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 FOR THE AMERICAN BAR ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

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INTEREST OF AMICUS CURIAE

The American Bar Association ("ABA") is the largest voluntary national membership organization for legal professionals in the United States.[1] Founded in 1887, the ABA has long supported the fair administration of

[1] No counsel for a party authored this brief in whole or in part, and no entity or person, other than amicus curiae, its members, and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

justice, due process, and access to counsel. Today, the ABA's members include attorneys in law firms, corporations, nonprofit organizations, and local, state, and federal governments, as well as judges, legislators, law professors, law students, and associates in related fields.[2] The ABA also brings decades of firsthand experience with the circumstances of detained noncitizens through its immigration programs that provide direct representation and assistance to noncitizens in immigration proceedings, including the Immigration Justice Project (IJP), South Texas Pro Bono Asylum Representation Project (ProBAR), and Detention Information Hotline.

Launched in 2008, the IJP works to promote due process and access to justice at all levels of the immigration and appellate court system through the provision of legal services for both detained and non-detained individuals in immigration proceedings in the San Diego area. *See* ABA, *About the Immigration Justice Project (IJP)*, https://www.americanbar.org/groups/public_interest/immigration/projects_initiatives/immigration-justice-project/about-us/ (visited Sept. 8, 2026). The IJP works to benefit the immigration system by expanding legal representation, which promotes due process and fosters fairer, more efficient, accurate, and consistent adjudication. *See, e.g.*, Eagly & Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1, 6, 54-58 (2015) (analyzing over 1.2 million removal cases and finding that represented respondents were significantly more likely to obtain case termination or relief from removal); Eagly et al., *Access to*

[2] Neither this brief nor the decision to file it reflects the views of any judicial members of the ABA. The Judicial Division Council did not participate in the adoption or endorsement of this brief and did not receive a copy of this brief before filing.

Counsel in Immigration Court, Revisited, 111 Iowa L. Rev. 1, 43-49 (2025) (finding similar outcomes for represented individuals in immigration proceedings from 2013 to 2024); Ryo, *Representing Immigrants: The Role of Lawyers in Immigration Bond Hearings*, 52 Law & Soc'y Rev. 503, 517-520 (2018) (finding detainees with representation were "significantly more likely to be granted bond than detainees without representation" and more likely to submit documents, present affirmative arguments, and offer legally significant arguments).

ProBAR was founded in 1989 in response to an urgent need for immigration legal services in Texas's Rio Grande Valley. ProBAR provides detained individuals, including unaccompanied children, with legal orientation, representation in immigration and federal court proceedings, and referrals to legal and social services. *See* ABA, *ProBAR*, https://abaprobar.org/ (visited Sept. 8, 2026).

The ABA's Detention Information Hotline provides individualized information and referrals for individuals in immigration detention. The Hotline does not provide legal advice or direct representation; instead, the Hotline aids detained noncitizens who are generally acting pro se in their immigration proceedings. Hotline operators, including ABA Commission on Immigration staff and volunteers, speak directly with unrepresented detainees across the nation to answer questions about eligibility for relief in immigration court, options for release from detention, contact information for local nonprofit organizations and immigration attorneys, direct referrals for pro bono assistance, and more. *See* ABA, *Immigration Detention Information Lines* (Aug. 14, 2025), https://www.americanbar.org/groups/

public_interest/immigration/projects_initiatives/immigration-detention-information-lines/.

These immigration programs reflect the ABA's longstanding commitment to the fair administration of justice, due process, and facilitating access to counsel. Consistent with these commitments, the ABA has for decades supported alternatives to immigration detention. In 2006, the ABA House of Delegates passed a resolution opposing the detention of noncitizens in removal proceedings except in extraordinary circumstances, which may include a determination, following a hearing and subject to judicial review, that a person presents a threat to national security, public safety or other persons, or presents a substantial flight risk. ABA Resolution 06M107E (Feb. 13, 2006).

Similar considerations guided the ABA Civil Immigration Detention Standards. Published in 2012, these Standards are designed to promote access to justice and the humane treatment of individuals in immigration detention. ABA, *Civil Immigration Detention Standards* vii (2012) https://www.americanbar.org/content/dam/aba/administrative/immigration/abaimmdetstds.pdf

The ABA's Civil Immigration Detention Standards provide that a "noncitizen should only be detained based upon an objective determination that he or she presents a threat to national security or public safety or a substantial flight risk that cannot be mitigated through parole, bond, or a less restrictive form of custody or supervision." *Civil Immigration Detention Standards* 4. These detention standards further provide that decisions to continue detention should be regularly reassessed. *Id.* 4, 9.

Recent ABA resolutions reaffirm the Association's longstanding commitment to due process, access to counsel, and limits on prolonged immigration detention. In 2025, the ABA called for protection of noncitizens' due process rights and for detention practices that ensure meaningful access to counsel and that restrict prolonged or indefinite detention. ABA Resolution 25A510 (Aug. 11-12, 2025); ABA Resolution 25A603 (Aug. 11-12, 2025).

The ABA's decades of experience in issues relevant to immigration detention give it a unique perspective on how prolonged detention impairs noncitizens' ability to access counsel, participate meaningfully in their cases, and pursue statutorily authorized relief. The ABA thus submits this brief to provide the Court with its expertise on the practical effects of prolonged detention and the due process protections necessary to safeguard noncitizens' constitutional rights.

