No. 25-886

IN THE

Supreme Court of the United States

KENNETH GENALO, DIRECTOR OF THE NEW YORK FIELD OFFICE OF U.S. I.C.E., *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 *AMICI CURIAE* FORMER IMMIGRATION JUDGES AND FORMER MEMBERS OF THE BOARD OF IMMIGRATION APPEALS IN SUPPORT OF RESPONDENT.

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INTEREST OF *AMICI CURIAE*[1]

Amici are fifty-four (54) former immigration judges (IJs) and former members of the Board of Immigration Appeals (BIA). A complete list of signatories can be found in the Appendix of *Amici Curiae*.

Amici have an interest in this case based on their many years of dedicated service administering the immigration laws of the United States. Each is intimately familiar with the immigration court system and its procedures. Collectively, *amici* have presided over tens of thousands of immigration proceedings, including thousands of bond hearings for detained individuals. From this experience, *amici* are well-positioned to provide insights to this Court about the process and purpose of bond hearings. *Amici* are also well-suited to explain the inefficiencies created by unnecessary detention, which can frustrate a detained person's ability to retain counsel, coordinate case strategy with counsel, and marshal the evidence necessary to oppose removal.

Amici believe that the Second Circuit's decision that the Due Process Clause requires individualized bond hearings for immigrants subject to prolonged pre-final-order detention is correct. *Amici* submit this brief in order to explain the important role that bond hearings play in protecting public safety while furthering the just and efficient enforcement of the

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[1] Pursuant to Supreme Court Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, and that no person or entity other than *amici* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

immigration laws. *Amici* encourage the Court to affirm.

SUMMARY OF ARGUMENT

Amici submit that bond hearings serve the essential roles of protecting public safety and supporting efficient docket management at minimal cost. Bond hearings also facilitate the proper functioning of the immigration justice system by permitting those detained persons with the most meritorious cases to prepare their cases more effectively and efficiently, while imposing fewer costs on the detention system. Petitioners contend that detention without a bond hearing imposes little cost and creates scant risk of error, and that whatever process is due turns on the statutory grounds for detention rather than on danger or flight. *See* Pet. s Br. 21, 33–37. *Amici*—former immigration judges and members of the Board of Immigration Appeals—write to measure those contentions against the daily reality of the immigration courts.

First, bond hearings protect public safety. In conducting a bond hearing, an IJ must evaluate the risk to the public of the detained person s release on bond and the likelihood of flight during the pending removal proceedings. This involves considering factors such as employment history, length of residence in the community, family ties, previous criminal or immigration law history, and the person s general credibility—all of which IJs are specifically trained to weigh. Bond hearings also permit IJs to manage their dockets, allowing them to filter out meritorious cases and delve into cases which require more extensive review. Bond hearings can be undertaken with minimal costs because IJs have the flexibility to focus their inquiry on only the factors most relevant to protecting public safety in each specific case. Bond hearings thus have the potential to create opportunities for financial savings or reallocation for public benefit as they efficiently identify which persons do not pose a sufficient public safety risk to justify the costs of detention.

Second, bond hearings facilitate the proper functioning of the immigration justice system. Detained persons with the most meritorious cases often end up with the longest proceedings, as they work with counsel to develop a robust factual record establishing why removal is inappropriate. Mandatory detention fights this reality, perversely penalizing and creating procedural inefficiencies for the persons most likely to prevail and, in turn, those with the best arguments against detention in the first place. A bond hearing helps IJs to improve the overall efficiency of the system by permitting persons with the most meritorious claims to develop their cases outside detention, where they can connect more easily with their attorneys, gather evidence, and prepare their cases. When detained persons are released on bond to develop their cases, they are more likely to present a full, complete case, which allows for a more effective immigration justice system.

BACKGROUND

Removal proceedings originate in the immigration courts when the government files a charging document and serves it on an immigrant (henceforth respondent"). 8 U.S.C. § 1229; 8 C.F.R. §§ 239.1, 1003.14. The notice specifies the basis for the proceedings and informs the respondent when and where to appear for proceedings before an IJ, who will decide the respondent s deportability. 8 U.S.C. §§ 1229(a), 1229a(a).

Removal proceedings can be complex and time-intensive, often involving many of the procedures of a typical trial, including live witness testimony, a wide range of evidence, and legal and factual arguments. 8 C.F.R. §§ 1240.7, 1240.10; *see generally* 8 C.F.R. Pt. 1240. The IJ cannot enter a final disposition of removal without resolving (1) if the respondent is deportable as charged and (2) if the respondent qualifies for any ground of relief from removal.[2] Additional hearings are available when a respondent disputes the charges or claims other relief. 8 C.F.R. § 1240.1(c) (applications for relief shall" be calendared for a hearing); *see also In re E-F-H-L-*, 26 I. & N. Dec. 319, 323 (B.I.A. 2014) (applying § 1240 to other relief in Immigration Court and holding that in the ordinary course, an applicant for relief is entitled to a merits hearing).

