No. 26-50183
c/w Nos. 26-50219, 26-50221

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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Ignacio Sosnava Rodriguez,

*Petitioner-Appellee*,

---v.---

Sylvester M. Ortega, in his official capacity as Director of San Antonio Field Office of ICE's Enforcement and Removal Operations, et al.,

*Respondents-Appellant*.

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Alejandro Villegas Angel,

*Petitioner-Appellee*,

---v.---

Markwayne Mullin, in his official capacity as Secretary of the U.S. Department of Homeland Security et al.

*Respondents-Appellants*.

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Miguel Angel Gomez Alvarado,

*Petitioner-Appellant*,

---v.---

Michael Vergara, in his official capacity as Acting Director of San Antonio Field Office for U.S. Immigration and Customs Enforcement, et al.,

*Respondent-Appellant*.

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ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS
Nos. 1:26-cv-384, 1:26-cv-309, 1:26-cv-273

**BRIEF OF *AMICI CURIAE* INDUSTRY LEADERS AND REPRESENTATIVES**

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This brief is filed via consent, because pursuant to Rule 29(a)(2) all parties have consented to the filing.

## CERTIFICATE OF INTERESTED PERSONS

1. Nos. 26-50183, 26-50219, 26-50221, *Sosnava Rodriguez v. Ortega*
   USDC Nos. 1:26-CV-273, 1:26-CV-384, 1:26-CV-309
2. The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.
   - Ignacio Sosnava Rodriguez, Petitioner-Appellee;
   - Alejandro Villegas Angel, Petitioner-Appellee;
   - Miguel Angel Gomez Alvarado, Petitioner-Appellee;
   - Patricio Garza Izaguirre, Garza Narvaez PLLC, Counsel for Petitioner-Appellee Alejandro Villegas Angel;
   - Stephen A. Lagana, Law Offices of Stephen Lagana, Attorney for Petitioner-Appellee Miguel Angel Gomez Alvarado;
   - Stephanie E. Norton, Gracie Willis, Yulie Landan, National Immigration Project of the National Lawyers Guild, Counsel for Petitioners-Appellees;
   - Rebecca Cassler, Michelle Lapointe, Suchita Mathur, American Immigration Council, Counsel for Petitioners-Appellees;
   - Matt A. Crapo, Federation for American Immigration Reform, counsel for an *Amicus* party;
   - Denise Gilman, University of Texas School of Law Immigration Clinic, Counsel for *Amici* parties;
   - Fatma Marouf, Texas A&M University School of Law, Counsel for *Amici* parties;
   - Brianne Jenna Gorod, Constitutional Accountability Center, Counsel for an *Amicus*;
   - Daniel Hatoum, Texas Civil Rights Project, Counsel for *Amici*
   - Kate Gibson Kumar, Texas Civil Rights Project, Counsel for *Amici*
   - Kristin Etter, Texas Immigration Law Council, Counsel for *Amici*
   - Charlotte Collins, Respondent-Appellant;
   - Markwayne Mullin, Respondent-Appellant;
   - Todd Blanche, Respondent-Appellant; and
   - Sylvester M. Ortega, Respondent-Appellant.

/s/ *Daniel Hatoum*
Daniel Hatoum
*Attorney for Amici Curiae*

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## STATEMENT OF IDENTIFICATION AND INTEREST

Collectively, *Amici* are industry leaders and representatives who are affected by the overregulation and overreach of the mandatory detention mandate that limits the work force and ability of *Amici* to contract for labor. *Amici* bear the cost directly of this overregulation. But *Amici* is also aware of how this detrimental impact is passed on to all residents of this country.

The National Association of Home Builders (NAHB) represents the largest network of craftsmen, innovators, and problem solvers dedicated to building and enriching communities. Operating at the local, state and national levels, NAHB helps its members gain a competitive advantage through education, expertise, and resources, networking opportunities for home building professionals, political advocacy to improve the business environment, and by generating economic savings for members. NAHB and its members have been negatively impacted by the Government's novel mandatory detention policy, which has removed labor from the workforce, forcing build cancellations, causing loss of revenue, materials, jobs for U.S.-born workers, and a sharp decline in the number of available homes on the market.

