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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Lazaro MALDONADO BAUTISTA, et
al., on behalf of themselves and others
similarly situated,

Plaintiffs-Petitioners,

v.

Kristi NOEM, Secretary, Department of
Homeland Security, et al.,

Defendants-Respondents.

No. 5:25-cv-01873

**[PROPOSED] BRIEF FOR STATES
OF NEW YORK, CALIFORNIA,
ARIZONA, COLORADO,
CONNECTICUT, DELAWARE,
HAWAI'I, ILLINOIS, MAINE,
MARYLAND, MASSACHUSETTS,
MICHIGAN, MINNESOTA,
NEVADA, NEW JERSEY,
OREGON, RHODE ISLAND,
VERMONT, WASHINGTON, AND
THE DISTRICT OF COLUMBIA
AS AMICI CURIAE SUPPORTING
PLAINTIFFS-PETITIONERS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Hearing Date: October 17, 2025
Time: 2:00 p.m.
Courtroom: 2
Judge: Hon. Sunshine S. Sykes

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INTRODUCTION AND INTEREST OF AMICI CURIAE

The undersigned 19 States¹ and the District of Columbia, herein referred to as Amici States, submit this amicus curiae brief in support of Plaintiffs-Petitioners' motion for partial summary judgment (ECF No. 42), which asks the Court to declare unlawful and vacate Defendants-Respondents' new policy of mandatory detention for all noncitizens who entered the United States without inspection. That new policy requires detention without individualized bond hearings, and thus without regard to the amount of time those noncitizens have been living in the United States or any other factors that bear on the need for such detention. The policy is contrary to any reasonable reading of the immigration detention statutes; 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 not subject to unnecessary civil immigration detention while they seek to demonstrate they should be allowed to remain in the United States. 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 law, which generally requires an individualized showing of danger or risk of flight in order to justify prolonged

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

1 detention. That vast experience demonstrates that Defendants’ new policy does not
2 serve the purpose of protecting the community or preventing flight and is inconsistent
3 with the Constitution’s guarantee of due process, which unquestionably applies to
4 Plaintiffs and those they seek to represent. It is thus not surprising that the policy
5 contravenes the statute and all evidence of Congressional intent.
6

7
8 Amici States are home to nearly six million undocumented noncitizens,² many
9 of whom are in the process of pursuing legal status—for instance, through
10 applications for asylum, cancellation of removal, or other relief—in removal
11 proceedings. These individuals are valued and active contributors to communities
12 and work forces. They are often the beloved spouses, parents, and other close
13 relatives of U.S. citizens or lawful permanent residents. They are valued employees
14 and employers and critical sources of financial and emotional support for their
15 families. They pay billions in state, local, and federal taxes annually and contribute
16 to their States and localities in innumerable other respects.
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20 Detention pending removal proceedings can last many months or even years,
21 while noncitizens seek in those proceedings to prove they should be permitted to
22 remain in the United States. Their unnecessary detention while pursuing such efforts
23 inflicts irreparable harms on them, their families, their communities, and their States.
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26 ² Am. Immigr. Council, *Immigrants in the United States* (2025),
27 <https://tinyurl.com/4hj6cpzk> (total number of undocumented immigrants in the
28 plaintiff States calculated by selecting each plaintiff State in the “Select Location”
list and adding the number of undocumented immigrants in each).

1 For decades, noncitizens in the United States facing removal proceedings were
2 consistently afforded individualized bond determinations pursuant to 8 U.S.C. §
3 1226(a) and a predecessor statute, whether or not they previously entered the United
4 States without inspection. But pursuant to the new policy challenged in this case, the
5 U.S. Department of Homeland Security (DHS) is now subjecting all of the millions
6 of noncitizens who entered without inspection to mandatory detention without access
7 to bond hearings, based on a newly invented and erroneous interpretation of 8 U.S.C.
8 § 1225(b)(2)(A), which has not previously been applied to noncitizens who have been
9 living in the United States. This unlawful policy will inevitably inflict irreparable
10 harms on detained noncitizens, their families, their communities, and their States.
11

12 Amici States' experience makes clear that Defendants' novel mandatory
13 detention policy inflicts vast harms while not serving any valid purpose. The policy
14 is inconsistent with due process principles, reverses a longstanding understanding of
15 the law, and is plainly inconsistent with what Congress intended. Amici States have
16 extensive experience with state-law civil detention schemes, and with pretrial
17 detention during the pendency of legal proceedings. In these schemes, States are
18 ordinarily required to make an individualized showing that prolonged detention is
19 warranted, consistent with due process. Amici States' experience shows that
20 affording noncitizens individualized bond hearings properly balances public safety
21 and other governmental interests against the risk of unnecessarily depriving
22 individuals in the United States of their essential liberty interest. Amici States'

1 experience also supports the conclusion that Congress recognized that “civil
2 commitment for *any* purpose constitutes a significant deprivation of liberty that
3 requires due process protection,” *Addington v. Texas*, 441 U.S. 418, 425 (1979)
4 (emphasis added), and thus intended for Plaintiffs to have access to bond hearings.
5

