

**In the United States Court of Appeals
for the Eighth Circuit**

ALEKSEI MOROZOV,
Petitioner-Appellee,

v.

WARDEN, LAWRENCE COUNTY JAIL,
Respondent,

FIELD OFFICE DIRECTOR, U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT; UNITED STATES ATTORNEY, FOR THE DISTRICT OF
SOUTH DAKOTA,
Respondents-Appellants.

On Appeal from the United States District Court
for the District of South Dakota
Case No. 5:26-cv-05030-RAL

**BRIEF OF *AMICI CURIAE* THE ADVOCATES FOR HUMAN RIGHTS,
FEDERAL IMMIGRATION LITIGATION CLINIC, DETAINEE RIGHTS
CLINIC, IMMIGRANT LAW CENTER OF MINNESOTA, MID-
MINNESOTA LEGAL AID'S IMMIGRATION LAW PROJECT IN
SUPPORT OF PETITIONER-APPELLEE**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel states that each of the Amici Curiae, The Advocates for Human Rights, Federal Immigration Litigation Clinic, Detainee Rights Clinic, Immigrant Law Center of Minnesota, and Mid-Minnesota Legal Aid's Immigration Law Project, are nonprofit organizations, have no parent corporations, and no publicly held corporation owns 10% or more of their stock.

Date: September 16, 2026

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INTEREST OF AMICI CURIAE

Amici Curiae (“Amici”) are immigration legal services non-profits and law school clinics who represent noncitizens in removal proceedings before the Executive Office for Immigration Review and in federal court. They also support a large network of pro bono attorneys who regularly represent immigrants in those fora. In both capacities, Amici have an interest in the issues before the Court. They have represented numerous noncitizens subject to civil immigration detention. They therefore have a strong interest in ensuring that the government does not mandatorily detain noncitizens without due process of law.

The Advocates for Human Rights, is a volunteer-driven nongovernmental organization committed to the impartial promotion and protection of international human rights. Advocates has engaged in advocacy to protect the rights of immigrants for more than 40 years. With the help of hundreds of pro bono attorneys, Advocates has provided free legal assistance in thousands of cases involving asylum seekers, victims of trafficking, unaccompanied minors, and detained people. In the last calendar year, Advocates has shifted considerable resources to defending the human rights of many more noncitizens in immigration detention than in any previous period. This includes representing refugee survivors of violence. Advocates also monitors, documents, and reports on women’s rights and gender-based violence, including regularly reporting to the United Nations, where Advocates has special

consultive status. Advocates has worked on refugee detention policy in the upper Midwest and globally, since 1993. Advocates has an interest in ensuring that the United States meet human rights standards regarding asylum seekers.

The Federal Immigration Litigation Clinic is a law school clinic within the James H. Binger Center for New Americans at the University of Minnesota Law School. With the participation of law students, the Clinic represents noncitizens in complex cases at every level of the federal court system, including in challenges to unlawful civil immigration detention, and in removal proceedings before EOIR. The Clinic also supports a network of pro bono attorneys representing noncitizens in challenges to unlawful civil detention. The Clinic's institutional affiliation is for identification only; the views expressed are not those of the University of Minnesota.

The Detainee Rights Clinic, formally The Detainee Rights Clinic of the James H. Binger Center for New Americans at the University of Minnesota Law School, represents noncitizens detained by ICE. The majority of the Clinic's clients have been held in Minnesota county jails as they face removal. Many of the Clinic's clients have been held without individualized determination that detention is necessary, and the Clinic has direct experience with the consequences of that practice. The Clinic's institutional affiliation is for identification only; the views expressed are not those of the University of Minnesota.

The Immigrant Law Center of Minnesota is a non-profit organization that has provided immigration legal assistance to low-income immigrants and refugees in Minnesota since 1996. ILCM is located in St. Paul and its clients include noncitizens who are in civil immigration detention. ILCM provides direct representation to noncitizens before the Fort Snelling Immigration Court, the Board of Immigration Appeals, and federal courts in removal and custody proceedings.

Mid-Minnesota Legal Aid's Immigration Law Project provides a broad range of direct representation and advice to noncitizens in a twenty-one county area in central Minnesota and the metro area. Through immigration law attorneys, accredited representatives, and pro bono volunteers, we provide full representation to individuals applying for naturalization, permanent residence, and other types of humanitarian based applications, with a focus on victims of crime, domestic violence and human trafficking, youth, seniors, refugees, and medically vulnerable individuals. MMLA provides in person consults and brief services to noncitizens in ICE detention and represents individuals in removal proceedings before EOIR and federal challenges to unlawful immigration detention.

Amici file this brief pursuant to Fed. R. App. P. 29 and 8th Cir. Rule 29A. No counsel for a party authored this brief in whole or in part; no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief; and no person other than amicus curiae, its members, or its counsel

made such a monetary contribution. Fed. R. App. P. 29(a)(4)(E). All parties have consented to this filing.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents a narrow question: whether the Due Process Clause permits the government, in the absence of any new evidence or proceeding, to re-detain a parolee who complied with all terms of his parole and who the government previously determined poses no flight risk or danger. The answer is no. The Court should affirm the decision below based on Mr. Morozov’s individual facts, for the reasons set forth in his brief. *See* Appellee Br. 12–54.

