No. 25-886

IN THE
Supreme Court of the United States

KENNETH GENALO, DIRECTOR OF THE NEW YORK FIELD OFFICE OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ET AL.,
Petitioners,

v.

KEISY G.M.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE AMERICAN IMMIGRATION COUNCIL, THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION, THE ASIAN LAW CAUCUS, RAICES, THE SIKH COALITION, AND THE SOUTH ASIAN AMERICAN JUSTICE COLLABORATIVE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

The American Immigration Council (the "Council") is a nonprofit organization that advances U.S. immigration policy through research, advocacy, and legal efforts rooted in fairness and compassion. It provides free legal services to immigrants, including those in detention or facing removal, and actively litigates and participates as *amicus curiae* in appellate and Supreme Court cases on immigration detention, removal, and judicial review.

The American Immigration Lawyers Association ("AILA"), founded in 1946, is a national, nonpartisan, nonprofit association with more than 18,000 members throughout the United States and abroad, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to promote justice, advocate for fair and reasonable immigration law and policy, and advance the quality of immigration and nationality law and practice.

The Asian Law Caucus ("ALC") is the nation's first legal and civil rights organization serving low-income, immigrant, and underserved Asian American and Pacific Islander communities. ALC brings together impact litigation, direct legal services, community empowerment, and policy advocacy to fight for

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[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici curiae*, their members, or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

immigrant justice, economic security, and a stronger, multiracial democracy.

RAICES is a nonprofit, nonpartisan organization headquartered in San Antonio, Texas. As a humanitarian aid organization serving immigrant, refugee, and asylum-seeking people and families, RAICES prioritizes access to free and subsidized immigration legal aid, social services, and rights advocacy. RAICES provides a range of immigration-related services to individuals who are in detention, or who are continuing to fight their cases following release, and endeavors to serve as many noncitizens as possible. As a staunch advocate for due process, RAICES is well-versed in the INA's mandatory detention and bond provisions, and has extensive experience litigating such issues, including currently in *Alvarez Perez v. Warden*, 3:26-cv-00758-KC (W.D. Tex. 2026).

The Sikh Coalition is a nonprofit, nonpartisan organization dedicated to ensuring that members of the Sikh community in America are able to practice their faith. It defends the civil rights and civil liberties of Sikhs by providing direct legal services and advocating for legislative change, educating the public about Sikhs and diversity, promoting local community empowerment, and fostering civic engagement among Sikh Americans.

The South Asian American Justice Collaborative ("SAAJCO") is a national nonprofit organization that fights for the civil and human rights of the South Asian diaspora in the United States through legal advocacy,

community engagement, and narrative power. SAAJCO engages in impact litigation, *amicus* advocacy, and other legal advocacy concerning issues that affect South Asian communities, including immigration detention, birthright citizenship, discrimination, and voting rights. SAAJCO has previously participated as *amicus curiae* in this Court in cases affecting South Asian communities.

This case is of pressing importance to *amici* given their shared commitment to securing due process rights for immigrants, including immigrants subject to mandatory detention under 8 U.S.C. § 1226(c).

SUMMARY OF ARGUMENT

Amici file this brief to bring to the Court's attention three essential points of context in assessing whether due process requires a bond hearing when mandatory detention under 8 U.S.C. § 1226(c) becomes unreasonably prolonged.

First, Section 1226(c) subjects many noncitizens to mandatory detention who do not plausibly pose any risk of flight or any danger to the community—including many lawful permanent residents and many individuals who have strong challenges to deportability on which they may ultimately prevail. Section 1226(c) can be triggered by minor or nonviolent offenses—such as shoplifting, turnstile-jumping, or misdemeanor marijuana possession—and by convictions that occurred many years or decades in the past. As a result, Section 1226(c) is often applied to individuals who have been in the United States for many years and have substantial family and community ties. Detaining such individuals

does nothing to advance Section 1226(c)'s asserted rationales that detention is needed to prevent flight or protect the community.

Second, prolonged mandatory detention inflicts significant tolls on both detained noncitizens and their families. As several courts have recognized, detained noncitizens are often held in conditions that are indistinguishable from, or worse than, criminal incarceration. They are subjected to overcrowded, squalid, and unsafe conditions, where they are often unable to receive needed medical treatment and face severe risks of illness and even death. The physical and psychological harms of such conditions on detained noncitizens are well documented. These harms extend to detained noncitizens' families, who lose significant household income, and to detained noncitizens' children, who may experience long-term psychological, educational, and other injuries. Finally, detained noncitizens who are part of religious or linguistic minorities, including detained South Asians, may face additional harms in the form of discrimination, language barriers, and refusals to make religious accommodations.

Third, prolonged mandatory detention without any due-process backstop undermines the fair adjudication of immigration cases, such that people with legal rights to remain in the country are nonetheless removed. Detention makes it far more difficult for noncitizens to build their cases for cancellation or withholding of removal. Though the assistance of counsel makes a tremendous difference in case outcomes, detained

noncitizens often struggle to find counsel—particularly when they are detained in remote facilities or frequently transferred among different facilities. Even if those detained under Section 1226(c) have counsel, detention impedes the speedy collection of documents and other materials needed to support an application for immigration relief. And, perversely, mandatory detention imposes the most severe harm on those individuals with the strongest cases. The result is that many noncitizens with meritorious cases are put to the terrible choice of enduring additional detention or abandoning their valid claims for relief.

Bond hearings in cases of unreasonably prolonged detention are compelled as a matter of fairness and due process to redress all of these harms. If the Court reaches the merits, it should affirm.

ARGUMENT

I. SECTION 1226(c) SUBJECTS TO MANDATORY DETENTION MANY IMMIGRANTS WHO POSE NO FLIGHT RISK OR THREAT TO PUBLIC SAFETY.

Though Section 1226(c) formally governs the detention of "criminal aliens," 8 U.S.C. § 1226(c), the reality of who is detained pursuant to that provision is far broader than that shorthand conveys. The practical operation of Section 1226(c) over the past several decades makes clear that this provision does not result in the mandatory detention of "a limited class of deportable aliens," *Demore v. Kim*, 538 U.S. 510, 517-18 (2003), but in fact sweeps in many noncitizens, including

lawful permanent residents, with minor, nonviolent, or stale convictions—or indeed no convictions at all. The provision also reaches people who have strong challenges to deportability on which they ultimately prevail. As to such individuals, the argument that their detention advances the community-danger and flight-risk rationales typically invoked to justify mandatory detention is simply inaccurate.