Respondents often have no experience with such procedures and may be represented at any proceeding by counsel. 8 U.S.C. § 1229a(b)(4)(A). But respondents generally must fund their legal representation themselves, find pro bono counsel, or represent themselves; unlike in criminal proceedings, there is no universal right to appointed counsel at government expense. *Ibid.*; 8 C.F.R. § 1292.1. Perhaps as a result, the vast majority of detained immigrants—86% nationally—lack counsel in immigration proceedings. Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1, 32 fig. 6

[2] Various forms of waiver or relief from removal include: cancellation of removal, 8 U.S.C. § 1229b, adjustment of status, 8 U.S.C. § 1154, asylum, 8 U.S.C. § 1158, withholding of removal, 8 U.S.C. § 1231(b)(3), and a claim for protection under the Convention Against Torture, 8 C.F.R. §§ 208.16, 208.17.

(2015) (studying immigration cases from 2007 through 2012). For unrepresented individuals, it thus falls to the IJ to guide the respondent through the often complex procedures of the immigration courts. And, in part for that reason, IJs routinely grant, and even encourage, requests by respondents for continuances to allow time to find a lawyer. *See id.* at 61 fig. 16 (tracking the percentage of total case duration attributable to time spent searching for counsel, which can exceed 50% when an immigrant is detained); *see also* 8 U.S.C. § 1229a(b)(4)(A) (guaranteeing an immigrant s right to seek counsel at no expense to the government).

Aside from guiding unrepresented respondents through the immigration process, IJs also often need to resolve complex questions during those proceedings, including factual issues, such as the respondent s good moral character,” 8 U.S.C. § 1229b(a), (b); and legal topics, such as whether a conviction qualifies as an aggravated felony or a crime of moral turpitude, *id.* § 1227(a)(2)(A)(i). Factual and legal disputes may also arise regarding various forms of relief, such as persons claiming asylum based on evidence of past persecution and a well-founded fear of persecution in light of current conditions in their countries. *Id.* §§ 1101(a)(42), 1158(b). Resolving such issues can significantly lengthen the time to resolve the dispute, particularly when cases proceed through both administrative and federal court appeals.

Bond hearings allow IJs to effectively manage such complex cases while protecting the public. During bond hearings, the IJ assesses the danger, flight risk, and likelihood of appearance at future proceedings of each respondent. The judge makes an informed judgment based on, among other factors, the respondent s fixed address, length of residence, family and community ties, employment history, record of court appearances, criminal history, immigration history, attempts to evade authorities, and manner of entry. *In re E-Y-F-G-*, 29 I. & N. Dec. 103, 105 (B.I.A. 2025). According to one study, 86% of immigrants released on bond appeared at subsequent court hearings.[3] This is unsurprising, as studies show that persons released from detention have high rates of compliance with subsequent immigration court obligations.[4]

Bond hearings are also beneficial to an immigration system that is already overburdened. As of August 2026, there were 3,195,137 cases pending in United States immigration courts. TRAC, *Immigration Court Quick Facts* (visited Sept. 8, 2026), https://perma.cc/G673-3WGV. That is nearly seven times the caseload from a decade ago. *See* Human Rights First, *The U.S. Immigration Court: A Ballooning Backlog that Requires Action* (Mar. 15, 2016), https://perma.cc/DG9P-KHT3https://perma.cc/DG9P-KHT3. Unsurprisingly, the number of persons in the federal immigration detention system has also grown dramatically. As of April 2026, Immigration and Customs Enforcement (ICE) maintained an average daily detained

[3] Transactional Records Access Clearinghouse (TRAC), *What Happens When Individuals Are Released On Bond In Immigration Court Proceedings?* (Sept. 14, 2016), https://perma.cc/7NZU-T3FF.

[4] American Immigration Council, *Detaining Families*, at 23 (Aug. 15, 2018), https://perma.cc/3BCQ-6T9Z (finding that 81% of non-family detainees and 96% of asylum-seeking families released from detention complied with all subsequent immigration court obligations).

population of more than 67,000 noncitizens, 71% more than in January 2025,[5] and over ten times the number in 1994.[6]

And as the number of cases has grown, the cost of detention has grown. The federal government now spends approximately $4 billion annually on immigration detention, nearly twice the amount spent a decade ago.[7]

Bond hearings mitigate that cost and burden, allowing the release of individuals who do not pose a public-safety threat or flight risk. The bond proceedings themselves impose little additional burden: bond determinations may be made orally, in writing, or at the IJ s discretion, by telephone. *See* 8 C.F.R. § 1003.19(b).

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[5] U.S. Gov't Accountability Off., *Immigration Detention: Waste and Performance Issues at Camp East Montana Provide Valuable Lessons for Future Facilities*, GAO-26-108886, at 1 (June 9, 2026) ("ICE's average daily population of detained noncitizens increased from 39,314 on January 20, 2025, to 67,204 on April 1, 2026, an increase of 71 percent, according to ICE data."), https://perma.cc/CFY6-GKLQhttps://perma.cc/LNR2-NVJX?type=image.

[6] Anil Kalhan, *Rethinking Immigration Detention*, 110 Colum. L. Rev. Sidebar 42, 44–45 (2010) ("In 1994, officials held approximately 6,000 noncitizens in detention on any given day.").

[7] *Compare* U.S. Dep't of Homeland Sec., U.S. Immigration & Customs Enf't, Congressional Budget Justification: Fiscal Year 2026, at 41 (2025) *with* U.S. Dep't of Homeland Sec., Budget-in-Brief: Fiscal Year 2017, at 5 (2016).