SUMMARY OF ARGUMENT

The ABA's decades of representation of noncitizens subject to immigration detention inform the ABA's conclusion that the Court's reasoning in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976), applied correctly by the court of appeals, requires bond hearings when detention pursuant to 8 U.S.C. § 1226(c) becomes "unreasonably prolonged." Pet. App. 5a. This Court has repeatedly stressed that indefinite civil detention runs afoul of due process when it is not supported by a compelling justification or tempered by strong procedural safeguards. Civil detention always requires a means to contest the government's rationale. The "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Mathews*, 424 U.S. at 333. Application of *Mathews* confirms that due process requires the government to provide individual bond hearings to noncitizens subject to prolonged detention pursuant to Section 1226(c).

First, the individual liberty interest at stake—freedom from detention—is "the most elemental of liberty interests." *Hamdi* v. *Rumsfeld*, 542 U.S. 507, 529 (2004). That interest is only compounded by the ancillary harms that follow from lengthy detention, which can include loss of employment and the attendant loss of individual and family income, family separation, and lack of adequate medical care. These burdens have significant detrimental effects on those who are pursuing statutorily authorized challenges to removal.

The ABA's experience shows that detention impedes noncitizens' ability to provide basic evidence, retain counsel, and pursue relief, particularly when repeated transfers disrupt access to legal resources. Worse still, prolonged detention can lead noncitizens to abandon bona fide, congressionally authorized claims for relief from removal, as individuals, increasingly desperate to be released from extended confinement, make the reasonable decision to abandon an uncertain future benefit for immediate release. Prolonged detention thus undermines meaningful access to counsel and the fair adjudication of removal proceedings.

Second, the risk of erroneous deprivation is substantial. The only existing process, a so-called "*Joseph*" hearing, merely confirms whether the noncitizen falls within Section 1226(c)—as the government freely admits. *See* Pet. Br. 6. A *Joseph* hearing thus is not designed to inquire whether a noncitizen's detention serves the government's asserted regulatory interest in community safety or preventing flight.

Finally, the government's burden is minimal. Immigration judges are well-versed in conducting individualized bond assessments under Section 1226(a), and only a small class of noncitizens whose detention has been unreasonably prolonged would be eligible for a bond hearing under the court of appeals' judgment. What's more, the provision of a bond hearing to noncitizens detained under Section 1226(c) whose detention has become unreasonably prolonged would likely save the government money and administrative resources. The weighty private interest and substantial risk of erroneous deprivation therefore far outweigh the government's limited burdens. That conclusion is only strengthened by the fact that the mandatory detention at issue is significantly longer than the Court envisioned in *Demore* v. *Kim*, 538 U.S. 510 (2003)—a decision whose reasoning does not support, and in fact undermines, the government's position in this case.

The court of appeals' judgment should be affirmed.

ARGUMENT

I. THE ABA'S EXPERIENCE IN REPRESENTING DETAINED NONCITIZENS DEMONSTRATES THAT THE INTERESTS SUPPORTING A BOND HEARING AFTER PROLONGED DETENTION WELL OUTWEIGH ANY GOVERNMENTAL INTEREST IN AVOIDING A HEARING

The government does not dispute that noncitizens detained pursuant to Section 1226(c) are protected by the Due Process Clause of the Fifth Amendment, nor could it. *See, e.g.*, *Trump* v. *J. G. G.*, 604 U.S. 670, 673 (2025) (per curiam) ("'[T]he Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." (quoting *Reno* v. *Flores*, 507 U.S. 292, 306 (1993)). This Court's analysis of the process due in connection with detention pending removal balances the competing interests of "autonomy that the Government asserts is necessary in order to pursue effectively a particular goal" and the process due before one is "deprived of a constitutional right." *Hamdi*, 542 U.S. at 528. As this Court has recognized, "[t]he ordinary mechanism that we use for balancing such serious competing interests, and for determining the procedures that are necessary to ensure that a citizen is not 'deprived of life, liberty, or property, without due process of law,' U.S. Const.[amend. V], is the test that [the Court] articulated in *Mathews* v. *Eldridge*." *Id.* at 528-529.

This Court has, in various circumstances, used *Mathews* to evaluate the adequacy of procedures provided to individuals in custody, including noncitizens. *See*, *e.g.*, *Hamdi*, 542 U.S. at 528-529, 533 (applying *Mathews* to assess whether due process entitled enemy combatant to "a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker"); *Addington* v. *Texas*, 441 U.S. 418, 425-433 (1979) (*Mathews* applies in assessing the adequacy of procedural safeguards for mentally ill individuals subject to civil commitment); *Landon* v. *Plasencia*, 459 U.S. 21, 34 (1982) (*Mathews* governs evaluation of noncitizen's claim that she was denied due process in exclusion hearing).

Mathews requires a flexible consideration of three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335.

The ABA's decades of experience representing noncitizens in removal proceedings demonstrates that each factor favors providing bond hearings to noncitizens subject to unreasonably prolonged detention. The establishment of a specific temporal threshold after which detention becomes "unreasonably prolonged" is not necessary to uphold the court of appeals' judgment. In the ABA's experience, however, detention lasting many months, including the periods of detention discussed in the court of appeals' opinion (approximately 7 and 21 months), suffice to raise the practical due process concerns the ABA has repeatedly observed, including diminished access to counsel, difficulty obtaining evidence, and pressure to abandon potentially meritorious claims for relief.