First, Section 1226(c) authorizes mandatory detention based on convictions that are minor or nonviolent. Section 1226(c) directs that the government "shall take into custody" five categories of covered noncitizens, the first three of which involve noncitizens who are inadmissible or deportable for having committed specified covered offenses. *See* 8 U.S.C. § 1226(c)(1)(A)-(C). These categories encompass noncitizens rendered inadmissible or deportable under virtually all removal grounds related to criminal dispositions or conduct, regardless of the de minimis nature of the offenses specifically covered by those provisions. Thus, triggering offenses have included a wide range of nonviolent conduct such as retail theft,[2] misdemeanor marijuana possession,[3] and simple

[2] *See, e.g.*, *Vallejo v. Decker*, 2018 WL 3738947, at *2 (S.D.N.Y. Aug. 7, 2018).

[3] *See, e.g.*, *Preap v. Johnson*, 831 F.3d 1193, 1197 (9th Cir. 2016), *rev'd and remanded sub nom. Nielsen v. Preap*, 586 U.S. 392 (2019), *and vacated sub nom. Preap v. McAleenan*, 922 F.3d 1013 (9th Cir. 2019); *Vazquez v. Green*, 2016 WL 6542833, at *1 (D.N.J. Nov. 3, 2016).

possession of a controlled substance.[4] As one judge has explained, the "difference between a § 1226(a) discretionary detainee and a § 1226(c) mandatorily detained 'criminal alien' may be a conviction or two for shoplifting or marijuana possession." *Reid v. Donelan*, 17 F.4th 1, 17 (1st Cir. 2021) (Lipez, J., dissenting).

For example, mandatory detention is required where a noncitizen is inadmissible based on a "crime involving moral turpitude" ("CIMT"). *See* 8 U.S.C. § 1226(c)(1)(A) (incorporating individuals who are inadmissible "by reason of having committed any offense covered" by § 1182(a)(2)); *id.* § 1182(a)(2)(A)(i)(I) (addressing CIMTs). As the Board of Immigration Appeals ("BIA") has acknowledged, this includes a wide range of offenses that simply require "some form of scienter." *Matter of Diaz-Lizarraga*, 26 I. & N. Dec. 847, 849 (B.I.A. 2016) (internal quotation marks omitted). That is the defining feature; "neither the seriousness of the offense nor the severity of the sentence imposed is determinative of whether a crime involves moral turpitude." *Matter of Serna*, 20 I. & N. Dec. 579, 581 (B.I.A. 1992). The BIA and the courts have therefore found noncitizens inadmissible for all manner of minor, nonviolent CIMTs, including: possession of stolen bus transfers, *Michel v. INS*, 206 F.3d 253, 256, 265 (2d Cir. 2000); shoplifting, *Matter of Diaz-Lizarraga*, 26 I. & N. Dec. at 854-55; jumping a subway turnstile, *Santos-Gonzalez v. Reno*, 93 F. Supp. 2d 286, 288 & n.2 (E.D.N.Y. 2000); and using a false driver's license, *Montero-Ubrai v. INS*, 229 F.3d 319, 321 (1st Cir. 2000). Indeed, essentially all offenses

[4] *Castaneda v. Souza*, 952 F. Supp. 2d 307, 310 (D. Mass. 2013).

involving theft or fraud are considered CIMTs. *See, e.g.*, *Serna*, 20 I. & N. Dec. at 582.

Similarly, the "aggravated felony" removal ground includes minor offenses that are neither aggravated nor felonies. *See* 8 U.S.C. § 1226(c)(1)(B) (subjecting to mandatory detention noncitizens "deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii)"); *id.* § 1227(a)(2)(A)(iii) (addressing "aggravated felon[ies]"). The statute defines that term to include twenty broad categories of offenses, including offenses that result in a one-year or longer prison sentence as well as attempts and conspiracies. *Id.* § 1101(a)(43). There is little question that misdemeanors can qualify as aggravated felonies under the statute. *United States v. Pacheco*, 225 F.3d 148, 153 (2d Cir. 2000). And a noncitizen may be subject to mandatory detention due to an aggravated felony conviction without actually serving any time in jail. *See, e.g.*, *United States v. Christopher*, 239 F.3d 1191, 1193 (11th Cir. 2001).

The INA provides that a lawful permanent resident is not deportable on the basis of a conviction after receipt of a pardon. *See* 8 U.S.C. § 1227(a)(2)(A)(vi). However, in other contexts, a noncitizen can still be subject to prolonged mandatory detention even where the qualifying offense has been modified, resentenced, vacated, or expunged; where adjudication has been deferred; or where the adjudicating court classifies the offense as non-criminal. *See, e.g.*, *Matter of Roldan-Santoyo*, 22 I. & N. Dec. 512, 521-23 (B.I.A. 1999) (expunged convictions remain convictions under

§ 1101(a)(48)(A)); *Matter of Pickering*, 23 I. & N. Dec. 621, 624 (B.I.A. 2003) (same, for convictions that are vacated "for reasons unrelated to the merits of the underlying criminal proceedings"), *rev'd sub nom. Pickering v. Gonzalez*, 465 F.3d 263 (6th Cir. 2006); *Jaquez v. Sessions*, 859 F.3d 258, 259, 261-62 (4th Cir. 2017) (same, for deferred adjudication); *Madriz-Alvarado v. Ashcroft*, 383 F.3d 321, 330 (5th Cir. 2004) (same).

Second, Section 1226(c) also requires mandatory detention in certain circumstances where the noncitizen has not been convicted of any crime at all. For example, the INA categorizes as inadmissible any noncitizen "who admits having committed, or who admits committing acts which constitute the essential elements of" a CIMT or a controlled substance offense. 8 U.S.C. § 1182(a)(2)(A)(i); *see also Barton v. Barr*, 590 U.S. 222, 243 (2020) (Sotomayor, J., dissenting) (explaining that a "criminal ground for inadmissibility can be made out by showing … that the noncitizen admitted to conduct meeting the elements of a crime").

