Government detention is a quid pro quo: the government may deprive persons of their physical liberty, but in exchange, it owes them a level of care. The critical question is, how much care does the Constitution require the government to provide? In a series of federal judicial decisions (collectively, the detainee medical care doctrine), courts have found that the Constitution requires different standards of care for different classes of government detainees. These courts' standard of care for immigrant detainees is erroneous. Modern U.S. immigration detention's descriptive resemblance to criminal confinement has prompted courts to (wrongly) find that immigrant detainees are constitutionally entitled to the same standard of medical care as pretrial criminal detainees. Yet, the constitutionally civil status of immigration detention distinguishes it from pretrial criminal detention in doctrinally salient ways such that the Constitution entitles immigrant detainees to a higher standard of medical care. This Comment charts a path to conforming the immigration detention jurisprudence within the doctrine to what the Constitution requires by answering this question of law, which was recently unsettled by the Supreme Court's 2015 decision in Kingsley v. Hendrickson and the Fourth Circuit's 2021 decision in Doe 4 ex rel. Lopez v. Shenandoah Valley Juvenile Center Commission: What adjudicatory standard should govern immigrant detainees' claims of constitutionally inadequate medical care? After devising a doctrinal test and applying it to immigrant detainees, this Comment concludes that the Constitution entitles them to "medical professional judgment": medical care must not substantially depart from accepted medical standards.
INTRODUCTION

Uniformed authorities detain a man without charging him with any crime. Through the transport vehicle’s window, funereal images of barbed wire and armed guards pierce his bewildered gaze. He trades soft cotton and blue denim for a stiff, orange jumpsuit. A cramped, cold cell awaits. Staff quickly learn that the man is schizophrenic. He suffers suicidal delusions and chronically impaired judgment. The man refuses his medication and tells staff that he is the Antichrist whom God will kill shortly. Unmoved, staff repeatedly condemn him to punitive solitary confinement for minor violations of the facility’s rules.

Four months after his arrest, the man first appears in court. He cannot afford an attorney, nor is he entitled to one. A swift bang of the judge’s gavel orders his removal from the United States. Authorities rush him back to the facility, the gavel’s thud
still reverberating in his ears. More weeks pass until tragedy strikes. After twenty-one consecutive days in solitary confinement, the man is a tragic succession of *stills*: he is still without criminal charges; still schizophrenic; still refusing his medicine; still suffering delusions; and still vulnerable. That night, staff make a tragic succession of errors. They do not administer the man’s much-needed medication; they do not check on the man for two hours, though facility policy requires checking every thirty minutes; and they falsify logs recording how often they checked on him. That night, the man dies by suicide.

This is the harrowing story of Efraín Romero de la Rosa’s stay at Stewart Immigration Detention Center.¹ He is not alone. Jose Azurdia died of a heart attack at Adelanto Detention Facility after a nurse, upon learning of his vomiting, refused to treat him for fear of getting sick herself.² Thongchay Saengsiri died of prolonged congestive heart failure at LaSalle Detention Facility after a nurse responded to his classic cardiac symptoms with increased fluid intake, exacerbating his risk of heart failure.³ Rafael Barcenon Padilla died from bronchopneumonia after Otero County Processing Center nurses waited three days before hospitalizing him despite his dangerously low oxygen levels.⁴ And countless other immigrant detainees are de facto prisoners suffering inadequate medical care in detention facilities across the United States.⁵ How can the federal government provide persons not subject to criminal charges and not afforded criminal due process with such inadequate treatment in carceral facilities? The answer lies with the “detainee medical care doctrine,” a label this Comment devises. The “detainee medical care doctrine” refers to the collection of federal judicial decisions concerning the standard of medical care the Constitution guarantees to different classes of government detainees.

Federal detention is a quid pro quo⁶: the federal government may deprive persons of their physical liberty, but in exchange, it

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³ Id.
⁴ Id.
⁵ See infra Part I.B.
⁶ See infra Part II.
owes them a level of care. The question is, how much care does the Constitution require the federal government to provide? According to the Supreme Court, the level of constitutionally required care depends on the type of detainee—for example, the Court has ruled that civil commitment patients require a different standard of care than prisoners. This results in varying standards of care for different categories of detainees and, consequently, varying adjudicatory standards to evaluate the constitutional adequacy of government care for each category. The case law conveys no clear test for how to determine the appropriate standard of care for any given detainee class. Yet, a review of the doctrine’s seminal decisions reveals that courts generally balance two criteria when determining the standard of care: the detainee class’s rights and the government’s legitimate interests. In so doing, they focus on three factors: the detainee class’s constitutional liberty interests, the reason for that detainee class’s confinement, and the quality of the process preventing that detainee class’s confinement. This Comment refers to this framework as the “detainee standard-of-care framework.” How courts apply this framework to immigration detention is constitutionally defective.

Courts err by determining the appropriate adjudicatory standard for immigrant detainees by reference to immigration detention’s descriptive features, namely, that modern U.S. immigration detention facilities are descriptively carceral. This Comment defines a “carceral” facility as one that prioritizes security and control in its operation. Such facilities often resemble jails or prisons in their appearance, but the touchstone of a carceral facility is its detention model prioritizing security and control. Faced with descriptively carceral immigration detention facilities, courts applying the detainee standard-of-care framework have summarily decided that immigrant detainees are entitled to the

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7 See id.; see also DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs., 489 U.S. 189, 199–200 (1989) ("[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.").
8 See infra Part II.
9 This Comment uses “standard of care” and “adjudicatory standard” interchangeably, as they are two sides of the same coin: a higher (or lower) standard of care results in a more (or less) protective adjudicatory standard and vice versa.
10 See infra Parts II and III.
11 See id.
12 See infra Part I.
same constitutional standard of care as pretrial criminal detainees because they occupy comparable facilities. This conclusion is mistaken.

Courts fail to consider that while immigration detention is descriptively carceral, under longstanding U.S. Supreme Court precedent, immigration detention is constitutionally civil, not criminal. Immigration detention’s civil status distinguishes it from pretrial criminal detention in three doctrinally salient ways. First, immigrant detainees are not confined pursuant to outstanding criminal charges. Second, immigration detention is constitutionally justified only for nonpenal purposes. Third, and most importantly, immigrant detainees do not enjoy procedural protections commensurate with carceral confinement.

These three differences are doctrinally dispositive of immigrant detainees’ right to a higher constitutional standard of care than pretrial criminal detainees. Again, the detainee standard-of-care framework balances a detainee class’s rights against the government’s legitimate interests. These three differences between immigrant and pretrial criminal detainees undermine the legitimacy of the government’s interest in employing a carceral model of care in immigration detention. That is, relative to criminal confinement, the government has a substantially diminished interest in security and control in immigration detention. Thus, evaluation of the differences between immigration detention and pretrial criminal detention through the detainee standard-of-care framework reveals that—notwithstanding immigration detention facilities’ apparent resemblance to criminal confinement—the Constitution entitles immigrant detainees to a higher standard of medical care than pretrial criminal detainees.

This Comment charts a path to doctrinal redemption by answering this recently unsettled question of law: What adjudicatory standard should govern immigrant detainees’ claims of constitutionally inadequate medical care? The detainee medical care doctrine is in flux. A recent Supreme Court decision concerning pretrial criminal detainees’ excessive force claims has prompted lower courts to reconsider the appropriate standard of medical

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13 See infra Part II.D. In most federal circuits, that standard is deliberate indifference: medical care is constitutionally deficient only when detention center personnel consciously disregard a substantial risk of harm to a detainee in need of medical care. See, e.g., Hope v. Warden York Cnty. Prison, 972 F.3d 310 (3d Cir. 2020); Charles v. Orange County, 925 F.3d 73 (2d Cir. 2019); Doe v. Kelly, 878 F.3d 710 (9th Cir. 2017); Belbachir v. County of McHenry, 726 F.3d 975 (7th Cir. 2013).
care for pretrial criminal detainees. Since courts traditionally have treated immigrant detainees like pretrial criminal detainees, these developments also raise questions about the appropriate standard of medical care for immigrant detainees. This Comment argues that the appropriate standard is “medical professional judgment”: immigrant detainees’ medical care must not substantially depart from accepted medical standards. In cases like de la Rosa’s, the medical professional judgment standard would be pivotal. Rather than proving that Stewart Detention Center personnel consciously disregarded a substantial risk that de la Rosa would die by suicide—a nearly insuperable burden—his estate would need only prove that Detention Center personnel’s decision to isolate a schizophrenic, unmedicated, and suicidal man in a solitary cell for two hours without observation substantially departed from accepted medical standards.