A. The Private Interests Of Detained Noncitizens Are Weighty And Warrant Substantial Procedural Protections

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas* v. *Davis*, 533 U.S. 678, 690 (2001); *see also Kansas* v. *Hendricks*, 521 U.S. 346, 356 (1997). It is no surprise, then, that "[t]his Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington*, 441 U.S. at 425. For the purposes of the *Mathews* analysis, this Court has clarified that the private interest in being "free from physical detention" is the "most elemental of liberty interests." *Hamdi*, 542 U.S. at 529. The constitutional right to liberty can be restricted only in accordance with both procedural and substantive due process. *See, e.g.*, *United States* v. *Salerno*, 481 U.S. 739, 746 (1987).

Individualized process is deeply rooted in the history and tradition of our legal system. *E.g.*, Coke, The Second Part of the Institutes of the Laws of England 46 (1642) (stating that "the liberty of a mans person is more precious" than other liberties and may be restrained only through the "due course, and process of Law"). So is increased process based on the length of confinement. *See Duncan* v. *Louisiana*, 391 U.S. 145, 161 (1968) (noting that "in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term"). Citizens and noncitizens alike have a constitutionally protected interest in remaining at liberty if they pose neither a flight risk nor a risk to public safety. *See, e.g.*, *Zadvydas*, 533 U.S. at 690-691. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *Salerno*, 481 U.S. at 755. Indefinite detention of a noncitizen raises "a serious constitutional problem." *Zadvydas*, 533 U.S. at 690.

1. An individual's liberty interest is heightened in the context of prolonged detention

The private liberty interest in being free from physical detention only becomes weightier as detention increases in length. This Court has repeatedly recognized that prolonged liberty deprivations require greater procedural protections than brief ones. For example, this Court has limited the time that an individual can be detained without a judicial determination of probable cause to 48 hours absent emergency or extraordinary circumstance. *See County of Riverside* v. *McLaughlin*, 500 U.S. 44, 55-56 (1991).

The same principle applies in cases addressing various forms of civil commitment. Thus, the Court ruled that an individual found incompetent to stand trial may be held to attempt restoration of their competency, but only for a "reasonable period of time": "At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." *Jackson* v. *Indiana*, 406 U.S. 715, 738 (1972). Similarly, this Court ruled that, while lesser safeguards may be appropriate for the short-term confinement of a convicted prisoner to a mental institution, "by the same token, the duration of the confinement must be strictly limited." *McNeil* v. *Director, Patuxent Inst.*, 407 U.S. 245, 249-250 (1972). And reduced procedural protections may justify an insanity acquittee's *initial* commitment, but not prolonged confinement after the basis for that commitment has dissipated. *Foucha* v. *Louisiana*, 504 U.S. 71, 76, n.4 (1992).

This Court has applied these same principles in the immigration context. In *Zadvydas*, this Court held that, as the length of detention is extended, the procedural protections must correspondingly increase. *See* 533 U.S. at 701 (imposing a presumptive six-month limit on the detention of removable noncitizens pursuant to 8 U.S.C. § 1231(a)(6) and holding that, "as the period of prior postremoval confinement grows," the showing required by the government to justify continued detention increases).

2. The conditions and effects of detention further exacerbate the deprivation of the physical liberty interest

The reality of prolonged detention intensifies the consequences of the deprivation of individual physical liberty. While physical confinement alone warrants procedural safeguards, Section 1226(c) detainees are often subject to far more than mere physical restraint. Immigration detention is frequently characterized by poor conditions of confinement, insufficient medical care, inadequate access to mental health resources, and prolonged isolation.

This is hardly news. Inspections of several ICE detention facilities in 2017 depicted the problematic conditions of detention. *See* Office of Inspector General, OIG-18-32, *Concerns about ICE Detainee Treatment and Care at Detention Facilities* (Dec. 11, 2017), https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf. Observations upon intake revealed that the government housed high and low-risk detainees together and conducted inadequate pat downs and undocumented strip searches. *Id.* 3-4. While detained, noncitizens reported non-working phones, long waits for medical care, bathrooms in a state of disrepair, insufficient hygiene supplies, and unsanitary food practices in the kitchen facilities. *Id.* 5, 7-8.

Recent reporting has raised similarly problematic conditions. For example, a 2026 review of immigration detention facilities by the California Department of Justice found that facilities in California failed to meet applicable federal detention standards, subjecting detainees to "inadequate medical care, delay in medical treatment, overcrowding, inadequate food, excessive use of force by detention facility guards, and inadequate clothing." California Dep't of Justice, *Immigration Detention in California: A Review of Conditions of Confinement* 6 (2026). Detainees reported various serious issues, including failing to receive necessary and timely medical treatment, even for emergency medical care; receiving food of poor quality or in insufficient portions; and poor access to clean water. *Id.* 6-9. Detainees at one facility reported that they were exposed to excessively cold temperatures and received insufficient protective clothing and blankets, which reportedly led elderly female detainees to create scarves and sleeves for themselves out of socks in an effort to keep warm. *Id.* 154-155. Multiple detainees wept openly when describing the living conditions at this facility. *Id.* 154.