The Texas Business Immigration Coalition (TBIC) is a chapter of the American Business Immigration Coalition, a bipartisan coalition of more than 2,000 CEOs in 17 states promoting common sense immigration solutions. ABIC has an interest in this case because its members depend on a stable and predictable workforce to operate their businesses, meet consumer demand, and contribute to the Nation's economic growth. ABIC's members include businesses and employers across industries that rely on immigrant workers, including construction, manufacturing, agriculture, healthcare, and hospitality. ABIC recognizes that immigration policy is also workforce policy: government action that removes workers from the labor force can disrupt established employment relationships, exacerbate existing labor shortages, increase costs, and impair businesses' ability to plan and operate effectively.

ABIC therefore has a particular interest in ensuring that immigration detention policies account for their substantial economic consequences. When workers are detained for extended periods without individualized consideration of whether continued detention is necessary, businesses lose employees they have hired, trained, and relied upon; families lose wage earners; and consumers and communities bear the resulting costs. ABIC's members have a direct interest in ensuring that the Nation's immigration enforcement system does not unnecessarily disrupt the workforce and economic relationships on which American businesses depend.

The Texas United Auto and Community Alliance (TUACA) is a business alliance for the automotive sector in Texas that includes automotive businesses, workers, dealers, and workshops in Texas. TUACA has an interest in this case because its members depend on a stable workforce and a healthy consumer base to operate their businesses, serve their customers, and sustain the broader network of businesses that supports the automotive industry. The automotive sector depends upon the availability of workers across a range of interconnected businesses, including dealerships, repair and service facilities, parts suppliers, title and registration businesses, lenders, and other automotive service providers. When workers are removed from the workforce or consumers are unable to participate fully in the marketplace, the effects extend beyond any single business. Sales decline, financing and collection risks increase, businesses incur additional administrative costs, and workers and consumers bear the resulting economic consequences. TUACA therefore has a particular interest in the economic consequences of mandatory immigration detention. Detaining workers removes participants from an industry in which their labor is needed, while detaining wage earners reduces the purchasing power of the families and consumers they support. Those effects can reverberate throughout the automotive economy, affecting businesses, workers, lenders, and consumers alike. TUACA seeks to ensure that the Court considers these real-world economic consequences when evaluating whether individualized review of continued detention imposes an undue administrative burden.

The National Association of Home Builders (NAHB), the American Business Immigration Coalition (ABIC), and the Texas United Auto and Community Alliance

(TUACA) file this brief pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure and all parties to the appeal have consented to the filing of this brief.

No party's counsel authored this brief in whole or in part. No party or its counsel contributed financial support intended to fund the preparation or submission of this brief.

## INTRODUCTION AND SUMMARY OF ARGUMENT

> *"One thing is certain in this hungry world; no regulation or law should be allowed if it results in crops rotting in the field for lack of harvesters[.]" - Ronald Reagan, speaking on non-citizen labor.*[1]

This Court should affirm the district court orders granting *habeas* relief. At its core, the panel understood that the decision must, in part, be governed by constitutional notions of liberty, and the effects of that liberty on our society. True too is that this liberty interest is deeply connected with the free market principles that founded this country and led it to become the economic powerhouse of the world. Moreover, the decision to mandatorily detain noncitizens is a decision to prevent noncitizens, who are not a danger and not flight risk, from being free and able to freely contract. Such overregulation has negative ripple effects that are well

[1] Steven Greenhut, *Immigration Politics Are Killing the Debate Over Immigration Policy*, R Street (April 12, 2021), https://www.rstreet.org/commentary/immigration-politics-are-killing-the-debate-over-immigration-policy/.

within the province of due process. *Amici* are business leaders who have benefited from the founding fathers' principles of free markets and liberty, and wish to highlight those interests for the Court.

As an initial matter, procedural due process demands that this Court review the impacts of the mandatory detention mandate. "The essence of due process is the requirement that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (quotation omitted). As a result, compliance with due process requires weighing the Government's interest, including the fiscal, administrative, and societal costs on our market economy. *Id.* at 335 (determining the constitutional sufficiency of administrative procedures requires consideration of three factors: (1) "the private interest"; (2) "the risk of an erroneous deprivation"; and (3) "the Government's interest, *including* the fiscal and administrative burdens that the additional or substitute procedures would entail.")(emphasis added). This brief addresses the third *Mathews* factor.