And, though not at issue in this case, the recently enacted Laken Riley Act further expands the category of noncitizens who must be detained even absent a conviction. *See* Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025). That statute subjects to mandatory detention individuals who are "charged with," "arrested for," or "admit[] [to] having … committ[ed] acts which constitute the essential elements of" specified offenses, including burglary, theft, larceny, or shoplifting. 8 U.S.C. § 1226(c)(1)(E). As one scholar has recently

explained, the Act "breaks new ground by mandating potentially lengthy periods of no-bail immigration detention based on an unproven accusation against someone presumed innocent in the criminal legal system."[5]

Third, Immigration and Customs Enforcement ("ICE") can detain noncitizens on the enumerated grounds based on conduct that occurred years or decades in the past—and ICE is in fact doing so. Consider two examples: Mateo Alvarez, a lawful permanent resident since 1987, was arrested and detained for nine months by ICE fourteen years after his narcotics conviction, for which he already completed probation and served no jail time.[6] And after living in the United States for thirty-plus years, Vijay Rao was detained under § 1226(c) more than a decade after his conviction—a conviction that the criminal court later vacated as unconstitutional.[7]

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[5] Lindsay Nash, *Resurrecting Immigration Releases*, 135 Yale L.J. 1533, 1537 (2026).

[6] Mateo Alvarez is a pseudonym. Br. of Community Organizations and Legal Service Providers as *Amici Curiae* at 9-10, *Keisy G.M. v. Decker*, No. 22-70 (2d Cir. May 2, 2022), ECF No. 71 (facts detailed in Decl. of Suchita Mathur, The Bronx Defenders (on file with counsel)). Alvarez was granted a bond hearing and released, and an IJ later granted him cancellation of removal.

[7] Vijay Rao is a pseudonym. Br. of Community Organizations and Legal Service Providers as *Amici Curiae* at 13 (facts detailed in Decl. of Suchita Mathur, The Bronx Defenders (on file with counsel)).

In short, the statute in practice results in the detention of people who pose no flight risk nor any danger to the community. To the contrary, many of these individuals are lawful permanent residents with longstanding ties to the United States or challenges to deportability on which they may ultimately prevail.

Actual cases bear this out. Jose German Santos, a longtime lawful permanent resident, pleaded guilty to a single marijuana offense in 2017 and was detained as a noncitizen who committed an aggravated felony. *German Santos v. Warden, Pike Cnty. Corr. Facility*, 965 F.3d 203, 206-07 (3d Cir. 2020). Similarly, Alejandro Rodriguez, the named plaintiff in this Court's case of *Jennings v. Rodriguez*, was a longtime lawful permanent resident who was brought to the United States as an infant before being detained based on prior convictions for possession of a controlled substance and "joyriding." *See* Respondents' Br. at 5-6, *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (No. 15-1204), 2016 WL 6123731.

Because this is the population held under § 1226(c), it is all the more essential that the Court recognize that such individuals are entitled to some due-process protection when their detention becomes unreasonably prolonged.

II. PROLONGED DETENTION IMPOSES EXTREME HARDSHIP ON DETAINED NONCITIZENS AND THEIR DEPENDENTS, INCLUDING MINORITY GROUPS.

Due-process safeguards are also needed given the squalid and unsafe conditions of prolonged detention.

That detention has serious physical and psychological impacts on the detained noncitizens themselves, and it also inflicts serious harms on the noncitizen's family—particularly children. And religious and linguistic minorities face additional hardships while in detention.

A. Detained Noncitizens Face Squalid and Unsafe Conditions of Confinement, Subjecting Them to Severe Physical and Psychological Harm.

Detained noncitizens face an array of challenges in detention, and the harmful effects of prolonged detention are well documented.

Immigration detention is nominally "civil" in nature, but detained noncitizens are held in conditions that resemble criminal conditions of confinement. *See, e.g.*, *Velasco Lopez v. Decker*, 978 F.3d 842, 850-53 (2d Cir. 2020) (noting conditions in immigration and criminal custody were "indistinguishable"); *United States v. Estrada-Mederos*, 784 F.3d 1086, 1091 (7th Cir. 2015) (same); *German Santos*, 965 F.3d at 213 (same). Indeed, some noncitizens detained by ICE are held in facilities (such as county jails) that also house individuals serving criminal sentences.[8]

Immigrants held in such settings are subjected to similar conditions and rules as the criminal offenders. Consider three examples: Ibrahim Nasr Ibrahim was detained for 13 months before receiving a bond hearing.

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[8] *See, e.g.*, Immigrant Advocates Response Collaborative, *Behind Bars in the Empire State: An Assessment of the Immigration Detention of New Yorkers* 8 (2019).

Ibrahim v. Superintendent of Mia. Corr. Facility, 821 F. Supp. 3d 490, 496 (M.D. Pa. 2026). As recounted by the court, Mr. Ibrahim is "confined to his cell for 18-22 hours a day"; "does not have any access to sick call with medical providers and must wait approximately two weeks to seek a doctor or nurse after requesting to do so"; and "is not provided any access to mental health care." *Id.* at 495. The court noted that "Ibrahim is currently housed in a state prison in Indiana alongside people who have been convicted of crimes," and that his "detention is not meaningfully different from criminal punishment." *Id.* at 497.

Similarly, Juan Centeno-Martinez was detained for 18.5 months before a court granted habeas relief requiring a bond hearing. *See Centeno-Martinez v. Jamison*, 2025 WL 3157711, at *2 (E.D. Pa. Nov. 12, 2025). Mr. Centeno-Martinez reported that conditions are "'about as bad as state prison' because of severe overcrowding, poor sanitation, and poor medical care." *Id.* And the court noted that "Mr. Centeno-Martinez, who has spent years in prison, asserts FDC [Philadelphia] is 'worse' and 'more restrictive than in any of [his] state prison terms' due in part to frequent lockdowns and strip searches." *Id.*

And Dmitrii Tropskii, a Russian dissident, was detained for 25 months before a district court granted habeas relief and his immediate release. *See Tropskii v. Bondi*, 2025 WL 3016518, at *3 (E.D. Pa. Oct. 28, 2025). In granting relief, the court described the "[p]rison-[l]ike [c]onditions at the [d]etention [f]acilities" where Mr. Tropskii was held. *Id.* at *1. In particular,

"[d]etainees are held in custody with two, sometimes three, people per cell"; there have been "multiple lockdowns, with Mr. Tropskii locked in his cell for as long as three to four days"; and Mr. Tropskii wrote in his affidavit that detainees "were rarely allowed access to the shower during lockdowns," and that the cells were "cold … during the winter months." *Id.* at *2.