Experiences of attorneys working with the ABA's immigration programs bear out these concerns. For example, an IJP client recently reported that she received expired food for weeks, with bread that was green and moldy and worms in the beans she was served, and that her housing unit did not receive cleaning supplies for two weeks, forcing detainees to use toothpaste to wash their cups, dishes, and hands.

IJP clients also report dehumanizing and abusive treatment while detained. For example, one detained IJP client, A.M., was sexually assaulted in detention by another detainee, and subsequently sexually and verbally harassed by guards at the detention center. After IJP filed a complaint about A.M.'s treatment with the Office of Immigration Detention Ombudsman, the government transferred A.M. to a different facility, which failed to produce A.M. for three hearings. IJP counsel attempted to obtain a medical evaluation to document A.M.'s injuries from the sexual assault, but the facility would not cooperate with the evaluation.

The lack of access to adequate medical care can have serious—even fatal—consequences. Since October 2018, the start of ICE's 2018 fiscal year, ICE has reported that 118 individuals have died in its custody. Fifty-six of these deaths have occurred since January 2025. ICE, *Detainee Death Reporting*, U.S. Dep't of Homeland Security, https://www.ice.gov/detain/detainee-death-reporting (visited Sept. 8, 2026). In one study covering a five-year period from 2017 to 2021, medical experts concluded that 95% of the deaths reported by ICE were potentially preventable had appropriate medical care been provided. Physicians for Human Rights, *Deadly Failures: Preventable Deaths in U.S. Immigration Detention* 7-8 (June 25, 2024). And in 79% of cases during this same period, medical experts concluded that the ICE medical staff provided treatment that "did not meet evidence-based medical standards, was inadequate to resolve the medical issue, or was unreasonably delayed." *Id.* 8.

In certain instances, noncitizens may also be subject to solitary confinement, the most extreme deprivation of liberty. ICE has markedly increased its use of solitary confinement in detention centers over the past decade. *See* Physicians for Human Rights, *Cruelty Campaign: Solitary Confinement in U.S. Immigration Detention* 3, 6 (Sept. 2025). Individual detainees report that ICE uses solitary confinement not as a last resort, but as punishment, including for minor infractions or as a form of retaliation. *See* Physicians for Human Rights, *"Endless Nightmare": Torture and Inhumane Treatment in Solitary Confinement in U.S. Immigration Detention* 1 (Feb. 6, 2024). Between 2018 and 2023, ICE imposed more than 14,000 solitary-confinement placements, the average duration of which was approximately 27 days (meaning there were many instances of solitary confinement for longer periods). *Id.* 14. As the GAO has recognized, prolonged isolation can cause serious health harms that persist long after confinement ends. GAO, GAO-23-105366, *Immigration Detention: Actions Needed to Collect Consistent Information for Segregated Housing Oversight* 1 (Oct. 2022) (referencing studies showing that even brief isolation can cause lasting harms, including anxiety, depression, PTSD, self-harm, and suicide risk). Taken together, the conditions of confinement increase the seriousness of the deprivation of liberty.

Finally, the harm extends beyond these individual detainees to their families, which often include U.S. citizens. Prolonged detentions often result in the loss of a family's primary income. *Cf.* Capps et al., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature* 10, Migration Pol'y Inst. (2015) (noting that family income dropped an average of 70 percent in the six months following a parent's arrest in one study of six immigration raid sites). Families of detained individuals must often find alternative ways to ensure stable housing and meet other basic needs. Moreover, other family members may need to find employment (or further employment) to make ends meet, which comes at the cost of childcare, aggravates stress and pressure on the family unit, and can have serious impacts on a noncitizen's own immigration proceeding.

As but one example, IJP personnel represented a client, M.A.G., who was the breadwinner of his family of five before being detained by ICE. M.A.G.'s wife was to gather evidence to show M.A.G.'s good moral character as well as hardship to her and their children should M.A.G. be removed. However, as a result of his detention, M.A.G.'s wife was forced to obtain a second part-time job to make ends meet. Her new work schedule made her unavailable to complete a psychological evaluation to show the socioemotional hardship M.A.G.'s detention was causing her. She was also unable to gather the children's school records and the family's medical and financial records to show that M.A.G. was the primary support for not just their child in common, but to each of their children from prior relationships.

These grave deprivations of liberty militate in favor of an individualized process to determine whether public safety or risk of flight truly require a particular individual's prolonged detention. This Court has required such individualized process even where the government action does not involve the deprivation of physical liberty. *See, e.g.*, *Santosky* v. *Kramer*, 455 U.S. 745, 747-748 (1982) (due process requires proof by clear and convincing evidence when terminating parental rights). The same is warranted here.

3. Prolonged detention materially limits the ability of noncitizens to present their cases

The private interests of detained noncitizens are seriously affected by their prolonged detention in other ways as well. Detained individuals confront significant obstacles in gathering evidence, contacting witnesses, obtaining records, consulting with counsel, and preparing testimony. All too often, detained clients are separated from the very records—identity documents, police reports, medical files, tax and employment records—needed to establish eligibility for relief from removal. Detained clients are also often unable to furnish their counsel even with contact information for people who might gather that evidence, because detention facilities frequently do not permit access to a client's mobile phone.