6 7 ARGUMENT

8 **I. DEFENDANTS’ MANDATORY DETENTION POLICY** 9 **IRREPARABLY HARMS NONCITIZENS, THEIR FAMILIES,** 10 **THEIR COMMUNITIES, AND THEIR STATES.**

11 Unnecessary detention during removal proceedings is devastating for
12 noncitizens, their families, their communities, and their States. The United States is
13 home to approximately 45 million immigrants,³ including nearly 12 million
14 undocumented immigrants,⁴ most of whom have lived in the United States for more
15 than a decade.⁵ Nearly six million undocumented immigrants live in Amici States.⁶
16 These many individuals are irreparably harmed by Defendants’ novel policy of
17 mandatory detention, without an opportunity to prove in a bond hearing that detention
18 is unnecessary.
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22 ³ Am. Immigr. Council, *Immigrants in the United States* (Sep. 21, 2021),
23 <https://tinyurl.com/a9866urw>.

24 ⁴ *Id.*

25 ⁵ Bryan Baker & Robert Warren, U.S. Dep’t of Homeland Sec., *Estimates of*
26 *the Unauthorized Immigrant Population Residing in the United States: January*
27 *2018–January 2022* (Apr. 2024), <https://tinyurl.com/4f7x45hd>; Matthew Lisiecki &
28 Gerard Apruzzese, Ctr. for Migration Stud., *Proposed 2024 Mass Deportation*
Program Would Socially and Economically Devastate American Families (Oct. 9,
2024), <https://tinyurl.com/ychvj976>.

⁶ *See supra* note 2.

1 Noncitizens who are subjected to immigration detention are often made to suffer
2 overcrowding, unsanitary conditions, and inadequate medical and mental health
3 services.⁷ Detention can disrupt the continuity of detainees' medical care,⁸ worsen
4 preexisting medical conditions, and create new ones.⁹ Immigration detention also
5 poses substantial risks for vulnerable detainees such as women and LGBTQ+
6 individuals, who experience abuse, sexual harassment, and medical neglect at
7 disproportionately high rates while in immigration custody.¹⁰ Recent reports further
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11 ⁷ Caitlin Patler, Altaf Saadi & Paola Langer, *The Health-Related Experiences*
12 *of Detained Immigrants With and Without Mental Illness*, 11 J. Migr. Health 1, 4
13 (2025); Physicians for Hum. Rts., “Endless Nightmare”: Torture and Inhuman
14 *Treatment in Solitary Confinement in U.S. Immigration Detention* (Feb. 6, 2024),
15 <https://tinyurl.com/4jd5988t>; Jasmine Garsd, *In Recorded Calls, Reports of*
16 *Overcrowding and Lack of Food at ICE Detention Centers*, NPR (June 6, 2025),
17 <https://tinyurl.com/4wh8p8s9>; Cal. Dep’t of Just., *Immigration Detention in*
18 *California: A Comprehensive Review with a Focus on Mental Health* 5-8 (2025),
19 <https://tinyurl.com/5n89j935> (documenting serious deficiencies in mental health care
20 and conditions for persons with mental health care conditions detained in
21 immigration detention facilities across California).

22 ⁸ Patler, *supra* note 7, at 4; *see, e.g., Rodriguez v. Bostock*, 779 F.Supp.3d
23 1239, 1249 (W.D. Wash. 2025) (plaintiff lost access to medication for over a week
24 while detained, causing health issues).

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

27 ¹⁰ *See* Liza Doubossarskaia, et al., “No Human Being Should Be Held There”:
28 *The Mistreatment of LGBTQ and HIV-Positive People in U.S. Federal Immigration*
Jails, Nat’l Immigrant Just. Cntr. (June 2024), <https://tinyurl.com/m6f9j3rn>, at 13-
14, 17-31; Nora Ellmann, *Immigration Detention Is Dangerous for Women’s Health*
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Placing LGBT Immigrants at Severe Risk of Sexual Abuse, Ctr. for Am. Progress
(May 30, 2018), <https://tinyurl.com/y27np84r>; *see also* Cal. Dep’t of Just.,
(continued...)

1 show that many immigration detention facilities are operating over capacity,¹¹ and
2 conditions of confinement are deteriorating.¹² One study found that detainees
3 perceive the poor conditions of detention as pressure to relinquish their claims, forego
4 immigration court proceedings, and leave the United States.¹³

6 Moreover, many noncitizens affected by Defendants' new mandatory detention
7 policy, including some of the Plaintiffs here, reside in households with U.S.-citizen
8 children, or have citizen spouses and other relatives. Indeed, a large majority of
9 households with an undocumented individual also include at least one U.S. citizen.¹⁴
10 Nearly ten million U.S. citizens live in a home with one or more undocumented
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16 *Immigration Detention in California* (Feb. 2019), <https://tinyurl.com/muhckyyt>
17 (discussing findings including “delayed or inadequate medical care” and “inadequate
18 mental health staffing and services” in immigration detention facilities).