Accordingly, the business *amici* do not ask this Court to dictate immigration policy. What *amici* contest is narrow: that once the Due Process Clause applies, the Government may not continue to detain noncitizens that have been residing in the United States—at substantial public cost—without any individualized determination that detention remains necessary. *Amici* are organizations that represent the lifeblood of our economy. This brief focuses on how that lifeblood is being drained by the *cost* of detention to businesses, taxpayers, workers, consumers, and local economies.

Specifically, society bears the substantial economic costs of mandatory detention without individualized review. A functioning market economy relies on a system that provides protection to economic relationships. Yet, the mandatory detention policy encroaches on this relationship without substantial justification. As a result, *Amici* have seen a reduction in work force (for both non-citizens and citizens), a loss of jobs for the U.S.-born workers, and creation of supply side problems.

These societal costs are not the only costs. Detention is expensive, and alternatives to detention are not only far cheaper, but also allow noncitizens to contribute economically to our nation's prosperity by working, producing and consuming goods, and paying taxes. That ultimately lowers debt, rather than increases it. Therefore, *Amici* submit that procedural due process requires additional protections, including individualized bond hearings.

## BACKGROUND

The mandatory detention policy flies in the face of procedural due process and the free market principles our Nation and her Constitution were founded on. As James Madison wrote, "Government is instituted to protect property of every sort. . . . That alone is a just government, which impartially secures to every man, whatever is his own." James Madison, Property, Nat'l Gazette, Mar. 29, 1792, reprinted in 14 The Papers of James Madison 266 (Robert A. Rutland et al. eds., 1983). When government action removes established workers from their livelihoods and communities without individualized justification, it undermines the very economic liberty the Constitution is designed to safeguard.

That is exactly what is happening here. An estimated 14 million immigrants live in the United States without authorization, most of whom have lived in the United States for over a decade.[2] The mandatory detention of these resident noncitizens during their immigration proceedings produces wide-ranging, measurable economic harms. Such harms span state and federal fiscal costs, the labor market, consumer prices, housing supply, and economic output. The evidence is strongest in labor-intensive industries and states like Texas, but the aggregate effects ripple across the entire economy. They are also reflected in the U.S. debt.

## ARGUMENT

### I. *Mathews* Requires Consideration of Fiscal and Societal Costs, Including the Economic Burden Facing States.

As Adam Smith recognized, the freedom to employ one's labor is "the most sacred and inviolable" form of property, and restraints upon it demand justification.

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[2] Stephanie Kramer & Jeffrey S. Passel, *What the Data Says About Immigrants in the U.S.*, Pew Rsch. Ctr. (Aug. 21, 2025), https://www.pewresearch.org/short-reads/2025/08/21/key-findings-about-us-immigrants/.

Adam Smith, An Inquiry into the Nature and Causes of the Wealth of Nations, bk. I, ch. X, pt. II (1776). Given Adam Smith's profound influence on the framers, it is unsurprising that Constitutional law contains a framework for evaluating those justifications: the *Mathews v. Eldridge* test.

The Supreme Court confirmed in *Hamdi v. Rumsfeld* that *Mathews* provides the framework for balancing liberty interests against governmental interests in detention settings. 542 U.S. 507, 529 (2004). The *Mathews* framework applies even in contexts implicating national security and executive prerogative, and even where Congress possesses plenary authority over immigration. *Hamdi* makes clear that plenary power does not exempt the Government from constitutional constraints on *how* it exercises that power. "[A]s critical as the Government's interest may be in detaining those who actually pose an immediate threat . . . history and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse." *Id.* at 530. *Mathews* directs courts to evaluate not only governmental objectives but also the costs associated with the procedures chosen to advance them. The third factor expressly requires consideration of "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. The Supreme Court further recognized that the public-interest inquiry encompasses "other societal costs." *Id.* at 347–48.

