UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 26-50183

Ignacio Sosnava Rodriguez
Petitioner–Appellee,
v.
Sylvester M. Ortega, in his official capacity as Director of San Antonio Field Office of ICE's Enforcement and Removal Operations, et al.
Respondents-Appellants.

CONSOLIDATED WITH

No. 26-50219

Alejandro Villegas Angel,
Petitioner–Appellee,
v.
Markwayne Mullin, in his official capacity as Secretary of the U.S. Department of Homeland Security et al.
Respondents-Appellants.

CONSOLIDATED WITH

No. 26-50221

Miguel Angel Gomez Alvarado
Petitioner–Appellee,
v.
Michael Vergara, in his official capacity as Acting Director of San Antonio Field Office for U.S. Immigration and Customs Enforcement, et al.
Respondents-Appellants

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS
Nos. 1:26-cv-384, 1:26-cv-309, 1:26-cv-273

BRIEF OF *AMICI CURIAE* IMMIGRANT LEGAL SERVICES PROVIDERS, FAITH-BASED ORGANIZATIONS, AND RELIGIOUS LEADERS

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STATEMENT OF INTEREST[1]

Amici are nonprofit legal services organizations, law school clinic directors, faith-based institutions, and religious leaders who have a strong interest in this case because they directly assist immigrants and their families.[2] They bring extensive experience with the immigration system and its real-world effects on individuals, families, and communities.

Legal services *amici* include American Gateways, Catholic Legal Immigration Network, Inc. (CLINIC), Refugee and Immigrant Center for Education and Legal (RAICES), Texas Civil Rights Project, and Texas Immigration Law Council, as well as law school clinic directors based in Texas and Louisiana. These *amici* provide direct representation to noncitizens in removal proceedings, including detained individuals, as well as engage in impact litigation, policy advocacy, and statewide coordination of immigrant legal services. *Amici* have substantial expertise on immigration detention and highlight real stories of individuals who have contacted them for assistance.

Faith-based *amici* include over one hundred interfaith coalitions, congregations, and religious leaders who serve communities that are directly

[1] Both parties consented to the filing of this brief. No party or its counsel had any role in authoring this brief. No person or entity—other than *amici* and their counsel—contributed money that was intended to fund preparing or submitting this brief. Fed. R. App. P. 29(a)(4)(E).

[2] A complete list of *amici* is provided at the end of this brief.

affected by immigration detention. They witness the disruption that detention causes to detained individuals, as well as their U.S. citizen children, extended families, congregations and communities. Faith-based *amici* regularly provide support when a parent, caregiver, or primary financial provide is detained.

All *amici* have observed firsthand that many detained immigrants are long-term residents of the United States with significant ties to this country. They have also seen how detention impairs individuals' ability to obtain counsel, gather evidence, meaningfully participate in their removal proceedings, and even pressures individuals to abandon potentially meritorious claims.

Amici provide the Court with important context for evaluating the constitutional questions presented and underscore the humanity of those who have been arbitrarily deprived of liberty.

INTRODUCTION

As now interpreted, 8 U.S.C. § 1225(b)(2) subjects hundreds of thousands, if not millions, of non-citizens to mandatory immigration detention during their immigration proceedings, without justification based on flight risk or danger, and without review of the deprivation of liberty. *See Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). The Fifth Amendment Due Process Clause requires restoring liberty as the norm and detention as a limited exception that must be specially justified. *See Zadvydas*

v. Davis, 533 U.S. 678 (2001); *Foucha v. Louisiana,* 504 U.S. 71 (1992). Additional process is therefore necessary to test whether any legitimate justification for detention exists in individual cases. *Mathews v. Eldridge,* 424 U.S. 319 (1976).

Mandatory detention severely harms not only detained individuals, but also the families and communities they leave behind. Since the massive expansion of mandatory detention under 8 U.S.C. § 1225(b)(2) beginning in the summer of 2025, immigration detention numbers have skyrocketed. As of April 4, 2026, over 60,000 immigrants were detained, 43% of them in Texas and Louisiana.[3] The vast majority (over 70%) have no criminal conviction.[4] Many of those in mandatory detention were apprehended while attending their Immigration Court proceedings or reporting for check-ins with Immigration and Customs Enforcement ("ICE"), demonstrating no risk of absconding.[5]

Despite being categorized as civil for constitutional purposes, immigration detention "mimics the criminal incarceration system and holds detained individuals

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[3] Transactional Records Access Clearinghouse (TRAC), Immigration Detention Quick Facts, https://tracreports.org/immigration/quickfacts/detention.html (last visited Apr. 22, 2026).