ICE also makes use of other facilities, including military bases, private detention facilities, or temporary staging areas.[9] The conditions there, too, often fail to meet basic requirements and can be even poorer than conditions of criminal confinement. A recent report by the DHS Office of Inspector General found that ICE did not comply with standards "related to environmental and health safety, special management units, staff-detainee communication, dental and chronic medical care, medical staffing, and the grievance system."[10] In particular, DHS-OIG found that "regardless of time, location, detainee population, and facility type, ICE and facility staff have struggled to comply with aspects of detention standards," which "hindered their ability to maintain a safe and secure environment for staff and detainees."[11]

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[9] ICE, *Detention Facilities*, https://www.ice.gov/detention-facilities (updated Mar. 23, 2026).

[10] Office of Inspector General, U.S. Dep't of Homeland Security, OIG-24-59, *Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023* (Sept. 24, 2024).

[11] *Id.*

Moreover, the situation has only worsened as ICE detention centers have become severely overcrowded.[12] In 2026, the detained population reached an all-time high, exceeding 70,000.[13] At a detention center in Miami, the detained population recently swelled to three times its capacity, with people sleeping on cold concrete floors.[14] Other detained noncitizens were left handcuffed for hours without food, water, or working toilets.[15] And recent investigations into a Newark facility found overcrowding, contaminated food sometimes containing live worms, and even active tuberculosis infections.[16]

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[12] *See, e.g.*, Miriam Jordan & Jazmine Ulloa, *Concerns Grow Over Dire Conditions in Immigrant Detention*, N.Y. Times (updated July 1, 2025), https://www.nytimes.com/2025/06/28/us/immigrant-detention-conditions.html.

[13] Human Rights Watch, *Dying in Detention: Rising Deaths in an Expanding US Immigration Detention System* (June 25, 2026), https://www.hrw.org/report/2026/06/25/dying-in-detention/rising-deaths-in-an-expanding-us-immigration-detention-system; *see also* Nash, *supra*, at 1537 (explaining that "[i]n the past year, mandatory detention has radically expanded, reaching unprecedented proportions in scope and scale").

[14] Joshua Goodman & Gisela Salomon, *Trump's Migrant Arrests Force All-Male ICE Center to Hold Women and Exceed Nearly Triple Capacity*, Associated Press (Apr. 25, 2025).

[15] Human Rights Watch & Sanctuary of the South, *"You Feel Like Your Life Is Over": Abusive Practices at Three Florida Immigration Detention Centers Since January 2025* (July 21, 2025), https://www.hrw.org/report/2025/07/21/you-feel-like-your-life-is-over/abusive-practices-at-three-florida-immigration.

[16] Jamiles Lartey, *Bad Food. Poor Care. No Toilets. ICE Detention Misery Pushes Immigrants to 'Voluntarily' Depart*, The Marshall

Living in such conditions raises life-threatening risks. At least 32 people died in immigration custody in 2025, more than any year in the last two decades.[17] And 2026 is on track to be the deadliest year in ICE's history, with 26 deaths already reported as of July.[18]

Such conditions also make it very difficult to receive necessary medical treatment in a timely fashion—if at all. It has long been the case that immigration detention facilities provide inadequate medical care, putting detained noncitizens in life-threatening danger.[19] The recent case of Rodrigo Gutierrez Romo illustrates these conditions. Mr. Gutierrez Romo, a lawful permanent resident since 1989, was separated from his family and detained under § 1226(c) based on decade-old convictions for which he had served a total of 120 days in jail. *See*

Project (May 30, 2026), https://www.themarshallproject.org/2026/05/30/ice-trump-new-jersey-detention; Michael Sol Warren, *NJ Inspectors Cite Poor Hygiene, Unsafe Food Handling at Delaney Hall Newark ICE Facility*, Gothamist (June 9, 2026), https://gothamist.com/news/nj-inspectors-cite-poor-hygiene-unsafe-food-handling-at-delaney-hall-newark-ice-facility.

[17] Maanvi Singh et al., *2025 Was ICE's Deadliest Year in Two Decades*, Guardian (Jan. 4, 2026), https://www.theguardian.com/us-news/ng-interactive/2026/jan/04/ice-2025-deaths-timeline.

[18] *See* Sanjay Basu et al., *Mortality in US Immigration and Customs Enforcement Detention*, 335 JAMA 1632 (2026) (concluding that the mortality rate in ICE detention is already the highest on record in the last two decades).

[19] *See, e.g.*, New York Lawyers for the Public Interest, *Still Detained and Denied: The Health Crisis in Immigrant Detention Continues* (Apr. 2020), https://nylpi.org/wp-content/uploads/2020/04/NYLPI-report-Detained-Denied.pdf.

Romo v. Chestnut, 2026 WL 2254385, at *2 (E.D. Cal. Aug. 4, 2026). He entered ICE custody having already survived throat cancer and two recent strokes. While detained, he suffered two more strokes and received shockingly inadequate medical care. After his second stroke, he received no medical attention or supplies, and resorted to covering his open wound with shrink wrap saved from his dinner. *Id.* When the facility failed to provide his inhaler, his blood-oxygen level fell to levels so low that he required emergency hospitalization. *Id.* A reviewing physician called his case "the most egregious case of delayed care for life threatening medical conditions that I have seen to date." *Id.* Mr. Gutierrez Romo was forced to suffer this deterioration of health and denial of medical care for nearly a year before a court ordered his release. *Id.* at *6.

Beyond the serious physical consequences of prolonged detention, extended periods of confinement cause serious psychological and emotional harms. Detention "can lead to life-long damage to health and development, causing health problems including post-traumatic stress disorder, depression, developmental regressions, suicidal behavior, weight loss, sleep disturbance, and frequent infections."[20] Studies further show that prolonged detention has "severe and chronic … consequences for detainee psychological and physical

[20] Human Rights First, *Jailing Immigrant Families Inflicts Severe Harms and Wastes Resources* (Jan. 23, 2025), https://www.humanrightsfirst.org/library/jailing-immigrant-families-inflicts-severe-harms-and-wastes-resources.

health."[21] And studies have specifically shown that detention lasting six months or longer is associated with even higher rates of poor health, mental illness, and PTSD following release.[22] Indeed, precisely because "prolonged detention is associated with increased risks to health," researchers have suggested that "efforts to establish systematic mechanisms for release (e.g., bond hearings) could mitigate health harms."[23]

B. The Dependents of Detained Noncitizens Also Suffer Profound Harms.

The ripple effects of prolonged detention extend beyond those who are detained. Individuals held in immigration detention have limited contact with their families. In many cases, detained noncitizens are transported hundreds of miles away, making staying in touch with children and other family members very difficult.[24] In one study of prolonged detention, researchers found that spousal and child visitation was infrequent—deterred by distance, cost, and the carceral

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[21] Physicians for Hum. Rts., *Punishment Before Justice: Indefinite Detention in the U.S.* 10 (2011).