ARGUMENT

I. Bond Hearings Are Efficient and Effective Tools for Protecting the Public.

Bond hearings are efficient and effective tools for protecting the public and ensuring that detention is reserved for those who genuinely pose a danger to the community or a risk of flight. IJs are uniquely well-suited to make those determinations, and the hearings they conduct are an essential tool for managing their extensive dockets at minimal cost, especially relative to mandatory detention. The Government's contrary position—that individualized hearings are an administrative burden that categorical detention avoids, *see* Pet.'s Br. 33–37—misapprehends how these hearings function in practice, as the sections below explain.

A. Immigration Judges Are Well-Suited to Judge the Potential Danger Posed by Release.

In a bond hearing, the IJ assesses the danger and flight risk posed by each respondent. IJs routinely make such assessments during bond redetermination hearings in removal cases not subject to Section 1226(c). *See* 8 C.F.R. § 1236.1. IJs completed more than 78,000 bond hearings in Fiscal Year 2017 and 91,000 bond hearings in Fiscal Year 2018. Executive Office for Immigration Review, U.S. Dep't of Justice, *FY 2018 Statistics Yearbook*, 9 & fig. 4 (2018), https://perma.cc/G3ZT-NHSDhttps://perma.cc/G3ZT-NHSD. These hearings permit experienced judges to make an informed judgment based on factors that Congress and the courts have long recognized as appropriate to weigh when considering flight risk and danger in pretrial detention determinations. *See, e.g.*, *United States v. Gonzales Claudio*, 806 F.2d 334, 343 (2d Cir. 1986) (identifying "ties to the community" as "the starting point for assessing risk of flight"); *United States v. Friedman*, 837 F.2d 48, 49–50 (2d Cir. 1988) (no flight risk based on finding that criminal defendant "is a life-long New York resident, that he has no prior criminal record, that he has no passport or known ability to evade surveillance, that he has worked gainfully in the New York area for twenty-five years prior to his arrest, and that he is married and has three children, all of whom live in the New York area").

IJs reliably weigh these factors, and an IJ who finds that an individual presents a danger to the community must deny release on bond entirely. *See In re Urena*, 25 I. & N. Dec. 140, 141 (B.I.A. 2009). Bond is appropriate only to address flight risk, danger to persons or property, or a threat to national security. *Ibid*.; *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006).

In *amici*'s experience, these assessments are highly fact-intensive, and IJs err on the side of protecting public safety in evaluating them. As one former IJ noted, she would release a respondent on bond only when it was clear that the respondent posed no threat to public safety. For example, if a respondent was convicted of driving while under the influence, she would question the respondent on his plans for getting to work and ensure that he would not need to revert to driving while out on bond. Likewise, another *amica* applied a rigorous framework to her detained docket, denying bond outright where an individual had a conviction for an aggravated violent offense, a sex offense, or domestic violence. Even absent a conviction, the IJ frequently declined to grant bond where an individual had been arrested, charged, or indicted for a sex offense or an act of domestic violence. For non-violent offenses not subject to mandatory detention, she set a monetary bond above the minimum, and for non-criminal cases, she released individuals on their own recognizance or set a low bond. That graduated, individualized approach reflects the care with which IJs weigh public safety in every custody determination. Indeed, that IJs deny bond where the facts warrant it is not a flaw in the system but proof of its protective function: a bond hearing guarantees only an individualized assessment of dangerousness, not release.

Finally, any order granting release remains reviewable by the BIA and, in turn, the Attorney General. *See* 8 C.F.R. § 1003.1(b), (h). This limited review preserves IJs' authority to continue detention when warranted, while preventing confinement (and its associated financial costs) without an individualized determination.

B. Bond Hearings Are An Essential Case Management Tool.

Bond hearings not only address noncitizens' liberty interest but also serve as effective, efficient case management tools, providing the necessary opportunity to filter out cases that should not be before the Immigration Court in the first instance, as well as permitting IJs to balance their detained and non-detained dockets.

Bond hearings are often the first interactions detained individuals have with IJs and, critically, the first opportunity any factfinder has to determine whether the individual is properly detained and subject to the Immigration Court's jurisdiction. In many instances, detention is appropriate—just 30% of bond hearings resulted in release in the first half of 2026.[8] However, without a bond hearing, an improperly detained U.S. citizen, for example, might remain in custody with no near-term opportunity to demonstrate the unlawfulness of his or her detention.

One former IJ, Judge Eliza Klein, recalls an instance that highlights the need for placing detained individuals promptly before IJs. During a merits hearing wherein the detained individual expressed that he would rather accept deportation than remain in custody, the individual revealed that his parents were U.S. citizens. On further questioning, Judge Klein was able to determine that the respondent's parents had become citizens later in the respondent's life, but neither he nor counsel for the Department of Homeland Security (DHS) knew whether respondent was himself a U.S. citizen. Following a recess for lunch, the DHS attorneys confirmed that the respondent was, in fact, a U.S. citizen. Judge Klein ordered him released that day.

Had this citizen been provided with a bond hearing at the start of the process, the erroneous detention could have been resolved promptly. Instead, he waited in detention, without an attorney, unaware of his citizenship status, until he had the opportunity to discuss the fundamental facts of his

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[8] *See* TRAC, *Immigration Court Quick Facts* (visited Sept. 8, 2026), https://perma.cc/G673-3WGV ("Immigration judges have held 51,816 bond hearings so far in FY 2026 (through June 2026). Of these 15,347 were granted bond.").

case—*i.e.*, his citizenship—with an IJ. This case highlights a significant risk of depriving individuals in removal proceedings of a bond hearing: legally and factually erroneous detention with no backstop. Bond hearings, although not focused on the merits of removal or relief, are a setting where IJs and government counsel can make basic inquiries to determine whether the court even has jurisdiction over the individual in the first instance.