[4] *Id*

[5] AILA, Policy Brief: ICE Arrests at Immigration Courts (Aug. 1, 2025), https://www.aila.org/policy-brief-ice-arrests-at-immigration-courts; National Immigration Project, What's Happening with Immigration Court Arrests and Bonds (June 2025), https://nipnlg.org/sites/default/files/2025-06/2025_NIPNLG-Courthouse.pdf.

in punitive, prison-like conditions," with negative impacts on health.[6] Detention also makes it more difficult to find an attorney,[7] creates obstacles to applying for relief from removal,[8] and coerces many immigrants into abandoning viable claims to remain in the United States.[9] For example, 18.75% of asylum applications filed with EOIR were abandoned in December 2024, but, with the rapid expansion of detention, that number had doubled to 38.89% by February 2026.[10] Parents, in particular, are pressured by detention to take voluntary departure just so that they can be reunited with their children.

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[6] Altaf Saadi et al., *Understanding US Immigration Detention*, 22 HEALTH & HUM. RTS. J. 187, 190 (2020); *see also* Altaf Saadi et al, *Duration in Immigration detention and Health Harms*, 8 JAMA Network Open e2456164 (2025), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2829506.

[7] Ingrid V. Eagly et. al., *Access to Counsel in Immigration Court, Revisited*, 111 IOWA L. REV. 1, 28 (2025) (31% of detained immigrants were represented between 2013-2024, compared to 57% of non-detained immigrants); *see also* Ingrid Eagly & Steven Shafer, *Detained Immigration Courts*, 110 VA. L. REV. 691, 754 (2024) ("From 1983 to 2022, only 16% of immigrants in detained courts found counsel, compared to 53% of those with cases in nondetained courts.").

[8] Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 50 (2015) ("cases with representation and those litigated outside detention are far more likely to pursue relief").

[9] *See EOIR Table 5-1. Asylum Withdrawals by Custody Status by Fiscal Year Completed*, U.S. COMMISSION INT'L RELIGIOUS FREEDOM 670, https://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum_seekers/EOIR_Tables_5-7.pdf (showing detained noncitizens withdrew their asylum claims at more than double the rate of non-detained or released claimants).

[10] Mobile Pathways, Asylum Navigator Dashboard, https://www.mobilepathways.org/dashboards/asylum-navigator-dashboard (last visited Apr. 23, 2026).

Take, for example, Karla, who entered the United States without inspection in 1996 when she was just two years old. She reached out to one of the *amici* organizations for assistance when she was detained in Laredo, Texas, by ICE in 2026, after calling the police for help during a domestic dispute. In detention, she was separated from her five U.S. citizen children, three of whom are under the age of four. She applied for cancellation of removal for non-permanent residents, a form of relief that allows someone without status to become a lawful permanent resident if they have been present in the U.S. for at least ten years, have been a person of good moral character, and can demonstrate that removal would result in "exceptional and extremely unusual hardship" to a U.S. citizen or permanent resident spouse, parent, or child. 8 U.S.C. § 1229b(b)(1). Despite the impact her removal would have on her five children, the immigration judge found that she had not satisfied the hardship standard. Karla ended up taking voluntary departure instead of pursuing an appeal because she could not endure remaining detained. Had she received a bond hearing, she likely would have been released and better able to gather evidence—such as medical and school records, community support letters, and psychological evaluations—to support her claims. If denied by the immigration judge, she could have then pursued her right to appeal without being deprived of her liberty. But she was subject to mandatory detention.

Mandatory detention is producing similar harms in many other cases. Parents who have long supported their families are suddenly being removed from their households, leaving U.S.-citizen children without financial or emotional stability. In one case, a father of two from Florida who had spent decades supporting his children—including a son with significant mental health needs—now watches from detention in El Paso, Texas, as his children struggle emotionally and economically in his absence. *See First Amended Petition for Writ of Habeas Corpus & Class Action Complaint* at 22-25, *Alvarez Perez v. Doe,* No. 3:26-cv-00758-KC (W.D. Tex. Apr. 8, 2026). In another, a single mother from Arkansas who survived domestic violence and was the sole provider for her children has been detained for months in El Paso without a bond hearing, leaving her young daughter anxious and her teenage son considering leaving school to work. *Id.* at 25-27. In yet another case, a father from Minneapolis detained in Pearsall, Texas, is unable to send money to his wife and young child abroad, both of whom suffer from serious medical conditions; as a result, his daughter now lacks access to essential medication and nutritional support. *Id.* at 28-30.

These are not isolated incidents; they reflect the predictable consequences of indiscriminate, mandatory detention without any determination that such detention is necessary to address flight risk or danger.

ARGUMENT

I. MANDATORY DETENTION OF NONCITIZENS WHO ENTERED WITHOUT INSPECTION INFRINGES ON FUNDAMENTAL LIBERTY INTERESTS.

A. The Due Process Clause Prohibits Arbitrary Deprivation of Liberty, Requiring "Special Justification" for Detention in the Immigration Context.

Mandatory detention of all non-citizens who entered without inspection and are placed in removal proceedings deprives hundreds of thousands of non-citizens within the U.S. of physical liberty without justification based on flight risk, danger, or any other special governmental purpose. Due process therefore requires that a remedy exists for unjustified detention.

