

[Oral Argument Not Yet Scheduled]

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**No. 26-2113**

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**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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Aleksei MOROZOV,

*Petitioner–Appellee,*

v.

WARDEN, Lawrence County Jail; *et al.*

*Respondents–Appellants.*

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ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA  
5:26-cv-05030-RAL  
Hon. Roberto A. Lange, Chief Judge

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**BRIEF OF *AMICI CURIAE* ACLU FOUNDATION IMMIGRANTS’  
RIGHTS PROJECT AND ACLU OF SOUTH DAKOTA IN SUPPORT OF  
PETITIONER-APPELLEE AND AFFIRMANCE**

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae* the American Civil Liberties Union Foundation and the American Civil Liberties Union of South Dakota state that they do not have a parent corporation and that no publicly held corporation owns 10% or more of their stock.

/s/ Michael K.T. Tan

Michael K.T. Tan

September 14, 2026

*Counsel for Amici Curiae*

## INTEREST OF *AMICI CURIAE*

The American Civil Liberties Union (“ACLU”) is a nationwide, non-partisan organization with approximately over 1.3 million members dedicated to the principles of liberty and equality enshrined in the Constitution and the nation’s civil rights laws. The ACLU Foundation, through its Immigrants’ Rights Project (“ACLU IRP”) and with its state affiliates, engages in a nationwide program of litigation, advocacy, and public education to enforce and protect the constitutional and civil rights of noncitizens.

The ACLU of South Dakota directly serves South Dakotans in the Eighth Circuit. As a non-partisan organization, the ACLU of South Dakota is dedicated to serving communities throughout the state by protecting and advocating for the rights guaranteed under the United States Constitution. The ACLU of South Dakota engages in litigation, advocacy, and public education to all community members across the State to protect noncitizen rights through the enforcement of government responsibility under our Constitution.

*Amici* have significant expertise on immigration detention and have litigated numerous cases in the Supreme Court and in the courts of appeals addressing the scope and constitutionality of immigration detention. ACLU IRP is currently litigating numerous cases in courts around the country concerning the statutory and due process rights of noncitizens in immigration detention. *See, e.g., Genalo v.*

*Black*, No. 25-886, 2026 WL 1718025, at \*1 (U.S. June 15, 2026) (granting certiorari in case involving constitutional claims raised by noncitizen subject to detention under 8 U.S.C. § 1226(c)); *Santillan Quiroz v. Mullin*, 180 F.4th 1226, 1235-50 (10th Cir. 2026) (addressing statutory arguments concerning detention of noncitizens who entered without admission). ACLU IRP was counsel of record in *Herrera Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026), and *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), cases concerning immigration detention that are cited in the parties’ briefs.<sup>1</sup>

## ARGUMENT

### I. Petitioner’s Detention Violates the Due Process Clause.

*Amici* support Petitioner’s arguments that his mandatory detention without access to bond violates the Due Process Clause. U.S. Const. amend. V. (“No person shall . . . be deprived of life, liberty, or property, without due process of law.”). Beyond the fact that “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that

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<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 29(a)(2), counsel for *amici curiae* contacted counsel for Petitioner-Appellee and Respondents-Appellants, who consented to the filing of this brief.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* state that no party or party’s counsel authored this brief in whole or in part. No party, no party’s counsel, and no person other than *amici*, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

Clause protects,” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), there are multiple facts in Mr. Morozov’s case that underscore the weight of his liberty interest. Among other things, Petitioner was initially detained at the border but released from custody after the government deemed him not to be a flight risk or danger to the community. App.34, R.Doc.14-3, at 2; App.26, R.Doc.14, at 1; 8 C.F.R. § 212.5(b). And in fact, that conclusion has proven true—as Petitioner describes, he has lived in the country for about three years; found lawful work; supported his family; complied with his immigration-related obligations; and had no contact with criminal law enforcement until the routine traffic stop that led to his current custody. AB.2-3 (discussing Mr. Morozov’s life in United States). Mr. Morozov is also seeking to regularize his status through his asylum application and was granted a work permit. *Id.* at 2. In light of these circumstances, there was no constitutionally-permissible justification for the government to take him back into custody. *See generally id.* at 25-28.