Unsurprisingly then, "detained noncitizens may have a much harder time preparing their cases because of difficulties in communicating with counsel and gathering evidence." Pet. App. 42a; *see also Moncrieffe* v. *Holder*, 569 U.S. 184, 201 (2013) (noting that detained noncitizens have difficulty locating witnesses and collecting evidence). Prolonged detention further degrades noncitizens' capacity to participate in their own defense. Asylum seekers, in particular, frequently suffer from PTSD, depression, or anxiety, and detention worsens those conditions, leaving clients less able to recount events consistently or to testify effectively. As this Court has recognized, "any amount of actual jail time" has "exceptionally severe consequences for the incarcerated individual and for society." *Rosales-Mireles* v. *United States*, 585 U.S. 129, 139 (2018) (quotation marks and citation omitted).

The experience of the ABA's immigration programs makes the point concrete. One IJP client, O.S.G., deprived of her regular medication in detention, could focus on little else in preparation and ultimately testified poorly at her merits hearing despite a viable claim, which the immigration judge denied. In another case, IJP attorneys represented a client, M.L., who had been tortured by government officials in Iran and had developed a seizure disorder as a result. Although M.L. had long been prescribed seizure medication, the facility could not provide his correct medication consistently, particularly when he was due for a refill, and consequently would place him on another brand in the interim. As a result of constantly having to adjust to different medications, M.L. complained during attorney visits of brain fog, headaches, and shaky hands, all of which impeded his ability to concentrate on his case preparation.

Detention can interfere with noncitizens' ability to adequately prepare their cases and prosecute their claims for relief in myriad other ways. For example, IJP attorneys represented S.A.B., a man whom the government contended was barred from seeking asylum due to an alleged criminal conviction. While S.A.B. insisted he was not convicted of the alleged charge, his detention prevented him from obtaining the underlying records. Because S.A.B. could not disprove that he was convicted of the alleged offense, he could not pursue asylum and could seek only withholding of removal, which the immigration judge denied.

Another client, R.P.B., could not obtain the police report that would have shown that his domestic-violence arrest involved no violent act, because the police department required a photo identification he could not procure while detained. Yet another client, V.M.M.C., had an extensive history of psychological treatment for schizophrenic symptoms but could not remember the names and addresses of the treatment facilities at which he had received treatment. V.M.M.C was not afforded access to Google Maps or other websites in detention, which would have allowed him to locate the treatment facilities and pursue records from his prior mental healthcare providers. Similarly, M.L. (discussed above) had contact information for witnesses and photos of injuries he had sustained as a result of the torture he endured at the hands of Iranian government officials on his phone, which ICE kept in its custody during M.L.'s detention. Despite numerous requests from IJP counsel for access to M.L.'s cell phone to obtain the evidence and information needed for M.L.'s representation, IJP did not receive any response from the facility or ICE.

Detainees suffering from mental illness or other mental distress often face difficulties completing psychological evaluations necessary for procedural protections and claims for relief from removal. H.A.V.V., a 19-year-old IJP client whose child is a U.S. citizen, attempted to meet via a video call with a psychological evaluator to document the mental harm he suffered as a crime victim to support one of his pending claims for relief. The audio quality of the video meeting was so poor that the evaluator was unable to complete the evaluation.

These are not isolated anecdotes; they are the predictable result of confinement. Independent research confirms the negative impact of prolonged confinement on the ability of noncitizens to present their cases in immigration court and elsewhere. Indeed, an ACLU study examined 173 ICE facilities and found that nearly every method of attorney-client communication is systematically restricted. ACLU, *No Fighting Chance: ICE's Denial of Access to Counsel in U.S. Immigration Detention Centers* (2022). At least 58 facilities refused to allow attorneys to schedule a call with a client for a set date and time; roughly 85 percent required detained individuals to pay for outgoing calls to their attorneys; and at nearly half of the surveyed facilities, attorneys reported arbitrary delays in—or outright denial of—access to their clients. *Id.* 7-8. Attorneys at several facilities reported that even in-person visits do not take place in confidential settings, "destroying the attorney-client privilege." *Id.* 8. These pervasive barriers have, as the report acknowledges, "rendered detained immigrants' right to counsel essentially meaningless." *Id.* 5. Scholars have also documented how conditions of confinement systematically "impair communication with counsel and evidence gathering." Manfredi & Meyers, *Isolated and Unreachable: Contesting Unconstitutional Restrictions on Communication in Immigration Detention*, 95 N.Y.U. L. Rev. 130 (2020).

These issues are magnified by transfers between facilities that sever communications and interrupt case preparation. As but one example, after having lived in the United States for over two decades, J.A.H.M., an ABA Detention Information Hotline caller originally from Honduras, reported being transferred to nine different detention facilities in Florida, Texas, Arizona, and California within the span of four months. Another caller to the ABA Detention Information Hotline, M.M., stated that he was sentenced to death by the Iranian Islamic Revolutionary Guard Corps for converting from Islam to Judaism and could not return to Iran. M.M. reported that ICE attempted to transfer him to another facility a mere five days before his BIA appellate brief was due. M.M. refused because all his BIA appeal materials were saved on the law library computer at his current detention facility, and ultimately resorted to harming himself with a stapler and biting himself in an attempt to remain at this current facility with his appellate materials. M.M. reported he was tackled by five separate officers and placed in solitary confinement as a result. The combined result of the realities of prolonged immigration detention is an ever-greater risk that the final adjudication of a noncitizen's proceeding will turn not on the merits of the case, but on the practical disadvantages that detention imposes.