Every "person" in the United States enjoys a fundamental right to physical liberty. U.S. Const. Am. V. That liberty is not entirely without limits, *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997), but important governmental justification is required for deprivation of freedom in the form of physical custody. *Zadvydas v. Davis*, 533 U.S. 678. As the Supreme Court has stated in the immigration context: "government detention violates [due process] unless it is ordered in a *criminal* proceeding. . . or in certain special and 'narrow' nonpunitive 'circumstances,' where a special justification outweighs" the constitutional interest in freedom from "physical restraint." *Id*. at 690.

Since immigration detention is not pursuant to a criminal proceeding, detention is permitted only where such special governmental justification exists, generally to prevent flight from future immigration proceedings or to prevent danger to the community. *Id*. This rule is the same in immigration detention as in other civil contexts, such as civil commitment for mental health reasons and pre-trial criminal detention. *See Hendricks,* 521 U.S. at 363–69; *Foucha,* 504 U.S. at 81–82; *United States v. Salerno*, 481 U.S. 739, 746 (1987); *Jackson v. Indiana*, 406 U.S. 715 (1972). Liberty is the norm, and detention is the exception that must be specially justified. *Foucha*, 504 U.S. at 83 (*citing Salerno*, 481 U.S. at 755).

Yet, 8 U.S.C. § 1225(b)(2) as now interpreted allows detention throughout removal proceedings for a broad range of non-citizens in greatly differing circumstances who are apprehended after entering the United States. It does so without any determination that such detention is necessary to address flight risk or danger. Appellants argue, in fact, that no justification based on flight risk or danger is needed, and that it suffices that the detention is related to removal proceedings. *See* Appellants' Opening Br. at 34. However, no Supreme Court or Fifth Circuit precedent relieves the government of establishing a special reason why a non-citizen must be detained in connection with their immigration proceedings.

Appellants attempt to circumvent this constitutional issue by stating that there is no substantive due process problem since there is no fundamental interest

at stake in this case. They argue that, at most, rational basis review applies. Appellants' Opening Br. at 33. This argument misunderstands the constitutional framework.

Special justification for detention is required under the Due Process Clause, because liberty is a fundamental right. Any argument that liberty is not a fundamental right in the immigration context is altogether foreclosed by Supreme Court precedent. *Zadvydas,* 533 U.S. at 690 (holding, in a case addressing prolonged immigration detention, that "[f]reedom from . . . detention . . . lies at the heart of . . . liberty"); *see also Demore v. Kim*, 538 U.S. 510, 532 (2003) (Kennedy, J., concurring) (recognizing that "the Due Process Clause prohibits arbitrary deprivations of liberty" in the immigration context). Appellants therefore attempt to cast the constitutional issue as one relating to the right to bail and assert that this is not a guaranteed right. This effort to redirect attention away from the right to liberty must fail. The Constitution requires a justification for the deprivation of liberty in the first place, before bail even comes into the picture. Yet the statute, as now interpreted, allows for detention without "special," or any, justification.

B. Many Noncitizens Subjected to Mandatory Detention Under the New Interpretation of 1225(b)(2) Are Neither a Flight Risk, Nor a Danger to the Community.

The facts of individual cases involving noncitizens subjected to mandatory detention under *Yajure Hurtado* and *Buenrostro-Mendez* often demonstrate that

detention is not justified by either flight risk or danger. The breadth of the new mandatory detention regime encompasses people with no criminal history, longstanding family and community ties, and clear evidence of stability, including primary caregivers and sole financial providers, whose detention serves no discernible connection to flight risk or danger.

Mr. Cruz Reyes's case is illustrative. After nearly two decades in the United States, he built a stable life in Texas as a self-employed truck driver, raising three U.S.-citizen children, including one with developmental needs. *Cruz-Reyes v. Bondi*, 2026 WL 332315, at *1 (S.D. Tex. Feb. 3, 2026). He has no criminal convictions and, for over fifteen years, complied with all immigration requirements while working pursuant to an order of release on recognizance that was issued after a traffic stop in 2011. *Id.* at *2. At that time, he was placed in non-detained removal proceedings, applied for cancellation of removal, and obtained a work permit. *Id.* His next immigration court hearing was scheduled for February 2027. *Id.* Yet in January 2026, he was abruptly arrested at a checkpoint and detained without any determination that he poses a flight risk or danger. *Id.* His detention has disrupted his ability to support his family and impaired his capacity to prepare his case by creating challenges in gathering hardship evidence for cancellation of removal. *Id.*

His story is not unique. Farhad is an asylum seeker who fled the Taliban in Afghanistan, entering without inspection in 2023, with his wife and two children. He was apprehended after entry and released on his own recognizance. Over the past three years, he and his family have established a life in the U.S, complying with their ICE check-ins and attending immigration court hearings. Their lives were uprooted, however, in January 2026, when Farhad, who had been the sole earner, was detained. Both of his children are under the age of ten, and his eldest son is suffering from severe vision loss due to a suspected genetic disorder. Before being detained, Farhad was managing his son's complex medical needs. His wife has also been checking in with ICE, and the family is terrified that if she, too, is detained, there will be no one to take care of their children. Despite posing no flight risk or danger, Farhad was denied bond under *Matter of Yajure Hurtado*. His individual hearing on his asylum application is not until late June 2026, so, unless released through habeas, he will be detained at least six months, and possibly much longer if there is an appeal. Farhad and his family fear that he will be persecuted by the Taliban if removed due to his political opinions, including his support for women's rights. His detention is complicating gathering evidence, reviewing documents, and communicating with his attorney about his case. *See also Bonilla Chicas v. Warden*, 2026 WL 539475, at *2 (S.D. Tex. Feb. 20, 2026) (addressing detention of noncitizen with over twenty years' residence, no criminal record, U.S.

citizen spouse and stepson, gainful employment, and a history of compliance with Order of Release on Recognizance).