*Mathews* does not permit courts to assume that the Government's preferred procedure necessarily serves the public interest. Rather, it requires courts to examine the "fiscal and administrative burdens" and other "costs that would be associated with requiring" additional procedural safeguards "in striking the appropriate due process balance." *Id.* at 347. The relevant inquiry therefore cannot stop with the cost of a bond hearing; it must also account for the fiscal and societal costs of continued detention without individualized review. Since *Mathews*, circuit courts applying the Fifth Amendment in immigrant-detention cases have treated the third *Mathews* factor as encompassing more than the Government's interest in administrative efficiency.[3] In evaluating that factor, courts have considered detention's fiscal costs, its demands on public resources, and its practical effects on families, employers, and local economies.

The business *amici* provide a real-world measure of those societal costs: The National Association of Home Builders ("NAHB") demonstrates the effect on housing supply and construction costs; the American Business Immigration Coalition ("ABIC") documents the disruption already occurring to the business community; and the Texas United Auto and Community Alliance ("TUACA")'s perspective from the automotive industry illustrates the broader effects on workforce

[3] *E.g.*, *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021); *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024); *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020); *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017).

mobility and ordinary economic activity. Together, these perspectives demonstrate that the consequences of mandatory detention are not confined to the individuals held in custody, but instead propagate outward through businesses, labor markets, housing markets, consumers, and local communities.

Those consequences fall squarely within the "societal costs" that *Mathews* identifies as relevant to the due-process balance. A bond hearing is therefore not simply an additional administrative expense. It is a mechanism for identifying individuals for whom continued detention is not necessary. If an individual is released, the Government no longer bears the daily cost of detention, and that individual can return to work, support a family, purchase goods and services, pay taxes, and contribute to the businesses and communities in which he or she lives. Employers retain workers, consumers remain in the marketplace, families retain their wage earners, and local economies retain productive participants. To borrow a phrase from Ronald Reagan: a bond hearing is a mechanism to prevent food from rotting in the field.

The relevant question is therefore not simply whether a bond hearing imposes some administrative burden. It is whether that limited burden is justified when weighed against the continuing fiscal cost of detention and the economic activity lost when individuals who do not require detention remain behind bars. On this record, it is not.

## II. Society Bears the Substantial Economic Costs of Detention Without Individualized Review.

As founding father and President Thomas Jefferson observed:

> a wise & frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, & shall not take from the mouth of labor the bread it has earned. this is the sum of good government; & this is necessary to close the circle of our felicities.[4]

At its heart, Thomas Jefferson's warning foretold the dangers that overregulation can have on our daily lives—particularly when government action takes from people what they have already earned and built.

The risk Jefferson warned of is seen here. A functioning market economy depends upon a legal system in which individuals and businesses can reasonably predict the consequences of government action and rely upon existing economic relationships. Employers invest in workers, workers build careers and livelihoods, and families and businesses make long-term decisions based on those relationships. When government action abruptly removes workers on a large scale from their jobs and interrupts those established relationships, the consequences are not confined to the individuals detained. They are borne by employers that lose workers, consumers who face higher costs or fewer services, families that lose income, and communities

[4] Thomas Jefferson, First Inaugural Address (Mar. 4, 1801), https://tjrs.monticello.org/letter/1330.

that lose economic activity and tax revenue. It is these dangers that *amici* have seen firsthand and expound on in this section. The question presented here therefore has consequences well beyond the administration of immigration proceedings: it implicates the stability and predictability on which businesses, workers, and local economies depend.

### A. Mandatory Detention Affects the Broader Workforce, Not Just Those Detained.

Of particular interest to *amici* are the negative economic effects of the mandatory detention mandate, which extend beyond those physically held in custody. A 2025 survey of immigrants[5] indicates that immigration enforcement activity has altered workplace participation and mobility decisions among immigrant populations, including individuals who have *not* been detained. The survey reflects that three in ten immigrants, including about one-third of lawfully present immigrants, reported avoiding activities such as going to work, traveling, or seeking medical care because of immigration enforcement concerns. The relevant societal

[5] KFF & New York Times, *KFF/New York Times 2025 Survey of Immigrants*, (Nov. 18, 2025), https://files.kff.org/attachment/Topline-KFF-New-York-Times-2025-Survey-of-Immigrants.pdf. *See also*, Shannon Schumacher, Isabelle Valdes, Julian Montalvo III, Liz Hamel, Samantha Artiga, Drishti Pillai, & Ashley Kirzinger, *KFF/New York Times 2025 Survey of Immigrants: Worries and Experiences Amid Increased Immigration Enforcement*, KFF (Nov. 18, 2025) https://www.kff.org/racial-equity-and-health-policy/kff-new-york-times-2025-survey-of-immigrants-worries-and-experiences-amid-increased-immigration-enforcement/ (interpreting study).

costs therefore extend beyond the individuals actually detained, encompassing broader disruptions to workforce participation and local economic activity.

