

NO. 19-35565

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

YOLANY PADILLA, et al.,

Plaintiffs-Appellees,

v.

IMMIGRATION AND CUSTOMS ENFORCEMENT, et al.,

Defendants-Appellants.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No. 2:18-cv-00928

The Honorable Marsha J. Pechman
United States District Court Judge

**BRIEF OF AMICI CURIAE STATES OF WASHINGTON,
CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE,
DISTRICT OF COLUMBIA, HAWAII, ILLINOIS, MARYLAND,
MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW
JERSEY, NEW MEXICO, OREGON, RHODE ISLAND, VERMONT,
AND VIRGINIA, IN SUPPORT OF APPELLEES**

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I. INTRODUCTION AND STATEMENT OF INTEREST

The States of Washington, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Virginia (the States) respectfully submit this brief as amici curiae in support of Appellees. The States have significant interests in the prompt provision of bond hearings for asylum-seekers who, if released on bond, will reside in our jurisdictions during the pendency of their immigration proceedings, and who, if granted asylum, will become members of our communities.

A bond hearing is the irreducible minimum standard necessary to deprive an individual of their liberty and is a prerequisite to detention consistent with constitutional Due Process. Requiring the government to prove to an independent arbiter that a particular individual represents a flight risk or a danger to the community before they are detained indefinitely is essential to preventing arbitrary, unnecessary, and cruel detention that is abhorrent to the Constitution.

The States' interest in bond hearings for asylum-seekers is direct. The Amici States are collectively home to tens of thousands of asylees and millions of other immigrants likely to be harmed by the Federal Government's attempt to detain asylum-seekers without bond. These immigrants and their families are

valuable members of the States’ communities: their economic, social, and cultural contributions make the States better off in a wide variety of ways. Needlessly detaining asylum-seekers will have severe negative consequences to the States.

For example, the States invest significant resources to provide education, health care, and other services to residents within their borders, including immigrants, asylum-seekers, and asylees, in order to smooth the transition to life in the States. The Federal Government’s attempted refusal to provide bond hearings with basic procedural protections will, as the District Court correctly found, cause unnecessary trauma to asylum-seekers, impeding the States’ efforts to welcome, educate, integrate, and care for these new and vulnerable residents.

For these reasons, the States urge this Court to affirm the District Court’s injunction and require Appellants to provide meaningful bond hearings to members of the certified class.

II. ARGUMENT

A. **Due Process Requires that Asylum-Seekers Receive Bond Hearings to Challenge Their Civil Detention.**

Our Constitution guarantees that “[n]o person shall . . . be deprived of . . . liberty . . . without due process of law[.]” U.S. Const. amend. V. “In our society, liberty is the norm,” with “carefully limited exception[s].” *United States*

v. Salerno, 481 U.S. 739, 755 (1987). “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Among “freedom’s first principles,” the “freedom from arbitrary and unlawful restraint” is “[c]hief.” *Boumediene v. Bush*, 553 U.S. 723, 797 (2008). Indeed, the Founders understood “the practice of arbitrary imprisonments” to be among “the favorite and most formidable instruments of tyranny.” The Federalist No. 84 (Alexander Hamilton). And that threat is at its apex when the detention at issue concerns politically unpopular or marginalized groups. *See, e.g., Boumediene*, 553 U.S. at 732.

It is well established that all persons on U.S. soil—regardless of their citizenship status, means of entry, or length of stay—are entitled to the protections afforded by the Due Process Clause. *See* Answering Br. at 23–25. The Supreme Court and this Court have consistently distinguished between individuals detained *inside* the United States (who are unequivocally entitled to full due process protection) and those detained at the border *outside* the United States (whose rights are more limited). *Id.* at 23–27. The Federal Government’s current position that individuals detained “after” crossing into the United States who are seeking admission to the country “have no more due process interest”

than those “arriving” at the border, Opening Br. at 30, is antithetical to the Constitution and decades of legal precedent.