In addition to filtering out cases not properly before the immigration courts, bond hearings provide a crucial case management tool IJs use to balance detained and non-detained dockets. For detained individuals, decisions regarding removability and relief from removability are required to be made quickly, while cases involving non-detained individuals may proceed more deliberately. In September 2025, the Executive Office for Immigration Review (EOIR) issued a policy memorandum requiring that 95% of "all non-status detained removal cases should be completed within 60 days of filing of the Notice to Appear (NTA), reopening or recalendaring of the case, remand from the [BIA] or notification of detention," while 95% of "all non-status non-detained removal cases should be completed within 365 days (1 year) of filing of the NTA, reopening or recalendaring of the case, remand from the BIA, or notification of release from custody." Executive Office for Immigration Review, *Case Priorities And Immigration Court Performance Measures*, PM 25-47, effective Sept. 12, 2025, App. A, https://perma.cc/J65X-FBYV.

When bond is not an option, this difference in approach hampers the effective litigation of meritorious cases that are factually or procedurally complex, as such cases generally take longer to resolve than those that are clearly insufficient on the merits. Demonstrating the merits of non-removability or relief from removability often requires fact-gathering, witness support, and diligence by legal counsel, all of which take time. Such thorough preparation is difficult, if not impossible, at the current "breakneck" pace of the detained docket.[9]

Complex cases may also require continuances made in good faith, but those continuances extend the period of detention due to no fault of the respondent. *See* 8 C.F.R. § 1003.29 ("The immigration judge may grant a motion for continuance for good cause shown[.]"). Prolonged periods of detention render complex cases even more difficult to resolve, as noncitizens lose contact with family members and friends who are able to provide evidentiary and witness support, cannot access documentation that would demonstrate the merits of their cases, and have less access to, and less time to spend with, legal counsel.

IJs do not release individuals on bond simply because release would ease the management of their dockets, nor could they. Bond is appropriate only where the IJ determines that the individual poses no danger to persons or property, no threat to national security, and no risk of flight. *See In re Urena*, 25 I. & N. Dec. 140, 141 (B.I.A. 2009); *In re Guerra*, 24 I. &

[9] Valerie Gonzalez & Cybele Mayes-Osterman, *Breakneck pace in immigration courts is driving up deportation orders*, ASSOCIATED PRESS (last updated Aug. 1, 2026, at 0:04 ET), https://perma.cc/MF3Y-QJ67.

N. Dec. 37, 40 (B.I.A. 2006). However, these case management benefits are a positive byproduct of permitting IJs to exercise experienced discretion in analyzing the suitability of release on bond for those detained pursuant to Section 1226(c).

C. The Cost and Time Required for Bond Hearings Are Minimal When Compared with the Burden of Mandatory Detention.

Bond hearings impose only limited administrative inconveniences when compared with the burden of mandatory detention. In *amici*'s experience, bond hearings provide a necessary opportunity for IJs to address the immediate question of whether continued custody is justified without undertaking the more extensive merits inquiry required in removal proceedings.

First, 8 C.F.R. § 1003.19 permits IJs to resolve custody issues without convening a full courtroom proceeding in every case. Instead, IJs may decide bond orally, in writing, or at the IJ's discretion, by telephone. Second, IJs are able to proceed with highly individualized inquiries during bond hearings that are organized around a narrow category of facts. *See In re E-Y-F-G-,* 29 I. & N. Dec. at 105; *see also In re Guerra*, 24 I. & N. Dec. at 40. Since bond hearings address custody status rather than removability or relief from removal, they do not involve the in-depth analysis of the merits record, country-conditions evidence, or expert testimony that contested removal cases may demand.

Detention, in contrast to bond hearings, generates substantial expense. *See Hernandez v. Sessions*, 872

F.3d 976, 996 (9th Cir. 2017) ("The costs to the public of immigration detention are 'staggering[.]'"). The federal government now spends approximately $4 billion annually on immigration detention, nearly twice the amount spent a decade ago. Put simply, a bond hearing is a discrete proceeding that concludes in a single sitting, whereas detention creates a recurring daily cost. Therefore, when supervision can safely take the place of confinement, it costs a fraction as much. *Ibid*. ("Supervised release programs cost much less by comparison" and "reduced detention costs can free up resources to more effectively process claims in Immigration Court.").

Detention also generates additional burdens on the immigration system by obstructing representation and proper case preparation. Eagly and Shafer's national study found that only 14% of detained individuals obtained representation, compared with 66% of individuals who were never detained. Eagly & Shafer, *A National Study of Access to Counsel in Immigration Court*, at 31–32 & fig. 6. The study also reported that the effort to locate counsel could account for more than half of a detained case's overall duration. *Id.* at 61 & fig. 16. In *amici*'s experience, a *pro se* respondent makes a case much more burdensome to manage than having a represented respondent because the IJ must adopt a more active role (*e.g.,* explaining the available forms of relief, identifying the facts that matter, and developing a record adequate for review). *See* 8 C.F.R. § 1240.11(a)(2); Noel Brennan, *A View from the Immigration Bench*, 78 Fordham L. Rev. 623, 626 (2009). Detention also renders evidence-gathering more difficult, which can result in continuances and further lengthen the proceeding. *See* 8 C.F.R. § 1003.29; *Moncrieffe v. Holder*, 569 U.S. 184, 201 (2013).