National labor-market data reflects the same trend. Last year, the Congressional Budget Office (CBO) projected that the United States' population will have significantly fewer working-age adults in the future than the CBO had previously projected.[6] The resulting reduction in available labor reverberates beyond the individuals directly affected, contributing to broader pressures on businesses, production, housing construction, and consumer prices. Those consequences are reflected in the distinct experiences of each *amicus*. NAHB sees the effects in an already-strained homebuilding workforce and constrained housing production. ABIC's members experience the disruption through labor shortages, lost employees, and the difficulty of maintaining a stable and predictable workforce. And TUACA's members experience the effects through disruptions to automotive businesses, workers, and consumers whose purchasing power sustains the broader automotive economy and supply chain.

### B. Removing Immigrant Workers Removes Jobs for U.S.-Born Workers.

U.S.-born workers are not simply filling vacancies left by the mass detention of immigrant workers because such skilled labor is complementary, not a

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[6] *The Demographic Outlook: 2025 to 2055* (January 2025) at 14, www.cbo.gov/publication/60875.

substitution.[7] For example, the immigrant framer hanging drywall and the U.S.-born electrician wiring the same building are not competing for the same work—rather, they depend on each other to finish the job. That is because "undocumented immigrants are more likely than U.S.-born individuals within the same sector, to work in jobs that are less desirable due to lower pay, on-the-job hazards and irregular schedules."[8]

The president of the Northeast Florida Builders Association put it plainly: "Our local workforce has been depleted in some trades by 70–75%."[9] Wage growth for nonsupervisory construction workers has reached 5.2 percent, and still the vacancies are not filled,[10] because the skills are not interchangeable. Detaining immigrants from a work crew composed of both immigrants and citizens often means the citizens (who would otherwise be able to keep their jobs) lose their job because the entire build must be cancelled due to insufficient team members.

Empirical research confirms that pattern. The New York Times reported on a study of enforcement-affected industries, which found that a five percent

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[7] *See generally* Elizabeth Cox & Chloe N. East, *Labor Market Impacts of ICE Activity in Trump 2.0*, NBER Working Paper 35129 (2026), https://doi.org/10.3386/w35129.
[8] *Id*. at 2.
[9] *The Economic Costs of Donald Trump's Immigration Crackdown*, The Economist (Aug. 27, 2026), https://www.economist.com/finance-and-economics/2026/08/27/the-economic-costs-of-donald-trumps-immigration-crackdown.
[10] *Id*.

employment decline among male undocumented workers corresponded to a 1.3 percent employment decline among male U.S.-born workers without a college degree in those same areas.[11] There was no evidence that employers raised wages to attract U.S.-born workers.[12] Instead, economic activity contracted across agriculture, construction, manufacturing, and wholesale trade. Removing immigrants from the workforce does not only reduce the labor supply. It also removes consumers from local economies, which leads to less revenue for local businesses such as "barber shops, grocery stores, and auto dealerships, causing them to hire fewer workers, including U.S.-born workers."[13]

The effects extend beyond the businesses directly impacted. As outlined below, when labor shortages disrupt production and construction, prices rise, projects are delayed, and housing becomes more expensive and less available. The food consumers buy costs more, the rent they pay is higher, and the homes they hope to purchase remain out of reach. Labor shortages in immigrant-heavy sectors are a documented contributing factor to each of these conditions. Mandatory detention

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[11] *See* Lydia DePillis, *Trump's Deportations Are Costing Americans Jobs, Study Finds*, N.Y. Times, May 19, 2026, [https://www.nytimes.com/2026/05/19/realestate/trumps-deportations-are-costing-americans-jobs.html](https://www.nytimes.com/2026/05/19/realestate/trumps-deportations-are-costing-americans-jobs.html) (interpreting the study by Cox and East).