Even particularly vulnerable individuals with a clear path to legal status have been subjected to mandatory detention under the new interpretation of 1225(b)(2)(A). *See, e.g.*, *Jimenez v. Ortega*, 2026 WL 990022, at *1 1 (W.D. Tex. Apr. 13, 2026) (pending application for T visa based on human trafficking); *Moguel v. Bondi*, 2026 WL 752451, at *1 (W.D. Tex. Mar. 12, 2026) (pending U visa as the victim of a crime and prior grant of prosecutorial discretion); *Lopez-Tipas v. Noem*, 2025 WL 4350764, at *1 (S.D. Tex. Nov. 25, 2025) (pending U visa); *Reyes v. Thompson*, 2025 WL 3654265, at *1 (W.D. Tex. Dec. 12, 2025) (pending adjustment application for lawful permanent residence under the Violence Against Women Act based on spousal abuse); *F.R.R. v. Rodriguez*, 2025 WL 3654266, at *1 (W.D. Tex. Dec. 5, 2025) (minor who had been granted Special Immigrant Juvenile status based on neglect by his mother); *Vieira v. De Anda-Ybarra*, 806 F. Supp. 3d 690, 695 (W.D. Tex. 2025) (petitioner was granted Special Immigrant Juvenile status and would become eligible to apply for permanent residence). These cases underscore the disconnect between the statute's sweeping reach under *Buenrostro-Mendez* and the lack of any requirement for the government to prove a legitimate justification for these individuals' detention.

C. *Demore* Relied on a Categorical Determination of Flight Risk or Danger in Finding Constitutional a Distinct and More Limited Mandatory Detention Statute.

Appellants contend that the opinion in *Demore* allows for detention without justification during removal proceedings. This reading is mistaken. *Demore supports* the proposition that a special justification is required. 538 U.S. at 524-26. *Demore* addressed the constitutionality of a distinct, narrow mandatory detention provision, 8 U.S.C. § 1226(c), applicable to persons with certain serious criminal convictions. *Id*. at 518. The Court did not permit detention without justification but instead found that Congress had supplied the justification categorically for the specific group of persons affected. *Id*. at 518-20. Congress had relied on a clear record and determined that this "limited" category of persons presented sufficient flight risk or danger to justify detention. *Id*. (citing evidence before Congress relating to additional crimes committed by non-citizens with criminal convictions during removal proceedings and establishing high rates of absconding among this group). The Court repeatedly emphasized both the "limited" category of persons affected and the "limited" length of detention. *Id*. at 518, 522, 526, 531.[11] Nothing in *Demore* suggests that the mere existence of removal proceedings is

[11] The *Demore* decision relied on data regarding the length of removal proceedings that was later revealed to be an inaccurate underestimate. Letter from Ian Heath Gershengorn, Acting Solicitor Gen., to the Clerk of the Supreme Court, re: *Demore v. Kim*, No. 01-1491 (Aug. 26, 2016), https://perma.cc/3TME-FZ28.

constitutionally sufficient to justify long-term detention of a broad population without regard to flight risk, danger, or other special justification.

Mandatory detention under 8 U.S.C. § 1225(b)(2) is distinguishable in that it applies to a very broad class of individuals in removal proceedings. These proceedings can be quite lengthy as affected non-citizens challenge removability and seek relief from removal. DHS's own data show that, as of March 2026, there were more than 2000 people who had been held in immigration detention for longer than a year.[12] *Amici*'s experience confirms that noncitizens are routinely detained for many months, and detention over a year is not uncommon when there is an appeal. *See, e.g., Fadeev v. Lyons*, 2026 WL 93147, at *1 (W.D. Tex. Jan. 7, 2026) (granting habeas petition filed by a citizen of Russia who had been detained for over two years under 1225(b)).

Given these distinctions, *Demore* cannot be used to defend the constitutionality of mandatory detention under 1225(b)(2). At most, *Demore* permits categorical detention in a narrowly defined contexed supported by congressional findings. Even then, "as applied" constitutional challenges are permitted when detention becomes "unreasonable or unjustified" in individual

[12] *See* U.S. Immigration & Customs Enf't, Detention Management, FY2026 YTD: Average in Custody Length of Stay, https://www.ice.gov/detain/detention-management; *see also* Emily Ryo & Ian Peacock, *A National Study of Immigration Detention in the United States*, 92 S. CAL. L. REV. 1, 2 (2018).

cases. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring). A means to challenge unjustified detention is therefore always necessary. *Id*.