19 ¹¹ TRAC Immigr., *ICE Contractual Capacity and Number Detained: Overcapacity vs. Overcrowding* (July 8, 2025), <https://tinyurl.com/yhh756py>.

20 ¹² Miriam Jordan & Jazmine Ulloa, *Concerns Grow Over Dire Conditions in Immigration Detention*, N.Y. Times (July 1, 2025), <https://tinyurl.com/33jnn7cd>;
21 Garsd, *supra* note 7; see Didi Martinez, Julia Ainsley & Laura Strickler, *Immigrants in Overcapacity ICE Detention Say They're Hungry, Raise Food Quality Concerns*,
22 NBC News (July 14, 2025), <https://tinyurl.com/4bkvvunr>; see also *Vazquez Perez v. Decker*, No. 18-cv-10683 (AJN), 2020 WL 7028637, at *10 (S.D.N.Y. Nov. 30, 2020) (evidence 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”).

23 ¹³ Diaz et al., *supra* note 9, at 2033.

24 ¹⁴ See Lisiecki, *supra* note 5, at 3 (finding 4.7 million mixed-status households
25 in the United States, which include “at least one undocumented resident and at least
26 one citizen or legal noncitizen resident,” but only 1.1 million households containing
27 only undocumented individuals).
28

1 individuals,¹⁵ while more than four million U.S.-citizen children live with an
2 undocumented parent.¹⁶

3
4 The well-established detrimental effects of detention of close family members
5 on whose wages the family may depend include housing insecurity, economic
6 instability, and food insecurity.¹⁷ The sudden separation caused by immigration
7 detention also inflicts psychological trauma on detainees' children, and these children
8 are more likely to suffer from depression, anxiety, and post-traumatic stress
9 disorder.¹⁸ The psychological and emotional effects of a parent's detention
10 negatively impact children's physical health, brain development, performance in
11 school, and relationships with friends and the non-detained parent.¹⁹ Fear of
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15 ¹⁵ *Id.*

16 ¹⁶ Am. Immigr. Council, *New Data: Immigrants Keep Economy Strong, As*
17 *Congress Considers Wasting Billions on Mass Deportation* (Feb. 25, 2025),
<https://tinyurl.com/35fbkpyr>.

18 ¹⁷ See Randy Capps et al., Urban Inst. & Migration Pol'y Inst., *Implications of*
19 *Immigration Enforcement Activities for the Well-Being of Children in Immigrant*
20 *Families: A Review of the Literature* 1, 9-14, 17 (2015),
<https://tinyurl.com/3zy4wk54>; Heather Koball et al., Urban Inst. & Migration Pol'y
21 Inst., *Health and Social Service Needs of U.S. Citizen Children with Detained or*
22 *Deported Immigrant Parents* 5-9 (2015), <https://tinyurl.com/yc5p6j86>; see also
23 *Severing a Lifeline: The Neglect of Citizen Children in America's Immigration*
Enforcement Policy, Dorsey & Whitney LLP, 65-71 (Mar. 20, 2009),
<https://tinyurl.com/zj5352vh>.

24 ¹⁸ Am. Immigr. Council, *U.S. Citizen Children Impacted by Immigration*
25 *Enforcement* (June 24, 2021), <https://tinyurl.com/2pzeb68r>; Randy Capps et al.,
26 Migration Pol'y Inst., *Immigration Enforcement and the Mental Health of Latino*
High School Students 7-8 (Sep. 2020), <https://tinyurl.com/3wwrdmcw>; Randy Capps,
27 *Implications of Immigration Enforcement Activities for the Well-Being of Children*
in Immigrant Families: A Review of the Literature, *supra* note 17, at 9-10.

28 ¹⁹ Koball et al., *supra* note 17, at 5, 11.

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

10 Detention of noncitizens during removal proceedings also deprives States and
11 localities of noncitizens' substantial economic contributions. Immigrants comprise
12 more than 19% of the American workforce,²² and contribute over \$2 trillion to the
13 United States's gross domestic product,²³ and pay over \$650 billion in taxes.²⁴ In
14 2019, immigrant-owned businesses generated over \$86 billion in income, and
15 immigrant-led households added over \$1.3 trillion to the United States economy as
16 consumers.²⁵

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21 ²⁰ Capps et al., *Immigration Enforcement and the Mental Health of Latino High School Students*, *supra* note 18, at 3, 17.

22 ²¹ 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 ²² Bureau of Lab. Stat., U.S. Dep't of Lab., USDL-25-0847, *Labor Force Characteristics of Foreign-Born Workers Summary 1* (2025), <https://tinyurl.com/38tyv3hj>.

24 ²³ Daniel Costa et al., Econ. Pol'y Inst., *Immigrants and the Economy* (Apr. 15, 2025), <https://tinyurl.com/yunxy398>.

25 ²⁴ Am. Immigr. Council, *Map the Impact* (2023), <https://tinyurl.com/2tsbr3k8>.

26 ²⁵ Am. Immigr. Council, *Immigrants in the United States*, *supra* note 3.