The Due Process Clause requires protections when government authorities seek to detain and confine individuals other than as punishment for a duly proven crime. *See, e.g., Salerno*, 481 U.S. at 748–49. The Supreme Court—rejecting a broad assertion by the Federal Government that “status itself [could] justify indefinite detention” of a noncitizen already held to be removable—emphasized that civil detention is permissible only “in certain special and ‘narrow’ nonpunitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Zadvydas v. Davis*, 533 U.S. 678, 690, 692 (2001) (citation omitted; quoting *Foucha*, 504 U.S. at 80, and *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In those contexts—very familiar to the States and their municipalities, which have the primary custodial role in most cases of detention—the Supreme Court has consistently made clear that “civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979) (civil commitment for mental health treatment); *see also Foucha*, 504 U.S. at 86

(individual previously acquitted based on legal insanity); *Salerno*, 481 U.S. at 751 (describing statutory protections for pretrial arrestees).

The most basic due process protection is the right to an individualized assessment, before a neutral adjudicator, of the asserted need for the detention. *See, e.g., Foucha*, 504 U.S. at 77–83 (emphasizing need for individualized showing of proper, current grounds for detention). The Supreme Court has not recognized any scenario in which the government has a valid interest in detaining a person indefinitely without a fair hearing to determine whether the deprivation of liberty is justified. *See* Answering Br. at 29–32. Even in scenarios where the government has a strong interest in detention—for example, where the individual is facing prosecution for a serious crime—due process requires an individualized review by a neutral arbiter to balance the government’s interest against the individual’s presumptive right to liberty. *See, e.g., O’Connor v. Donaldson*, 422 U.S. 563, 575 (1975); *Foucha*, 504 U.S. at 77–78.

The Federal Government’s interest in mass detention is not justified by the need to compel attendance at subsequent proceedings. Thousands of individuals are detained each year while they await asylum proceedings. In many, if not most, cases, the detained individual would have appeared for immigration proceedings and poses no danger to the community. Indeed, at least

87.6% of asylum-seekers who establish a credible fear of persecution or torture appear for court. ECF 15-5 ¶ 8. The District Court's ruling did *not* require the immigration court to release all individuals detained prior to removal proceedings who have demonstrated a credible fear of persecution—it simply means that, given the fundamental liberty interests at stake, those individuals are entitled to a bond hearing with basic due process protections.

The States are deeply concerned by the Federal Government's asserted right to indefinitely detain asylum seekers with no guarantee of a bond hearing at any time. As persons detained on U.S. soil, these individuals are entitled to full due process protection; moreover, they have already passed a credible-fear screening, making them eligible to continue the asylum application process, and have not been shown to pose a flight risk or danger to the community. Absent an individualized hearing for each person, mass detention is unjustified. A central principle of civil detention cases is that a decision so profoundly restricting personal liberty must be based on an individualized demonstration of real need—not on generalizations or unsubstantiated fears. For at least the past fifty years, detained asylum seekers who have entered the country have been afforded due process through bond hearings consistent with 8 U.S.C. § 1226. The possibility of a discretionary grant of parole by ICE custody officers, with no hearing,

record, or opportunity to appeal, is no substitute for the constitutional due process to which all persons on U.S. soil are entitled. Answering Br. at 35–38.

The District Court correctly applied the law interpreting the Due Process Clause, and this Court should affirm to uphold the rights of the class members and avoid harm to the States.

B. Consistent with Well-Established Law, the Amici States Routinely Provide Hearings with Due Process Protections in Which Civil Detainees May Challenge Their Detention.

The Supreme 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. The Amici States are well familiar with these requirements, and have long experience heeding them in situations analogous to asylum proceedings.

Involuntary treatment for mental illness provides one instructive example. In *O’Connor v. Donaldson*, the Supreme Court held that a State may not “lock[] a person up against his will and keep[] him indefinitely” without proving, to a neutral arbiter, that the person presents a danger to themselves or others. *O’Connor*, 422 U.S. at 575–76. Consistent with this holding, the Amici States have developed procedures for civil commitment hearings that both promote community safety and respect the rights of mentally ill people.