This Comment proceeds in four parts. Part I lays a factual and theoretical foundation for the doctrinal analysis in the latter half of the Comment, covering the basics of immigration law, the low standard of medical care in immigration detention, and whether courts should treat immigration detention as civil or criminal. Part II canvasses the menu of adjudicatory standards that could govern immigrant detainees’ inadequate medical care claims and highlights the factors prompting courts to adopt the different standards. Part III uses this doctrinal survey to formulate a doctrinal test for determining the appropriate adjudicatory standard for a given detainee class. It then applies the doctrinal test to immigrant detainees. The analysis is necessarily comparative because the test’s ultimate inquiry asks how immigrant detainees compare to other detainee classes; Part III thus compares immigrant detainees to pretrial criminal detainees—its current comparison group under the doctrine—and civilly committed sex offenders—a more appropriate comparison group. This Part concludes that the Constitution entitles immigrant detainees to the

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14 See Kingsley v. Hendrickson, 576 U.S. 389, 398 (2015). This is discussed in Part II.C.
15 See generally Roman v. Wolf, 977 F.3d 935 (9th Cir. 2020) (addressing the appropriate constitutional standard of medical care for immigrant detainees after its reconsideration of the appropriate standard for pretrial criminal detainees).
16 See infra Part IV.
17 This Comment acknowledges that comparing immigrant detainees to civilly committed sex offenders is normatively thorny. Yet, it is analytically useful insofar as both detainee classes are civil detainees confined to carceral facilities. This Comment limits the comparison to this analytical frame.
“professional judgment” standard. Lastly, Part IV proposes refining the professional judgment standard for the immigration detention context. As originally formulated, the professional judgment standard does not specify what “professional judgment” officials must exercise because the originating court assumed a single context: psychiatric hospitals. Courts’ applications of the professional judgment standard to civilly committed sex offenders evince that, outside of psychiatric hospitals, the professional judgment standard is susceptible to applications that defer to facilities’ carceral prerogatives. Part IV thus proposes that to vindicate immigrant detainees’ constitutional right to a heightened standard of medical care, the professional judgment standard must be defined as “medical professional judgment”: care must not substantially depart from accepted medical opinion.

I. CARCERAL CARE IN CIVIL DETENTION

This Part lays a factual foundation establishing how courts should conceive of immigration detention in the detainee medical care context. Part I.A provides a brief background on U.S. immigration law. Part I.B details the low standard of medical care in immigration detention. Part I.C confronts the tension between immigration detention’s civil status and its carceral character, and explains why courts applying the detainee standard-of-care framework should treat immigration detention as civil, not criminal.

A. U.S. Immigration Law: A Brief Background

The Constitution authorizes Congress to regulate immigration, though its precise constitutional source is uncertain.\textsuperscript{18} The Supreme Court has variously cited the Fourteenth Amendment’s Citizenship Clause, the federal government’s foreign relations power, and the powers inherent in the government’s sovereignty.\textsuperscript{19} Nevertheless, Congress has long regulated immigration through federal immigration statutes.

The Immigration and Nationality Act of 1952\textsuperscript{20} (INA) governs the admission, detention, and removal of noncitizens in the

\textsuperscript{18} 1 CHARLES GORDON, STANLEY MAILMAN, STEPHEN YALE-LOEHR & RONALD Y. WADA, IMMIGRATION LAW AND PROCEDURE § 9.02 (Matthew Bender ed., 2022).
\textsuperscript{19} Id.
The University of Chicago Law Review [90:8]

United States. The INA authorizes the federal government “to arrest and detain noncitizens while awaiting a determination of whether the noncitizen should be removed from the United States.” The INA also delegates authority over immigration enforcement to the Department of Homeland Security (DHS). “DHS manages most of the immigration enforcement functions and has settled them into . . . [various] agencies[, including] U.S. Immigration and Customs Enforcement (ICE).” This Comment focuses on ICE because it is the primary operator of government-run immigration detention centers.

Constitutionally, immigration detention is a civil matter: the government effectuates removal of a noncitizen from the United States through a civil action that determines their eligibility to remain in the country; removal is a civil consequence of violating immigration laws; and immigration detention is civil detention.

The Supreme Court first declared immigration detention constitutional as a necessary adjunct to deportation: the government may constitutionally detain noncitizens without a trial for the nonpunitive purpose of administering deportation. The Court later justified detention on the additional constitutional ground of national security.

Descriptively, modern U.S. immigration law bears criminal features. The government increasingly uses immigration law to control crime by removing noncitizens who commit crimes. And

21 See generally Immigration and Nationality Act, 66 Stat. 163; see also GORDON ET AL., supra note 18, § 108.02.
22 Id. supra note 18, § 108.01.
23 Id. § 1.02.
24 Id.
25 Id. § 9.05.
26 See Stumpf, supra note 26, at 65.
27 See generally CÉSAR CUAHTEMOC GARCÍA HERNÁNDEZ, CRIMMIGRATION LAW 244–45 (2d ed. 2021) [hereinafter HERNÁNDEZ, CRIMMIGRATION].
the government detains noncitizens in facilities resembling criminal confinement. Notably, these criminal features have not altered immigration detention’s constitutional status; it remains civil and nonpunitive.

A noncitizen may be subject to removal and thus confined in immigration detention for various reasons. Some are detained after a border patrol inspector finds them to be inadmissible upon arrival. Others are convicted of certain crimes after entry. Others still are accused of terrorist activity or falsely claiming U.S. citizenship. More minor infractions may also prompt removal, such as willfully or inexcusably failing to furnish change-of-address information.

Still, noncitizens in the United States enjoy many of the same constitutional protections as U.S. citizens. The Fifth and Fourteenth Amendments are most relevant to immigrant detainees; the Due Process and Equal Protection Clauses protect noncitizens against arbitrary government action. For government detention to satisfy the Fifth Amendment’s Due Process Clause, either the government must afford detainees criminal process, or detention must be nonpunitive.

B. The Low Standard of Medical Care in Immigration Detention

Of the many types of documented abuses in immigration detention, immigrant detainees disproportionately complain about a low quality of medical care. Immigrant detainee medical care’s diverse infirmities include inadequate medical procedures and infrastructure, failure to follow existing procedures, untrained staff, and disincentives to report medical problems.

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30 HERNÁNDEZ, CRIMMIGRATION, supra note 28, at 244.
31 Kreimer, supra note 29, at 1503–06.
32 See Zadvydas v. Davis, 533 U.S. 678, 690 (2001) (“[Immigration] proceedings . . . are civil, not criminal, and we assume that they are nonpunitive in purpose and effect.”); see also infra Part I.C.
33 Gordon et al., supra note 18, § 1.03.
34 Id.
35 Id.
36 Id.
37 Id. § 6.02.
38 Gordon et al., supra note 18, § 6.02.
39 Zadvydas, 533 U.S. at 690.
40 See, e.g., Detention by the Numbers, FREEDOM FOR IMMIGRANTS, https://perma.cc/YY9V-J5TG.
ICE’s medical procedures and infrastructure are deficient. Human Rights Watch (HRW) reports substantial barriers to care, such as “sick call” procedures that require detainees seeking medical care to wait outside in the cold in the early hours. Officials frequently ignore requests for medical attention, and when assistance is provided, it is by unlicensed or underlicensed personnel without a physician’s oversight, resulting in a poor quality of care. Dr. Dora Schriro’s investigation of ICE’s facilities found that mental health care is also inadequate. Intake is “quite brief and does not lend itself to early identification and intervention.” Facilities lack sufficient infrastructure for in-house psychiatric care. And detainees “with mental illness are often assigned to [solitary confinement], as are [detainees] on suicide watch.” For ICE, these defects are designs; its nonbinding standards expressly contemplate underlicensed medical personnel and punitive solitary confinement.

The House Committee on Homeland Security’s 2019 report on ICE detention facilities found that facilities also disregard important existing procedures, especially in solitary confinement. Officials routinely dismiss detainees’ medical complaints, offering only pain relievers absent emergent symptoms. Additionally, “[d]etention facilities often misuse and abuse [solitary confinement],” frequently using it “as a form of threat or retaliation to assert control and gain compliance.” Detainees report that mandated welfare checks in solitary confinement often “might just be a knock on the door.” And a 2021 study on suicide rates in U.S.