The time spent by IJs on the inefficiencies associated with respondents' detention negatively impacts IJs' ability to address their existing, often overextended dockets. And while reducing avoidable detention-related delays would not eliminate that backlog wholesale, it would lessen competing demands on the judicial system and permit greater attention to pending immigration cases.

These realities also answer the Government's suggestion that categorical detention may continue so long as it is rationally related to preventing flight and danger. *See* Pet.'s Br. 33–37. Detaining everyone would, of course, eliminate all risk of flight, but at staggering and needless cost both to respondents' liberty and the public coffers. In *amici*'s experience, the bond hearing is the mechanism that sorts the individuals who require detention from the many who do not, at a fraction of the cost of detaining them all. A brief, focused proceeding that spares the public the expense of unnecessary confinement is not an administrative burden; it is sound fiscal and docket administration.

II. Mandatory Detention Without a Bond Hearing Increases the Risk of Erroneous Detention and Erroneous Removal Decisions.

Mandatory detention without a bond hearing also increases the risk of error. Without individualized review, individuals who pose no danger and no flight risk remain erroneously—and often needlessly—

detained. And the conditions of mandatory detention undermine respondents' ability to obtain counsel and gather evidence, increasing the risk of erroneous outcomes in the removal proceedings themselves.

The Government voices a concern about the "false negatives" wherein an IJ incorrectly grants bond. Pet.'s Br. 35. In *amici*'s experience (and as articulated by multiple courts of appeals), this risk runs in both directions: without a bond hearing, individuals who qualify for bond, and would be correctly granted release on bond, remain erroneously detained. In other words, the risk of potentially erroneous release must be weighed against the near certainty that some respondents who would have been eligible for bond are continuously detained.

The Government further contends that any process due relates only to whether the respondent's conviction satisfies Section 1226(c)'s statutory criteria—not to flight risk or danger. Pet.'s Br. 21. In *amici*'s experience, that gets custody determinations exactly backwards. The statutory criteria can be established in minutes from the record of conviction; the questions that require a judge are whether a particular individual poses a danger to the community or a risk of flight. *See In re Guerra*, 24 I. & N. Dec. at 40. A hearing confined to the question of statutory eligibility would provide process in name only, leaving unexamined the very facts, such as dangerousness and risk of flight, that detention exists to address.

Mandatory detention without a bond hearing also increases the risk of errors in the removal proceedings themselves, including incorrect removal orders. The lack of counsel, described above, often results in *pro se* proceedings that are difficult to follow and even more difficult to decide correctly. Even where counsel is permitted to appear, meaningful communication remains difficult: many facilities do not allow free calls to attorneys, forcing clients to rely on scheduled calls that can take days to arrange, and many prohibit in-person visits altogether. Gathering evidence, coordinating with family and community members, obtaining signatures on applications, and reviewing affidavits with clients thus become formidable tasks that can prevent the respondent from presenting a defense at all. Such erroneous results are unfair and unjust to respondents and their families and undermine the immigration system as a whole.

Amici's experience confirms the concern that these and other issues increase the risk that a respondent may be erroneously detained. Indefinite detention without a bond hearing necessarily eliminates any ability for respondents to challenge their detention and increases the risk (and occurrence) of erroneous deprivations of their liberty.

In addition to increasing unnecessary *detentions*, mandatory detention without a bond hearing increases the risk of removal cases reaching erroneous results. Courts frequently recognize that individuals subject to detention are subject to a risk of erroneous deprivation because of at least two systemic disadvantages: (1) lower rates of representation, and (2) limited ability to collect and present evidence.

First, it is a challenge for individuals in mandatory detention to obtain representation, if they can find counsel at all. Detained individuals are less likely to be able to afford to pay a lawyer, as they are unable to work while detained. *See* Farrin R. Anello, *Due Process and Temporal Limits on Mandatory Immigration Detention*, 65 Hastings L.J. 363, 368 (2014). And finding a free attorney is also difficult, as most detention facilities are located far from the urban areas with the highest concentrations of pro bono resources from public interest organizations, large private law firms, or law school clinics. *Ibid.* Even if a detained individual could afford an attorney or could find a group providing pro bono services, it is difficult for individuals at remote detention facilities to meet with an attorney to establish an attorney-client relationship. *See* Dora Schriro, *Immigration Detention Overview and Recommendations*, U.S. Immigration & Customs Enforcement, 23–24 (Oct. 6, 2009), https://perma.cc/4GAX-M6T9. When ICE transfers a detained individual to a new jurisdiction—an increasingly common occurrence—the respondent must often locate new counsel altogether, delaying the case still further.

As a result, the vast majority of detained immigrants—86% nationally in one study—lack counsel in immigration proceedings. Eagly & Shafer, *A National Study of Access to Counsel in Immigration Court*, at 32 & fig. 6 (studying immigration cases from 2007 through 2012). That study found that non-detained immigrants are nearly *five times* more likely to find representation, with 66% represented as compared to just *14%* of detained individuals. *Id.* at 31–32.