Unlike asylum cases, a civil commitment case begins because the state or local government has an established and substantial concern that a particular individual is likely to engage in self-harm or harm others if not detained. By contrast, in asylum cases, the federal government usually has no such fear. Nonetheless, the States' procedural safeguards for civil commitment largely exceed those required by the District Court's order at issue.

Under Washington's Involuntary Treatment Act, for example, individuals can only be detained for an initial 72-hour period upon a finding of probable cause that they "present[] a likelihood of serious harm or [are] gravely disabled," or that they are "in need of assisted outpatient behavioral health treatment," unless emergency circumstances require immediate hospitalization. Wash. Rev. Code § 71.05.150; 71.05.153. Civilly committed persons in Washington are then entitled to a hearing to challenge their detention within 72 hours, at which the county bears the burden of proof to show why an additional 14-day detention is warranted. Wash. Rev. Code § 71.05.230. At the end of 14 days, a detainee is presumptively entitled to release unless the government proves by "clear, cogent, and convincing" evidence that a further 90-day commitment is warranted. 71.05.280, .290. Each of these hearings occur before a superior court judge or commissioner, whose detention findings must be supported by a written order,

and which are subject to immediate appeal. Wash. Rev. Code § 71.05.240, 71.05.310; Superior Court Mental Proceeding Rule 2.4; Washington Rule of Appellate Procedure 2.2(8). At each stage of the process, the respondent is entitled to counsel, including appointed counsel if they cannot afford their own. Wash. Rev. Code § 71.05.360.

To be sure, these hearings come at a cost. In King County, Washington, alone, courts receive around 4,000 petitions per year—or roughly 15 per work day.¹ But detaining people should be difficult. Locking people up who have not been found guilty of a crime is such a profound deprivation of liberty that it must never be lightly considered. The Federal Government’s efforts to curtail asylum-seekers’ liberty should be rejected.

C. The States will be Harmed by Unnecessary Detention of Asylum-Seekers.

1. The Federal Government’s Policy of Indefinitely Detaining Asylum-Seekers Will Harm Communities.

The Federal Government’s policy of indefinitely detaining asylum-seekers rather than releasing them into the community as their immigration

¹ Involuntary Treatment Act (ITA Court), <https://www.kingcounty.gov/courts/superior-court/ita.aspx>.

proceedings continue will severely harm communities from which they are taken.

Many asylum-seekers subject to the Federal Government's new policy are likely to have or care for children who are legally present in the United States.² Unnecessary and indefinite separation of children from these caregivers can lead to serious harms for children, including struggles in school, and can even force children into foster care.³ The long-term effects of this separation can be profound. For example, children who are separated from their caregivers for even brief periods tend to show increased levels of the stress hormone cortisol.⁴ Research suggests that young children with elevated cortisol patterns, such as those from unstable families, have comparatively lower cognitive functioning.⁵

² See, e.g., Jie Zong, et. al., "Frequently Requested Statistics on Immigrants and Immigration in the United States," Migration Policy Institute (Mar. 14, 2019), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>.

³ See Ajay Chaudry, et. al., *Facing Our Future: Children in the Aftermath of Immigration Enforcement*, The Urban Institute, 49–51 (Feb. 2010), https://www.urban.org/research/publication/facing-our-future/view/full_report; Susan D. Phillips, et. al., *Children in Harm's Way: Criminal Justice, Immigration Enforcement, and Child Welfare*, 22 (Jan. 2013), <https://firstfocus.org/wp-content/uploads/2013/02/Children-in-Harms-Way.pdf>.

⁴ See, e.g., Megan R. Gunnar et. al., *Stressor paradigms in developmental studies: What does and does not work to produce mean increases in salivary cortisol*, *Psychoneuroendocrinology*, Vol. 34, 953-67 (2009).

⁵ See, e.g., Jennifer H. Suor et. al., *Tracing Differential Pathways of Risk: Associations Among Family Adversity, Cortisol, and Cognitive Functioning in Childhood*, *Child Development*, Vol. 86, 1142-58 (2015).

The effect of mass civil detention for asylum-seekers is almost certain to have effects on their families and society well beyond the actual period of detention.