4. Prolonged detention can coerce noncitizens into abandoning their claims to congressionally authorized relief

Finally, prolonged detention can coerce noncitizens into abandoning the congressionally authorized relief they are entitled to pursue. The experience of attorneys affiliated with the ABA's immigration programs confirms that individuals with viable claims routinely surrender them—not because the claims lack merit, but because the confinement and its conditions become unbearable.

For example, IJP represented L.O.V.S., an LGBTQ man from Central America who had obtained asylum status in Mexico but was subsequently sex trafficked on account of his sexual orientation. L.O.V.S. presented himself at a U.S. port of entry and requested asylum, after which he was detained for a prolonged period. The conditions of L.O.V.S.'s detention reminded L.O.V.S. of his confinement while being sex trafficked: the traffickers kept L.O.V.S. in rooms with doors similar to those used in the detention center, which were made of steel, locked only from the outside, and had a small window towards the top of the door for monitoring. Despite testifying eloquently over multiple days of his merits hearing, following ten months in detention with his mental health deteriorating, he requested removal rather than continuing to sit in detention awaiting a decision on his application.

Similar examples abound. Counsel with IJP worked with a Russian couple, V.M. and E.P., for six months to pursue a strong asylum claim. However, V.M. and E.P. ultimately consented to removal prior to their merits hearing to escape continued detention. In another case, IJP counsel represented R.M.R., who was in her late fifties when she was detained at an immigration court hearing. Prior to detention, R.M.R. was in the process of obtaining results for a possible cancer diagnosis. Faced with the prospect of delays in her continued cancer testing and fearing that the medical care she would receive in detention would be inadequate, R.M.R. declined to proceed with a credible fear interview and instead chose removal.

The ABA's Detention Information Hotline records the same phenomenon among unrepresented callers. One Cuban caller, G.D.J.H., was granted withholding of removal in July 2025 but was forced to remain in detention while the government appealed and the case remanded. G.D.J.H. feared returning to Cuba on account of discrimination and mistreatment he had previously experienced and feared that he would not be able to receive treatment for HIV there. After what he reported was almost a year in detention, G.D.J.H. indicated he chose removal to Mexico rather than accepting pro bono representation in his case.

Public reporting suggests that this coercion is not incidental but, increasingly, by design. A former ICE official has described the government's goal as making "detention look and feel so bad that people leave." Blitzer, *Locked Away*, CII The New Yorker 26 (July 20, 2026). At an ICE detention camp at the U.S. Army's Fort Bliss base in El Paso, Texas—now the country's largest immigration detention facility—detainees report that officers ask, day after day, who is ready to sign removal papers, and that many eventually acquiesce. *Id.* A joint investigation documented "coercive" removal practices and conditions so severe that detention operates as a tool to extract abandonment of claims. *See* Human Rights Watch & ACLU, *"You're Only Getting Out*

Deported or Dead": Abusive US Immigration Detention at Ft. Bliss (2026).

Empirical data reflect the toll. Researchers who observed 1,100 immigration hearings over the course of a year found that, among noncitizens with pending claims, nearly one in three gave up those claims and agreed to leave the country. Alejo, *Court Transparency Project in Colorado Finds Detained Immigrants Increasingly Give Up Legal Claims*, CBS News Colo. (July 10, 2026). And immigration judges issued more than 80,000 voluntary-departure orders between January 2025 and March 2026, with more than 70 percent granted to individuals who were detained when they requested departure. Sacchetti, *Immigrants Are Giving Up Their Cases and Leaving the U.S. in Soaring Numbers*, Wash. Post (May 8, 2026).

The government's brief does not dispute this coercive dynamic; it appears to embrace it. Its principal answer to the reality of prolonged detention is that a noncitizen may end his confinement simply "by withdrawing [his] objection[s] to removal." Pet. Br. 39. But that response confirms the weight of the private interest at stake: without procedural protections ensuring release of noncitizens who pose neither a danger nor a flight risk, Section 1226(c) detention results in noncitizens surrendering the very relief Congress authorized them to pursue through various provisions of the INA. *See, e.g.*, 8 U.S.C. §§ 1158 (asylum), 1229b (cancellation of removal), 1231(b)(3) (withholding of removal). Due process is not satisfied by telling a detainee that, if the process he is receiving is inadequate, he may remedy the violation by abandoning his claim altogether.

B. The Risk Of Erroneous Deprivation Of Liberty Is Substantial

The second *Mathews* factor addresses the risk of erroneous deprivation under the procedures in place and the probable value of additional or alternative procedural safeguards. *Mathews*, 424 U.S. at 335; s*ee, e.g.*, *Wilkinson* v. *Austin*, 545 U.S. 209, 224-225 (2005). This factor calls for a comparison of the procedures now in place against the additional or alternative safeguards that are sought. Here, that comparison is stark.

The procedural protections afforded a Section 1226(c) detainee are minimal: the sole process is a so-called "*Joseph*" hearing, which, as the government freely admits, asks only whether the noncitizen falls within the mandatory-detention statute—not whether continued detention actually serves either of the two regulatory interests the government invokes. *See* Pet. Br. 6-7; *see also* Pet. App. 33a-36a. Because Section 1226(c) "include[s] no mechanism for a detainee's release, nor for individualized review of the need for detention," Pet. App. 33a, it provides no assurance that noncitizens who are neither a flight risk nor a danger to society will not be subjected to continued confinement.