Amici take no position on the doctrine governing facial versus as-applied challenges. But from Amici’s vantage point representing noncitizens in these proceedings, one thing is clear: due process in a case like this one is inherently an individualized inquiry. *See Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976) (weighing the private interest, the risk of erroneous deprivation, and the government’s interest as applied to the facts of a given case). Whether a noncitizen is entitled to more process than Section 1225(b)(2)(A) provides depends on facts that vary from case to case—prior parole, length of residence, compliance history, and the government’s conduct, among others. Nothing about resolving Mr. Morozov’s case requires the Court to decide, in the abstract, what process every noncitizen detained is due. Amici respectfully urge the Court to exercise the same

restraint here that due process itself already counsels: decide the case in front of it, and leave the broader question the government urges it to resolve for a case that presents it.

Amici’s argument proceeds in two parts.

In Part I, Amici underscore the harms that processless detention inflicts, not only on the noncitizen detained, but on families and entire communities. As Mr. Morozov’s brief emphasizes, and the district court below held, processless detention risks the erroneous deprivation of liberty. Appellee Br. at 51 (Section III.D). But it also risks other harms, which Amici have repeatedly observed in their work. As numerous courts across the country have found, noncitizens in detention have been denied essential medical care; have lost businesses and livelihoods built over decades; and have been separated from citizen children and spouses who depend on them financially and emotionally. Courts have also found that conditions in detention—overcrowding, denial of medical care, denial of hygiene items and inadequate food and water—operate coercively, pressuring detainees to abandon their claims and “voluntarily” self-deport.

In Part II, Amici expound on Mr. Morozov’s arguments for why the government’s mandatory, no-process detention of noncitizens under Section 1225 cannot be squared with due process. As Amici have observed, noncitizens detained under that statute do not *categorically* constitute a flight risk or danger. The Supreme

Court has recognized only one narrow exception to the rule that the government must justify detention on an individual basis, in *Demore v. Kim*, 538 U.S. 510 (2003), and only on a legislative record establishing that a specific, limited class of noncitizens with certain criminal convictions posed heightened flight and danger risks. No comparable record supports treating every noncitizen who has not been lawfully admitted as presumptively dangerous or a flight risk. For previously paroled noncitizens, the contradiction is starker still: parole issues only after an individualized finding that the person poses no flight risk and no danger. Re-detaining that same person treats a completed, favorable individualized determination as though it never happened.

Part II further shows that, once a due process violation is found, a court has flexibility to craft the remedy. In Mr. Morozov’s circumstances, release is the only adequate remedy, but it is not the only one available. A bond hearing is another tool available under certain circumstances not before the Court. In habeas proceedings, a court must “dispose of the matter as law and justice require,” 28 U.S.C. § 2243, and that flexibility is not unique to habeas: a statute directing that relief be granted upon a showing of violation does not eliminate a court’s traditional discretion to select the remedy suited to the case before it. *See Hecht Co. v. Bowles*, 321 U.S. 321, 329–31 (1944).

From the perspective of Amici, due process as an as-applied challenge is always an individualized inquiry. Accordingly, Amici respectfully submit that this Court should affirm based on Mr. Morozov’s individual facts and circumstances. But if the Court does reach the broader question, it should affirm the district court’s ruling and hold that due process requires an individualized remedy—whether it be a bond hearing or, as in Mr. Morozov’s case, outright release.

ARGUMENT

I. Civil Immigration Detention Without Process Inflicts Wide-Reaching Harms.

Individuals detained under Section 1225(b)(2) are often, like Mr. Morozov, long-standing community members, seeking a permanent path to legal residency, with families and businesses cultivated in the years and often decades they have lived in the United States. Their detention causes severe and extensive harms—not only to the detainees, but to their families and communities. Their liberty interests are precisely the interests the Due Process Clause protects.

A. Immediate impact on noncitizens subject to detention

District courts nationwide have recognized the immediate harm that unlawful detention under Section 1225(b)(2) inflicts. Detained individuals face life-threatening deprivations of healthcare and basic needs, and far-reaching economic consequences. Many also lose opportunities to achieve permanent residency.