The strength of these liberty interests supports both his substantive and procedural due process rights against arbitrary and unjustified detention. They also constitute a protected liberty interest giving rise to the right to a meaningful process to determine whether his detention is justified.

The government also mistakenly conflates Mr. Morozov’s rights with respect to his *admission* into the United States with his rights against *unjustified executive detention*. Because Mr. Morozov has not yet been admitted, the government says he

“is entitled only to the procedures Congress has provided through statute.” OB.34. But in support, it relies on cases focusing on a noncitizen’s rights in removal proceedings. *See id.* 34-36; *see, e.g., Landon v. Plasencia*, 459 U.S. 21, 22 (1982) (addressing rights of returning lawful permanent resident); *Kaplan v. Tod*, 267 U.S. 228, 229-31 (1925) (addressing citizenship claim of noncitizen child of naturalized citizen); *Nishimura Ekiu v. United States*, 142 U.S. 651, 662-64 (1892) (addressing constitutionality of immigration statutes that gave immigration inspector exclusive power to prevent noncitizen on ship from landing in country).

The government’s lead case, *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), only reinforces this point. That decision addressed a noncitizen who was detained within 25 yards of the border “in the very act of attempting to enter.” *Id.* at 114, 118; *accord id.* at 107, 139-40 (treating Thuraissigiam as a person at “threshold of initial entry”). Critically, *Thuraissigiam* further clarified that it had “no occasion to consider” arguments concerning “unauthorized executive detention,” as the opinion focused on the noncitizen petitioner’s right to challenge his *removal*, not his custody. *Id.* at 127 & n.21.

## **II. This Court Should Limit Its Analysis to the Particular Facts and Circumstances of Petitioner’s Case.**

*Amici* write to make one additional point. As described above, there are multiple unique facts in this case. Among other things, Petitioner here came to the United States via a port of entry and was paroled into the United States under 8

U.S.C. § 1182(d)(5)(A). App.34, R.Doc.14-3, at 2; App.26, R.Doc.14, at 1; 8 C.F.R. § 212.5(b). The government then re-detained him after he was already residing in the United States for several years, akin to a criminal parolee who is picked up again years after his initial parole. *See Morrissey v. Brewer*, 408 U.S. 471, 484 (1972) (holding that parole revocation requires hearing). Whatever the resolution of this case, *amici* urge this Court to focus on the facts at issue here. This Court need not pass on the government’s sweeping arguments regarding all noncitizens present without admission, and can reserve for future cases the applicability of the Due Process Clause in other contexts or factual circumstances.

In particular, the government makes the remarkable argument that any noncitizen who is not “admitted” under the immigration statute lacks any constitutional due process rights against his unlawful detention, and has only the rights that Congress provides. *See, e.g.*, OB.34-36. This argument would drastically rewrite a century of immigration doctrine. The Supreme Court has repeatedly recognized that the Due Process Clause protects people who have entered the United States (lawfully or not) from unjustified deprivations of liberty. *See Zadvydas*, 533 U.S. at 693 (“[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”); *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) (holding that “[t]he Fifth Amendment

entitles aliens to due process of law in the context of removal proceedings,” in case about noncitizens who entered unlawfully) (citation modified). The Supreme Court has adhered to this principle for over a century. *See, e.g., Plyler v. Doe*, 457 U.S. 202, 212 (1982) (“‘[A]ll persons within the territory of the United States,’ including aliens unlawfully present, may invoke the Fifth and Sixth Amendments to challenge actions of the Federal Government.”) (quoting *Wong Wing v. United States*, 163 U.S. 228, 238 (1896)); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (due process protects “[e]ven one whose presence in this country is unlawful, involuntary, or transitory”).