42 Id. at 56–59.
43 Id. at 61.
44 Id. at 65.
46 Id. at 25.
47 Id. at 26.
48 Id.
51 Id. at 14.
52 Id. at 3.
53 Id. at 19.
54 Id. at 17.
immigration detention from fiscal years 2010 through 2020 found that “[f]rom 2010–2019, the mean number of suicides per 100,000 person[s] was 3.3... In 2020, the suicide rate increased 5.3 times the prior 10-year average to 17.4 suicides per 100,000 person[s],” possibly due to the COVID-19 pandemic.55

Further, facilities’ staff are often insufficiently trained. HRW reported immigration detention facilities’ overreliance on licensed vocational nurses (LVNs).56 In a recent investigation, “medical doctor[s] flagged the overextension of LVNs as a factor impeding proper medical care.”57 Compared to registered nurses (RNs), LVNs require less education to obtain licensure and thus are limited to basic nursing care under a physician’s or RN’s direction.58

The Homeland Security committee report adds that, beyond staff underqualification, deficiencies may be attributed to outright callousness. It noted that “[u]nfortunately, ICE and its contracted facilities frequently demonstrate an indifference to the mental and physical care of the migrants in their custody.”59 Staff diminished past suicide attempts.60 And in one particularly illustrative example, a facility director expressed astonishment at the suggestion that detainees with serious allergies be supplied with Epi-Pens.61

Finally, detainees encounter disincentives to report their medical concerns. As mentioned previously, sick call procedures require detainees seeking medical care to wait in the cold for hours.62 And the Homeland Security committee report cites complaints “that guards threatened placing detainees in [solitary confinement] for engaging in permissible acts that detention staff

56 HRW, SYSTEMIC INDIFFERENCE, supra note 41, at 25.
57 Id.
59 MAJORITY STAFF REPORT, supra note 50, at 3.
60 See Alice Speri, At Largest Ice Detention Center in the Country, Guards Called Attempted Suicides “Failures”, THE INTERCEPT (Oct. 11, 2018), https://perma.cc/P2HN-U8FA (citing MAJORITY STAFF REPORT, supra note 50, at 3).
61 MAJORITY STAFF REPORT, supra note 50, at 3, 15.
62 HRW, SYSTEMIC INDIFFERENCE, supra note 41, at 60.
considered disruptive, like submitting too many medical requests.”

Ostensibly, such conditions dissuade immigrant detainees from seeking medical attention when needed.

The American Civil Liberties Union (ACLU) suggests that private, for-profit immigration detention facilities are incentivized to provide an even lower standard of care than that of public facilities, though both provide low standards of care. Today, private prison companies run most U.S. immigration detention centers. These private facilities “operate outside the purview of public oversight and accountability. With no one to hold them accountable, private companies, which are incentivized to cut medical staffing and deny care to maximize shareholder return, have maintained a particularly grisly track record of detainee abuse and neglect.”

C. The Crimmigration Conundrum: Is Immigration Detention Civil or Criminal?

Immigration scholars have long grappled with the tension between immigration detention’s constitutionally civil status and descriptively criminal features. This Section squarely confronts the civil-criminal debate and proposes that, for the detainee medical care doctrine, courts should treat immigration detention as civil, not criminal.

1. Immigration detention’s constitutionally civil status.

In Zadvydas v. Davis, the Supreme Court established that immigration law proceedings “are civil, not criminal” and “nonpunitive in purpose and effect.” The Court explained that if immigration detention were criminal or punitive, there would be “a serious constitutional problem.” Immigrant detainees are protected by the Due Process Clause of the Fifth Amendment.

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63 MAJORITY STAFF REPORT, supra note 50, at 19–20.
66 ACLU, Privatized Immigration Detention, supra note 64.
67 See generally, e.g., Stumpf, supra note 26.
69 Id. at 690.
70 Id.
71 See id.
“[G]overnment detention violates that Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections, or, in . . . nonpunitive ‘circumstances.’”\(^72\) Put differently, if the government does not fortify the path to immigration detention with the guardrails of criminal procedure, immigration detention must be civil and nonpunitive, or else it contravenes the Fifth Amendment.

Immigration detention is thus constitutionally civil because immigration law does not offer traditional criminal procedure nor comparable procedural safeguards.\(^73\) Professor Juliet Stumpf describes immigration law as a “criminal-civil hybrid . . . permitting a lower threshold for justifying the restriction of liberty than the criminal justice system.”\(^74\) Immigrant detainees are not promptly brought before a judge; on average, their first hearing is not until two to four weeks after they are first detained.\(^75\) They enjoy no right to court-appointed counsel;\(^76\) no right to a jury trial; and no immunity from retroactive legislation.\(^77\) The INA mandates detention for many immigrant detainees.\(^78\) For example, the INA requires detention for immigrants previously convicted of “crimes of moral turpitude,”\(^79\) an undefined term, which federal courts interpret capiously.\(^80\) Those who escape categorical confinement shoulder a heavy burden of demonstrating that they are

\(^{72}\) *Id.* (emphasis in original).

\(^{73}\) GORDON ET AL., *supra* note 18, § 1.03 (“As the courts have consistently held that deportation and exclusion proceedings are civil rather than criminal proceedings, many of the safeguards that ordinarily cloak the defendant in a criminal proceeding do not apply in removal proceedings.”).

\(^{74}\) Stumpf, *supra* note 26, at 86.

\(^{75}\) See *Detained Immigrants’ Hearing Before a Judge, ILL. LEGAL AID ONLINE* (last updated May 24, 2020), https://perma.cc/4JRX-5DWK.


\(^{77}\) GORDON ET AL., *supra* note 18, § 1.03; *see also* Doe v. Miami-Dade County, 846 F.3d 1180, 1183 (11th Cir. 2017) (quoting Lynce v. Mathis, 519 U.S. 433, 441 (1997)) (“An ex post facto law is a law that ‘appl[ies] to events occurring before its enactment’ and that ‘disadvantage[s] the offender affected by it, by altering the definition of criminal conduct or increasing the punishment for the crime.’”).

\(^{78}\) DAN KESSELBRENNER & LORY D. ROSENBERG, *IMMIGRATION LAW & CRIMES* § 8:12 (2022).

\(^{79}\) 8 U.S.C. § 1227.

\(^{80}\) See, e.g., Mendez v. Barr, 960 F.3d 80, 84 (2d Cir. 2020) (“[T]o be a [crime in moral turpitude] a statute must encompass ‘conduct that shocks the public conscience as being inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.’”).
not a flight risk, national security threat, or significant community threat to avoid discretionary detention. And the Supreme Court permits virtually indefinite detention of immigrant detainees without periodic bond hearings.

2. Immigration detention’s descriptively criminal features.

Despite its civil status, immigration detention bears descriptively criminal features. Professor César Cuauhtémoc García Hernández reported that ICE places immigrant detainees in approximately two hundred county jails, prisons, and stand-alone immigration detention centers across the United States. “[T]he most invasive features of penal imprisonment resonate through the immigration detention estate.” Facilities impose structures with high fences, uniformed guards, and restricted freedom of movement. Detention center staff employ strip searches, uniforms color coded according to security classification, and solitary confinement. Schriro underscores the carceral design’s intentionality: immigration detention facilities “were built, and currently operate, as jails and prisons to confine pretrial and sentenced felons. Their design, construction, staffing plans, and population management strategies are based largely upon the principles of command and control.”

Immigration law is also descriptively punitive, a feature central to criminal detention. Since the 1980s, Congress and the executive branch have progressively utilized immigration detention for criminal law ends. “[T]oday’s system increasingly functions in collaboration with criminal law enforcement systems to incapacitate allegedly dangerous individuals for the purpose of preventing potential domestic crime.” Critics call this legislative project “crimmigration.” Moreover, like pretrial criminal detainees, who are detained because they stand accused of violating

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81 See Kreimer, supra note 29, at 1520.
83 See generally Hernández, Crimmigration, supra note 28.
84 Id. at 244.
86 Hernández, Crimmigration, supra note 28, at 249.
87 Id.
88 Id.
89 See Zadvydas, 533 U.S. at 690.
90 Id.
91 Kreimer, supra note 29, at 1485.
92 See generally Hernández, Crimmigration, supra note 28.
criminal law, immigrant detainees are culpable inasmuch as the government detains them because they stand accused of violating civil immigration law.93

3. Courts applying the detainee medical care doctrine should treat immigration detention as civil, not criminal.

The tension between immigration detention's civil status and its carceral character poses an important question for courts applying the detainee standard-of-care framework: Which is most relevant, immigration detention's constitutionally civil status or its descriptively criminal features? Whether courts treat immigration detention consistent with its civil status or its criminal features is significant because of a critical divide in the detainee medical care doctrine between civil and criminal detainees. As Part II illustrates, civil detainees generally enjoy a higher constitutional standard of care than criminal detainees. Presently, immigrant detainees are subject to a lower constitutional standard of care because courts erroneously treat them as constitutionally comparable to pretrial criminal detainees, a comparison prompted by immigration detention's descriptively criminal features. Through this descriptive lens, immigrant detainees resemble criminal detainees; both are confined in carceral facilities upon being accused of violating the law. Yet, immigration detention's civil status gestures toward a higher standard of care. Through this constitutional lens, immigrant detainees resemble other civil detainees with their diminished procedural protections and the government's reduced interest in employing a carceral detention model.94

For the detainee medical care doctrine, courts should treat immigration detention as civil, not criminal. As Part II illustrates, the doctrine's analytical framework balances detainee classes' constitutional rights against the government's legitimate interests in confinement. Immigration detention's descriptively criminal features are not germane to this inquiry. Immigrant detainees' constitutional rights and the government's legitimate interests do not turn on immigration detention's descriptively carceral character. Instead, they turn on concomitants of immigration detention's constitutionally civil status, such as immigrant detainees' diminished procedural protections against

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93 See GORDON ET AL., supra note 18, § 1.03.
94 See infra Part II.A.
confinement and immigration detention’s nonpenal constitutional justification. To treat immigration detention as criminal is to misunderstand the doctrinal framework, which is the precise judicial misstep that this Comment aims to remedy.