Many individuals in detention are elderly or in poor health, yet Immigration and Customs Enforcement (“ICE”) detention may deprive them of basic medical care. Take the petitioner (and client of Advocates) in *Mayamu K. v. Bondi*, No. 25-3035, 2025 WL 3641819, at *1–2 (D. Minn. Oct. 20, 2025). Mayamu K., a survivor of female genital mutilation and years of physical, emotional, and sexual abuse in Liberia, was released while she pursued her asylum claim, was diagnosed with PTSD and received ongoing psychological treatment. *Id.* When she appeared for a hearing, the government moved to dismiss her case, but ICE arrested her the moment she stepped out of the courtroom. *Id.* Once detained, she “immediately began exhibiting symptoms of psychological distress,” until she became “nearly catatonic” and required hospitalization—and was placed on suicide watch twice during her confinement. *Id.*

Giron Reyes v. Lyons, 801 F. Supp. 3d 797, 805–06 (N.D. Iowa 2025) offers another example. The petitioner has been in the United States for two decades and has three citizen children. *Id.* Prior to detention, she was employed, pursuing a certificate in ministry, and had strong ties to her community and church. *Id.* She suffers from diabetes and high cholesterol, both well managed with medication—which she was deprived of in detention. *Id.*

Another example is the petitioner in *I-ARC v. DOJ*, No. 25-cv-2279 (D.D.C., July 16, 2025). J.L. is a gay, HIV-positive asylum seeker from Venezuela. *Id.*,

Compl. ¶¶ 27, 107, ECF No. 1. After more than a year of compliance with his asylum proceedings J.L. was arrested by ICE as he left a hearing . *Id.* ¶ 27. He was then held for a week in an overcrowded space with inadequate ventilation and food, while allegedly denied access to his HIV medication. *Id.* ¶¶ 27, 107.

The petitioner in *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1118 (E.D. Cal. 2025) is another case study. When detained, Lepe had lived in the United States for 32 years. *Id.* Mr. Lepe suffered a “serious stroke” prior to arrest, requiring treatment and medication. *Id.* While in detention, ICE refused to provide this care. *Id.* Consequently, “the entire right side of his body has gone numb . . . and he experiences pain that is frequently ‘intolerable.’” *Id.* He is “‘very high risk for stroke, blood clots and a heart attack,’” a risk only increased by the “conditions in detention.”” *Id.*

These are not isolated incidents—countless other individuals held in detention have been denied the care they need. *See, e.g., Yupangui v. Hale*, No. 2:25-cv-884, 2025 WL 3207070, at *1 (D. Vt. Nov. 17, 2025) (individual with history of heart attacks suffered “nausea and dizziness at his detention facility because he d[id] not have adequate access to drinking water”); *Quispe v. Crawford*, No. 25-cv-1471, 2025 WL 2783799, at *8 (E.D. Va. Sept. 29, 2025) (individual held without “access to vital medications”); *Sanchez v. Wofford*, No. 25-cv-1187, 2025 WL 2959274, at *7 (E.D. Cal. Oct. 17, 2025) (“[p]etitioner has already been transported to the

hospital for hyperglycemia on three occasions. . . her diabetic condition is not being treated adequately.”); *Linarez v. Stamper*, No. 26-cv-101, 2026 WL 592294, at *2 (D. Me. Mar. 3, 2026) (individual submitted letter from her doctor warning of potential “permanent organ dysfunction and damage,” from her detention without access to her medication and supplements.); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1249, 1263 (W.D. Wash. 2025) (petitioner “has high blood pressure and, after he was detained . . . he ‘was not given [his] medication for over a week,’ resulting in ‘horrible headaches,’ inflammation of his feet, and ‘significant pain in [his] stomach.’”); *Hernandez Lazo v. Noem*, 818 F. Supp. 3d 328, 332–33, 336–39 (E.D.N.Y. 2026) (individual denied blood pressure medication).

ICE has also deprived new and expecting parents of essential care, sometimes to the point of having miscarriages while detained. *See, e.g., Espinoza v. Kaiser*, No. 25-cv-1101, 2025 WL 2675785, at *12 n.13 (E.D. Cal. Sept. 18, 2025) (mother detained while still breastfeeding and “suffered the painful condition of having her milk ducts clog,” with “no indication she was provided a breast pump or other assistance”); *Rodriguez v. Kaiser*, No. 25-cv-1111, 2025 WL 2855193, at *1 (E.D. Cal. Oct. 8, 2025) (individual learned she was pregnant while detained, “was not provided with adequate food, medical care, or pre-natal educational materials,” and suffered a miscarriage); *Romero v. Hyde*, 795 F. Supp. 3d 271, 275, n.8 (D. Mass. 2025) (woman held without feminine hygiene products for at least four days, and

that she and around eighteen others were “forced to sleep on the cold floor,” given insufficient food, and required to “share and divide up three pads.”). DHS’s response to a congressional inquiry, reported that there had been 16 miscarriages in ICE custody in the first nine months of 2025, and only 23 instances of obstetrics and gynecology services for a population of hundreds of detained pregnant individuals. *See* DHS Response to Senator Patty Murray’s September 18, 2025 Letter (Feb. 23, 2026), available at <https://perma.cc/J9ZV-8HZG>.