Asylum-seekers subject to indefinite detention are also shut out from the ability to form the community bonds so critical to our society. They cannot form bonds with their neighbors or start families; they do not join formal or informal civic groups, clubs, school communities, or congregations. Instead, they are wholly prevented from contributing to the vibrancy or stability of the States' communities.

Nor are detained asylum-seekers able to take the steps necessary to ease their transition into their new communities. Their isolation hampers their ability to form the social bonds critical to integrating successfully into a new home. These include not only the affective social bonds that contribute generally to a community's well-being, but also those networks that lead to tangible benefits, including the ability to get and keep jobs, to find available housing, and to connect to social resources within their communities. This inability to form necessary bonds is exacerbated by the fact that, while detained for months or even years, asylum-seekers are severely limited in their ability to learn the skills necessary to positively contribute economically upon their release. Thus, under the Federal Government's new policy, those who are ultimately granted asylum

will find their transitions to their new communities much harder than they otherwise would be.

Moreover, the Federal Government's increasingly restrictive immigration policies, such as this one, are having measurable negative impacts on resident communities within the States. The Journal of Adolescent Health recently reported that recent immigration policy changes have caused high levels of psychological distress among Latinx parents, including those parents in the United States legally.⁶ Nearly two-thirds of immigrant parents reported that they very often or always worried about their families being separated and nearly 40% reported they avoided obtaining medical care, police assistance, or social services because of fear of adverse immigration consequences.⁷ These worries lead to high levels of psychological distress, including anxiety and depression, which cascades throughout families, leading to adverse consequences for children including academic failure, risky behavior, and mental health issues.⁸

Arbitrary and indefinite detention thus has profound effects on the health and welfare of the communities from which these asylum-seekers are removed

⁶ K.M. Roche et al., *Impacts of Immigration Actions and News and the Psychological Distress of U.S. Latino Parents Raising Adolescents*, Journal of Adolescent Health 62 (2018) 525–531.

⁷ *Id.* at 528.

⁸ *Id.* at 526, 529–30.

and to which they might one day return. Because the States have a significant interest in the maintenance of economically and emotionally stable communities, they ask the Court to consider the full panoply of social costs associated with the prolonged and unnecessary deprivation of detainees' liberty, as is appropriate under a Due Process analysis. *Cf. Plyler v. Doe*, 457 U.S. 202, 221 (1982) (noting there are “significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests”).

2. Unnecessarily Detaining Immigrants Harms States' Economic Interests.

Detaining asylum-seekers pending completion of their immigration proceedings is highly inefficient and disruptive to the States. Among other things, individuals in detention cannot contribute to the economy. Asylum-seekers with applications pending for six months who are not detained may apply for employment authorization from the U.S. Citizenship and Immigration Services.⁹ And even asylum-seekers unable to work contribute as consumers and taxpayers. But their detention makes this impossible.

⁹ See U.S. Citizenship and Immigration Servs., *I-765, Application for Employment Authorization*, <https://www.uscis.gov/i-765>.

The Amici States rely heavily on immigrants to maintain healthy economies. Washington, for example, specializes in industries for which non-citizens make up an especially large portion of the labor force, such as farming, fishing, and forestry.¹⁰ Immigrants make up roughly 14% of all Washingtonians and roughly 17% of all workers, but more than half of all farmers, fishers, and foresters in the state.¹¹ Immigrants likewise make up nearly 30% of all workers in computer and mathematical sciences, another critical industry in Washington.¹² Collectively, immigrants in Washington are responsible for nearly \$23 billion in spending power.¹³ In California, immigrants fill over two-thirds of jobs in agricultural and related sectors and almost half of those in manufacturing, as well as 43% of construction workers and 41% of workers in computer and mathematical sciences.¹⁴ Immigrant-led households in California

¹⁰ See *Major occupation groups, by nativity and status, 2016*, Pew Research Center (Nov. 26, 2018), https://www.pewresearch.org/hispanic/2018/11/27/unauthorized-immigration-estimate-appendix-c-additional-tables/ph_2018-11-27_unauthorized-immigration-estimate_7-06/.

¹¹ Am. Immigration Council, *Immigrants in Washington* 1–2 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_washington.pdf/.