1 Undocumented immigrants represent a substantial portion of those making
2 economic contributions to their communities. They constitute nearly five percent of
3 the total workforce and a much larger portion of the workforce in key job sectors
4 such as agriculture and construction.²⁶ In 2019 and 2020, nearly half of crop workers
5 were undocumented.²⁷ In 2023, households headed by undocumented immigrants
6 paid nearly \$90 billion in taxes, including approximately \$34 billion in state and local
7 taxes, and added almost \$300 million to the economy as consumers.²⁸ Undocumented
8 immigrants also contribute billions of dollars to programs such as Social Security and
9 Medicare.²⁹ All these contributions are lost when these individuals are unnecessarily
10 detained.
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14 Unnecessary immigration detention likewise undermines Amici States'
15 interests in public safety and the effective administration of justice. Among other
16 things, state and local law enforcement rely on immigrant community members to
17 report crimes to local authorities, cooperate in law enforcement investigations, and
18 testify in legal proceedings. However, increased immigration enforcement—
19 including immigration detention—substantially chills immigrants' interactions with
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24 ²⁶ Abigail Kolker & Holly Straut-Eppsteiner, Cong. Rsch. Serv., R47218,
25 Unauthorized Immigrants: Frequently Asked Questions 10 (2022),
26 <https://tinyurl.com/bddsrbjv>.

27 ²⁷ *Id.*

28 ²⁸ Am. Immigr. Council, *supra* note 2.

²⁹ Carl Davis, Marco Guzman & Emma Sifre, Inst. on Tax'n and Econ. Pol'y,
Tax Payments by Undocumented Immigrants 3 (2024), <https://tinyurl.com/2ftzuaf4>.

1 law enforcement and therefore makes it much more difficult to investigate and
2 prosecute crimes such as domestic violence, human trafficking, and labor
3 violations.³⁰ Additionally, detention impedes the ability of criminal, family, and
4 other state courts to resolve cases involving the detained individual. Noncitizens
5 often cannot appear as witnesses, or even defendants, in criminal cases when
6 detained.³¹ Detained individuals also face significant barriers to participation in
7 custody proceedings, which under certain circumstances can result in the termination
8 of parental rights.³²

11
12 Further, detention hurts a noncitizen's prospects of obtaining immigration relief,
13 even when the individual is legally entitled to remain in the United States, by
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16 ³⁰ See Meg Anderson, *Some Legal Experts Say ICE in Criminal Courts Means*
17 *a Slower Path to Justice*, NPR (Aug. 8, 2025), <https://tinyurl.com/4wphfp2r>; Daniela
18 Alulema & Jacquelyn Pavilon, Ctr. for Migration Stud., *Immigrants' Use of New*
19 *York City Programs, Services, and Benefits: Examining the Impact of Fear and Other*
20 *Barriers to Access* (2022), <https://tinyurl.com/2m2fmr56>; *New York v. U.S. Immigr.*
21 *& Customs Enf't*, 431 F.Supp.3d 377, 382, 391 (S.D.N.Y. 2019); Min Xie & Eric P.
22 Baumer, *Neighborhood Immigrant Concentration and Violent Crime Reporting to*
23 *the Police: A Multilevel Analysis of Data from the National Crime Victimization*
24 *Survey*, 57 *Criminology* 237, 249 (2019); Immigrant Defense Project, *Safeguarding*
25 *the Integrity of Our Courts: The Impact of ICE Courthouse Operations on New York*
26 *State* (2019), <https://tinyurl.com/438jezxp>.

27 ³¹ See Proposed Amicus Brief of New York District Attorneys in Support of
28 Defendants' Motion to Dismiss the Complaint at 5, *United States v. State of New*
York, No. 1:25-cv-744 (N.D.N.Y. Aug. 11, 2025), ECF No. 30; Ben Markus &
Allison Sherry, *ICE Detention, Deportation Can Deny Justice in Local Criminal*
Cases, Frustrating Prosecutors, CPR News (Apr. 10, 2025),
<https://tinyurl.com/554ckmn6>.

³² Am. Immigr. Council, *U.S. Citizen Children Impacted by Immigration*
Enforcement, *supra* note 18.

1 impeding their ability to obtain counsel³³ and gather evidence.³⁴ Noncitizens who are
2 represented in removal proceedings are far more likely to pursue immigration relief
3 than noncitizens who lack representation, and far more likely to obtain such relief if
4 they do pursue it.³⁵ Moreover, detention's impediments to noncitizens' ability to
5 obtain immigration relief are amplified because ICE regularly transfers detained
6 individuals to detention centers and jails in other states,³⁶ which can further disrupt a
7 detainee's ability to obtain, or retain, an attorney, and even unfavorably alter the law
8 governing their immigration case if the detainee is moved to a different federal
9 judicial circuit, as is often the case.³⁷

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

18 ³³ See Am. Immigr. Council, *Access to Counsel in Immigration Court* (Sep.
19 27, 2016), <https://tinyurl.com/y889prk7>.

20 ³⁴ See, e.g., *Moncrieffe v. Holder*, 569 U.S. 184, 201 (2013) (noncitizen's
21 ability to locate witnesses may be further complicated by detention).