Others grow seriously ill because of the conditions in detention. The petitioner in *Munoz Materano v. Arteta*, 804 F. Supp. 3d 395 (S.D.N.Y. 2025) was forced to wear the same dirty clothes for weeks, held in a cell with over 100 other men, made to sleep on a floor near a food-service area infested with cockroaches, mosquitoes, and worms, and denied a shower or change of underwear for several days. *Id.* at 403–09, 423–25. His health rapidly deteriorated, resulting in a fungal skin infection, swollen masses, “the proliferation of white spots and red patches, a burning sensation while urinating, and aching pain rated at a 7/10 or 8/10.” *Id.* He was ultimately rendered unable to walk or stand due to the pain. *Id.*; *see also Kaur v. DHS*, 813 F. Supp. 3d 1167, 1178 (E.D. Cal. 2025) (petitioner “describes dire conditions of her detention and reports weight loss and elevated bilirubin levels – both of which place her pregnancy at risk – in addition to reporting mental health concerns.”); *Mercado v. Noem*, 800 F. Supp. 3d 526, 545 (S.D.N.Y. 2025)

(“significant overcrowding, pervasive unsanitary conditions, lack of basic hygiene resources, insufficient food and water, inadequate sleeping conditions, substandard medical care” in detention center); *Hernandez Lazo v. Noem*, 818 F. Supp. 3d 328, 332–33, 336–39, 346–47 (E.D.N.Y. 2026) (petitioner was kept in “deplorable,” “appalling,” and “shocking conditions,” including denying him blood pressure medication and a bed, bedding, soap, a shower, a toothbrush, or clean clothes).

Even detainees who remain physically healthy are harmed, losing income and businesses built over years. The petitioner in *Bonilla Chicas v. Warden*, 821 F. Supp. 3d 782, 787 (S.D. Tex. 2026), had “spent more than a decade building” a trucking business. Mr. Bonilla Chicas felt “that each day that passes that business is slipping away.” *Id.* Similarly, Baljinder Singh was operating his own trucking business when he was detained. *Singh v. FNU LNU*, No. 26-cv-541, 2026 WL 735132, at *1 (D.N.M. Mar. 16, 2026). Mr. Singh “lost” his “employment and business income” due to his detention. *Id.*

Many detainees also have substantial familial and community ties that are threatened by lengthy stays in detention. Roberto Orozco-Ramirez, for example, fled violence in Mexico as a child and entered the United States without inspection over two decades ago. *Orozco-Ramirez v. Visser*, 834 F. Supp. 3d 1053, 1060 (D. Mont. 2026). He is a father of four citizen children, the “primary breadwinner,” and a “beloved member of his community.” *Id.* He “single-handedly built a successful

diesel repair business” and “volunteers his time with the community, maintains the local school district buses, helps neighbors in need, and is a baseball coach.” *Id.*; see also *Gutierrez v. Thompson*, 815 F. Supp. 3d 558, 561 (S.D. Tex. 2025) (petitioner entered the U.S. 20 years prior, had family, was a business owner, and had community ties).

Many that the government has detained without process were seeking legal status. Brenda Rojano Gonzalez, a mother who came to the U.S. as a child, started the process of becoming a legal resident years before her detention. *Rojano Gonzalez v. Sterling*, No. 25-cv-6080, 2025 WL 3145764, at *1 (N.D. Ga. Nov. 3, 2025). Her application was approved, the only remaining step an interview. *Id.* ICE arrested her after a traffic stop and held her without any evidence that “she is a risk of flight or a danger.” *Id.* at *8. Armando Estrada-Samayoa is married to a citizen and has an approved immigrant visa petition. *Estrada-Samayoa v. Cruz*, No. 25-cv-1565, 2025 WL 3268280, at *1 (E.D. Cal. Nov. 24, 2025). He is a “deeply involved father,” offering “stability, guidance, and a secure home environment that is centered on family values and mutual support” to his three children. *Id.* at *2; see also *Guzman Mendez v. Mordant*, No. 2:26-cv-999, 2026 WL 1090971 at *1, 2 (M.D. Fla. April 22, 2026) (ordering release of noncitizen who had been in United States for 32 years, married, had citizen children, and an approved I-130 petition).

For individuals trying to obtain permanent residency, ICE detention impedes those efforts. At the time of his arrest and detention, Mr. Bonilla Chicas had an approved family petition for lawful permanent residency and was waiting only on a waiver for unlawful entry. *See Bonilla Chicas*, 821 F. Supp. 3d at 798. But his detention impaired his ability to obtain that waiver. *Id.*

These stories, from federal district judges across the country, demonstrate an unavoidable truth: detention can inflict serious, irreversible harm, with physical, financial, familial, and legal consequences. Such harms deprive detained individuals of their life, liberty, and property. The Constitution requires the government to afford them due process before this deprivation.

B. Derivative impact on families and communities

Many of the individuals detained under Section 1225(b)(2) are long-term residents with citizen children and deep local ties. The consequences of their detention are felt throughout their communities. *See Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771, 774, 785-86 (E.D. Mich. 2025), *aff'd*, 175 F.4th 713 (6th Cir. 2026), *petition for cert. filed*, No. 25-1415 (U.S. June 22, 2026) (“Petitioners have lived in the United States for years or decades . . . All appear to contribute to their neighborhoods and local communities. Many are the primary breadwinners or essential caregivers for their families, which include their children who were born here and are citizens[.]”); *Abanil v. Baltazar*, 817 F. Supp. 3d 1148, 1153 (D. Colo.