¹² *Id.* at 3.

¹³ *Id.* at 4.

¹⁴ Am. Immigration Council, *Immigrants in California* 3–4 (Oct. 4, 2017),

exercised almost \$240 billion in spending power in 2014.¹⁵ In Massachusetts, immigrants make up 20% of the state's workforce, and immigrant-led households contributed over \$27 billion in spending power in 2014.¹⁶ In New Jersey, immigrants comprise nearly 30% of the state's workforce and in 2014 exercised spending power of over \$54 billion.¹⁷ In Nevada, immigrants are over 25% of all workers and in 2014 earned \$13.2 billion dollars—or 19.3% of all income earned by Nevadans.¹⁸ In Illinois, almost 18% of workers are immigrants.¹⁹ In Chicago alone, immigrants contributed \$1.6 billion to the state's economy through taxes and helped create or preserve 25,664 local

https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_california.pdf.

¹⁵ *Id.* at 4.

¹⁶ Am. Immigration Council, *Immigrants in Massachusetts* 2, 4 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_massachusetts.pdf

¹⁷ Am. Immigration Council, *Immigrants in New Jersey* 2, 4 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_new_jersey.pdf.

¹⁸ Am. Immigration Council, *Immigrants in Nevada* 2 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_nevada.pdf; New Am. Econ., *The Contributions of New Americans in Nevada* 6 (Aug. 2016), <https://www.newamericaneconomy.org/wp-content/uploads/2017/02/nae-nv-report.pdf>.

¹⁹ Am. Immigration Council, *Immigrants in Illinois* 1 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_illinois.pdf.

manufacturing jobs.²⁰ In Maryland and Hawaii, nearly one in five workers are immigrants; in Connecticut, Rhode Island, and Virginia, roughly one in six are; in New Mexico, Oregon, Colorado, and Delaware, approximately one in eight; in Michigan and Minnesota, one in ten.²¹ In each of these States, immigrants

²⁰ New. Am. Econ., *New Americans in Chicago* 1, 4 (Nov. 2018), http://www.newamericaneconomy.org/wp-content/uploads/2018/11/G4G_Chicago.pdf.

²¹ Am. Immigration Council, *Immigrants in Maryland* 2 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_maryland.pdf; Am. Immigration Council, *Immigrants in Hawaii* 2 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_hawaii.pdf; Am. Immigration Council, *Immigrants in Connecticut* 2 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_connecticut.pdf; Am. Immigration Council, *Immigrants in Rhode Island* 2 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_rhode_island.pdf; *Immigrants in Virginia* 2 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_virginia.pdf; Am. Immigration Council, *Immigrants in New Mexico* 2 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_new_mexico.pdf; Am. Immigration Council, *Immigrants in Oregon* 2 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_oregon.pdf; Am. Immigration Council, *Immigrants in Colorado* 2 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_colorado.pdf; Am. Immigration Council, *Immigrants in Delaware* 2 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_delaware.pdf.

contribute billions in spending power and account for thousands or tens of thousands of entrepreneurs.²²

Individuals facing removal proceedings also make important contributions to state and local tax bases, including through sales and property taxes. All told, immigrant-led households in Washington contributed roughly \$2.4 billion in state and local taxes in 2014, with undocumented immigrants making up more than \$316 million of that total.²³ Because Washington has no state income tax, a large portion of the state's tax revenue comes from a sales tax paid by all residents and visitors, regardless of immigration status. In California, immigrant-led households paid over \$26 billion in state and local taxes in 2014, with more than \$3 billion of that coming from undocumented immigrants.²⁴ In each of the Amici States, immigrants contributed *at least* \$57.9 million in state and local taxes in 2014, and in eight of the States the number reached or exceeded \$1 billion.²⁵ Nationwide, undocumented immigrants alone

²² *Id.* at 4.

²³ Am. Immigration Council, *Immigrants in Washington* 4 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_washington.pdf.

²⁴ Am. Immigration Council, *Immigrants in California* 4 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_california.pdf.

