees here undisputedly do not fall into any of the narrow categories for which Congress found mandatory detention necessary under § 1226(c) or otherwise.

In IIRIRA, Congress also declined to disturb its prior mandate of detention for noncitizens arriving in the United States without a clear right to admission, *compare* 8 U.S.C. § 1225(b) (1996 ed.), *with* 8 U.S.C. § 1225(b)(2), and Congress expanded the scope of that detention scheme to include certain recently arrived noncitizens, *see id.* § 1225(b)(1). This approach reflected Congress’s understanding of longstanding due process precedent that there is an important distinction between the due process rights of noncitizens already living in the United States and those who are just arriving. *Compare, e.g.*, H.R. Rep. No. 104-469, pt. 1, at 163-66

(recognizing the “constitutional liberty interest[s]” of noncitizens present in the United States), *with id.* at 165-66 (assuming minimal due process rights for arriving noncitizens (relying on *Knauff v. Shaughnessy*, 338 U.S. 537 (1950))); *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (“The Fifth Amendment . . . protects every one of these [noncitizens within the jurisdiction of the United States] . . . Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection.”). Congress’s decision to deprive newly arrived noncitizens of the protection of a bond hearing was thus informed by its understanding that arriving noncitizens possess weaker due process interests than noncitizens who have established ties in the United States that would be harmed by detention.

In short, Congress expressly authorized mandatory detention without an individualized hearing only in specified categories of cases, which shows that Congress did not intend to authorize it as a general practice, outside of those categories. As defendants themselves recognized from the time IIRIRA was enacted thirty years ago until their recent, sudden about-face, § 1225(b)(2)(A)’s provision for mandatory detention was not intended to apply to noncitizens who have physically entered and built lives in the

United States, like petitioners-appellees here. That is because “all persons within the United States, including aliens, whether their presence here is lawful [or] unlawful,” have due process rights that those standing at the border do not have. *Zadvydas*, 533 U.S. at 693 (quotation marks omitted). And “[f]reedom 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.” *Id.* at 690. Thus, noncitizens like petitioners-appellees, who have been living in the United States, are entitled to due process protections that defendants here seek to erase with their policy. And IIRIRA reflects this well-settled understanding by entitling noncitizens in the United States, like petitioners-appellees, to a bond hearing—that is, the same opportunity to prove to a neutral adjudicator that civil detention is unnecessary as is required in other civil detention schemes for individuals in the United States.

In this regard, it is noteworthy that *Demore* was the first, and remains the only, instance in which the Supreme Court has deemed constitutional a provision imposing mandatory immigration detention on persons living in the United States. Defendants-Appellants’

unprecedented expansion of such detention, far beyond what *Demore* approved, is without clear authorization in the statute and lacks the evidentiary basis the Court found persuasive in upholding the far more limited in scope provision of § 1226(c). Had Congress intended such a marked departure from understood constitutional principles and norms for persons like the petitioners-appellees here, one would expect it not to have tucked such a proverbial elephant in a mousehole that would lay hidden for nearly 30 years. Defendants' attempt to construct this new interpretation of the statute cannot be sustained, and the mandatory detention policy on which it rests is thus unlawful.

CONCLUSION

This Court should affirm the decisions on appeal.

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I, Gillian Barna, certify under penalty of perjury under 28 U.S.C. § 1746 that:

1. I am a member of the bar of this Court and counsel of record for the State of New York et al.
2. The brief for the State of California et al., filed on April 20, 2026, complies with the typeface requirements and length limits of Rules 29 and 32(a)(5)-(7) of the Federal Rules of Appellate Procedure and contains 5,809 words.
3. The brief for the State of California et al. was prepared on a system using CrowdStrike Falcon Sensor antivirus software and no viruses were identified in these documents.
4. The text of the electronic file of the brief for the State of California et al. is identical to the text of the paper copies being submitted to the court.
5. All parties are filing users and this brief was filed and served by Notice of Docket Activity through the Court's appellate CM/ECF system on April 20, 2026, an electronic-filing system for purposes of Rule 25(d) of the Federal Rules of Appellate Procedure and Third Circuit Local Rules 25.1(b) and 113.4(c).

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