Second, detained individuals "have little ability to collect evidence." *Moncrieffe*, 569 U.S. at 201. One contributing factor is the simple difficulty of communicating with the outside world, where relevant evidence may exist. *See Hernandez Lara v. Barr*, 962 F.3d 45, 55 (1st Cir. 2020) (detention centers limit access to phone calls and visits). Even government records are often difficult for detained individuals to acquire, sometimes because of the Government's own refusal to produce records. *See Velasco Lopez v. Decker*, 978 F.3d 842, 852–53 (2d Cir. 2020) (government refused to produce detained individual's Deferred Action for Childhood Arrivals (DACA) records). Additionally, prolonged detention takes a toll on a respondent's familial and other relationships outside of detention, making it more difficult to find help gathering evidence.

In *amici*'s experience, the inevitable result of these two disadvantages for individuals in mandatory detention is that they are less likely to make a full case for relief, leading to a higher risk of reaching an incorrect result. *See Demore v. Kim*, 538 U.S. 510, 554 (2003) (Souter, J., concurring in part and dissenting in part) ("[D]etention prior to entry of a removal order may well impede the alien's ability to develop and present his case on the very issue of removability."). Respondents proceeding without counsel face a significantly lower chance of succeeding in their removal proceedings for a variety of reasons, including less familiarity with the process and lack of understanding of how to tie the facts of their case to the relevant legal requirements to oppose removal.

Despite IJs' best efforts to provide fair hearings, studies show significant disparities in outcomes based on representation and detention status. *See Developments in the Law: Immigration Rights & Immigration Enforcement, Representation in Removal Proceedings*, 126 Harv. L. Rev. 1658, 1662 (2013)

("[W]hether an individual is detained acutely affects the likelihood of relief: 74% of immigrants who have representation and are released or never detained have successful outcomes, compared to 18% for represented and detained immigrants." (quotation marks omitted)). Thus, detention alone can, in some cases, determine the substantive outcome of removal proceedings—whether an immigrant ultimately is deported or allowed to remain in the United States. On the other hand, individuals released on bond were *disproportionately more successful* in obtaining relief to remain in the United States. *See* TRAC, *What Happens When Individuals Are Released On Bond In Immigration Court Proceedings?* (Sept. 14, 2016), https://perma.cc/7NZU-T3FF. These statistics illustrate the tendency of mandatory detention—which is not, on its face, in any way related to the merits of a removal case—to contribute to potentially erroneous results in removal proceedings.

The proof of bond hearings' effectiveness is in the numbers. When individuals subject to mandatory detention are granted bond hearings, almost one-third are released on bond or supervision. This aligns with *amici*'s experience. For example, one former IJ recalls that when she presided over the detained docket, respondents who posed no danger to the community were routinely released: she released non-criminal respondents on their own recognizance or a minimal bond and set reasonable bond amounts for those who presented only a flight risk and no danger. At that time, even unrepresented respondents could obtain bond where the facts warranted it—an outcome that has grown far rarer as bond has increasingly been withheld, resulting in many detained bond hearings being either futile or protracted. Similarly, the Second Circuit below noted that, before 2018, 62% of mandatory detainees given bond hearings were released. *Black v. Decker*, 103 F.4th 133, 152 (2d Cir. 2024). Similar trends were seen in other courts of appeals. *See Reid v. Donelan*, 17 F.4th 1, 18 (1st Cir. 2021) (Lipez, J., dissenting) (noting that ordering bond hearings for a class of individuals subject to mandatory detention resulted in nearly half of class members being released on bond).

Nor does release come at the expense of compliance: as noted above, 86% of those released on bond appeared at their subsequent court hearings. *See supra*, at 6 & n.3. That rate compares favorably with the criminal pretrial system, where 20% of defendants released on surety, deposit, or full cash bond pending trial in the Nation's largest counties failed to make a scheduled court appearance. *See* Thomas H. Cohen & Brian A. Reaves, *Pretrial Release of Felony Defendants in State Courts*, U.S. Dep't of Justice, Bureau of Justice Statistics, 10 (Nov. 2007), https://perma.cc/43A9-UKPU. Nor is every missed hearing an act of flight: analyses of the government's own data show that in absentia removal orders frequently reflect defective or misdirected notice rather than absconding, and nearly one in five such orders is later successfully challenged through a motion to reopen. *See* Ingrid Eagly & Steven Shafer, *Measuring In Absentia Removal in Immigration Court*, 168 U. Pa. L. Rev. 817, 850–57 (2020). Indeed, in *amici*'s experience, respondents who persevere through prolonged detention frequently do so precisely because they have substantial defenses to removal and thus have a strong incentive to appear and see their cases through.

The Second Circuit's decision in *Black v. Decker* presents a useful example, too. Respondent Carol Black was convicted of a crime qualifying for detention under Section 1226(c) in March 2000, but for almost twenty years, he "led a peaceful life, helping to support his family." 103 F.4th at 153. When he was served by ICE with a Notice to Appear (NTA) in December 2019, ICE detained him due to his prior conviction, ultimately holding him for eight months during which time he had seven master calendar hearings. *Ibid.* Only after succeeding on a habeas petition was Black able to receive a bond hearing, resulting in his release on $15,000 bond "because the government could not justify his continued detention." *Id.* at 139, 153. As the Second Circuit explained, Black's case presents a clear example of the costs of holding respondents without a bond hearing under Section 1226(c): "rather than worrying of a 'risk' of erroneous deprivation, we can be virtually certain that [Black's] prolonged detention was unjustified." *Id.* at 153.