²⁵ Am. Immigration Council, *Immigrants in Vermont* 4 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_vermont.pdf.

are estimated to contribute over \$11 billion in state and local taxes.²⁶ Prolonged and unnecessary detention of the members of this class prior to a removability determination means not only that the States are missing out on tax revenue, but unnecessary tax dollars are being spent at the federal level. It is a double loss.

By detaining asylum-seekers who might otherwise be participating in the States' economies, the Federal Government's detention policy is likely to hurt the economies of the States.

[grants_in_vermont.pdf](#); Am. Immigration Council, *Immigrants in Virginia* 4 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_virginia.pdf; Am. Immigration Council, *Immigrants in Illinois* 4 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_illinois.pdf; Am. Immigration Council, *Immigrants in Massachusetts* 4 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_massachusetts.pdf; Am. Immigration Council, *Immigrants in Minnesota* 4 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_minnesota.pdf; Am. Immigration Council, *Immigrants in New Jersey* 4 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_new_jersey.pdf; Am. Immigration Council, *Immigrants in Connecticut* 4 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_connecticut.pdf; Am. Immigration Council, *Immigrants in Colorado* 4 (Oct. 4, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_colorado.pdf.

²⁶ See Lisa Christensen Gee et. al., *Undocumented Immigrants' State & Local Tax Contributions*, Institute on Taxation and Economy Policy, 10 (March 1, 2017), <https://itep.org/undocumented-immigrants-state-local-tax-contributions-2017/>.

3. Addressing the Individual Harms to Asylees Post-Release Will Require States to Spend Substantial Resources on Social Services Programs.

If upheld, the Federal Government’s policy of denying bond hearings to asylum-seekers will also have a direct negative financial impact on State programs. The Amici States include five of the top ten states of residence for asylees.²⁷ Together, they welcomed over half of the nearly 46,000 individuals granted affirmative asylum between FY 2015 and 2017, the most recent years for which data are available.²⁸ If current trends hold, they are likely to become home to tens or even hundreds of thousands more new asylees in the coming years. The States welcome these new residents and are committed to providing them the help they need to be healthy, productive members of their new communities. The Federal Government’s policies, however, make this ever more difficult and will require States to spend substantial additional money to serve these vulnerable populations.

After weighing the factual evidence, the District Court concluded that prolonged detention risks harms to detained individuals, including “substandard

²⁷ Nadwa Mossad, *Annual Flow Report: Refugees and Asylees: 2017*, DHS Off. of Immig. Statistics (Mar. 2019) https://www.dhs.gov/sites/default/files/publications/Refugees_Asylees_2017.pdf.

²⁸ *Id.*

physical conditions, low standards of medical care, . . . separation from their families, and re-traumatization of a population already found to have legitimate circumstances of victimization.” ECF # 149 at 17. Addressing the needs of these traumatized individuals will lead to increased burdens throughout state and local governments. In education, for example, State and local governments will need to devote substantial additional resources to ensure the success of children traumatized by prolonged separation from their families.²⁹ These resources, including counselors, remedial education, and the like, are costly. Washington public schools, for example, currently spend between \$6,000 and \$15,000 per child each year, depending on the child’s needs and location. Students who have experienced trauma will almost certainly fall toward the high end of this range.³⁰

²⁹ The Washington State Constitution declares that it is “the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.” Wash. Const. art. IX, § 1. Washington’s Legislature has also expressly prohibited discrimination in Washington public schools on the basis of, among other things, race, creed, religion, color, or national origin. Wash. Rev. Code § 28A.642.010.

³⁰ This is especially so if the U.S. Department of Homeland Security and U.S. Department of Health and Human Service’s proposed new *Flores* regulation goes into effect, allowing indefinite detention of minors. *Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children*, 84 Fed. Reg. 44,392 (Aug. 23, 2019) *Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children*, 84 FR 44392-01. This detention would be an

And the additional costs for educating these children will overwhelmingly be borne by state and local governments.³¹

So too in public health, the States will have to respond to the increased needs of immigrants denied vaccines, preventative care, and adequate medical treatment in federal detention. For example, the Federal Government recently announced it would not provide flu vaccines to migrants locked in its detention facilities, despite unsanitary conditions and overcrowding at these facilities, and despite the fact that three detained children died of flu-related illnesses within the last year.³² Ameliorating the effects of the Federal Government's detention policies will require state and local public health authorities to shoulder the burden of increased care.³³

additional source of trauma requiring treatment, and would cause detained minors to fall behind in school while they were detained.