[22] Altaf Saadi et al., *Duration in Immigration Detention and Health Harms*, 8 JAMA Network Open e2456164 (Jan. 24, 2025), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2829506.

[23] *Id.*

[24] *See, e.g.*, Seth Freed Wessler, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Applied Rsch. Ctr., at 7 (Nov. 2011).

conditions of visitation.[25] In the case of Mr. Gutierrez Romo, both his father and sister-in-law died during his eleven months in mandatory detention, and he was barred from attending either funeral. *Romo*, 2026 WL 2254385, at *6.

Children also suffer if their parents are detained. Children with detained parents experience changes in sleeping habits and behavior, including increased anger and withdrawal.[26] Their academic performance also suffers as they undergo this painful family separation. In interviews, children of detained parents describe grief they can barely put into words—as one child explained, "If I talk about it, I start crying."[27] Detention also drives mixed-immigration-status families to withdraw from the institutions that might otherwise support them, such as schools, hospitals, and courts.[28] In the case of prolonged detention, some children have been

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[25] Caitlin Patler & Nicholas Branic, *Patterns of Family Visitation During Immigration Detention*, 3 RSF: Russell Sage Found. J. Soc. Scis. 18 (2017).

[26] Ajay Chaudry et al., *Facing Our Future: Children in the Aftermath of Immigration Enforcement*, Urban Inst., at 43 (Feb. 2010).

[27] Caitlin Patler et al., *"If I Talk About It, I Start Crying": Children's Responses to Parental Imprisonment in US, in Immigration Detention and Social Harm* (Michelle Peterie ed., 2024).

[28] Caitlin Patler & Gabriela Gonzalez, *Compounded Vulnerability: The Consequences of Immigration Detention for Institutional Attachment and System Avoidance in Mixed-Immigration-Status Families*, 68 Soc. Probs. 886 (2021).

removed from their families entirely and placed in foster care.[29]

Children are not the only dependents who suffer. Detained noncitizens are often the caregivers or sole providers for elderly, ill, or disabled relatives. Mr. Gutierrez Romo supported his aging parents prior to being subject to mandatory detention. *Romo*, 2026 WL 2254385, at *3. Another lawful permanent resident was the sole support for his deaf and disabled parents until ICE arrested him outside of his family's home. His father told the immigration court, "He is the one who talks on the phone for me, takes care of bills, translates, and fixes anything that is broken."[30]

There are economic consequences for detained noncitizens and their families as well. This Court has recognized that the "time spent in jail awaiting trial … often means loss of a job," and it "disrupts family life." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972). And being unable to work for long periods can lead to broader economic consequences, including loss of one's home. One study found that families lost an average of 70 percent of their household income within six months of a parent's immigration-related arrest, detention, or deportation.[31] Even after release, families of people who

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[29] *See, e.g.*, Wessler, *supra*, at 6.

[30] Br. of Community Organizations and Legal Service Providers as *Amici Curiae*, at 11-12 (facts detailed in Decl. of Molly Lauterback, Brooklyn Defender Services (on file with counsel)).

[31] Am. Immigr. Council, *U.S. Citizen Children Impacted by Immigration Enforcement* (June 24, 2026), https://www.american

are subject to prolonged detention struggle to afford food and housing.[32] Given these harms, it is all the more crucial that the Court recognize some limit to indefinite detention under Section 1226(c).

C. Detained Minorities Face Additional Harms Related to Religious Accommodations, Dietary Restrictions, and Language Access.

Finally, reports from ICE facilities reveal that certain populations may face additional harms while in detention. Minorities, women, and LGBT individuals are more likely to face racism, abuse, harassment, and medical neglect.[33]

Religious and linguistic minorities also face unique harms. When ICE housed hundreds of South Asian

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immigrationcouncil.org/fact-sheet/us-citizen-children-impacted-immigration-enforcement/ (citing a study of immigration enforcement in six U.S. locations finding income losses of 40 to 90 percent).

[32] *See, e.g.*, Caitlin Patler, *The Economic Impacts of Long-Term Immigration Detention in Southern California*, UCLA Inst. for Rsch. on Lab. & Emp., at 3-4 (2015).

[33] Press Release, Freedom for Immigrants, *New Report Documents Increase in Hate Incidents in Immigration Detention in First National Study* (June 26, 2018), https://www.freedomforimmigrants.org/news-and-updates/2018/6/26/new-report-documents-increase-in-hate-incidents-in-immigration-detention-in-first-national-study; Nora Ellmann, *Immigration Detention Is Dangerous for Women's Health and Rights*, Ctr. for Am. Progress (Oct. 21, 2019); Sharita Gruberg, *ICE's Rejection of Its Own Rules Is Placing LGBT Immigrants at Severe Risk of Sexual Abuse*, Ctr. for Am. Progress (May 30, 2018).

asylum seekers at a federal prison in Victorville, California, Sikhs were barred from wearing turbans and were consistently denied religiously compliant vegetarian meals.[34] Complaints also document immigration officials confiscating sacred religious apparel like turbans or *karas* (bracelets), even chronicling attempts to rip off makeshift turbans fashioned from towels or T-shirts.[35] Sikhs detained in El Paso went on a hunger strike, and ICE force-fed them in a "painful and dehumanizing" practice that the United Nations warned could violate the Convention Against Torture.[36]

Muslims in detention have faced religious discrimination as well. Muslims held in a facility in Miami were denied religious dietary accommodations, forcing them to "choose between faith and food."[37] Violations at another facility occurred during Ramadan,

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[34] *See* ACLU, *Teneng v. Trump*, https://www.aclu.org/cases/teneng-v-trump (last updated Aug. 1, 2018).