The risk of unjustified continued confinement is no mere abstraction. Section 1226(c) "sweeps in people convicted of many nonviolent offenses" and "does not take into account when the prior crime was committed," so that "the prior conviction may well be a poor proxy for a finding of dangerousness." Pet. App. 34a. As a result, the statute mandates the detention of many noncitizens who "'are not dangerous, have strong family and community ties, are not flight risks and may have meritorious defenses to deportation.'" *Id.* (quoting *Lora* v. *Shanahan*, 804 F.3d 601, 605 (2d Cir. 2015)). The aftermath of the Second Circuit's 2015 decision in *Lora*, which required bond hearings after a certain period of detention (before it was vacated following *Jennings* v. *Rodriguez*, 583 U.S. 281 (2018)), provides a relevant empirical record. When Section 1226(c) detainees were actually afforded bond hearings under *Lora*, 62 percent were released, "confirming the absence in many cases of a sound justification for detention." Pet. App. 34a. In other words, absent a bond hearing, the existing procedures routinely result in the detention of individuals whose detention serves no identified government interest.

For these reasons, the second *Mathews* factor, like the first, weighs heavily in favor of the unconstitutionality of prolonged detention under Section 1226(c) without a bond hearing. Prolonged detention presents the quintessential risk of erroneous deprivation, and the "probable value" of an additional safeguard is correspondingly elevated. *Mathews*, 424 U.S. at 335.

C. The Burden On The Government Of An Individual Bond Hearing Is Minimal

Finally, *Mathews* requires that the Court weigh the government's interest, including the function involved and the fiscal and administrative cost imposed on the government against "the benefit of an additional safeguard to the individual affected by the administrative action and to society in terms of increased assurance that the action is just." 424 U.S. at 348. This factor, too, favors bond hearings for noncitizens whose detention has become "unreasonably prolonged."

1. Because this case only addresses individuals who have experienced "unreasonably prolonged" detention, the universe of individuals entitled to bond hearings is circumscribed

To accurately assess the government's interest and the fiscal and administrative costs associated with the process accorded under the court of appeals' judgment, the Court should consider the limited size of the population subject to the judgment. Recognizing a due process right to a bond hearing for those individuals detained under Section 1226(c) who both challenge their removal and who are subject to unreasonably prolonged detention circumscribes the potential number of noncitizens currently in detention for whom a bond hearing would be required. That circumscribed group excludes the "vast majority" of detention periods addressed in *Demore* v. *Kim*, 538 U.S. 510, 529-530 (2003).

2. The procedures sought impose only a minimal burden on the government

The government articulates two interests in support of its authority to detain noncitizens for an indeterminate length of time without affording them a bond hearing: (1) ensuring that noncitizens appear at their immigration proceedings and (2) protecting the community from noncitizens who may "continue to engage in crime" while their removal proceedings are pending. *See* Pet. Br. 33-37 (identifying "two legitimate government interests" related to Section 1226(c)); *see also Demore*, 538 U.S. at 513 (noting Section 1226(c) was enacted out of "concern[ ] that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings"); *Nielsen* v. *Preap*, 586 U.S. 392, 398 (2019) (same). While these interests are unquestionably legitimate, the court of appeals' ruling does nothing to undercut them. *See* Pet. App. 36a-39a.

First, at a bond hearing pursuant to the court of appeals' judgment, an immigration judge would assess, on an individualized basis, whether the specific noncitizen presented a flight risk or a danger to the community. *See* Pet. App. 36a-37a. This task is familiar to immigration judges, who routinely conduct precisely this analysis for other noncitizen detainees. *See, e.g.*, 8 U.S.C. § 1226(a).

The government identifies no legitimate interest in the prolonged detention of noncitizens who pose neither a danger to the community nor a flight risk. By contrast, this Court has recognized that "any amount of actual jail time ... has exceptionally severe consequences for the incarcerated individual and for society which bears the direct and indirect costs of incarceration." *See Rosales-Mireles*, 585 U.S. at 139 (quotation marks and alterations omitted). Because the third *Mathews* factor encompasses a consideration of "the public interest," including "administrative burden and other societal costs," *Mathews*, 424 U.S. at 347, the government's interest is in fact promoted by assuring that society does not bear the myriad negative costs of the prolonged detention of noncitizens who are neither a danger nor a flight risk. *See supra* section I.B.

Moreover, Section 1226(c) detention now reaches individuals who have never been convicted of a crime, including those merely "arrested for" or "charged with" certain offenses. Pet. Br. 6; 8 U.S.C. § 1226(c)(1)(E)(ii). This expansion of Section 1226(c) further undermines the government's argument that categorical detention without an individualized hearing is necessary to protect public safety and prevent flight.

Providing bond hearings to this limited class of detainees would likely reduce, rather than increase, the government's fiscal and administrative burdens, as prolonged detention is substantially more costly than individualized bond proceedings. While estimates of the cost for detaining a noncitizen vary, by ICE's own recent admission, the cost of detaining a noncitizen is around $152 *per day*. ICE, *Alternatives to Detention (ATD)*, https://www.ice.gov/features/atd (last updated May 18, 2026). Using this metric, the twenty-one months Respondent G.M. was detained would have cost the government approximately $96,000.