³¹ For example, more than 90% of Washington's school funding comes from state and local, rather than federal, sources. *See* State of Washington Legislative Evaluation and Accountability Program Committee, *A Citizen's Guide to Washington State K-12 Finance 2019* 17 <http://k12.wa.us/safs/PUB/FIN/1617/1617Section1Full.pdf>

³² Jessica Bursztynsky, *The US won't provide flu vaccines to migrant families at border detention camps*, CNBC (Aug. 20, 2019), <https://www.cnbc.com/2019/08/20/the-us-wont-vaccinate-migrant-children-against-the-flu-at-border-camps.html>.

³³ Washington, California, Illinois, Massachusetts, and Washington, D.C., all provide full-scope healthcare to children, regardless of their immigration status. Nat. Immigration Law Center, *Health Care Coverage Maps* (Jan. 2018), <https://www.nilc.org/issues/health-care/healthcoveragemaps/>. Other Amici

The same dynamic extends to nearly every social service program, from housing assistance to foster care to food assistance; in each case, States will be required to find additional resources to address the trauma wrought by the mistreatment of immigrants.

Beyond these general programs, the Amici States operate specialized services for asylees. For example, Washington's Office of Refugee and Immigrant Assistance (ORIA) provides comprehensive economic stability and immigration services to more than 10,000 refugees and immigrants each year, including asylees and unaccompanied children, using an annual budget of nearly \$28 million.³⁴ Among other things, ORIA partners with local governments, community and technical colleges, ethnic community-based organizations, and other service provider agencies to deliver educational services, job training skills, assistance establishing housing and transportation, language classes, and other comprehensive support services.³⁵ In California, the Immigration and Refugee Programs Branch of the Department of Social Services (CDSS)

States fund coverage for asylees, at least in part, via emergency medical services, community agencies, and the like.

³⁴ See Office of Refugee and Immigrant Assistance, Economic Servs. Admin., Wash. Dep't of Soc. & Health Servs., *Briefing Book for State Fiscal Year 2018*, https://www.dshs.wa.gov/sites/default/files/ESA/briefing-manual/2018ESA_Briefing_Book_Full.pdf.

³⁵ *Id.* at 28.

provides assistance for immigrants, through programs like the California Newcomer Education and Well-Being program (CalNEW), the Cash Assistance Program for Immigrants (CAPI), and the Trafficking and Crime Victims Assistance Program (TCVAP). CAPI provides cash assistance to certain aged, blind, and disabled noncitizens including asylees; TCVAP provides cash assistance, food benefits, employment, and social services to victims of human trafficking, domestic violence and other serious crimes; and CalNEW provides funding to certain school districts to improve the well-being, English-language proficiency, and academic performance of their students.³⁶ Each of these programs—whether directly targeted to immigrants or not—will be materially hindered by this Federal Government’s policy of indiscriminately detaining asylum-seekers without bond hearings.

³⁶ *Cash Assistance Program for Immigrants (CAPI)*, Cal. Dep’t of Soc. Servs., <http://www.cdss.ca.gov/CAPI> (last visited Aug. 5, 2019); *Trafficking and Crime Victims Assistance Program*, Cal. Dep’t of Soc. Servs., <https://www.cdss.ca.gov/inforesources/TCVAP>; *California Newcomer Education and Well-Being*, Cal. Dep’t of Soc. Servs., <http://www.cdss.ca.gov/inforesources/Refugees/Programs-and-Info/Youth-Initiatives/CalNEW>.

III. CONCLUSION

For the foregoing reasons, and the reasons stated in Appellees' Answering Brief, the Amici States respectfully request this Court affirm the District Court's preliminary injunction order.

RESPECTFULLY SUBMITTED this 4th day of September, 2019.

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