2026) (individual entered the country in 2010 and was the sole provider for his wife and ten-year-old son, both citizens); *Salazar v. Dedos*, 830 F. Supp. 3d 1110, 1112 (D.N.M. 2026) (individual brought here at six months old in 2004, who had lived in Minnesota ever since, was a key financial support for his family, had siblings who were citizens, was engaged to a citizen, was eligible for and planned to pursue a visa as a victim of domestic assault).

Many detained individuals are union members, small business leaders, and other laborers, with community ties and no criminal history. *See Leonardo G.Z v. Noem*, 820 F. Supp. 3d 1245, 1248 (N.D. Okla. 2025) (petitioner lived in U.S. for twenty plus years, had “deep ties to Oklahoma,” is father of six citizen children, had no criminal history, was employed); *R.P.L. v. Maldonado*, 814 F. Supp. 3d 301, 303 (E.D.N.Y. 2025) (petitioner is a “small business owner, father, and husband who has lived in the United States for decades”); *Castillo v. Andra-Ybarra*, No. 25-cv-1074, 2025 WL 3251223, at *2 (D.N.M. Nov. 21, 2025) (business owner with twenty-five employees, supporting two children in college, in U.S. for twenty-six years); *Sanchez v. Olson*, No. 25-cv-12453, 2025 WL 3004580, at *1 (N.D. Ill. Oct. 27, 2025) (homeowner, union member, and single parent to six-year-old twins); *Patin v. Trump*, 824 F. Supp. 3d 484, 488–90 (D. Vt. 2026) (dedicated and loving mother, hard worker, and engaged community member serving on the board of a local family center); *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771, 774, 785-86 (E.D. Mich.

2025) (petitioner was in the United States for 27 years, was the primary caretaker for five citizen children, was employed, had no criminal history, volunteered at his church).

Mr. Maldonado Vazquez, who has lived in the United States for twenty years and is the parent to three citizen children, built his own landscaping business and provides for his family. *Maldonado Vazquez v. Feeley*, 805 F. Supp. 3d 1112, 1127 (D. Nev. 2025). His oldest son, only 18 at the time of Mr. Maldonado Vasquez’s detention, “was tasked with running the family’s landscaping business[.]” *Id.* And “the loss of income caused by detention” caused serious financial challenges for the family, making “it impossible for his family to pay for an immigration attorney.” *Id.*

Other families have no one left to bring in income once their provider is detained. The petitioner in *Betancourth v. Tate*, 822 F. Supp. 3d 762, 766, 768 (S.D. Tex. 2026), “provided for her family by maintaining continuous employment ...for over eight years,” and, after her detention, her spouse was “unable to work consistently because of increased childcare responsibilities”) Because of lost income, families “face potential eviction.” *Mazon v. Dickey*, No. 4:26-cv-1728, 2026 WL 1270549, at *2 (S.D. Tex. Mar. 16, 2026); *Mendoza v. Noem*, No. 26-cv-1260, 2026 WL 494479, at *2 (S.D.N.Y. Feb. 23, 2026) (“His family, meanwhile, has fallen behind on utilities, car and phone payments, and rent given that Petitioner

previously paid for nearly all essential household expenses . . . The family has been served with an eviction notice.”).

Children are left gutted when their parents are ripped away. “[T]o be unlawfully separated from one’s family is to have life’s most essential bond severed, leaving an injury that may well never be fully healed.” *Mata Fuentes v. Olson*, No. 25-cv-4456, 2025 WL 3524455, at *6 (D. Minn. Dec. 9, 2025); *Covelli-Chaparro v. Bondi*, 816 F. Supp. 3d 332, 344 (E.D.N.Y. 2026) (“As a married man and the father of two young children, each day of his detention in ICE custody separates him from his family, who are struggling emotionally and financially”); *Sampiao v. Hyde*, 799 F. Supp. 3d 14, 31 (D. Mass. 2025) (petitioner was separated from his wife and newborn son and petitioner was unable to support his family). A mother, still breastfeeding “due to reflux issues the child experienced from digesting other types of milk,” was detained, leaving her child without food. *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1142 (D. Minn. 2025). Her other child asked his grandmother why his mother “abandoned him.” *Id.*

None of these individuals, deeply embedded in their respective communities, likely pose a flight risk—a point the government often does not dispute. *Estrada-Samayoa v. Cruz*, No. 25-cv-1565, 2025 WL 3268280, at *5–6 (E.D. Cal. Nov. 24, 2025) (government “does not dispute” petitioner poses no flight risk or danger). Yet, they are given no process to determine whether their detention is justified. Their

processless detention wreaks havoc on them, their families and their communities. It uproots citizen children, drains finances, and unravels community ties that long-term residents have spent years building.

C. Deprivation of a meaningful opportunity to litigate

The impact on people's ability to litigate their cases is an independent harm of immigration detention. In the criminal context, the Supreme Court has recognized that the "traditional right to freedom before conviction permits the unhampered preparation of a defense." *Stack v. Boyle*, 342 U.S. 1, 4 (1951). That reasoning applies with equal force to removal proceedings, which the Supreme Court has recognized may result in the "particularly severe penalty" of deportation. *Lee v. United States*, 582 U.S. 357, 370 (2017). Two features of removal proceedings make the point especially weighty for individuals detained under Section 1225(b)(2)(A).