[12] Elizabeth Cox & Chloe N. East, *supra* note 7, at 2.

[13] Chloe East, *The Labor Market Impact of Deportations,* Brookings (Sept. 18, 2024) https://www.brookings.edu/articles/the-labor-market-impact-of-deportations/.

deepens those shortages and compounds the costs borne by families and consumers throughout the economy.

**C. Housing: The Supply Side of a National Crisis**

The U.S. housing crisis is deepening on multiple fronts, with historic affordability burdens, stagnant sales, and demographic headwinds all converging to strain both housing markets and labor supply. A 2026 State of the Nation's Housing report[14] found that existing-home sales remain at near thirty-year lows, approximately 49 percent of renter households are cost-burdened, and approximately 26 percent are severely cost-burdened, which is a record for the fourth consecutive year.[15] The report identifies multiple contributing factors to current housing and labor-market conditions, including slowing immigration and reduced labor-force growth.[16]

Empirical research demonstrates that counties subject to stricter immigration enforcement lost approximately a year's worth of normal construction activity over four years, and that such enforcement "reduces homebuilding and drives up new

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[14] Joint Ctr for Housing Studies of Harvard University, *The State of the Nation's Housing 2026* (June 7, 2026), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2026_0.pdf.
[15] *Id.* at 6.
[16] *Id*. at 2 ("Housing demand is further threatened by severely restricted immigration and increased deportations.")

construction prices."[17] Another study reached the same conclusion: stricter immigration enforcement leads to "lasting declines in construction labor and homebuilding and rising home prices."[18]

The result is a constrained housing market in which first-time buyers compete for homes that are not being built, while existing homeowners pay inflated construction costs driven by labor shortages. These market distortions are the predictable consequence of detaining more than 75,000 workers at a total daily cost of $6.5 million to taxpayers, without any hearing to determine whether that detention serves a necessary governmental purpose or the public interest.

**D. Consumer Costs: Labor Shortages Drive Food Cost Increases.**

Food prices are rising, and labor shortages in agriculture are a documented contributor. The USDA Economic Research Service reported in July 2026 a 3 percent overall increase in food prices from 2025, a 3.4 percent year-over-year increase in the cost of food purchased away from home, and projected increases of

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[17] Troup Howard, Mengqi Wang, & Dayin Zhang, *Cracking Down, Pricing Up: Housing Supply in the Wake of Mass Deportation*, SSRN, 1 (Nov. 10, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4729511.

[18] Jorge González-Hermoso, Christina Plerhoples Stacy, & Hamutal Bernstein, *Mass Deportations Would Worsen Our Housing Crisis*, Urban Wire, Urban Institute, (April 15, 2026), https://www.urban.org/urban-wire/mass-deportations-would-worsen-our-housing-crisis.

2.9 percent for fresh fruits and 9.8 percent for beef in 2026.[19] These price pressures fall directly on American consumers and households already contending with inflation.

Texas, the nation's largest beef producer, stands to bear a disproportionate share of these costs. Economic research shows that a 10 percent decline in farm employment corresponds to approximately a 2.94 percent increase in prices for labor-intensive agricultural products.[20] When enforcement policy pulls workers out of already-strained agricultural sectors, consumers pay the difference.

## III. Individualized Bond Hearings Impose Minimal Administrative Burden and Serve the Government's Legitimate Interests.

Mandatory detention is expensive, and that cost must also be weighed. "Great nations are never impoverished by private, though they sometimes are by public prodigality and misconduct. The whole, or almost the whole public revenue, is in most cases employed in maintaining unproductive hands." Adam Smith, An Inquiry into the Nature and Causes of the Wealth of Nations, bk. II, ch. III, pt. II (1776). And it is the height of "unproductive hands" to detain someone who is not a flight risk or

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[19] U.S. Dep't of Agric., Econ. Rsch. Serv., Food Price Outlook: Summary Findings (Aug. 25, 2026), https://www.ers.usda.gov/data-products/food-price-outlook/summary-findings.