22 ³⁵ Am. Immigr. Council, *Access to Counsel in Immigration Court*, *supra* note
23 33; see also Vera Inst. of Just., *Immigration Court Legal Representation Dashboard*
(July 2025), <https://tinyurl.com/yd6fex8x>.

24 ³⁶ See Leon Yin et al., *The Rising Cost of ICE Flying Immigrants to Far-Flung*
25 *Detention Centers*, Bloomberg (May 1, 2025), <https://tinyurl.com/49txexbb>; Eric
26 Levenson & Gloria Pazmino, *Why ICE is Really Moving Detainees Over a Thousand*
27 *Miles From Where They Were Arrested*, CNN (Apr. 10, 2025),
<https://tinyurl.com/npzevpum>; Am. Immigr. Council, *Council and RMIAN File FOIA*
28 *Seeking Information About Detrimental Transfers of People in ICE Custody* (Feb.
10, 2025), <https://tinyurl.com/5xsaujbe>.

³⁷ See Emily Ryo & Ian Peacock, *A National Study of Immigration Detention*
in the United States, 92 So. Cal. L. Rev. 1, 39 (2018).

1 and community supervision.³⁸ For example, in fiscal year 2024, \$3.4 billion was
2 allocated to detain a daily average of 41,500 noncitizens.³⁹ By contrast, only \$470
3 million was allocated for the federal government's Alternatives to Detention
4 Program.⁴⁰ The federal government estimates that the program costs less than \$4.20
5 each day per participant, compared with a cost of \$152 per day to detain each such
6 person.⁴¹
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8
9 Community release on bond likewise helps state and local governments avoid
10 costs associated with providing additional social services to families that are affected
11 by the detention of noncitizen family members. As noted above, families that lose a
12 wage-earning parent or relative to immigration detention are at substantially greater
13 risk of losing their housing and being unable to pay for basic needs such as groceries,
14 heating, and medical care. These consequences are likely to increase reliance on state
15 and local resources such as homeless shelters, Medicaid, and other safety net
16 programs—thus imposing substantial costs on taxpayers. In addition, some children
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23 ³⁸ See Michael D. Nicholson, Ctr. for Am. Progress, *The Facts on Immigration*
24 *Today: 2017 Edition* (Apr. 20, 2017) (discussing a 2017 study estimating that the
25 federal government would save \$1.4 billion annually by releasing more low-risk
detainees pending removal hearings), <https://tinyurl.com/3869n88w>.

26 ³⁹ Am. Immigr. Lawyers Ass'n, *Featured Issue: Immigration Detention and*
Alternatives to Detention (Mar. 14, 2025), <https://tinyurl.com/5n6hd92y>.

27 ⁴⁰ *Id.*

28 ⁴¹ U.S. Immigr. & Customs Enf't, *Alternatives to Detention* (Feb. 27, 2025),
<https://tinyurl.com/3bmbnz57>.

1 whose parents are detained may be forced into foster care, which would impose
2 additional burdens on already strained state foster care budgets.⁴²

3
4 While, to be sure, the government has legitimate interests in promoting public
5 safety and ensuring that noncitizens appear at future proceedings, the degree to which
6 that interest is served, if any, by the detention of noncitizens like Plaintiffs cannot be
7 ascertained without a bond hearing. And there is every reason to believe that
8 detention of noncitizens with close ties to the United States—who were routinely
9 granted bond without issue before Defendants’ recent policy change—will very often
10 not serve any governmental interest.⁴³ Indeed, empirical evidence shows that
11 undocumented immigrants commit less crime than citizens in the United States,⁴⁴
12 and most show up at their immigration court hearings, including while released on
13 bond.⁴⁵
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19 ⁴² See Matthew Lisiecki, Kevin Velasco & Tara Watson, Ctr. for Migration
20 Stud., *What Will Deportations Mean for the Child Welfare System?* (Apr. 22, 2025),
21 <https://tinyurl.com/3kfk3mb8>; Am. Immigr. Council, *U.S. Citizen Children Impacted*
22 *by Immigration Enforcement*, *supra* note 18; Mark Greenberg et al., Migration Pol’y
23 Inst., *Immigrant Families and Child Welfare Systems: Emerging Needs and*
24 *Promising Policies* 17-19 (2019), <https://tinyurl.com/2np44ywb>.

24 ⁴³ See Ariel G. Ruiz Soto, Migration Pol’y Inst., *Explainer: Immigrants and*
25 *Crime in the United States* (Oct. 2024), <https://tinyurl.com/p7yc2fx4>; Nina Siulc &
26 Noelle Smart, Vera Inst. of Just., *Evidence Shows That Most Immigrants Appear for*
27 *Immigration Court Hearings* (Oct. 2020), <https://tinyurl.com/mrxbvuvh>.

26 ⁴⁴ See Soto, *supra* note 43; Nat’l Inst. of Just., *Undocumented Immigrant*
27 *Offending Rate Lower Than U.S.-Born Citizen Rate* 2-4 (Sep. 12, 2024),
28 <https://tinyurl.com/4xw3p6p2>.