Of course, even with these examples of erroneous detention, a large number of respondents are properly subject to detention pending their removal proceedings. Despite the Government's suggestions otherwise, *see* Pet.'s Br. 35–36, IJs are uniquely suited to identify which respondents pose a public safety risk and are experienced in applying the procedural safeguards of bond hearings during that process. *See supra* § I.A. By cutting out bond hearings, the Government's approach writes the IJs out of the process and loses the benefit of their experience and expertise in managing the detained docket.

The Government's position also has the effect of tying IJs' hands by preventing them from remedying cases of potentially improper detention that they might observe. Under the Government's interpretation of the law, the IJ could not invite a bond motion no matter what information he or she learns that might make it likely—even clear—that it is error to continue to detain the respondent. In *amici*'s experience, the cognitive dissonance of a judge seeing a likely error, but being unable to correct it, erodes the overall sense of justice and legitimacy in immigration courts.

Given the significance of detention status to respondents' ability to obtain counsel and, ultimately, to their success in removal proceedings, affording respondents a bond hearing before detaining them indefinitely is a reasonable procedural requirement. As Judge Klein's example highlights, even a modicum of process can force the Government to increase the rigor of its own investigation and realize its mistakes. *See supra* § I.B. In *amici*'s experience, Judge Klein's anecdote illustrates a broader problem with the current immigration system: due to overwhelming case backlogs, the Government often does little diligence and pays little attention to cases where it knows the individual will not be released. In Judge Klein's example, for instance, it took a government attorney a lunch break's worth of attention to determine that the respondent was a citizen—but the Government had not done that diligence until held to account by the IJ.

IJs like *amici* are experienced professionals who must make dozens (and sometimes hundreds) of weighty decisions every day—decisions about bond requests, removability, requests for voluntary departure, and requests for relief. While "[e]very judge must learn to live with the fact he or she will make some mistakes; it comes with the territory," *Ramos v. Louisiana*, 140 S. Ct. 1390, 1408 (2020), in *amici*'s experience the consequences of mandatory detention *without* the possibility of bond transform the minimal risk of an erroneous release into a certain and knowing violation of respondents' liberty interests.

CONCLUSION

For these reasons, this Court should affirm the judgment of the court of appeals.

Respectfully submitted,

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September 8, 2026

APPENDIX

Table of Contents

LIST OF *AMICI CURIAE*

1. **The Honorable Steven Abrams** served as an Immigration Judge at the Varick Street and Queens Wackenhut Immigration Courts in New York, NY, from 1997 until 2013.

2. **The Honorable Terry A. Bain** served as an Immigration Judge in New York, NY, from 1994 until 2019.

3. **The Honorable Lucy Billings** served as an Immigration Judge in New York, NY from 2023 until 2025.

4. **The Honorable Sarah M. Burr** served as an Immigration Judge, and then as Assistant Chief Immigration Judge, in New York, NY, from 1994 until 2012.

5. **The Honorable Sarah Cade** served as an Immigration Judge in Boston, MA, from 2021 until 2025.

6. **The Honorable Olivia Cassin** served as an Immigration Judge in New York, NY, from 2015 until 2025.

7. **The Honorable Daniel Caudillo** served as an Immigration Judge in Laredo, TX, from 2021 until 2025.

8. **The Honorable Florence Chamberlin** served as an Immigration Judge in Concord, CA, from 2023 until 2025.

9. **The Honorable Jeffrey S. Chase** served as an Immigration Judge in New York, NY, from 1995 until 2007. Along with Deborah E. Anker,

he is co-author of *Law of Asylum in the United States* (2025 ed.).

10. **The Honorable Joan V. Churchill** served as an Immigration Judge from 1980 until 2005 in Washington, D.C., and Arlington, VA, including five terms as a Temporary Member of the Board of Immigration Appeals.

11. **The Honorable Chloe Dillon** served as an Immigration Judge in San Francisco, CA, from 2022 until 2025.

12. **The Honorable Bruce J. Einhorn** served as an Immigration Judge in Los Angeles, CA, from 1990 until 2007.

13. **The Honorable Cecelia M. Espenoza** served as a Member of the Board of Immigration Appeals from 2000 until 2003.

14. **The Honorable Noel A. Ferris** served as an Immigration Judge in New York, NY, from 1994 until 2013. She previously served as Chief of the Immigration Unit at the U.S. Attorney's Office for the Southern District of New York from 1987 until 1990.

15. **The Honorable James R. Fujimoto** served as an Immigration Judge in Chicago, IL from 1990 until 2019.

16. **The Honorable Annie S. Garcy** served as an Immigration Judge in Newark, NJ, and Philadelphia, PA, from 1990 until 2023.

17. **The Honorable Jennie Giambastiani** served as an Immigration Judge in Chicago, IL, from 2002 until 2019.

18. **The Honorable John F. Gossart, Jr.,** served as an Immigration Judge in Baltimore, MD, from 1982 until 2013.

19. **The Honorable Paul Grussendorf** served as an Immigration Judge in Philadelphia, PA, and San Francisco, CA, from 1997 until 2004.