[20] Zachariah Rutledge, *Analysis of the Effects of Reduced Domestic Farm Employment on Food Prices*, 1 (Dec. 17, 2025), https://www.growithere.org/_files/ugd/f4142c_5416744d5c9942c4b8625c147ea1dd66.pdf.

a danger to the community. The fiscal burden of mandatory detention falls on the Government and, ultimately, taxpayers. Detention costs $152 per detainee per day.[21] With 65,765 immigrants in detention,[22] the *daily* cost of immigration is nearly $10 million. These extra costs come at an alarming time where the U.S. debt is over 40 *trillion* dollars.[23]

By contrast, people who are not detained can work and pay taxes, thus diminishing the debt. Immigrants' effect on diminishing debt has been well documented by the Cato Institute: "The fiscal surplus from all immigrants from 1994 to 2023 was $14.5 trillion, compared with a deficit of $48 trillion without immigrants. That means that immigrants cut deficits by nearly a third in real terms over the last three decades."[24]

### A. The Cost of Mandatory Detention is Substantial and Unjustified.

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[21] Muzaffar Chishti & Valerie Lacarte, *U.S. Immigrant Detention Grows to Record Heights under Trump Administration*, Migration Policy Institute (Oct. 29, 2025), https://www.migrationpolicy.org/journal/policy-beat/us-immigrant-detention-grows-record-heights-under-trump-administration.

[22] *Immigration detention quick facts*, TRAC (accessed Sept. 15, 2026), https://tracreports.org/immigration/quickfacts/.

[23] John Towfighl, *The National Debt Just Hit $40 Trillion. But just how big is $40 Trillion*, CNN Online (Aug. 23, 2026), https://www.cnn.com/2026/08/23/economy/national-debt-40-trillion.

[24] David J. Bier, *Cato Study: Immigrants Reduced Deficits by $14.5 Trillion Since 1994*, Cato Institute (Feb. 3, 2026 10:33 AM), https://www.cato.org/blog/cato-study-immigrants-reduced-deficits-145-trillion-1994.

Mandatory detention imposes significant fiscal and administrative expenses on the federal government. In fiscal year 2025, Congress appropriated $45 billion for immigration detention.[25] Since January 2026, Immigration and Customs Enforcement ("ICE") has paid 11 to 13 percent premiums above market value to convert commercial warehouses into detention facilities because the detention population has nearly doubled.[26] By mid-January 2026, more than 75,000 noncitizens were in detention, compared to approximately 40,000 the year prior. Federal officials have also proposed spending billions of dollars to further expand detention capacity. Requiring the Government to justify continued detention promotes the Government's interest in minimizing the substantial costs of detention in cases where detention serves no purpose. *See, e.g.*, *Giri v. Lyons*, 833 F. Supp. 3d 748, 770 (S.D. Tex. 2026) (recognizing that additional procedural safeguards in the form of a bond hearing do nothing to undercut the Government's strong interest in ensuring that noncitizens appear for their removal proceedings and that the public is kept safe).

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[25] The One Big Beautiful Bill Act, Pub. L. No. 119-21 (July 4, 2025).

[26] *See* Thomas, Ellen, *Here's Where ICE Is Buying up Warehouses to Make Detention Centers*, Business Insider Real Estate (April 3, 2026), www.businessinsider.com/ice-buying-warehouses-to-make-detention-centers-2026-4 (outlining the premiums ICE has paid for new detention buildings).

At the same time, the immigration system faced a total backlog exceeding 3 million matters.[27] Subjecting millions of people to mandatory detention at approximately $152 per detainee per day while their cases proceed would impose enormous and continuing fiscal costs while removing millions of workers from the labor force, with cascading effects on employers, consumers, families, and local economies. A bond hearing, by contrast, requires only a brief individualized determination whether continued detention remains necessary and can be conducted at the detention facility or remotely by video. Thus, the disparity between those costs favors providing that limited process.

### B. Supervised Release Provides a Significantly Less Costly Alternative.

Alternatives to mandatory detention impose substantially lower fiscal and administrative burdens than continued detention. The Government *already* administers an Alternatives to Detention ("ATD") program that supervises noncitizens in the community while removal proceedings remain pending.[28] Appearance rates under the program are high—substantially higher than the absconding rates Congress documented thirty years ago when it enacted mandatory detention for criminal aliens under § 1226(c). *See Demore v. Kim*, 538 U.S. 510,

[27] TRAC Reports, *Immigration Court Backlog* (accessed Aug. 28, 2026), https://tracreports.org/phptools/immigration/backlog/.
[28] U.S. Immigration & Customs Enforcement, Alternatives to Detention, https://www.ice.gov/features/atd (last updated May 18, 2026).