D. The Government's Reliance on a "90 Percent Absconding" Statistic as Justification for Detention Is Contradicted by Contemporary Data.

Because detention implicates a fundamental liberty interest, it is subject to heightened scrutiny. *Zadvydas*, 533 U.S at 690. But Appellants' justification fails even rational basis review. Appellants assert that the mere existence of removal proceedings warrants detention, but that proposition supplies no justification for the liberty deprivation at all.

The only rationale offered is a generalized claim of flight risk, untethered to any evidence that the vast group of non-citizens affected by mandatory detention under 1225(b)(2) present any particular risk of absconding. Appellants reference a 1997 Inspector General, claiming that it indicates "nearly 90 percent" of noncitizens abscond. Appellants' Opening Br. at 35–36. But Appellants offer no evidence or even argument suggesting that Congress considered the Inspector General report or other evidence of flight risk for those who enter without inspection when it adopted 1225(b)(2). Additionally, the OIG report states only that 11% of noncitizens *with final orders* were ultimately deported; it does not address the flight risk of noncitizens who are still in removal proceedings, much less of those who entered without inspection.

Empirical evidence does not show high rates of absconding among noncitizens in removal proceedings. Recent longitudinal analyses of immigration court data directly refute the claim that noncitizens routinely abscond after release. One comprehensive study of nearly 2.8 million removal proceedings between 2008 and 2018 found that 83% of non-detained noncitizens attended *all* of their hearings, and attendance rose to 96% for those represented by counsel.[13] Another study by the Government Accountability Office analyzing EOIR data for cases completed between 2016 through 2023 found that represented noncitizens had only a 9% in absentia rate if not detained.[14]

Pervasive defects in notices to appear partially explain failures to appear for hearings. In a 2018 oral argument before the Supreme Court, government counsel admitted "that 'almost 100 percent' of 'notices to appear omit[ted] the time and date of the proceeding over the last three years.'" *Pereira v. Sessions*, 585 U.S. 198, 204–05 (2018). Immigration Court efforts to address notice problems dramatically increased appearance rates.[15]

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[13] *See* Ingrid Eagly & Steven Shafer, Am. Immigr. Council, Measuring *In Absentia* Removal In Immigration Court 4 (2021), https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/measuring_in_absentia_in_immigration_court.pdf.
[14] U.S. Gov't Accountability Off., *Immigration Courts: Actions Needed to Track and Report Noncitizens' Hearing Appearances*, GAO-25-106867 (Dec. 19, 2024), https://www.gao.gov/products/gao-25-106867.
[15] Eagly & Shafer, *supra* note 13.

Furthermore, many in absentia removal orders are successfully overturned. 81% of motions to rescind in absentia removal orders were granted between 2016 and 2023, reversing 9% of all the in absentia orders issued during that period.[16] As organizations such as TRAC have observed, EOIR's calculations of in absentia rates does not account for these cases that are later reopened.[17]

Finally, even setting aside the substantial evidence that most noncitizens appear for their proceedings without detention, the government's assertions about generalized flight risk fail because far less restrictive alternatives to detention are highly effective at ensuring compliance. For example, two community-based alternatives to detention that were piloted under prior administrations had compliance rates over 90%.[18]

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[16] U.S. Gov't Accountability Off., *supra* note 14.

[17] Hum. Rts. First, *Immigration Court Appearance Rates* (Feb. 2018), https://humanrightsfirst.org/wp-content/uploads/2022/10/Immigration_Court_Appearances_Feb_2018.pdf.

[18] Nina Siulc, Vera Institute of Justice, *Community Supervision Proves Detention is Unnecessary to Ensure Appearance at Immigration Hearings*, (2020), available at https://www.vera.org/downloads/publications/appearance-assistance-program-factsheet.pdf (91% compliance in Appearance Assistance Program); U.S. Office of Inspector General, U.S. Immigration and Customs Enforcement's Award of the Family Case Management Program Contract (Redacted) (2017), available at https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-22-Nov17.pdf (99% compliance rate for ICE check-ins and 100% compliance for court hearings in the Family Case Management Program).

II. PROCEDURAL PROTECTIONS ARE NECESSARY TO ENSURE THE JUSTIFICATION FOR DETENTION IS SUFFICIENT.

Given that mandatory detention under 1225(b)(2) categorically denies bond hearing to examine flight risk and danger, recourse must be available under the Due Process Clause to ensure that detention is justified in any given case. *See Counselman v. Hitchcock,* 142 U.S. 547, 565 (1892) ("Legislation cannot detract from the privilege afforded by the constitution."), *overruled on other grounds by Kastigar v. United States*, 406 U.S. 441 (1972); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985) ("[O]nce it is determined that the due process clause applies, the question remains what process is due. The answer to that question is not to be found in the . . . statute."). Here, due process requires a meaningful process before a neutral arbiter to ensure that detention rests on a legitimate government interest—flight risk or danger—in each individual case.