20. **The Honorable Miriam Hayward** served as an Immigration Judge in San Francisco, CA, from 1997 until 2018.

21. **The Honorable Sandy Hom** served as an Immigration Judge in New York, NY, from 1993 until 2018.

22. **The Honorable Charles M. Honeyman** served as an Immigration Judge in New York, NY, and Philadelphia, PA, from 1995 until 2020.

23. **The Honorable William P. Joyce** served as an Immigration Judge in Boston, MA, from 1996 until 2002.

24. **The Honorable Edward F. Kelly** served as a Member of the Board of Immigration Appeals from 2017 until 2021. He previously served as Assistant Chief Immigration Judge and then Deputy Chief Immigration Judge from 2011 to 2013 and 2013 to 2017, respectively, at the Executive Office for Immigration Review Headquarters in Falls Church, VA.

25. **The Honorable David K.S. Kim** served as an Immigration Judge in New York, NY, from 2022 until 2025.

26. **The Honorable Carol King** served as an Immigration Judge in San Francisco, CA, from 1995 until 2017. She also served as a Temporary Member of the Board of Immigration Appeals for six months between 2010 and 2011.

27. **The Honorable Eliza C. Klein** served as an Immigration Judge in Miami, FL, Boston, MA, and Chicago, IL, from 1994 until 2015. She then served as a Senior Immigration Judge in Chicago, IL, from 2019 until 2023.

28. **The Honorable David Koelsch** served as an Immigration Judge in Baltimore, MD, and Hyattsville, MD, from 2018 until 2025.

29. **The Honorable Christopher M. Kozoll** served as an Immigration Judge in Memphis, TN, from 2022 until 2023.

30. **The Honorable Elizabeth A. Lamb** served as an Immigration Judge in New York, NY, from 1995 until 2018.

31. **The Honorable Shira M. Levine** served as an Immigration Judge in San Francisco, CA, from 2021 until 2025.

32. **The Honorable Homero Lopez** served as a Member of the Board of Immigration Appeals from 2024 until 2025.

33. **The Honorable Dana Leigh Marks** served as an Immigration Judge in San Francisco, CA, from 1987 until 2021.

34. **The Honorable Margaret McManus** served as an Immigration Judge in New York, NY, from 1991 until 2018.

35. **The Honorable Maria E. Navarro** served as an Immigration Judge in New York, NY, from 2017 until 2025.

36. **The Honorable Irma Perez** served as an Immigration Judge in Los Angeles, CA, Santa Ana, CA, and West Los Angeles, CA, from 2023 until 2025.

37. **The Honorable Anam Rahman Petit** served as an Immigration Judge in Annandale, VA, from 2023 until 2025.

38. **The Honorable George Proctor** served as an Immigration Judge in Los Angeles, CA, and San Francisco, CA, from 2003 until 2008.

39. **The Honorable Laura L. Ramirez** served as an Immigration Judge in San Francisco, CA, from 1997 until 2018.

40. **The Honorable Carmen Maria Rey Caldas** served as an Immigration Judge in Lumpkin, GA, and New York, NY, from 2022 until 2025.

41. **The Honorable Lory D. Rosenberg** served as a Member of the Board of Immigration Appeals from 1995 until 2002.

42. **The Honorable Susan G. Roy** served as an Immigration Judge in Newark, NJ, from 2008 until 2010.

43. **The Honorable Shifra Rubin** served as an Immigration Judge in Newark, NJ, and New York, NY, from 2016 until 2025.

44. **The Honorable Paul W. Schmidt** served as a Member and then Chairperson of the Board of Immigration Appeals from 1995 until 2003. He then served as an Immigration Judge in Arlington, VA, from 2003 until 2016. Prior to his service on the Board and as an Immigration Judge, he served as Deputy General Counsel of the former Immigration & Naturalization Service from 1978 until 1987. He was also the Acting General Counsel from 1979 until 1981 and 1986 until 1987.

45. **The Honorable Douglas B. Schoppert** served as an Immigration Judge in New York, NY, from 1997 until 2024.

46. **The Honorable Patricia M. B. Sheppard** served as an Immigration Judge in Boston, MA, from 1993 until 2006.

47. **The Honorable Ilyce S. Shugall** served as an Immigration Judge in San Francisco, CA, from 2017 until 2019.

48. **The Honorable Helen Sichel** served as an Immigration Judge in New York, NY, from 1997 until 2020.

49. **The Honorable Denise Slavin** served as an Immigration Judge in Miami, FL, Krome, FL,

and Baltimore, MD, from 1995 until 2019, and Senior Immigration Judge in Orlando, FL, from 2023 until 2024.

50. **The Honorable Andrea Hawkins Sloan** served as an Immigration Judge in Portland, OR, from 2010 until 2017.

51. **The Honorable Robert D. Vinikoor** served as an Immigration Judge in Chicago, IL, from 1984 until 2017.

52. **The Honorable Polly A. Webber** served as an Immigration Judge in San Francisco, CA, from 1995 until 2016.

53. **The Honorable Robert D. Weisel** served as an Immigration Judge and then Assistant Chief Immigration Judge in New York, NY, from 1989 until 2016.

54. **The Honorable Elizabeth Young** served as an Immigration Judge, Assistant Chief Immigration Judge, and then Regional Deputy Immigration Judge in San Francisco, CA, from 2016 until 2025.