518–19 (2003) (citing congressional findings). The Government's reliance on those dated congressional findings ignores the critical distinction: Congress's 1996 findings concerned *criminal* aliens, not the long-term residents without criminal histories before this Court. And the intervening three decades have demonstrated that community supervision produces substantially higher appearance rates than Congress anticipated,[29] while detention costs have ballooned to approximately $152 per detainee per day.[30] ATD supervision costs approximately $4.20 per participant per day[31]—a small fraction of detention costs—with appearance rates that undercut the empirical premise underlying Congress's original detention mandate.[32]

The relevant question under *Mathews* is whether the cost of providing individualized review outweighs the costs associated with continued detention without such review. The data demonstrates the opposite. This is especially true when the relatively modest administrative costs of providing individualized review are weighed against the extraordinary economic costs of continued detention at

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[29] *See Community Supervision Proves Detention is Unnecessary to Ensure Appearance at Immigration Hearings*, Vera Institute (Sept. 2020), https://www.vera.org/publications/appearance-assistance-program-fact-sheet (documenting that community supervision programs alone result in 90% attendance to court hearings).

[30] Muzaffar Chishti & Valerie Lacarte, *supra* note 21.

[31] *U.S. Immigration & Customs Enforcement*, *supra* note 28.

[32] *Getting the Facts About Alternatives to Migrant Detention*, GEO Group (2026), https://wearegeo.com/facts-about-alternatives-to-detention/ ("ISAP has consistently met ICE objectives over 20 years of operation. Participants attend over 98% of all immigration hearings . . . .").

scale. The existence of a functioning supervision program illustrates that individualized alternatives to detention are both administratively feasible and substantially less expensive, undercutting the Government's claim that bond hearings would impose an undue administrative burden. *See, e.g., Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 687 (W.D. Tex. 2025) (noting the costs of conducting bond hearings cannot be terribly burdensome given the Government's concession that it conducted such hearings for decades until its recent reinterpretation of the law).

The disparity is stark:

| Length of Detention | Cost at $152 Per Day | Cost at $4.20 Per Day |
|---|---|---|
| 30 days | $4,560 | $126 |
| 180 days | $27,360 | $756 |
| 365 days | $55,480 | $1,533 |

A bond hearing requires only an individualized determination whether continued detention remains necessary in a particular case. Where detention is found unnecessary, the Government already possesses a significantly less costly mechanism for supervising individuals in the community. For work-authorized resident noncitizens, supervised release allows continued employment, family support, and economic contribution across the Fifth Circuit under appropriate immigration supervision.

The availability of this alternative weighs heavily in favor of providing individualized review under the third *Mathews* factor.

## CONCLUSION

For all the foregoing reasons, this Court should affirm the district courts' grants of relief for Appellees. The Founders built a constitutional order on the premise that liberty and economic freedom are inseparable, and that government power must be justified before it may deprive individuals of either. The negative effect of the detention mandate on our market economy demonstrates the truth behind the idea.

This Court need not question Congress's plenary authority over immigration to second-guess the Government's mandatory detention policy. Affirming the district courts' judgments in this case would only require the Government to provide what the Due Process Clause of our nation's Constitution has *always* required when the Government deprives someone of liberty: a hearing. The district courts correctly so held, and their judgments should be affirmed.

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Respectfully submitted,

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## <u>CERTIFICATE OF COMPLIANCE</u>

This brief is filed via consent, because pursuant to Rule 29(a)(2) all parties have consented to the filing. This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7) because the brief contains 4,975 words/uses a monospaced typeface and contains 525 lines of text, excluding the parts of the brief exempt by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft® Word 365 in 14-point Times New Roman font.

Dated: September 16, 2026

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## CERTIFICATE OF SERVICE

All parties have consented to the filing of this brief. I hereby certify that I e-filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on September 16, 2026. A true and correct copy of this brief has been served via the Court's CM/ECF system on all counsel of record.

Dated: September 16, 2026

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