II. THE DETAINEE MEDICAL CARE DOCTRINE

The legal standards governing the adequacy of medical care in government detention exist on the “detainee spectrum.” Its ends are well-defined doctrinal anchors. On one end sits the professional judgment standard, which applies to claims by civil commitment patients; it represents a high standard of care. On the opposite end sits the deliberate indifference standard, which governs claims by prisoners; it represents a minimal standard of care. An uncertain expanse lays in between. Claims by detainees within this space—namely, pretrial criminal detainees and immigrant detainees—have troubled courts, as the Constitution prescribes no obvious adjudicatory standard.

This Part does two things. First, it sketches the detainee spectrum and its menu of adjudicatory standards. Second, this Part highlights the courts’ reasoning. As this Part demonstrates, to determine the appropriate adjudicatory standard for a detainee class’s constitutionally inadequate medical care claims, courts balance two criteria: the detainee class’s rights and the government’s legitimate interests. Three considerations are relevant: the detainee class’s constitutional liberty interests, the reason for its confinement, and the quality of the process preventing its confinement.

Part II.A addresses civil commitment patients and details the origins of the professional judgment standard. Part II.B introduces the deliberate indifference standard in the context of prisons. Part II.C considers pretrial criminal detainees, a challenging context that eventually gave rise to a third standard: objective indifference. Part II.D briefly examines immigrant detainees. Lastly, Part II.E concludes with the Fourth Circuit’s novel approach to unaccompanied minor children. The Fourth Circuit’s decision, which applies the professional judgment standard to this subclass of immigrant detainees and prescribes the appropriate standard of care, provides a doctrinal hook for

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95 This reasoning informs Part III’s doctrinal test. Its ultimate inquiry involves placing immigrant detainees on the detainee spectrum.
courts to require medical professional judgment for adult immigrant detainees.

A. Civil Commitment Patients: Professional Judgment

Courts judge the adequacy of civil commitment patients’ medical care by the “professional judgment” standard, which asks whether care substantially departed from an accepted professional opinion. This Section examines the origins of the professional judgment standard, which Part III argues is the appropriate adjudicatory standard for immigrant detainees.

The right to medical care for government detainees first emerged in the academic literature before later earning judicial recognition. In 1929, Professor George Smoot planted the seed that eventually grew into a muddled yet important doctrine. 96 His treatise, The Law of Insanity, was the earliest articulation in the legal literature of the quid pro quo theory: if the government may lawfully commit a person against their will, it must, in return, offer some level of care and treatment while they are detained. 97 Thirty-one years later, physician Morton Birnbaum penned an influential American Bar Association article responding to a crisis in U.S. psychiatric hospitals caused by overcrowding and understaffing. 98 He proposed a novel substantive due process right to treatment for civil commitment patients. 99

Before long, the right-to-treatment seed sprouted in judicial opinions. In 1966, the D.C. Circuit decided Rouse v. Cameron, 100 which was the first articulation in a U.S. judicial opinion of a potential constitutional right to treatment for persons involuntarily committed to a psychiatric hospital. 101 The Rouse court reasoned that the purpose of involuntary hospitalization is treatment, not punishment; absent treatment, the hospital becomes a penitentiary. 102 But the court stopped just short of recognizing a constitutional right to treatment, instead reading the 1964 Hospitalization of the Mentally Ill Act’s statutory right to treatment into the

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96 George A. Smoot, The Law of Insanity (1929); see also Michael L. Perlin & Heather Ellis Cucolo, Mental Disability Law: Civil and Criminal § 7-2 (2d ed. 2022) (describing the historical development of the right to treatment).
97 Perlin & Cucolo, supra note 96, § 7-2.
98 Id.
99 Id.
100 373 F.2d 451 (D.C. Cir. 1966).
101 Perlin & Cucolo, supra note 96, § 7-2.
102 Rouse, 373 F.2d at 452–53.
D.C. statute governing the case. Five years later, in *Wyatt v. Stickney*, the U.S. District Court for the Middle District of Alabama recognized a constitutional right to care for civil commitment patients rooted in the "very fundamentals of due process." It was another eleven years before the Supreme Court weighed in.

*Youngberg v. Romeo* was the Supreme Court’s first articulation of the professional judgment standard. While involuntarily committed, Nicholas Romeo, a thirty-three-year-old man with an intellectual disability, “was injured on numerous occasions, both by his own violence and by the reactions of other residents to him.” Romeo’s mother sued the government, alleging that the state facility’s mistreatment of Romeo violated the Eighth and Fourteenth Amendments to the federal Constitution. In the lower court, the Third Circuit addressed what standard of care the government owed to Romeo. It held that “[i]nvoluntary commitment . . . implicates a constitutional right to treatment and protection.” Then–Chief Judge of the Third Circuit Collins Seitz concurred in the judgment, writing separately to articulate what would become the professional judgment standard. In devising the standard, then–Chief Judge Seitz mediated between the government’s obligation to act reasonably and a concern not to turn “every state malpractice claim into a constitutional violation”:

By “accepted professional judgment” I do not mean some standard employed by a reasonable expert or a majority of experts in the community, as state malpractice actions would require, but rather that the choice in question was not a sham

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103 Perlin & Cucolo, supra note 96, § 7-2.
105 Wyatt, 325 F. Supp at 785; see also id. at 784–85 (“When patients are [involuntarily] committed for treatment purposes they unquestionably have a constitutional right to receive such individual treatment as will give each of them a realistic opportunity to be cured or to improve his or her mental condition.”).
107 Id. at 310.
108 Romeo v. Youngberg, 644 F.2d 147, 155 n.2 (3d Cir. 1980). The posture of claims alleging constitutionally inadequate medical care in government detention varies. Plaintiff-detainees ordinarily sue the government under 42 U.S.C. § 1983. The constitutional provision underlying their claim for relief depends on their detainee class and whether they are suing the federal government or a state government.
109 Id. at 158.
110 Id.
111 Id. at 178 (Seitz, C.J., concurring).
112 Id. at 177.
or otherwise illegitimate. The jury is to decide only whether the defendants’ conduct had some basis in accepted professional opinion. Furthermore, unlike state malpractice actions, a departure from accepted professional judgment must be substantial to give rise to liability.\textsuperscript{113}

On certiorari review, the Supreme Court considered whether Romeo “ha[d] substantive rights under the Due Process Clause of the Fourteenth Amendment to (i) safe conditions of confinement; (ii) freedom from bodily restraints; and (iii) training or ‘habilitation.’”\textsuperscript{114} Honoring the intellectual foundations that preceded it, the Supreme Court endorsed the quid pro quo theory\textsuperscript{115} and held that Romeo “enjoys constitutionally protected interests in conditions of reasonable care and safety, reasonably nonrestrictive confinement conditions, and such training as may be required by these interests.”\textsuperscript{116} The Court then adopted then-Chief Judge Seitz’s professional judgment standard to assess the adequacy of treatment.\textsuperscript{117}

In adopting professional judgment, the Court focused on striking “the proper balance between the legitimate interests of the [government] and the rights of the involuntarily committed.”\textsuperscript{118} Under Youngberg’s formulation of professional judgment, “the Constitution only requires that the courts make certain that professional judgment in fact was exercised” without “specify[ing] which of several professionally acceptable choices should have been made.”\textsuperscript{119} The Court further acknowledged the government’s legitimate interests arising from the reason for civil commitment patients’ confinement: psychiatric conditions that render them dangers to their communities or to themselves.\textsuperscript{120} It thus held that the government is entitled to a presumption of