First, unlike criminal defendants, noncitizens in removal proceedings have no right to counsel. Their ability to secure representation depends on their own capacity to find and retain counsel—something detention makes harder. Data confirms the effect: only 26.9% of immigration court respondents were ordered removed compared to 61.8% of those without representation. Am. Immigr. Council, *Where Can You Win in Immigration Court?* (Nov. 20, 2025), <https://www.americanimmigrationcouncil.org/report/immigration-court/>.

Second, the nature of removal proceedings makes access to counsel and the ability to gather evidence especially consequential. These proceedings are fact-intensive, evidence-dependent, and demanding. There is no presumption that an applicant is credible. *See Matter of H-C-R-C-*, 28 I&N Dec. 809, 811 (BIA 2024). Recent Board precedent goes further, holding that a lack of corroborating evidence can independently defeat an otherwise-credible claim. *Matter of G-C-I-*, 29 I&N Dec. 176, 176 (BIA 2025). An applicant must proactively locate and present specific documentary evidence or risk losing. That task is far harder to accomplish from detention, where access to phones, mail, and the outside world is restricted and the likelihood of securing a lawyer is far less.

D. Detention in this context has proven to be coercive

Courts have agreed that processless detention under Section 1225(b)(2) is coercive and counter to their due process rights. *See Gomez v. Bondi*, 832 F. Supp. 3d 669, 689-690 (W.D. Tex. 2026); *cf. Duarte Cantarero v. Warden, Florida Soft Side South Detention Center*, No. 2:26-cv-189, 2026 WL 396851 at *1 (M.D. Fla., Feb. 12, 2026) (discussing the government’s pressure on a detainee to self-deport). Recent reporting on mass deportation flights has documented noncitizens who accepted removal—some with asylum claims still pending—only to be killed or left missing within hours of arrival in the country they had fled. *See, e.g., More Than 100 Venezuelans Who Were Deported From the U.S. Hours Before the Earthquakes*

Are Missing, PBS NewsHour (June 29, 2026), <https://pbs.org/newshour/world/more-than-100-venezuelans-who-were-deported-from-the-u-s-hours-before-the-earthquakes-are-missing>. The government has offered an untenable choice: remain in confinement or “voluntarily” self-deport. This is no choice, it is coercive behavior by the government to circumvent individual rights.

“Civil detention is punitive if it becomes a mechanism for retribution or general deterrence.” *Gomez*, 832 F. Supp. 3d at 685–86 (citations and quotes omitted). “The Court should consider whether the class of individuals subject to detention might be deterred by the threat of confinement.” *Id.* at 686. In cases like Mr. Morozov’s, where the government has determined an individual poses no flight or security risk and presents no evidence purporting to undermine that determination, “there is no reason to believe that re-detention serves any permissible purpose of confinement rather than, say, deterring [immigrants] from [their] claim for asylum relief by agreeing to self-deport.” *Id.* at 690.

The conditions of confinement often becomes coercive and is meant to cause individuals to self-deport. Federal courts have documented these abhorrent conditions. In *Duarte Cantarero*, the district court noted the conditions of confinement included “limited access to showers, hygiene items, and phones, severely delayed medical care, constant shackles, and foul-tasting drinking water.”

2026 WL 396851, at *1. In *Romero v. Hyde*, the petitioner was held “without access to showers, meaningful access to counsel, without a bed or cot, with only a mylar blanket in a cold room, without access to natural light through a window or time outdoors, and without feminine hygiene products which she needed and was denied for at least four days.” 795 F. Supp. 3d 271, 275 n.8 (D. Mass. 2025) (cleaned up). In *Minarcaja Concha v. Lyons*, a detainee described how they were held “without access to a bunk, bedding, soap, a shower, a toothbrush, or clean clothes,” conditions the district court described as “deplorable.” 818 F. Supp. 3d 367, 372 (E.D.N.Y. 2026).

Faced with these conditions, detainees are given an impossible choice between “self-deporting” or pursuing their rights while held in abhorrent conditions. These conditions are a feature, not a bug, of the government’s immigration scheme. “Statements from senior officials suggest that harsh conditions of confinement are a deliberate feature of the enforcement program intended to induce self-deportation.” *Mercado*, 800 F. Supp. 3d at 575.

For many caught in this bind, what they forfeit is relief that Congress has deemed so important that it is *mandatory*. That is, a noncitizen who shows a likelihood of persecution or torture is entitled to withholding of removal under 8 U.S.C. § 1231(b)(3)(A), or to protection under the Convention Against Torture, 8 C.F.R. §§ 1208.16(c)(2), 1208.17. Congress built that mandatory floor because the

alternative of an erroneous return is, as this country has long recognized, potentially fatal. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 436–37 (1987). A regime that pressures someone to abandon that claim risks coercing him out of protection the government would otherwise be required to grant.