A. Entry Into the Territory of the United States Triggers Due Process Rights, Even If the Entry Was Without Inspection.

Appellants erroneously argue that anyone who entered the United States without inspection should be treated for due process purposes as if stopped at the border, possessing only those rights conferred by Congress and no procedural due process rights. That position is inconsistent with longstanding precedents. The Supreme Court has made clear that physical presence within the United States, not the manner of entry, triggers constitutional protections, including freedom from

arbitrary detention. *Zadvydas v. Davis*, 533 U.S. 678 (2001) ("certain constitutional protections available to persons inside the United States are unavailable to aliens outside our geographic borders")*; Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206 (1953) (limiting procedures available to a noncitizen returning from abroad who was stopped and held on Ellis Island). Appellants invoke the "entry doctrine" as a magical means to erase all rights for noncitizens who enter without inspection, but that doctrine is vastly more limited than suggested by Appellants. It applies only to those apprehended at the very threshold of the United States, generally the physical border, and limits only certain rights, generally procedural rights in connection with *immigration* proceedings. *Sale v. Haitian Centers Council, Inc*., 509 U.S. 155, 175 (1993) (noncitizens "within the United States after an entry, irrespective of its legality, [are afforded] additional rights and privileges not extended to those . . . merely 'on the threshold of initial entry'"); *Martinez-Aguero v. Gonzalez*, 459 F.3d 618, 622 (5th Cir. 2006) (recognizing "[t]he crucial distinction" made in *Zadvydas* between noncitizens stopped at the border and those who have entered the United States); *Lynch v. Cannatella*, 810 F.2d 1363, 1373 (5th Cir. 1987) (explaining that the entry fiction limits certain rights of "*excludable* [noncitizens]"—i.e. those stopped at the border—"with regard to immigration and deportation proceedings").

Appellants identify no precedential decision eliminating constitutional liberty protections for individuals encountered after entry without inspection.[19]

Under these long-standing constitutional understandings, Immigration Court custody redetermination hearings were traditionally held for individuals who entered without inspection and were placed in removal proceedings but were unavailable to "arriving" noncitizens apprehended at a port of entry. *See* 8 C.F.R. § 1236.1(d); 8 C.F.R. § 1003.19(h); 8 C.F.R. § 1001.1(q). The Board of Immigration Appeals recognized this distinction, permitting custody hearings for individuals apprehended after entry while withholding them from noncitizens apprehended at a port of entry. *See Matter of D-J-*, 23 I&N Dec. 572 (AG 2003) (recognizing availability of bond hearings for Haitians who arrived by boat and came ashore before apprehension). *Amici* legal service providers have represented hundreds, if not thousands, of noncitizens who entered without inspection at bond

[19] The Supreme Court's decision in *Dep't of Homeland Sec. v. Thuraissigiam* did not change the long-settled doctrine that individuals, even at the threshold of the United States, enjoy fundamental constitutional protections, including against arbitrary detention. 591 U.S. 103, 107 (2020). *Thuraissigiam* related only to procedures due in connection with removal and status questions, not with personal liberty. The Court limited the process due in *immigration* proceedings for very recent entrants into the United States but specifically noted that the analysis would be different if the case involved a habeas petition involving physical liberty. *Id*. at 119-20. The new statutory interpretation that treats those who enter without inspection as forever "applicants for admission" who are "seeking admission" can change immigration procedures but cannot alter the constitutional liberty protections guaranteed to all who are apprehended on U.S. territory.

hearings. These hearings were held pursuant to the pre-*Yajure Hurtado* statutory interpretation, but that interpretation followed the constitutional framework that granted greater procedural rights to those who had entered the United States. While the interpretation of the statute has changed, the reach of constitutional protections cannot.

There can be no doubt that the category of noncitizens now subject to mandatory detention under *Buenrostro-Mendez* enjoy the full panoply of procedural and substantive rights due to those encountered within the United States. Those affected include thousands of people who have lived well within the United States for decades, establishing strong family and community ties. Some have spent virtually their entire lives in this country. *See, e.g., Carabantes v. Bondi*, 2026 WL 689995, at *1 (W.D. Tex. Mar. 5, 2026) (granting habeas filed by a nineteen-year-old who had lived in the U.S. since he was one year old and had no criminal history).

B. *Connecticut Dept. of Public Safety v. Doe* Has No Bearing on the Procedural Due Process Protections that are Required

The Government's reliance on *Connecticut Dept. of Public Safety v. Doe*, 538 U.S. 1 (2003), to eschew procedural due process rights is also misplaced. In *Connecticut*, the relevant statute indicated that Congress had determined that certain convictions required registration as a sex offender, and the Court held that procedural protections to test an individuals' current dangerousness and protect

them from reputational harm were not necessary because the registration requirement was intended simply to share already public information, not to assess dangerousness, and was imposed only based on certain past convictions.