\textsuperscript{113} Romeo, 644 F.2d at 178.
\textsuperscript{114} Youngberg, 457 U.S. at 309.
\textsuperscript{115} Id. at 317 (“[T]hough a general matter, a State is under no constitutional duty to provide substantive services for those within its border . . . [w]hen a person is institutionalized—and wholly dependent on the State—. . . a duty to provide certain services and care does exist.”).
\textsuperscript{116} Id. at 324. One such constitutionally protected interest is medical care. See, e.g., DeShaney v. Winnebago Cty. Dep’t of Soc. Servs., 489 U.S. 189, 196 (1989).
\textsuperscript{117} See Youngberg, 457 U.S. at 321. “Treatment” in Youngberg does not mean “habilitation.” Whether Youngberg established a constitutional right to habilitation for civil commitment patients is an unresolved question, which lower courts continue to debate. See, e.g., Cameron v. Tomes, 990 F.2d 14, 19–20 (1st Cir. 1993).
\textsuperscript{118} Youngberg, 457 U.S. at 321.
\textsuperscript{119} Id. (quoting Romeo, 644 F.2d at 178 (Seitz, C.J., concurring)).
\textsuperscript{120} Id. at 320.
correctness in view of the “widely varying needs and problems” that such persons present.121

Courts likewise apply the professional judgment standard to a subclass of civil commitment patients called civilly committed sex offenders. The government involuntarily commits sex offenders it regards as sufficiently sexually dangerous to require treatment, incapacitation, or both.122 Federal and state sexual psychopath laws and sexually violent predator laws delineate statutory elements that the government must prove before civilly committing a sex offender.123 These elements vary among jurisdictions;124 examples include multiple convictions for sexually motivated offenses, sexual dangerousness, and mental abnormality.125

The federal circuits that have addressed what adjudicatory standard governs civilly committed sex offenders’ claims of constitutionally inadequate care employ the professional judgment standard.126 They reason that professional judgment is appropriate because civilly committed sex offenders are simply a subclass of civil commitment patients.127

That courts apply professional judgment to civilly committed sex offenders is significant because, on the detainee spectrum, civilly committed sex offenders are immigrant detainees’ closest analog. Both groups include persons civilly detained in connection with criminal convictions for which they have already been punished. The INA mandates detention for immigrant detainees convicted of certain crimes triggering their removal from the United States (of course, not all immigrant detainees are detained on this basis).128 Likewise, many state statutes prescribe the confinement of civilly committed sex offenders after criminal punishment for sex-related crimes.129 Both groups also experience carceral

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121 Id. at 324.
122 See generally Karl A. Menninger II, Proof of Qualification for Commitment as a Mentally Disordered Sex Offender, 51 AM. JUR. PROOF OF FACTS 3D 299 (2023).
123 Id. §§ 3, 8.
124 See id.
125 See id.
126 See Rosado v. Maxymillian, 2022 WL 54181, at *3 (2d Cir. Jan. 6, 2022); Bilal v. Geo Care, LLC, 981 F.3d 903, 912 (11th Cir. 2020); Christian v. Magill, 724 F. App’x 185, 187 (4th Cir. 2018); Mitchell v. Washington, 818 F.3d 436, 444 (9th Cir. 2016); Lane v. Williams, 689 F.3d 879, 882 (7th Cir. 2012); Deavers v. Santiago, 243 F. App’x 719, 722 (3d Cir. 2007); Tomes, 990 F.2d at 18.
127 See supra note 126 and accompanying text.
128 GORDON ET AL., supra note 18, § 1.03.
129 See generally Menninger, supra note 122.
confinement despite the civil status of their detention. Like immigrant detainees, the government confines civilly committed sex offenders in prisons or facilities resembling prisons.\textsuperscript{130}

Civilly committed sex offenders also differ from immigrant detainees in ways that, as Part III illustrates, entitle immigrant detainees to an even higher constitutional standard of care than civilly committed sex offenders. First, civilly committed sex offenders enjoy more robust procedural protections against confinement than immigrant detainees. In many jurisdictions, civilly committed sex offenders receive a prompt probable cause hearing, assistance of counsel, and the right to a jury trial.\textsuperscript{131} And at commitment hearings, the government bears the burden of proving that the sex offender meets the criteria for involuntary commitment.\textsuperscript{132} In some jurisdictions, the standard of proof is “clear and convincing evidence,” while in others, the standard is “beyond a reasonable doubt.”\textsuperscript{133} In contrast, immigration procedure affords immigrant detainees no such rights. And immigrant detainees bear the burden of proving either that they are not properly included within the INA’s mandatory detention provision, or that they are not a flight risk, national security threat, or significant community threat.

Second, the government has a more legitimate interest in prioritizing security and control in the civil commitment of sex offenders than in immigration detention. Many statutes require a predicate conviction of a sexual crime for the civil commitment of a sex offender.\textsuperscript{134} And many civilly committed sex offenders are committed pursuant to a court finding that they “suffer from [] mental condition[s] that render[ ] [the]m likely to reoffend.”\textsuperscript{135} Since such adjudications employ robust procedural safeguards, the government may reasonably infer that civilly committed sex offenders pose security risks. Moreover, treatment is a major purpose of civilly committing sex offenders, and “the interest in safety within the [facility] itself may be critical to the delivery of adequate treatment.”\textsuperscript{136} Immigration detention differs significantly. Though some immigrant detainees are confined pursuant

\textsuperscript{130} See generally id.
\textsuperscript{131} Id. § 11.
\textsuperscript{132} Id.
\textsuperscript{133} Id.
\textsuperscript{134} See, e.g., Healy v. Spencer, 765 F.3d 65, 78 (1st Cir. 2014) (describing one such requirement under Massachusetts law).
\textsuperscript{135} Id.
\textsuperscript{136} Id.
to a finding of dangerousness, the weakness of the procedural safeguards renders these findings unreliable. Further, the government confines immigrant detainees as an administrative adjunct to deportation, not for treatment.\textsuperscript{137} Thus, security and control are not justifiable predicates to a legitimate government objective in the immigration detention context.

B. Prisoners: Deliberate Indifference

Courts measure the adequacy of prisoners’ medical care against the deliberate indifference standard, which asks whether an official consciously disregarded a substantial risk of harm to a prisoner in need of medical care. This Section outlines the deliberate indifference standard, which most federal circuits presently employ for immigrant detainees.

The seminal decision is \textit{Estelle v. Gamble}.\textsuperscript{138} J.W. Gamble, a Texas prisoner, injured his back while unloading a truck during a prison work assignment.\textsuperscript{139} During the ensuing three months, medical personnel saw Gamble on seventeen occasions.\textsuperscript{140} Prison doctors repeatedly cleared Gamble to return to work, after which prison officials repeatedly condemned him to solitary confinement when he complained that his severe pain made manual labor unbearable.\textsuperscript{141} Gamble eventually sued, alleging that his medical care violated the Eighth Amendment.\textsuperscript{142}

The Court agreed that the Constitution entitles prisoners to medical care while detained\textsuperscript{143} and held that prisoner medical care cannot be so inadequate as to amount to cruel and unusual punishment.\textsuperscript{144} The Court then adopted the “deliberate indifference”

\textsuperscript{137} See \textit{Wong Wing v. United States}, 163 U.S. 228, 235 (1896).
\textsuperscript{138} 429 U.S. 97 (1976).
\textsuperscript{139} \textit{Id.} at 99.
\textsuperscript{140} \textit{Id.} at 107.
\textsuperscript{141} \textit{Id.} at 99–101.
\textsuperscript{142} \textit{Id.} at 99.
\textsuperscript{143} Like civil commitment patients, prisoners’ entitlement to medical care is based on the quid pro quo theory. \textit{Estelle}, 429 U.S. at 103 (“[T]he Government has an] obligation to provide medical care for those whom it is punishing by incarceration. An inmate must rely on prison authorities to treat his medical needs."); see also \textit{id.} at 103–04 (quoting \textit{Spicer v. Williamson}, 132 S.E. 291, 293 (N.C. 1926)) (describing “the common-law view that it is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself”); \textit{Edwards v. Duncan}, 355 F.2d 993, 994 (4th Cir. 1966) (“Prisoners are entitled to medical care and to access to the courts.”).
\textsuperscript{144} \textit{Estelle}, 429 U.S. at 103.
standard to assess when prison medical care falls below this constitutional floor.\textsuperscript{145}

In so doing, the Court struck a balance between prisoners’ Eighth Amendment rights and the government’s penological interests. The Court tethered its standard to the Eighth Amendment, reasoning that a failure to treat prisoners’ medical needs “may actually produce physical ‘torture or a lingering death,’”\textsuperscript{146} or “may result in pain and suffering which no one suggests would serve any penological purpose.”\textsuperscript{147} In subsequent opinions, lower federal courts have further balanced prisoners’ rights against the government’s legitimate interests in view of the purpose of criminal confinement. Prisoners are confined because they were found guilty of transgressing the criminal law, which permits the government to incapacitate and punish them.\textsuperscript{148} Federal courts thus consider judicial review inappropriate for “deprivations which are necessary or reasonable concomitants of imprisonment.”\textsuperscript{149} That is, federal courts will not review the constitutionality of deprivations of medical care to the extent that they arise naturally from the exigencies of operating a carceral institution.