[35] *See* Letter from ACLU to U.S. Dep't of Homeland Sec., *Re: Investigating Religious Freedom Violations by Border Patrol and ICE* (Mar. 15, 2019), https://www.aclu.org/letter/investigating-religious-freedom-violations-border-patrol-and-ice.

[36] Martha Mendoza et al., *ICE Halts Force-Feeding of Immigrant Detainees in Texas*, Associated Press (Feb. 15, 2019), https://apnews.com/article/immigration-north-america-india-us-news-ap-top-news-15d84da5810748f7a14b346419381cfb.

[37] *See* Letter from Muslim Advocates, Ams. for Immigrant Just. & King & Spalding LLP to U.S. Dep't of Homeland Sec. & ICE, at 3 (Aug. 18, 2020).

with detained Muslims receiving non-halal meals or having to wait hours to break their daily fast.[38]

Language access issues raise additional concerns. Per a complaint to DHS, Punjabi-speaking detainees were not provided the detainee handbook explaining their rights, even though a translation existed.[39] And a 2024 report similarly documented ICE facilities' routine failure to provide required interpretation and translation: one asylum seeker, forced to prepare his application through a fellow detainee for lack of language assistance, omitted details of past torture that he was unwilling to share with a stranger, leaving out key facts to make his case as a result.[40] Another detainee spent six months in detention simply because language barriers prevented him from learning that he could ask for release.[41] A 2024 federal civil rights complaint likewise alleged that non-English speakers at a

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[38] *See* Marianne Dhenin, *ICE Jails Have Repeatedly Denied Muslims the Right to Fully Observe Ramadan*, Truthout (Mar. 18, 2026), https://truthout.org/articles/ice-jails-have-repeatedly-denied-muslims-the-right-to-fully-observe-ramadan/; Nargis Rahman & Ulaa Kuziez, *Leftover Ramen, Too Few Qurans: A 'Humiliating' Ramadan Inside ICE Detention Centers*, Religion News Serv. (Mar. 12, 2026).

[39] *See* Ctr. for Am. Progress, *Improving Language Access in the U.S. Asylum System* (May 25, 2023).

[40] Kathryn O. Greenberg Immigration Justice Clinic, *Held Incommunicado: The Failed Promise of Language Access in Immigration Detention*, Cardozo Sch. L. (2024), https://cardozo.yu.edu/sites/default/files/2024-08/YU-101%20Held%20Incommunicado.pdf.

[41] *Id.*

Louisiana facility could not understand their own legal documents, disciplinary reports, or medical information, a problem that may especially affect indigenous detainees.[42]

III. PROLONGED DETENTION UNDERMINES THE FAIR ADJUDICATION OF REMOVAL CASES.

As just described, prolonged detention imposes devastating harms on detainees and their families. But prolonged detention has additional, particularly nefarious, consequences: it upsets the fair adjudication of immigration cases by erecting often insurmountable barriers preventing immigrants from making their case to remain in the United States.

A. Prolonged Detention Creates Systematic Barriers to Defending Against Removal.

Perhaps most critically, prolonged detention severely limits a detained noncitizen's ability to access counsel.[43] As a threshold matter, detained noncitizens

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[42] *See* Law School Staff, *Clinic Files Federal Complaint on Widespread Language Access Issues at Louisiana ICE Facility*, Cornell L. Sch. (Sept. 30, 2024); Bobbi-Jeanne Misick, *Louisiana Immigration Lockup Fails to Provide Translation Services for Detainees, Complaint Alleges*, Verite News (Sept. 5, 2024); Katie Shepherd, *Indigenous People Face Persistent Language Access Challenges in Immigration Detention*, Am. Immigr. Council (Oct. 12, 2025).

[43] *See* Andrea Black & Joan Friedland, *Blazing a Trail: The Fight for Right to Counsel in Detention and Beyond*, Nat'l Immigr. Law Ctr., at 3-7 (Mar. 2016), https://www.nilc.org/resources/blazing-a-

must seek out their own counsel—a major hurdle when one is held in an ICE facility. These facilities are often located in rural areas with poor access to legal representation; in parts of the South, there is only one immigration attorney within a 100-mile radius for every 200 people detained.[44] The provided lists of pro bono counsel are frequently years out of date.[45] And counsel and legal resources are only becoming harder to access, with the government shuttering programs that had previously provided unrepresented persons in immigration detention information about their rights and referrals to pro bono counsel.[46] It is an uphill battle for those detained to even identify prospective counsel.

Making initial contact with and retaining an attorney poses further barriers. Many facilities will not allow attorney calls without counsel supplying the client's alien registration number—information that is often impossible for an attorney making initial contact with a

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trail-right-to-counsel/ [hereinafter *Blazing a Trail*].

[44] ACLU, Human Rights Watch & Nat'l Immigrant Justice Ctr., *Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration*, at 20-21 (2020); *see also* Emily Ryo & Ian Peacock, *A National Study of Immigration Detention in the United States*, 92 S. Cal. L. Rev. 1 (2018).

[45] Cindy S. Woods, *Barriers to Due Process for Indigent Asylum Seekers in Immigration Detention*, 45 Mitchell Hamline L. Rev. 319, 341-48 (2019); *Blazing a Trail* at 6-7.

[46] Cong. Rsch. Serv., *Immigration Court Legal Access Programs: Terminations and Related Litigation* (2025); *Amica Ctr. for Immigrant Rights v. U.S. Dep't of Justice*, 2025 WL 1852762 (D.D.C. July 6, 2025) (upholding the terminations), *appeal docketed*, No. 25-5254 (D.C. Cir. July 16, 2025).

client to provide.[47] For the noncitizen, making calls to an attorney can be prohibitively costly—to say nothing of the cost of retaining representation.[48]

Because access to counsel increases one's odds of achieving a successful result, detention has profound consequences for one's legal case. Only three out of every ten detained immigrants have counsel, as compared to the roughly two-thirds of non-detained immigrants.[49] A seminal study found that detained immigrants with representation were more than ten times as likely to prevail on their claims, and almost seven times as likely to be released from custody, as compared to those without counsel.[50] In one study of a representation program for detained immigrants, people assigned counsel were dramatically more likely to secure relief as compared to those who proceeded without.[51]

Even if counsel is secured, detention greatly impedes attorney-client communication. At many ICE facilities,

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[47] Aditi Shah et al., ACLU, *No Fighting Chance: ICE's Denial of Access to Counsel in U.S. Immigration Detention Centers*, at 7-8, 19 (2022) [hereinafter *No Fighting Chance*].