As the government touts in other capacities, alternatives to this prolonged and expensive detention exist. For example, ICE operates Alternatives to Detention ("ATD"), a program that permits "aliens to remain in their communities during immigration proceedings," and determines the level of necessary supervision on a "person-by-person basis." *Alternatives to Detention*. As of earlier this year, ICE monitored approximately 180,000 individuals through ATD, roughly double the population in detention. Kandel & Singer, *Immigration and Customs Enforcement (ICE) and the Non-Detained Docket (NDD)*, Congressional Rsch. Serv. (Apr. 24, 2026). The government's own calculations indicate that ICE's ATD program provides substantial cost savings over detention. *Alternatives to Detention*.

The government's primary retort is that, because "[s]ome rate of error is inherent in any system of bond hearings," an indeterminate and entirely hypothetical number of bond hearings "will produce false negatives—*i.e.*, releases of criminal aliens on bond based on erroneous predictions that they will not flee or commit more crimes." Pet. Br. 35.

But in advancing this argument, the government invites this Court to apply the very "procedure by presumption" it rejected in *Stanley* v. *Illinois*, 405 U.S. 645, 656-657 (1972). In *Stanley*, this Court confronted an Illinois statutory scheme that provided that a child of an unwed father became a ward of the state upon the death of the child's mother. *Id.* at 646. The Court weighed the benefit to the state of avoiding individualized inquiries into the fitness of unwed fathers against the "interest of a parent in the companionship, care, custody, and management of his or her children." *Id.* at 651-652, 656-657. The Court explained that, while "[p]rocedure by presumption is always cheaper and easier than individualized determination," ultimately "the Constitution recognizes higher values than speed and efficiency" and held that due process required an individualized hearing before the state removed a child from a parent. *Id.* at 656-658. This Court should decline the government's invitation to ride roughshod over the individualized due process the Constitution requires.

II. BECAUSE THE MANDATORY DETENTION AT ISSUE HERE IS SIGNIFICANTLY LONGER THAN THE COURT SUGGESTED IN *DEMORE*, DETAINEES' LIBERTY INTERESTS DESERVE FAR GREATER WEIGHT

Attempting to recast Respondent's procedural due process claim as a substantive one, the government argues that *Demore* controls because it upheld Section 1226(c) without applying any form of "heightened, substantive due process scrutiny." Pet. Br. 29 (quoting 538 U.S. at 549 (Souter, J., concurring in part and dissenting in part) (citations omitted). *Demore* does not support "unreasonably prolonged" detention without the safeguard of a bond hearing.

Demore rested on the understanding that individuals subject to mandatory detention were detained only for the "brief" and "limited" period necessary for removal proceedings, which, according to the decision, averaged "roughly a month and a half" in the vast majority of Section 1226(c) cases and "about five months in the … cases in which the alien chooses to appeal." *Demore*, 538 U.S. at 513, 526-530. Subsequent experience demonstrates that the "brief" detention authorized in *Demore* does not reflect the reality of Section 1226(c) detention. And even if it did, the "unreasonably prolonged" detention at issue in this case necessarily requires this Court to consider detention periods under Section 1226(c) that are, by definition, significantly longer than the assumptions underlying the *Demore* decision.

First, the government admitted in 2016 that *Demore's* five-month figure was incorrect. *See* Letter from Ian H. Gershengorn, Acting Solicitor Gen., to Hon. Scott S. Harris 3, *Demore*, No. 01-1491 (U.S. Aug. 26, 2016), https://www.justsecurity.org/wp-content/uploads/2018/05/SG_Letter-Demore.pdf. The government acknowledged that average detention in appealed immigration cases at the time of *Demore* exceeded twelve months, more than double the Court's estimate. *See id.* ("The corrections EOIR has now made yield an average and median of 382 and 272 days, respectively, for the total completion time in cases where there was an appeal[.]"). Because *Demore*'s due process analysis rested on the mistaken premise that detention would be brief, it is neither instructive nor dispositive here.

Moreover, this case, unlike *Demore*, concerns only noncitizens whose detention has become "unreasonably prolonged"—that is, noncitizens whose detention is, by definition, materially different from and longer than the detention considered in *Demore*.

Tellingly, a majority of the Court in *Demore* believed that extended mandatory detention under Section 1226(c) would not comport with due process. *See Demore*, 538 U.S. at 532 (Kennedy, J., concurring) ("since the Due Process Clause prohibits arbitrary deprivations of liberty, a lawful permanent resident alien such as respondent could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified" (citing *Zadvydas*, 533 U.S. at 684-686)); *see also id.* at 541 (Souter, J., joined by Stevens & Ginsburg, JJ., concurring in part and dissenting in part) ("The Court's holding that the Constitution permits the Government to lock up a lawful permanent resident of this country when there is concededly no reason to do so forgets over a century of precedent acknowledging the rights of permanent residents, including the basic liberty from physical confinement lying at the heart of due process."); *id.* at 576 (Breyer, J., concurring in part and dissenting in part) (noting that government may detain a removable noncitizen without bond "for the few weeks ordinarily necessary for formal entry of a removal order," but that "[t]ime limits of the kind set forth in *Zadvydas* v. *Davis*, … should govern these and longer periods of detention"). Accordingly, *Demore* does not resolve, let alone endorse, the constitutionality of detaining noncitizens under Section 1226(c) for unreasonably prolonged periods without meaningful procedural safeguards.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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