The deliberate indifference standard has an objective component and a subjective component. As the Tenth Circuit explains, “[t]o establish the objective component, ‘the alleged deprivation must be “sufficiently serious” to constitute a deprivation of constitutional dimension.’”\textsuperscript{150} The subjective component asks whether an “official kn[ew] of and disregard[ed] an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and [s]he must also draw the inference.”\textsuperscript{151}

Ultimately, the Court denied Gamble relief. Although “more should have been done by way of diagnosis and treatment,” the Court rejoined that matters for medical judgment such as deciding not to order an X-ray do not amount to cruel and unusual punishment.\textsuperscript{152}

\begin{itemize}
  \item[\textsuperscript{145}] Id.
  \item[\textsuperscript{146}] Id. (quoting In re Kemmler, 136 U.S. 436, 447 (1890)).
  \item[\textsuperscript{147}] Id.
  \item[\textsuperscript{148}] See Ingraham v. Wright, 430 U.S. 651, 671 n.40 (explaining that the government acquires the power to punish upon a formal adjudication of guilt).
  \item[\textsuperscript{149}] Edwards, 355 F.2d at 994.
  \item[\textsuperscript{150}] Strain v. Regalado, 977 F.3d 984, 989–90 (10th Cir. 2020), cert. denied, 142 S. Ct. 312 (2021) (quoting Self v. Crum, 439 F.3d 1227, 1230 (10th Cir. 2006)).
  \item[\textsuperscript{151}] Id. at 990 (quoting Mata v. Saiz, 427 F.3d 745, 751 (10th Cir. 2005)).
  \item[\textsuperscript{152}] Estelle, 429 U.S. at 287.
\end{itemize}
C. Pretrial Criminal Detainees: Deliberate vs. Objective Indifference

Courts traditionally judge the constitutionality of medical care in pretrial criminal detention by the deliberate indifference standard. But recent doctrinal developments have prompted some courts to apply the “objective indifference” standard instead. An official is objectively indifferent when they make an intentional, objectively unreasonable decision in response to a substantial risk of harm to a detainee.

A pretrial criminal detainee is someone in government custody on criminal charges.153 There are two stages at which the government may detain a criminal defendant. First, the government may detain pending a detention hearing if it charged the defendant with certain crimes enumerated in 18 U.S.C. § 3142(f)(1) or if the magistrate judge determines that the defendant poses serious risks of flight or obstruction of justice.154 Second, the government may detain a criminal defendant after a detention hearing if “the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community.”155

Pretrial criminal detainees are constitutionally distinct from prisoners; the government lacks authority to punish absent a conviction.156 Consequently, instead of the Eighth Amendment, pretrial criminal detainees are protected by the Due Process Clauses of the Fifth and Fourteenth Amendments.157 Unlike the Eighth Amendment, these provisions do not clearly delineate the appropriate standard of care.158

Most courts evade this difficult question by employing the same adjudicatory standard—deliberate indifference—for pretrial criminal detainees and convicted prisoners on the grounds

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156 COLUM. HUM. RTS. L. REV., supra note 153, at 1162.
157 Id. at 1180.
158 Compare U.S. CONST. amend. VIII (“cruel and unusual punishment”) with U.S. CONST. amend. V, and U.S. CONST. amend. XIV (“due process of law”). Because the Fifth and Fourteenth Amendments do not delineate the appropriate standard of care, courts determine the appropriate standard of care under these amendments by reference to features of the detainee class at issue, namely the detainee class’s constitutional liberty interest, the reason for the class’s confinement, and the quality of the process preventing the class’s confinement.
that the Fifth and Fourteenth Amendments are coextensive with the Eighth Amendment.\textsuperscript{159} Constitutional amendments are coextensive when they are at least as protective as one another in a given context. In the context of medical care for pretrial criminal detainees, the Court has held that the Fifth and Fourteenth Amendments are at least coextensive with the Eighth Amendment.\textsuperscript{160} This means that medical care deficient enough to violate the Eighth Amendment’s ban on cruel and unusual punishment, \textit{a fortiori}, violates the Fifth and Fourteenth Amendments’ due process guarantees. Thus, pretrial criminal detainees warrant at least the same standard of care under the Fifth and Fourteenth Amendments that prisoners enjoy under the Eighth Amendment; that standard is deliberate indifference.\textsuperscript{161}

Although most federal circuits continue to apply deliberate indifference to pretrial criminal detainees’ claims,\textsuperscript{162} the Supreme Court has articulated due process protections for pretrial criminal detainees independent of the Eighth Amendment. In \textit{Bell v. Wolfish},\textsuperscript{163} the Court observed that the “proper inquiry is whether [the challenged] conditions amount to punishment of the [pretrial] detainee . . . [because] under the Due Process Clause, a [pretrial criminal] detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.”\textsuperscript{164} Yet, the Court also acknowledged the importance of balancing this right against the government’s legitimate interests.\textsuperscript{165}

Pretrial criminal detainees are confined because they stand accused of violating the law and are adjudicated flight risks or significant threats to their communities.\textsuperscript{166} The government needs to effectuate the confinement of such persons, so “[t]he fact of confinement as well as the legitimate goals and policies of the penal

\begin{footnotes}
\footnote{159} See, e.g., Brawner v. Scott County, 14 F.3d 585 (6th Cir. 2021); Miranda v. County of Lake, 900 F.3d 335 (7th Cir. 2018); Gordon v. County of Orange, 888 F.3d 1118 (9th Cir. 2018); Darnell v. Pineiro, 849 F.3d 17 (2d Cir. 2017).
\footnote{161} Id.
\footnote{162} See, e.g., Cope v. Cogdill, 3 F.4th 198 (5th Cir. 2021); \textit{Strain}, 977 F.3d 984; Whitney v. City of St. Louis, 887 F.3d 857 (8th Cir. 2018); Dang \textit{ex rel. Dang} v. Sheriff, 871 F.3d 1272 (11th Cir. 2017).
\footnote{163} 441 U.S. 520 (1979).
\footnote{164} Id. at 535.
\footnote{165} Id. at 538.
\end{footnotes}
institution limits [pretrial criminal detainees'] retained constitutional rights." The Court stressed that “[n]ot every disability imposed during pretrial detention amounts to ‘punishment’ in the constitutional sense” because “[o]nce the Government has exercised its conceded authority to detain a person pending trial, it obviously is entitled to employ devices that are calculated to effectuate this detention.” It thus proposed that “[a] court must decide whether the disability is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose.” Though the Court articulated these due process protections for pretrial criminal detainees, it failed to craft an accompanying adjudicatory standard.

Yet, recent developments in the pretrial criminal detention context may have rectified the Bell Court’s oversight. Some courts are shifting from deliberate indifference to a more protective standard: objective indifference. In 2015, the Supreme Court decided Kingsley v. Hendrickson. This case addressed the proper legal standard for assessing a pretrial criminal detainee’s excessive force claim. Citing Bell, the Court adopted the objective unreasonableness standard. It grounded this standard in the Bell holding, stating that “in the absence of an expressed intent to punish, a pretrial detainee can nevertheless prevail by showing that the actions are not ‘rationally related to a legitimate nonpunitive governmental purpose’ or that the actions ‘appear excessive in relation to that purpose.’” With this reasoning, Kingsley left federal circuit courts to question the continuing validity of their coextension approaches to pretrial criminal detainees’ inadequate medical care claims.