The intentionally coercive nature of these conditions only further underscores the due process interests at stake, and the necessity of individualized determinations to support their confinement.

II. Due Process Would Confirm that Mandatory Detention Under Section 1225 Cannot Serve the Government’s Purported Aims of Preventing Flight Risk and Protecting the Community.

A. The government has no categorical basis for detaining noncitizens like Mr. Morozov

This record contains no justification for treating the noncitizens detained under Section 1225(b)(2)(A) as a “limited class” that can be categorically detained. As Mr. Morozov establishes in his brief, *see* Appellee Br. at 26, civil immigration detention is constitutionally permissible only where a “special justification,” such as flight risk or danger, outweighs that individual’s liberty interest.

The Supreme Court has repeatedly recognized that civil detention requires an individualized hearing to ensure the person’s confinement serves the government’s proffered goals. *U.S. v. Salerno*, 481 U.S. 739, 750 (1987); *Kansas v. Hendricks*, 521 U.S. 346, 374 (1997).

The Supreme Court has recognized one narrow exception, where Congress itself made an evidence-based, categorical finding of risk for a specific, limited class. *See* Appellee Br. at 28–29; *Demore v. Kim*, 538 U.S. 510, 518–21 (2003)). In *Demore*, the Supreme Court upheld detention under Section 1226(c) for a “limited class” of noncitizens with specified criminal convictions only after the Court credited a legislative record: evidence that this specific group had high rates of committing crimes and absconding while released, and that the convictions triggering detention were “relevant to future dangerousness.” 538 U.S. at 518–521 & n.9.

No comparable record exists under Section 1225(b)(2)(A). *Herrera Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026), holds that every noncitizen who has not been lawfully admitted is subject to detention under Section 1225(b)(2)(A)—a category untethered to criminal history, length of residence, or any prior individualized risk assessment. *See id.* at 1134–35.

Immigration agencies have already determined that individuals like Mr. Morozov who are granted humanitarian parole under Section 1182(d)(5)(A) are not a danger or a flight risk. The regulations require that the agency may grant parole only on a case-by-case basis, where the person is not a flight risk or a danger. 8 C.F.R. § 212.5(b). The agency has already resolved the very question *Demore* held due process ordinarily requires. *See* 538 U.S. at 518–21.

Accordingly, there is a direct contradiction when the government re-detains a previously-paroled noncitizen under Section 1225(b)(2)(A). The government’s theory treats status as an “applicant for admission” as a sufficient proxy for flight risk or danger—the same kind of categorical substitute for individualized review that *Demore* permitted but *Zadvydas* rejected because the statute “applie[d] not only to terrorists and criminals, but also to ordinary visa violators.” *Zadvydas v. Davis*, 533 U.S. 678, 697 (2001).

But for paroled noncitizens subject to Section 1225(b)(2)(A), there *is* an individualized record. That record says the government has already found the individual is *not* a flight risk and *not* a danger. A categorical detention theory cannot rest on treating a group as presumptively dangerous when, for a defined part of that group, the government’s own individualized process found the opposite. Unlike *Demore*, where the facts underlying the categorical judgment (qualifying criminal convictions) supported the government, here the facts—a completed parole determination—refute it.

Nor is it accurate, for this subset, to view the affected population as people who are unlawfully present. Parole itself, though expressly not an “admission,” 8 U.S.C. § 1182(d)(5)(A), is an exception to Section 1225(b)(2)(A)’s mandatory detention provision which grants permission to the noncitizen to remain in the United States. Even after Mr. Morozov’s parole expired, his pending, bona fide

asylum application imbued his continued presence in the United States with some legitimacy. *See* 8 U.S.C. § 1182(a)(9)(B)(iii)(II).¹ The government’s processless detention under Section 1225(b)(2)(A) does not merely detain people who evaded governmental screening. It detains people like Mr. Morozov and that the government screened and cleared.

The underlying problem also recurs across Circuits that have reviewed similar mandatory-detention regimes since this Court’s decision in *Herrera Avila*, some of which involve previously-paroled or released noncitizens. *See Barbosa Da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026); *Santillan Quiroz v. Mullin*, 180 F.4th 1226 (10th Cir. 2026); *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026); *Sosnava Rodriguez v. Ortega*, 180 F.4th 702 (5th Cir. 2026), *reh’g en banc granted, opinion vacated*, No. 26-50183 (5th Cir. July 10, 2026); *Hernandez Alvarez v. Warden*, 175 F.4th 1258 (11th Cir. 2026); *Cirrus Rojas v. Olson*, 183 F.4th 909 (7th Cir. 2026); *Rodriguez Vazquez v. Bostock*, 183 F.4th 1160 (9th Cir. 2026); *Guerrero Orellana v. Moniz*, No. 25-2152, 2026 WL 2352042 (1st Cir. Aug. 13, 2026); *Buele Morocho v. Warden Phila. FDC*, Nos. 26-1150 & 26-1454 (3d Cir. Aug. 28, 2026).