Courts have stated, when discussing a noncitizen’s procedural rights concerning admission and exclusion, that “an alien on the threshold of initial entry stands on a different footing” than “aliens who have . . . passed through our gates, even illegally.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). Accordingly, courts have drawn a distinction, in some circumstances, between a noncitizen stopped at a port of entry and paroled into the United States from those who have entered (even if unlawfully) and accrued substantial connections to this country. *See Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (recognizing “distinction between those aliens who have come to our shores seeking admission” and “those who are within the United States after an entry, *irrespective of its legality*”) (emphasis added). Notably, the government relies heavily on cases involving those stopped at ports of entry or arrested very close to the border for its

arguments. *See, e.g., Landon*, 459 U.S. at 23 (involving returning lawful permanent resident stopped at port); *Kaplan*, 267 U.S. at 230 (addressing noncitizen “stopped at the boundary line”); *see also Thuraissigiam*, 591 U.S. at 107, 114, 139 (addressing Suspension Clause and Due Process claims for judicial review of removal order against noncitizen arrested 25 yards from border).

To be clear, *amici* agree with Petitioner that he retains fundamental Due Process rights against arbitrary and unjustified detention, regardless of the circumstances of his entry into the country, or his immigration status. AB.41-47. And as stated above, *amici* also urge rejection of the government’s mistaken attempts to invoke cases like *Mezei*, *Thuraissigiam*, and the others cited above—which focus on a noncitizen’s rights with respect to his *admission*—to undermine his rights against *detention*. *Id.*

But if this Court rejects Petitioner’s arguments, it should cabin its analysis and holding to this case’s particular context, and reserve the analysis of other contexts for another day. *See, e.g., Serna v. Goodno*, 567 F.3d 944, 955 (8th Cir. 2009) (issuing holding based on “specific facts of [plaintiff’s] case” in “close question of constitutional law” concerning reasonableness of search); *Underwood v. Colonial Penn Ins. Co.*, 888 F.2d 588, 591 (8th Cir. 1989) (stressing that “holding of polygraph admissibility is limited to the narrow factual pattern presented to us”); *Sebastian v. United States*, 531 F.2d 900, 903 n.6 (8th Cir. 1976) (“Our holding of

immunity in the instant case is a narrow one limited to the circumstances involved herein.”); *see also Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) (“The Court will not formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.”) (citation and quotation marks omitted).

Declining to address the government’s maximalist positions is appropriate here because a number of appeals are pending before this Court that involve challenges to immigration detention brought by noncitizens who were detained for the first time years after entry. *See, e.g., Balwinder Singh v. Mullin*, No. 26-2165 (8th Cir.) (petitioner entered nine years ago); *Ermekov v. Mullin*, No. 26-2183 (8th Cir.) (petitioner entered three years ago); *Dharambir Singh v. Mullin*, No. 26-2199 (8th Cir.) (petitioner entered seven years ago); *Lazcano v. Mullin*, No. 26-2059 (8th Cir.) (petitioner entered three years ago). The government is moving to stay these cases pending the resolution of this appeal. *See, e.g., Order, Balwinder Singh*, No. 26-2165 (8th Cir. July 21, 2026) (granting motion to hold in abeyance); *Order, Ermekov*, No. 26-2183 (8th Cir. July 22, 2026) (same); *Order, Dharambir Singh*, No. 26-2199 (8th Cir. July 21, 2026) (same); *Order, Lazcano*, No. 26-2059 (8th Cir. July 20, 2026) (same). Consequently, after Mr. Morozov’s case is decided, this Court will have ample opportunity to resolve these cases with briefing and argument tailored to each Petitioner’s context.

## CONCLUSION

This Court should affirm the judgment below.

Dated: September 14, 2026

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## CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 29(a)(5) because it contains 1,943 words, excluding the parts of the brief exempted by Fed. R. App. 32(f).
2. This brief complies with the typeface requirements of Fed. R. App. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced and easy-to-read typeface using Microsoft Word in 14-point size font.
3. Pursuant to 8th Cir. R. 25, I certify that the foregoing brief has been scanned for viruses and is virus free.

/s/ Michael K.T. Tan

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September 14, 2026

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## **CERTIFICATE OF SERVICE**

I hereby certify that on September 14, 2026, I electronically filed the foregoing Certificate with the Clerk for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. A true and correct copy of this brief has been served via the Court's CM/ECF system on all counsel of record.

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