[48] *Id.* at 5, 7, 16.

[49] Ingrid V. Eagly, Steven Shafer & Renee Moulton, *Access to Counsel in Immigration Court, Revisited*, 111 Iowa L. Rev. 1, 10, 25-27 (2025).

[50] Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1, 50, 70 (2015).

[51] Jacquelyn Pavilon & Neil Agarwal, *The Impact of Legal Representation on Detained Immigrants Facing Deportation*, Vera Inst. of Just. (Apr. 2026).

attorneys are unable to schedule calls with detained clients—and facilities that do permit scheduled calls often do not honor them.[52] When calls are permitted, attorneys often report such poor audio quality that their clients could not reliably be heard or understood.[53] Phone calls are usually monitored, abrogating the promise of attorney-client confidentiality. In-person visits face other complications. Attorneys report being arbitrarily denied access to their clients or delayed in meeting with them in a majority of ICE facilities.[54]

For immigrants who do not speak English, in-person meetings have limited use, as most facilities prohibit counsel from bringing in cellphones or laptops to visits.[55] This bar also poses issues for immigrants seeking to review and understand documents key to their case.[56] In-person visits can also be complicated by lack of confidential meeting space, forcing clients to recount sensitive information about past persecution or the details of their case within earshot of guards and others in detention.[57]

For example, Ali Tayeh sought protection under the Convention Against Torture, based on the repeated sexual abuse he suffered as a child in his home country.

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[52] *No Fighting Chance*, *supra*, at 7, 13-15.

[53] *Id.* at 16-18, 27.

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.* at 26.

Denied any opportunity to testify in-person, he was forced to share the details of his past trauma by videoconference from a nonconfidential room in jail, where guards and others could easily overhear.[58] Similarly, in the case of Mr. Ibrahim, discussed in Part II *supra*, Mr. Ibrahim reported that he "has been denied the opportunity to communicate with his attorney in a confidential fashion." *Ibrahim*, 821 F. Supp. 3d at 495. In such conditions, people cannot safely and fully discuss the most critical details of their cases.

Detained immigrants are also constantly at risk of transfer between facilities, which can happen without notice to counsel.[59] Such transfers are common, with 60 percent of those detained experiencing a transfer at least annually.[60] These transfers routinely sever existing attorney-client relationships, forcing detained noncitizens to essentially start over.

Even if a noncitizen accesses and reliably communicates with counsel, further barriers await. As this Court has recognized, detention impedes one's

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[58] Ali Tayeh is a pseudonym. Br. of Community Organizations and Legal Service Providers as *Amici Curiae*, at 14-16 (facts detailed in Decl. of Ellen Pachnanda, Brooklyn Defender Services (on file with counsel)).

[59] Ryo & Peacock, *supra*, at 39-40 & n.123; Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States* 43-53 (Dec. 2009) (documenting that transfers routinely terminate existing attorney-client relationships and that ICE regularly failed even to notify counsel of a client's transfer).

[60] Ryo & Peacock, *supra*, at 39-40.

ability to "gather evidence, contact witnesses, or otherwise prepare [their] defense." *Barker*, 407 U.S. at 533. Removal cases typically involve assessing whether an immigrant is in fact deportable or inadmissible and, if so, whether any relief from removal should be granted. To establish eligibility for relief, the noncitizen often must assemble extensive documentary evidence, including affidavits, expert reports on country conditions, and various governmental and other records.

Quickly compiling such information is challenging in the ordinary course, but it is extremely difficult when detained. A detained individual likely cannot even call to seek her own court records. Moreover, less than 25 percent of ICE facilities provide detained individuals with email or electronic messaging to exchange, review, and sign legal documents, forcing detained litigants to rely on postal mail.[61] Attorneys at roughly one in five surveyed facilities reported that they or their clients missed a filing deadline because of failures in the mail system.[62] And continuances are often inevitable given routine delays in the production of medical records, conviction records, or in accessing expert witnesses.

Finally, detention also substantively harms an immigrant's case, as it undermines the equitable considerations that a court considers for determinations regarding cancellation of removal or release. Those determinations evaluate things like employment, ties to the community, rehabilitation, and family support—all

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[61] *No Fighting Chance*, *supra*, at 20-21.

[62] *Id.*

of which are eroded when one is held in mandatory detention for prolonged periods.[63] As a result, an immigrant entering detention with strong equities in support of release may find herself with a significantly weaker record once her case is ultimately heard after months or years in detention.

B. Individuals with Strong Claims for Relief Often Must Suffer Lengthy Detention Until They Succeed on the Merits of Their Claims.

Prolonged mandatory detention distorts adjudication of immigration cases in another respect as well: meritorious claims often take the longest to resolve, yet those individuals must remain in custody throughout the process. Most notably, many noncitizens have strong claims that there is no legal basis for their mandatory detention under Section 1226(c). For example, one noncitizen, Client D, was detained on the basis of two misdemeanor convictions, which an immigration judge originally found to be crimes involving moral turpitude.[64] But after appeal and remand, the BIA reversed course, finding that one of his convictions was not a crime of moral turpitude and thus did not merit mandatory detention.[65] Similarly, in the case of Mr. German Santos, following a remand, the BIA concluded that Mr. German Santos's conviction was not

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[63] Emily Ryo, *Detained: A Study of Immigration Bond Hearings*, 50 L. & Soc'y Rev. 117 (2016).

[64] Facts detailed in Decl. of David Faherty, National Immigrant Justice Center (on file with counsel).

[65] *Id.*

an aggravated felony, resulting in a further remand for a hearing regarding cancellation of removal. *German Santos*, 965 F.3d at 207-08. Mr. German Santos remained detained throughout. *Id.* at 208.

Yet such cases can take longer to prepare and resolve. BIA appeals can take months and can culminate in a remand to the immigration judge, which in turn could take several additional months and could generate another appeal. For instance, in the case of Daniel Rodríguez, the government appealed the decision granting him cancellation of removal. The BIA ultimately held that his conviction was not a removable offense, freeing him from detention. But Rodríguez had to spend another six months in detention fighting his appeal *after* initially proving that he should have never been subjected to detention at all.[66] And if the BIA dismisses an appeal, the noncitizen generally has the right to petition for review to the courts of appeals, which in turn can take months or years to brief and resolve. *See, e.g.*, *Galoustian v. Scott*, 2026 WL 1784828, at *3 (W.D. Wash. June 22, 2026) (noting that "BIA appeals can stretch to longer than six months, and if the BIA denies [the immigrant's] appeal, [the immigrant] can appeal to the Ninth Circuit Court of Appeals, where

[66] Daniel Rodríguez is a pseudonym. Br. of Community Organizations and Legal Service Providers as *Amici Curiae*, at 4-6 (facts detailed in Decl. of Sophia Gurulé, The Bronx Defenders (on file with counsel)).

appeals may not be resolved for more than another year or two").