⁴⁵ Siulc & Smart, *supra* note 43.

1 For all these reasons, Defendants’ unprecedented policy of mandatory detention
2 without access to bond hearings for noncitizens living in the United States causes
3 irreparable harm and is detrimental to the public interest. Thus, it is unsurprising that
4 there is no evidence Congress intended to permit it.
5

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7 **II. AMICI STATES’ EXPERIENCE SHOWS THAT MANDATORY**
8 **DETENTION WITHOUT INDIVIDUALIZED BOND HEARINGS**
9 **IS NOT NECESSARY TO PREVENT DANGER OR FLIGHT,**
10 **CONTRAVENES CONGRESS’S INTENT, AND RAISES SERIOUS**
11 **DUE PROCESS CONCERNS.**

12 As Plaintiffs explain, mandatory civil detention of noncitizens who have lived
13 in the United States for years and have no criminal record, without any opportunity
14 to show a neutral adjudicator that they should be released because they are not
15 dangerous or a flight risk, was simply not contemplated by Congress when it enacted
16 sections 1225(b)(2)(A) and 1226(a).

17 That is clear not only from the text, structure, and legislative history explained
18 by Plaintiffs, but also from the background context of settled state practice of civil
19 and pretrial detention, informed by the Due Process Clause. Amici States have
20 extensive experience with that background context, through their common
21 experience with civil and pretrial detention in a variety of forms, and with the
22 hearings before a neutral adjudicator that are ordinarily used to evaluate whether
23 detention is necessary in given individual cases. Evidence of “widely shared” state
24 practice has long provided “concrete indicators of what fundamental fairness and
25 rationality,” and due process, require. *Schad v. Arizona*, 501 U.S. 624, 640 (1991),
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1 *abrogated on other grounds by Ramos v. Louisiana*, 590 U.S. 83 (2020); *see also*
2 *Estes v. Texas*, 381 U.S. 532, 540 (1965) (consistent state practice provides “weighty
3 evidence” of what fairness requires).⁴⁶ And Congress presumably did not intend to
4 defy fairness, rationality, and due process in enacting sections 1225(b)(2)(A) and
5 1226(a). *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) (courts avoid reading
6 statutes in a manner that would render them unconstitutional).

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9 Amici States’ experience demonstrates that DHS’s new mandatory detention
10 policy is an extreme departure from the process that normally accompanies civil
11 detention, raising serious due process concerns. While individual States may vary in
12 the specific procedural protections they offer to respondents facing civil detention
13 (such as, for example, court-appointed counsel or trial by jury), they are consistent in
14 requiring an individualized determination by a neutral decisionmaker that prolonged
15 civil detention is appropriate. For instance, every State and the District of Columbia
16 provides the opportunity for hearings on whether individuals pose a risk of harm to
17 themselves or others in order to involuntarily confine them for psychiatric
18 treatment.⁴⁷ And in the more than twenty jurisdictions that authorize the civil
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23 ⁴⁶ *See also* Corinna Barrett Lain, *The Unexceptionalism of Evolving Standards*,
24 57 UCLA L. Rev. 365, 382 (2009) (“a consensus among the states (or lack thereof)
25 has been described as ‘weighty evidence,’ ‘convincing support,’ ‘significant,’ and a
26 ‘primary guide’” in due process analysis).

27 ⁴⁷ *See* Ala. Code § 22-52-8(a) (2025); Alaska Stat. § 47.30.735(a) (2025); Ariz.
28 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)
(continued...)

1 confinement of sexually dangerous or violent offenders, jurisdictions that include
2 several Amici States and the federal government, confinement is authorized only
3 upon individualized assessments that the offenders suffer from a mental abnormality
4 or personality disorder that predisposes them to commit future acts of sexual
5 violence.⁴⁸ Likewise, in criminal pretrial detention, every State, as well as the District
6 of Columbia and the federal government, in most cases requires an individualized
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10 (2025); Conn. Gen. Stat. § 17a-498 (2025); Del. Code Ann. tit. 16, § 5009 (2025);
11 D.C. Code § 21-545(a) (2025); Fla. Stat. § 394.467(7), (11) (2025); Ga. Code Ann.
12 § 37-3-62(a)-(b) (2025); Haw. Rev. Stat. § 334-60.5 (2025); Idaho Code § 66-326
13 (2025); 405 Ill. Comp. Stat. 5/3-611 (2025); Ind. Code § 12-26-5-9 (2025); Iowa
14 Code § 229.11(1) (2025); Kan. Stat. Ann. § 59-2959(b) (2025); Ky. Rev. Stat. Ann.
15 § 202A.051 (West 2025); La. Stat. Ann. § 28:55(A) (2025); Me. Stat. tit. 34-B, §
16 3864 (2025); Md. Code Ann., Health-Gen. § 10-632(a) (West 2025); Mass. Gen.
17 Laws ch. 123, § 7(c) (2024); Mich. Comp. Laws § 330.1452(1)-(2) (2025); Minn.
18 Stat. § 253B.08 (2025); Miss. Code Ann. § 41-21-71 (2025); Mo. Rev. Stat. §
19 632.335(1) (2025); Mont. Code Ann. § 53-21-120 (2025); Neb. Rev. Stat. § 71-923
20 (2025); Nev. Rev. Stat. § 433A.220(1) (2025); N.H. Rev. Stat. Ann. § 135-C:31
21 (2025); N.J. Stat. Ann. § 30:4-27.12(a) (West 2025); N.M. Stat. Ann. § 43-1-11(A)
22 (2025); N.Y. Mental Hyg. Law § 9.39(a)(3) (McKinney 2025); N.C. Gen. Stat. §
23 122C-268(a) (2025); N.D. Cent. Code § 25-03.1-26(3) (2025); Ohio Rev. Code Ann.
24 § 5122.141 (West 2025); Okla. Stat. tit. 43A, § 5-415(A)-(E) (2025); Or. Rev. Stat.
25 § 426.237(4)(b) (2025); 50 Pa. Stat. and Cons. Stat. § 7303(b) (West 2025); 40.1 R.I.
26 Gen. Laws § 40.1-5-8(d) (2025); S.C. Code Ann. § 44-17-410 (2025); S.D. Codified
27 Laws § 27A-10-5 (2025); Tenn. Code Ann. § 33-6-413(a) (2025); Tex. Health &
28 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); Treatment
Advoc. Ctr., *Grading the States: An Analysis of U.S. Psychiatric Treatment Laws*, 9-
10, 18 (2020), <https://tinyurl.com/3ftfxfta>.