In the present case, the interest implicated is not merely reputational harm but physical liberty. Additionally, unlike the criminal conviction that was the triggering event in *Connecticut*—which would have received the full panoply of procedural protections due to criminal defendants—here there is no prior event or individualized determination of any kind justifying detention. Thus, more procedure is required in connection with detention under 8 U.S.C. § 1225(b)(2).

Even more importantly, the Court in *Connecticut* relied heavily on the fact that there was no substantive question regarding the underlying statutory scheme. Since that unchallenged scheme made registration mandatory for certain convictions, there were no factual or legal determinations to be made, and additional procedural protections were thus not necessary. The opposite is true here. The application of 8 U.S.C. § 1225(b)(2) to all individuals who entered without inspection raises substantive questions about liberty deprivations without a showing of flight risk or danger. While the government contends that danger and flight are irrelevant to the statute, they certainly are not irrelevant to whether detention is legitimate, as required by the Due Process Clause. Congress cannot render constitutionally critical facts irrelevant simply by omitting them from the

statute's reach. Instead, procedures are required to determine whether detention under the statute can be constitutionally justified in a particular case.

C. Individualized Bond Hearings Are Necessary Under the *Mathews v. Eldridge* Framework.

Because procedural protections are necessary to ensure that detention rests on a constitutionally sufficient justification, the question becomes what process is due. That inquiry is governed by the framework in *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). Each factor strongly supports the need for individualized Immigration Court custody determinations for Petitioners and others in similar circumstances.

1. The Private Interest is at its Apex

First, the private interest at stake, freedom from physical detention, is among the most fundamental protected by the Constitution. Immigration detention entails not only loss of liberty, but also confinement in conditions that are often punitive, medically inadequate, and psychologically harmful.

A*mici*, as well as undersigned counsel, have witnessed and documented horrible conditions in immigration detention facilities. A report by the University of Texas School of Law Immigration Clinic describes conditions at Hutto, where Petitioners were detained, as threatening "health, safety, and dignity."[20] Hutto is a

[20] Immigration Clinic, University of Texas School of Law, *The T. Don Hutto Residential Center: A Report on Conditions of Confinement* 6 (Mar.

"dehumanizing, restrictive, and isolated environment" that has been "plagued by sexual abuse" and where medical care "ranges from inadequate to life threatening."[21] The report points out that "[m]any of Hutto's failings—such as the provision of inedible food, the use of forced labor, and the withholding of medical care—directly result in increased profit margins" for CoreCivic, the private prison company that operates the facility.[22]

Another report published by RAICES, Texas A&M School of Law Immigrant Rights Clinic, and University of Texas School of Law Immigration Clinic, documented how immigrants held at the West Texas Detenction Center near El Paso were subjected to indiscriminate use of pepper spray, solitary confinement, threats, racial slurs, denial of medical care, and denial of religious accommodations, as well as coercion to sign for voluntary deportations.[23]

Recent litigation challenging mandatory detention filed by the Texas Civil Rights Project, another *amici* in this case, included a petitioner who was previously detained at the South Florida Detention Facility ("Alligator Alcatraz"), where he

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2021), https://law.utexas.edu/wp-content/uploads/sites/11/2021/04/2021-IC-UTLaw_Hutto.pdf.

[21] *Id.*

[22] *Id.* at 15.

[23] Texas A&M School of Law Immigrant Rights Clinic, RAICES & University of Texas School of Law Immigration Clinic, *"I Was Treated Like an Animal": Abuses Against African Detainees at the West Texas Detention Facility* (2018), https://law.utexas.edu/clinics/2018/03/22/abuses-at-wtdf/.

had "no access to phones or medical services," "the lights were on 24/7," and "he had no water to bathe." *See First Amended Petition for Writ of Habeas Corpus & Class Action Complaint* ¶ 81, *Alvarez Perez*, No. 3:26-cv-00758-KC (W.D. Tex. Apr. 8, 2026). He was then transferred to the ERO El Paso Camp East Montana, where he was deprived of "basic hygiene products like soap and toilet paper," and dirty water flowed into the dining area. *Id.* These conditions, combined with inadequate medical services, inflicted significant physical and psychological harm. *Id.* at ¶ 82.

The harms extend well beyond the detained individual. Many are primary caregivers and financial providers for U.S. citizen children. Their detention without any opportunity for release causes immediate economic instability, disruption of caregiving, and significant distress to children, who frequently experience anxiety, behavioral changes, and educational setbacks due to separation.

Amici's experiences reflect these realities. One individual who reached out to *amici*, Alejandro, was detained after several decades in the U.S. and was the sole provider for his four U.S.-citizen children. His teenage son has been forced to work and sell the family car, leaving the family without reliable transportation, and they are struggling to afford another child's medication. His detention has also reverberated through his Dallas community, where he lived for thirty-five years,

working as a cook in local restaurants and contributing regularly to the Catholic church he attended.