The circuits that have addressed the question are split. The Second, Sixth, Seventh, and Ninth Circuits have extended Kingsley to pretrial criminal detainees’ inadequate medical care claims. In these circuits, pretrial criminal detainees no longer must prove subjective elements of an officer’s awareness to establish deliberate indifference; the test is purely objective. The

167 Bell, 441 U.S. at 545–46.
168 Id. at 537.
169 Id. at 538.
171 Id. at 398 (quoting Bell, 441 U.S. at 561).
172 Id. (quoting Bell, 441 U.S. at 561).
173 See generally Brawner, 14 F.3d 585; Miranda, 900 F.3d 335; Gordon, 888 F.3d 1118; Darnell, 849 F.3d 17.
174 See supra note 173.
Ninth Circuit’s formulation is a representative example of the standard that these circuits employ. Under that formulation, the question is whether “the defendant did not take [objectively] reasonable available measures to abate [a substantial risk of serious harm], even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant’s conduct obvious.”\textsuperscript{175}

In contrast, the Fifth, Eighth, Tenth, and Eleventh Circuits have declined to extend \textit{Kingsley} to the detainee medical care context.\textsuperscript{176} Most of these circuits reason that \textit{Kingsley}'s holding is limited to excessive force claims.\textsuperscript{177}

D. Immigrant Detainees: Deliberate vs. Objective Indifference

Because the detainee medical care doctrine (inappropriately) treats immigrant detainees as constitutionally comparable to pretrial criminal detainees, \textit{Kingsley} has reraised the question of the appropriate standard of medical care for immigrant detainees. The detainee medical care doctrine has long regarded immigrant detainees as sufficiently similar to pretrial criminal detainees to justify similar treatment.\textsuperscript{178} Thus, most federal circuits that have addressed the question agree that under coextension, immigrant detainees’ claims of constitutionally inadequate medical care may be assessed by the deliberate indifference standard applied to some pretrial criminal detainees and all prisoners.\textsuperscript{179} The Ninth Circuit is the lone exception. After applying the objective indifference standard to pretrial criminal detainees post-\textit{Kingsley}, the Ninth Circuit extended this standard to immigrant detainees, maintaining that they are sufficiently similar to pretrial criminal detainees to warrant similar treatment.\textsuperscript{180}

E. Unaccompanied Minor Children: Professional Judgment

Claims by unaccompanied minor children (UMCs) held in immigration detention recently witnessed a doctrinal innovation:

\textsuperscript{175} Gordon, 888 F.3d at 1124–25.
\textsuperscript{176} See generally Cope, 3 F.3d 198; Strain, 977 F.3d 984; Whitney, 887 F.3d 857; Dang ex. rel. Dang, 871 F.3d 1272.
\textsuperscript{177} See supra note 176.
\textsuperscript{178} See, e.g., Hope v. Warden York Cnty. Prison, 972 F.3d 310 (3d Cir. 2020); Charles v. Orange County, 925 F.3d 73 (2d Cir. 2019); Doe v. Kelly, 878 F.3d 710 (9th Cir. 2017); Belbachir v. County of McHenry, 726 F.3d 975 (7th Cir. 2013).
\textsuperscript{179} See generally Hope, 972 F.3d 310; Charles, 925 F.3d 73; Kelly, 878 F.3d 710; Belbachir, 726 F.3d 975.
\textsuperscript{180} See Roman v. Wolf, 977 F.3d 935, 943 (9th Cir. 2020).
the application of the professional judgment standard outside of civil commitment. Only two circuits have addressed UMCs’ inadequate medical care claims. The Fifth Circuit, upholding coextension, applied the deliberate indifference standard. But the Fourth Circuit disavowed deliberate indifference for UMCs and instead applied the Youngberg professional judgment standard, thereby becoming the first federal circuit to extend professional judgment beyond the civil commitment context.

In *Doe 4 ex rel. Lopez v. Shenandoah Valley Juvenile Center Commission*, UMCs challenged their immigration detention center’s mental health care as constitutionally inadequate because of its punitive practices and its failure to implement trauma-informed care. Their expert, Dr. Gregory Lewis, “observed that the ‘predominant approach utilized at [Shenandoah Valley Juvenile Center] is that of punishment and behavioral control through such methods as solitary confinement, physical restraint, [and] strapping to a restraint chair.’” The Fourth Circuit rejected the deliberate indifference standard in favor of the Youngberg professional judgment standard, which it refined to require trauma-informed care in this context. The court reasoned that, in relevant respects, UMCs are more like involuntarily committed psychiatric patients than pretrial criminal detainees.

In a prior decision, *Patten v. Nichols*, the Fourth Circuit had defined the relevant factors for determining the appropriate standard of medical care as (1) the reason for detention, (2) the location of detention, and (3) the length of time of confinement. Though the nature of a detention facility is more like a prison than a hospital, the court considered the reason for detention as most important. Under the governing statutory and regulatory scheme, the government detains UMCs to care for them before

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181 See *E.A.F.F. v. Gonzalez*, 600 F. App’x 205, 210 (5th Cir. 2015).
183 985 F.3d 327 (4th Cir. 2021).
184 Id. at 329.
185 Id. at 334.
186 Id. at 339 (“[W]e hold that the Youngberg standard governs this case.”).
187 Id. at 338–44.
188 274 F.3d 829 (4th Cir. 2001).
189 *Doe 4*, 985 F.3d at 339 (citing *Patten*, 274 F.3d at 840–41).
190 Id. at 341–42.
placing them in suitable homes. Like civil commitment patients, then, UMCs are confined for the purpose of receiving government care. The court thus concluded that, since the reason for UMCs’ confinement is more congruent with the confinement of civil commitment patients than criminal detainees, UMCs’ medical care claims should be governed by the professional judgment standard.

The Fourth Circuit’s application of the professional judgment standard to UMCs raises the possibility of applying the standard to adult immigrant detainees. UMCs, an immigrant detainee subclass affirmatively entitled to government care under statutory and regulatory law, differ from adult immigrant detainees, a detainee subclass not so entitled. Yet, just as UMCs warrant the professional judgment standard because they are more like involuntarily committed psychiatric patients than criminal detainees, adult immigrant detainees warrant professional judgment because, in doctrinally relevant respects, they are more like civilly committed sex offenders than pretrial criminal detainees.

Parts III and IV proceed from Doe 4’s doctrinal innovation to demonstrate that immigrant detainees are entitled to professional judgment refined as “medical professional judgment.”

III. PROFESSIONAL JUDGMENT

This Part answers a vital, now unsettled question of law: To what standard of care are immigrant detainees entitled under the Constitution? There are three possibilities under the doctrine: (1) professional judgment requires care that does not substantially depart from accepted professional opinion; (2) objective indifference demands objectively reasonable measures in response to a substantial risk of harm; and (3) deliberate indifference necessitates that officials do not knowingly disregard an excessive risk of substantial harm to detainees. Part III.A begins by sketching a doctrinal test to determine the appropriate standard. The

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191 See Homeland Security Act of 2002, 6 U.S.C. § 279 (“[T]he Director of the Office of Refugee Resettlement shall be responsible for . . . [the care and placement of UMCs].”); see also Care and Placement of Unaccompanied Alien Children, 45 C.F.R. § 410.102 (2019) (prescribing that the Office of Refugee Resettlement must hold UMCs in facilities that are safe and sanitary, and that are consistent with its concern for the particular vulnerability of minors).
192 See Doe 4, 985 F.3d at 339.
193 See infra Part III.B. and Part III.C.
inquiry involves placing the detainee class on the detainee spectrum by balancing the class’s right to care against the government’s legitimate interests.

Part III.B applies the test to immigrant detainees. Placing immigrant detainees on the detainee spectrum is necessarily a comparative exercise. Part III.B compares immigrant detainees to pretrial criminal detainees, as the doctrine currently treats them as constitutionally comparable. This Part shows that, under the doctrine’s salient factors, immigrant detainees constitutionally differ from pretrial criminal detainees such that immigrant detainees warrant a higher standard of care. Part III.C makes a second comparison, between immigrant detainees and civilly committed sex offenders. Civilly committed sex offenders are immigrant detainees’ closest analog on the detainee spectrum. Doctrinally salient factors instruct that immigrant detainees warrant a higher constitutional standard of care than civilly committed sex offenders, too. This Part thus concludes that immigrant detainees are constitutionally entitled to at least the professional judgment standard.

A. A Doctrinal Test

The current detainee medical care doctrine does not explicitly articulate a test for determining the appropriate adjudicatory standard for a given detainee class, but its roots imply the presence of one. This Comment distills the criteria courts have long used to determine the appropriate constitutional standard of medical care for different classes of detainees and assembles those criteria into an explicit doctrinal test. Conceptually, determining the appropriate standard of care requires placing the detainee class on the detainee spectrum. Courts balance two criteria: the detainee class’s rights and the government’s legitimate interests. Three considerations are relevant: the detainee class’s constitutional liberty interest, the reason for its confinement, and the quality of the process preventing its confinement. This Section briefly outlines the bases for this doctrinal test.