⁴⁸ See Trevor Hoppe et al., UCLA Sch. of L., Williams Inst., *Civil Commitment
of People Convicted of Sex Offenses in the United States* 6-9 (Oct. 2020),
<https://tinyurl.com/4ywwpxbk>; Nat'l Dist. Att'ys Ass'n, *Civil Commitment of Sex
Offenders*, <https://tinyurl.com/mr4ykxzzr> (last updated Apr. 2012).

1 assessment of the appropriateness of detention or pretrial release conditions,
2 reserving mandatory pretrial detention for, at most, only a small category of
3 individuals charged with the most serious crimes or having a record of criminal
4 conduct or flight while on pre-trial release.⁴⁹

6 This consistent state practice is in turn consonant with the Supreme Court's
7 precedent which, when upholding state civil detention schemes, has relied heavily on
8 the fact that they are limited to a narrow group that poses a serious risk if not detained
9 and there is an individualized assessment that detention is necessary. *See, e.g.,*
10 *Kansas v. Hendricks*, 521 U.S. 346, 352-53, 357 (1997). The Supreme Court has held
11 that civil detention schemes violate due process when individualized hearings are not
12 robust enough. *See Addington*, 441 U.S. at 433 (striking down preponderance of the
13 evidence standard and imposing clear and convincing evidence standard in civil
14 commitment hearing); *Foucha v. Louisiana*, 504 U.S. 71, 80-82 (1992) (striking
15 down civil commitment scheme where government did not need to prove that
16 detainee was dangerous at hearing). Likewise, in the context of criminal pretrial
17 detention, the Supreme Court has upheld detention on the basis of future
18 dangerousness in reliance, in part, on the availability of a "prompt detention hearing"
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25 ⁴⁹ See Lisel Petis, R. Street, *Navigating Bail Reform in America: A State-by-*
26 *State Overview* (Feb. 2024), <https://tinyurl.com/2umv48hd>; Nat'l Conf. of State
27 Legislatures, *Pretrial Release: Detention* (June 20, 2022),
28 <https://tinyurl.com/5m5zbn34>; 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. R. 831 (2018); 18 U.S.C. §§ 3142(e), (f).

1 before a neutral decisionmaker. *United States v. Salerno*, 481 U.S. 739, 747, 751
2 (1987).

3
4 In fact, Amici States’ experience shows that individualized hearings to
5 determine the necessity of detention are often required even when the prospective
6 detainees at issue likely pose a substantially greater risk to public safety than
7 individuals like Plaintiffs, who have been living in the United States for years without
8 any criminal record and are accused only of a civil immigration law violation. For
9 instance, as explained above, in consistent state practice, even individuals who are
10 serial sexual offenders, or who have been arrested for serious violent crimes, are
11 ordinarily entitled to individualized assessments of the need for detention. In contrast,
12 DHS’s new mandatory detention policy provides less process to Plaintiffs and the
13 putative class than nearly anyone else—under the challenged policy, there is no
14 individualized assessment.
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18 Moreover, there is no reason to believe that Congress intended to impose such
19 outlier mandatory civil detention on noncitizens living in the United States like
20 Plaintiffs. As explained by Plaintiffs (ECF No. 42, at 4-5), when Congress enacted
21 the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA),
22 it left in place existing due process protections—including the opportunity to be
23 considered for release on bond pending removal proceedings—for noncitizens like
24 Plaintiffs. *See* 8 U.S.C. § 1226(a); *see also* H.R. Rep. No. 104-469, pt. 1, at 229
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1 (1996) (§ 1226(a) merely “restate[d] the current provisions”); H.R. Rep. No. 104-
2 828, at 210 (1996) (similar) (Conf. Rep.).