Similarly, Heriberto, who entered without inspection in 2018, recently married a U.S. citizen, and became a stepfather, has seen his family's plans to move into their own house upended following his detention. He has been transferred repeatedly between facilities and denied consistent access to necessary medications, while enduring unsanitary conditions and delays in medical care. His detention has taken a significant emotional toll on the family: both he and his wife are currently struggling with depression, and their son has become increasingly anxious about the family's finances. Detention has also disrupted their religious life, which had included regular church attendance, Bible school, and marital counseling. These accounts illustrate the cascading harms that flow from detention without any opportunity for individualized review.

2. The Risk of Erroneous Deprivation is High

The second Mathews factor—the risk of erroneous deprivation—likewise weighs strongly in favor of procedural safeguards. As reflected in the stories described above, individuals subject to mandatory detention under *Buenrostro-Mendez* include those who pose no flight risk or danger. Many have U.S. citizen spouses and children, decades of presence in this country, strong community ties, and no criminal history. Some have even won their cases in Immigration Court but

remained detained because the government appealed. *See, e.g., Licona Membreno v. Thompson*, 2026 WL 93980, at *1 (W.D. Tex. Jan. 7, 2026) (cancellation of removal granted); *Mendez v. Noem*, 2025 WL 3124285, at *3 (D. Nev. Nov. 7, 2025) (cancellation of removal granted); *Mukhin v. Rose*, 2026 WL 524266, at *2 (M.D. Pa. Feb. 25, 2026) (asylum granted).

The risk of error is especially acute where mandatory detention is imposed on individuals who have already demonstrated compliance with less restrictive conditions. Federal courts have repeatedly granted habeas petitions filed by noncitizens who entered without inspection, were later apprehended and released on their own recognizance, and then were detained under a categorical regime, despite having complied with their proceedings. *See, e.g., Cruz-Reyes,* No. 5:26-CV-60, 2026 WL 332315, at *1 (granting habeas where petitioner was previously released on Order of Recognizance); *Bonilla Chicas*, No. 5:26-CV-00131, 2026 WL 539475, at *2 (same). In such cases, detention serves no legitimate purpose, raising concerns that it is being used to "deter[] [a noncitizen] from pursuing [a] claim for [] relief by agreeing to self-deport." *Morales v. Thompson*, 2026 WL 911448, at *13 (W.D. Tex. Mar. 25, 2026).

3. The Government's Interests Do Not Justify the Absence of Procedural Safeguards.

The third *Mathews* factor, the government's interests, does not alter the balance. The administrative burden of providing additional procedures to assess

flight risk or danger is modest; for decades, immigration courts routinely conducted such hearings for individuals who entered without inspection prior to *Yajure Hurtado*. Nor would these procedures undermine the government's interest in ensuring appearance at proceedings or protecting public safety, since those are addressed in custody determinations.

By contrast, categorical detention imposes significant financial and social costs. Detention averages roughly $157 per person per day,[24] while also shifting burdens onto families and communities. When parents are detained, the resulting instability is borne by local support networks. Faith-based organizations, in particular, absorb these costs by providing financial assistance, childcare, and pastoral care to destabilized families, even as they lose active members who contributed to congregational life.

For example, Guillermo is a father of seven children, including a five-year-old daughter with autism. He lived in the U.S. for over fifteen years and was the primary provider for his family before being detained by ICE and contacting one of *amici* for assistance. He attended Catholic church every Sunday in Coppell, Texas, where he also participated in a program called Alpha that involved Bible study and encouraging others to attend church more regularly. Now that his wife has become

[24] Transactional Records Access Clearinghouse (TRAC), *Number of Migrants on ATD Decreases* (Feb. 29, 2024), https://tracreports.org/whatsnew/email.240229.html.

a single mother to seven children, his church will need to assist the family. Among other things, the community is helping his family with transportation, since his wife did not know how to drive.

Similarly, Erik is a father of four who has lived in the U.S. for eighteen years and was the sole earner for his family. Prior to his detention by ICE under 1225(b)(2), he attended an Evangelical church in Austin, where he had a strong bond with the pastor and other church members. His pastor has stepped up to help his family, including his traumatized children.

In these situations, individualized custody determinations both satisfy constitutional requirements and advance the government's stated objectives. They ensure that detention is not imposed in cases where it serves no legitimate purpose.

CONCLUSION

Based on the foregoing, *amici* respectfully request that the Court affirm the district courts' decisions below.

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Respectfully submitted,

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Texas Immigration Law Council

Faith-Based Organizations

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Cathedral of Saint Andrew (Grand Rapids, MI)

Communities Organized for Public Service/Metro Alliance (San Antonio, TX)

Dallas Area Interfaith (Dallas, TX)

Earth Sanctuary (interfaith organization)

Faith Commons (Dallas, TX)

First Congregational Church (Houston, TX)

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Interfaith Welcome Coalition (San Antonio, TX)

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The Metropolitan Organization (Houston, TX)

Oak Lawn United Methodist Church (Dallas, TX)

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on April 24, 2026. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Fatma Marouf

Fatma Marouf

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because the brief contains 6494 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief also complies with the typeface and typestyle requirements of Fed. R. App. P. 32(g)(1) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Times New Roman fourteen-point.

/s/ Fatma Marouf

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