B. Requiring process before detention would achieve these aims

¹ Other agencies likewise recognize gradations of “lawful presence” for purposes of determining benefits eligibility. *See, e.g.,* 45 C.F.R. § 233.50 (defining benefits eligibility for noncitizens “permanently residing in the United States under color of law”); 26 U.S.C. § 3304(a)(14)(A); 45 C.F.R. § 155.20.

At a minimum, due process requires a hearing before a neutral decisionmaker before the government may detain a previously-screened noncitizen without any new evidence of flight risk or danger. Amici do not ask this Court to go further and order the release of every noncitizen detained under Section 1225(b)(2)(A).

Determining the strictures of due process requires an individual inquiry specific to the particular circumstances of the case. Due process requires meaningful notice and a “opportunity to be heard.” *Mathews*, 424 U.S. at, 333. “Due process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Determining “the specific dictates of due process” requires weighing the private interest at stake, the risk of erroneous deprivation, and the government’s interest as applied to the facts of the case. *Mathews*, 424 U.S. at 335.

In Mr. Morozov’s case, the district court held that due process required release, as it had discretion to do (and district courts in this Circuit do). *See Garrison G. v. Bondi*, 825 F. Supp. 3d 853, 856 (D. Minn. 2026) (ordering “immediate release” where ICE re-detained petitioner without “sufficiently demonstrate[ing] changed circumstances”); *C.R.R. v. Bondi*, 832 F. Supp. 3d 904, 910 (D. Minn. 2026) (ordering release after detention declared unlawful); *Heler D.R.P. v. Blanche*, No. CV 26-3675, 2026 WL 2546901, at *2 (D. Minn. Aug. 28, 2026) (ordering release

where arrest was unlawful); *Francisco M.A. v. Blanche*, No. 26-2032, 2026 WL 1229701, at *3 (D. Minn. May 5, 2026) (“release is the proper remedy”); *Ahmed M. v. Bondi*, No. 25-4711, 2026 WL 25627, at *3 (D. Minn. Jan. 5, 2026) (ordering release); *Lauro M. v. Bondi*, No. 26-134, 2026 WL 115022, at *3 (D. Minn. Jan. 15, 2026) (same); *see also Munaf v. Geren*, 553 U.S. 674, 693 (2008).

In other cases, due process’s requirements may be different. It requires—at minimum—an individualized hearing before a neutral decisionmaker to test whether detention in a case serves the government’s interests. The cases cited above confirm this: in each, the court ordered release rather than a lesser remedy, because a hearing would not have cured the constitutional violation. Where someone was not previously screened and cleared through the parole process, the *Mathews* calculus may weigh differently, but it does not follow that less process is due. If anything, without a prior individualized finding, the risk of erroneous deprivation from proceeding without any hearing at all is greater.

For that reason, an individualized bond hearing must be the constitutional floor. An individualized bond hearing lets the government pursue its interest in preventing flight and danger while giving district courts the flexibility to resolve

habeas claims on the facts before them. While a bond hearing would not be sufficient to protect Mr. Morozov’s rights, in other cases it may be sufficient.²

This is why a categorical, no-process detention scheme undermines due process and, as applied to the facts of Mr. Morozov’s case, violates the United States Constitution. There is longstanding precedent that provides guidance on how to avoid this miscarriage of justice. *Mathews*, 424 U.S. 319, 334–35 (1976). *Mathews* and *Morrissey* require that flexibility, and it is precisely what the government’s preferred interpretation of Section 1225(b)(2)(A) forecloses.

CONCLUSION

For the reasons set forth herein, the Court should affirm the decision below based on Mr. Morozov’s individual facts.

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² Although not an issue, Amici stress that any bond hearing must be constitutionally sufficient— the government must bear the burden by clear and convincing evidence that dangerousness or flight risk justify detention. *See Addington v. Texas*, 441 U.S. 418, 432-33 (1979) (clear-and-convincing standard required to reduce the risk of erroneous deprivation); *see also, e.g., Bryan A.G.D. v. Blanche*, No. 26-2366, 2026 WL 2163098, at *5 (D. Minn. July 27, 2026); *Juan C.M.C. v. Blanche*, No. 26-2402, 2026 WL 2117276, at *5 (D. Minn. July 22, 2026); *Matamoros Rodriguez Gonzalez Arias v. Woodbury County Jail*, No. C26-4041-LTS-MAR, 2026 WL 1735035, at *4 (N.D. Iowa June 16, 2026).

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CERTIFICATE OF COMPLIANCE

I certify that this amicus brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) because it contains 6,489 words, excluding the parts of the amicus brief exempted by Fed. R. App. P. 32(f). I certify that, in accordance with Fed. R. App. P. 29(a)(4), this amicus brief complies with the typeface requirements of Fed. R. App. P. 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 typeface using Microsoft Word in 14-point Times New Roman font.

I also certify pursuant to Eighth Circuit Rule 28A(h)(2) that the electronic version of the brief has been scanned for viruses and, to the best of our ability and technology, is believed to be virus-free.

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system, which will send notification of such filing to all counsel of record. I certify that all participants' counsel of record are registered CM/ECF users and service will be accomplished via the CM/ECF system.

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