3
4 When Congress expressly subjected certain noncitizens to mandatory detention
5 without a bond hearing, it did so for a limited category of persons, including
6 noncitizens who have committed certain enumerated crimes, *see* 8 U.S.C. § 1226(c),
7 in order to address a specific problem that is inapplicable to Plaintiffs and the putative
8 class. Empirical evidence before Congress suggested that noncitizens living in the
9 United States who had previously engaged in criminal activity were committing
10 further crime while out on bond and were failing to appear in court for their removal
11 proceedings at an “unacceptable rate.” *See Demore v. Kim*, 538 U.S. 510, 518-521
12 (2003). Further evidence demonstrated that these issues stemmed from a “failure to
13 detain those [noncitizens] during their deportation proceedings” and would continue
14 to occur if bond remained available to these noncitizens, “even with individualized
15 screening[s].” *Id.* at 519-520. Accordingly, Congress adopted a “narrow” solution to
16 accommodate the federal government’s heightened interest in detaining this specific
17 group. *See id.* at 526. And, in light of this context, the Supreme Court found the
18 statute’s narrow categories for mandatory detention consistent with due process. *See*
19 *id.* at 527-28, 531. But Plaintiffs here undisputedly do not fall into any of the narrow
20 categories for which Congress found mandatory detention necessary under section
21 1226(c) or otherwise.
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1 In IIRIRA, Congress also declined to disturb its prior mandate of detention for
2 noncitizens arriving in the United States without a clear right to admission, *compare*
3 8 U.S.C. § 1225(b) (1994 ed.), *with* 8 U.S.C. § 1225(b)(2), and Congress expanded
4 the scope of that detention scheme to include certain recently arrived noncitizens, *id.*
5 § 1225(b)(1). This approach reflected Congress’s understanding of longstanding due
6 process precedent that there is an important distinction between the due process rights
7 of noncitizens already living in the United States and those who are just arriving.
8 *Compare, e.g.,* H.R. Rep. No. 104-469, pt. 1, at 163-66 (recognizing the
9 “constitutional liberty interest[s]” of noncitizens present in the United States), *with*
10 *id.* at 165-66 (assuming minimal due process rights for arriving noncitizens (citing
11 *Knauff v. Shaughnessy*, 338 U.S. 537 (1950))). *See also Mathews v. Diaz*, 426 U.S.
12 67, 77 (1976) (“The Fifth Amendment ... protects every one of these [noncitizens
13 within the jurisdiction of the United States] Even one whose presence in this
14 country is unlawful, involuntary, or transitory is entitled to that constitutional
15 protection.”). Congress’s decision to deprive newly arrived noncitizens of the
16 protection of a bond hearing was thus informed by its understanding that arriving
17 noncitizens possess weaker due process interests than noncitizens who have
18 established ties in the United States that would be harmed by detention.

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20 In short, Congress expressly authorized mandatory detention without an
21 individualized hearing only in specified categories of cases, which shows that
22 Congress did not intend to authorize it as a general practice, outside of those
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1 categories. As Defendants themselves recognized from the time IIRIRA was enacted
2 thirty years ago until their recent, sudden about-face, section 1225(b)(2)(A)’s
3 provision for mandatory detention was not intended to apply to noncitizens who have
4 physically entered and built lives in the United States, like Plaintiffs here. That is
5 because “all ‘persons’ within the United States, including aliens, whether their
6 presence here is lawful [or] unlawful,” have due process rights that those standing at
7 the border do not have. *Zadvydas*, 533 U.S. at 693. And “[f]reedom from
8 imprisonment—from government custody, detention, or other forms of physical
9 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Id.*
10 at 690. Thus, noncitizens like Plaintiffs, who have been living in the United States,
11 are entitled to due process protections that Defendants here seek to erase with their
12 new policy. And IIRIRA reflects this well-settled understanding by entitling
13 noncitizens in the United States, like Plaintiffs, to a bond hearing—that is, the same
14 opportunity to prove to a neutral adjudicator that civil detention is unnecessary that
15 is required in other civil detention schemes for individuals in the United States.
16 Defendants’ contrary mandatory detention policy is thus unlawful.⁵⁰

23 ⁵⁰ Other legislative history of IIRIRA further demonstrates that Congress
24 intended mandatory detention to be applied in very limited circumstances—not to the
25 millions of noncitizens who at some point entered the United States without
26 inspection. For instance, Congress provided for “an increase in the detention facilities
27 of the Immigration and Naturalization Service to at least 9,000 beds before the end
28 of fiscal year 1997.” Pub. L. 104-208, div. C, title III, § 386(a). But 9,000 beds would
hardly be sufficient to accommodate the broad class of noncitizens DHS now asserts
fall under section 1225(b)(2)(A).

CONCLUSION

This Court should grant Plaintiffs' motion for partial summary judgment, and further grant all requested relief.

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The undersigned, counsel of record for amicus curiae State of California,
certifies that this brief contains 5,611 words, which complies with the word limit of
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