The result is ever more prolonged detention for strong candidates for relief. When the Third Circuit considered Mr. German Santos's case, he had "been imprisoned for more than two-and-a-half years" as he fought through removal proceedings, appeals, and habeas petitions to return to his life outside of confinement. *See German Santos*, 965 F.3d at 206-08. Similarly, Alejandro Rodriguez was detained for over three years as his case eventually reached this Court, and he later won his immigration case, remaining a U.S. resident to this day.[67] Client D was detained for over two years as his case went through appeal and remand before he was released on bond.[68] And Cheikh Diop won withholding of removal only after three remands and nearly three years of detention. *See Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 223 (3d Cir. 2011), *overruling recognized by Borbot v. Warden Hudson County Correctional Facility*, 906 F.3d 274 (3d Cir. 2018).

C. Prolonged Detention Forces Immigrants to Abandon Their Claims.

These dynamics point to yet another respect in which mandatory detention denies immigrants fair and accurate resolution of their claims for relief. Detained

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[67] ACLU, *Alejandro Rodriguez*, https://www.aclu.org/bios/alejandro-rodriguez (last visited Aug. 28, 2026).

[68] Facts detailed in Decl. of David Faherty, National Immigrant Justice Center (on file with counsel).

immigrants with meritorious cases are forced into an impossible choice: they must either willingly subject themselves to the squalid, dangerous conditions of detention, without end in sight, or abandon their right to pursue relief from removal.

Recent studies have concluded that many individuals faced with this choice abandon their worthy claims for relief. In the words of one scholar, prolonged mandatory detention "force[s] people to give up meritorious claims."[69] Another study concludes that "immigration detention has a negative impact on immigration case outcomes as the stress of detention causes people to abandon their claims to relief."[70] And prolonged detention erodes individuals' confidence in the legal system and their belief that they can obtain relief.[71]

Immigration officials exacerbate these conditions and exploit detained immigrants' vulnerable position by coercing detained immigrants to agree to voluntary

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[69] Nash, *supra*, at 1536.

[70] Nat'l Immigrant Just. Ctr., *Locked Away: The Urgent Need for Immigration Detention Bond Reform*, at 1 (May 2023), https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2023-06/NIJC-Policy-Brief_ICE-Bond-Reform_May-2023.pdf.

[71] Maureen A. Sweeney et al., *Detention as Deterrent: Denying Justice to Immigrants and Asylum Seekers*, 36 Geo. Immigr. L.J. 291, 314-15 (2021); *see also Blazing a Trail* at 36-38 (formerly detained clients recounting that people "just signed papers to leave" believing they could not win without a lawyer, and that officers told detained people they would be held so long that they should sign and go).

departure or deceptively claiming that stipulating to removal is the only avenue to free oneself from detention—a practice that has previously been the subject of class action litigation.[72] Notes from court observers similarly show a concerning pattern of immigration judges encouraging immigrants, especially those without legal representation, to consider voluntary departure.[73] The last year has seen a surge in immigrants abandoning their cases, with voluntary departures becoming *twenty-eight times* more common throughout 2025.[74]

Similarly, attorneys well versed in immigration law report numerous stories of people opting for voluntary departure or accepting deportation proceedings, "not because they don't have a right to stay in the United States, but because they can't handle [the] really inhumane conditions in detention any longer."[75]

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[72] Sweeney et al., *supra*, at 316; Tim Henderson, *Voluntary Departures Spike as Immigrants Face Squalid Detention, Pressure to Leave*, Stateline (May 26, 2026), https://stateline.org/2026/05/26/voluntary-departures-spike-as-immigrants-face-squalid-detention-pressure-to-leave/.

[73] *Voluntary Departures Spike*, *supra*.

[74] Graeme Blair & David Hausman, *One Year of the Immigration Enforcement*, Deportation Data Project (Apr. 7, 2026), https://deportationdata.org/analysis/immigration-enforcement-first-year.html ("[T]he combination of the increase in voluntary departures/returns and the decline in releases suggests that giving up to avoid more time in detention is an important part of the story").

[75] *Voluntary Departures Spike*, *supra* (quoting Shayna Kessler,

Detained immigrants will do so even if it means returning to potentially dangerous conditions or being shipped off to an unknown country. For instance, Client A, who fled to the United States due to death threats and near-fatal physical attacks, was detained on disputed criminal charges. After months in detention, his health deteriorated so severely that he accepted voluntary departure despite continued, credible fear for his life upon return to his home country. Within just six months of his return, he was forced to flee his home country once more out of fear for his life. After returning to the United States, he eventually won asylum—grounds that would have allowed him to remain in the United States when he was first detained.[76]

In short, "detention is being used intentionally as a routine and deliberate method of deterring immigrants from pursuing their immigration cases."[77] The Court should not ratify this state of affairs by holding that

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Director of the Vera Institute of Justice's Advancing Universal Representation Initiative); *see also* Ted Hesson & Kristina Cooke, *As Trump Misses Deportation Goals, ICE Pushes Migrants to Give Up Their Cases*, Reuters (Dec. 11, 2025), https://www.reuters.com/world/us/ice-threatens-family-separation-indefinite-detention-satisfy-trump-deportation-2025-12-11/ (quoting Elora Mukherjee, director of Columbia Law School's Immigrants' Rights Clinic, discussing how her detained clients across the country find detention conditions so "inhumane" and "degrading" that "they are giving up on their immigration cases").

[76] Facts detailed in Decl. of David Faherty, National Immigrant Justice Center (on file with counsel).

[77] Sweeney et al., 36 Geo. Immigr. L.J. at 299.

those subjected to unreasonably prolonged mandatory detention have no due-process right to a bond hearing.

CONCLUSION

If the Court reaches the merits, the judgment below should be affirmed.

Respectfully submitted,

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