As Part II demonstrated, to determine the appropriate adjudicatory standard, the doctrine’s seminal cases balanced a detainee class’s rights and the government’s legitimate interests. *Youngberg, Estelle*, and *Bell* explicitly chose their respective standards—professional judgment, deliberate indifference, and objective indifference—because they achieved an appropriate balance between the respective detainee classes’
Three considerations are relevant to this balancing. One such consideration is a detainee class’s constitutional rights. The Youngberg Court held that civil commitment patients enjoy a Fourteenth Amendment substantive due process right to care. In Estelle, prisoners invoked the Eighth Amendment’s proscription against cruel and unusual punishment. And Bell acknowledged pretrial criminal detainees’ due process right not to be punished. A detainee class’s constitutional rights are relevant in at least two ways. First, they set a constitutional floor under which their medical care may not fall. For example, under the Fifth Amendment’s Due Process Clause, pretrial criminal detainees—having not received full-fledged criminal process—may not be treated in a manner amounting to punishment. Second, a detainee class’s constitutional rights may furnish exogenous limitations on how the government may treat members of such class. For instance, Part III.B.1 demonstrates that Fifth Amendment “double jeopardy” prevents the government from legitimately justifying a carceral detention model by reference to some immigrant detainees having criminal records.

A second consideration is the reason for a detainee class’s confinement. In Seling v. Young, the Court held that “due process requires that the conditions and duration of confinement . . . bear some reasonable relation to the purpose for which persons are [civilly] committed.” The consideration’s importance is also reflected in the doctrine’s key cases. As Part II illustrated, the reason for a detainee class’s confinement informs what counts as constitutional rights and the government’s legitimate interests in each context.  

194 Youngberg, 457 U.S. at 321 (1982) (“[W]hether respondent’s constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests.”); Estelle, 429 U.S. at 102 (demonstrating that Eighth Amendment jurisprudence weighs the right to not suffer cruel and unusual punishment against legitimate penological purposes); see also Farmer v. Brennan, 511 U.S. 825, 855 (1994) (explaining that the mens rea requirement may contemplate the exigencies of making high pressure decisions in a prison environment); Bell, 441 U.S. at 537 (stressing the limits on what counts as punishment because “[o]nce the Government has exercised its conceded authority to detain a person pending trial, it obviously is entitled to employ devices that are calculated to effectuate this detention”).

195 See Youngberg, 457 U.S. at 316.

196 See Estelle, 429 U.S. at 101.

197 See Bell, 441 U.S. at 535 (“[U]nder the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.”).


199 Id. at 265.
a legitimate government interest. For example, in pretrial criminal detention, the Supreme Court acknowledged that once the government has the power to detain persons accused of crimes, some of whom are adjudicated sufficiently dangerous to warrant pretrial confinement, “it obviously is entitled to employ devices that are calculated to effectuate this detention.”\textsuperscript{200} And, in the prisoner context, the Court observed that when persons are detained because they have been adjudicated guilty of committing crimes, the government may incapacitate and punish them, and thus, federal courts consider judicial review inappropriate for “deprivations which are necessary or reasonable concomitants of imprisonment.”\textsuperscript{201}

A third consideration is the procedural protections preventing a detainee class’s confinement. The doctrine’s seminal cases do not explicitly cite this consideration, but it is implicit in the doctrine taken as a whole. Procedural due process is a prerequisite to government deprivations of physical liberty.\textsuperscript{202} The detainee spectrum’s composition suggests that procedure distinguishes classes of detainees. Moving from left (civil commitment patients) to right (prisoners) across this spectrum, the detainee classes are protected by increasingly robust processes and enjoy steadily diminishing constitutional rights to care in government detention; moreover, the government boasts a steadily increasing interest in security and control. These trends suggest that the extent of a detainee class’s deprivation must be commensurate with the level of procedure preventing their confinement.

The doctrine’s treatment of pretrial criminal detainees and prisoners confirms that procedure has doctrinal salience. Consider the procedural protections, rights, and legitimate government interests for each. Pretrial criminal detainees retain substantial procedural protections against pretrial confinement: they enjoy access to counsel, receive prompt proceedings, and may not be confined unless the government proves by clear and convincing evidence that they require pretrial detention.\textsuperscript{203} The Constitution guarantees pretrial criminal detainees a moderate standard of care: care not amounting to punishment.\textsuperscript{204} And the government

\textsuperscript{200} Bell, 441 U.S. at 537–38.
\textsuperscript{201} Edwards v. Duncan, 355 F.2d 993, 994 (4th Cir. 1966).
\textsuperscript{202} U.S. CONST. amend. V, XIV.
\textsuperscript{204} See generally Bell, 441 U.S. 520.
has strong legitimate interests in maintaining security and control in pretrial detention: the government must effectuate the detention of persons accused of crimes, many of whom were found sufficiently threatening to warrant pretrial confinement.\footnote{205}{Id. at 536–37.}

Prisoners have stronger procedural protections than pretrial criminal detainees, including a jury trial and a more exacting standard of proof before guilt.\footnote{206}{U.S. CONST. amends. V, VI, VII, XIV.} But prisoners are afforded a lower constitutional standard of care: they are only entitled to treatment that does not amount to cruel and unusual punishment.\footnote{207}{See Estelle, 429 U.S. at 102.} And the government has a heightened legitimate interest in security and control in prisons. Prisoners were found guilty of crimes, so the government legitimately must prioritize security and control to safely effectuate their confinement.\footnote{208}{See Bell, 441 U.S. at 546 (“[M]aintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees.”).}

The law regards the moderate deprivation of liberty in pretrial criminal detention as justifiable because it only takes effect after the government affords the accused a commensurate level of process.\footnote{209}{See id. at 536–37 (observing that after moderate procedure short of full-fledged criminal process, the government may take appropriate actions short of punishment); United States v. Salerno, 481 U.S. 739, 747, 750 (1987) (justifying pretrial criminal detention by its predicate procedural protections).} And prisoners’ more serious level of deprivation also is warranted because they have received the commensurate full-fledged criminal due process.\footnote{210}{See Bell, 441 U.S. at 535.} Thus, comparing pretrial criminal detainees and prisoners reveals that the level of procedure preventing a detainee class’s confinement may bear on the detainee class’s rights and the government’s legitimate interests.

B. Applying the Test Reveals That Immigrant Detainees Are Entitled to Professional Judgment

This Section applies the doctrinal test for determining the constitutional standard of medical care for a detainee class to immigration detention. Immigrant detainees’ constitutional liberty interests, the reasons for their confinement, and the quality of the process preventing their confinement distinguish them from pretrial criminal detainees. Unlike in pretrial criminal detention, the government lacks a legitimate interest in employing a carceral
model in immigration detention. When applied, the doctrinal test shows that immigrant detainees are entitled to a higher constitutional standard of care than pretrial criminal detainees. That standard is professional judgment.

1. Immigrant detainees’ constitutional liberty interests.

Notwithstanding their citizenship statuses, immigrant detainees enjoy various federal constitutional rights that implicate the standard of medical care the government constitutionally owes to them. Under the Fifth Amendment’s Due Process Clause, immigrant detainees have a right not to be punished without procedural safeguards.\textsuperscript{211} Due process also shields them from arbitrary government action, “the exercise of power without any reasonable justification in the service of a legitimate governmental objective.”\textsuperscript{212} Immigrant detainees are further protected against double jeopardy—being twice convicted of, or punished for, the same offense.\textsuperscript{213}

The government lacks a legitimate interest in carceral confinement in immigration detention because immigrant detainees, unlike pretrial criminal detainees, are not confined pursuant to outstanding criminal charges. The government confines immigrant detainees because they are subject to removal from the United States.\textsuperscript{214} A large percentage has never encountered the criminal legal system.\textsuperscript{215} A smaller percentage was previously accused of crimes; a still smaller percentage was convicted.\textsuperscript{216} But crucially, such persons enter immigration detention only after serving their sentences for prior convictions.\textsuperscript{217} This is true even for persons convicted of the federal crime of unlawful entry into the United States.\textsuperscript{218} So no one in immigration detention stands currently accused of a crime. Contrarily, pretrial criminal detainees are exclusively persons accused of crimes.\textsuperscript{219} This difference

\begin{itemize}
\item[211] See, e.g., Hope v. Warden York Cnty. Prison, 972 F.3d 310, 325 (3d Cir. 2020).
\item[213] Gordon et al., supra note 18, § 6.02.
\item[214] See generally Zadvydas, 533 U.S. 678.
\item[216] Id.
\item[218] See Unauthorized Entry & Re-entry Prosecutions, Nat’l Immigr. Project, https://perma.cc/6TCU-F9YP.
\end{itemize}
prevents the government from legitimately justifying a carceral model in immigration detention, unlike the carceral model employed for pretrial criminal detainees. Carceral confinement prioritizes security and control. In the pretrial criminal context, the government concludes that persons accused of crimes and subject to pretrial confinement pose a sufficient threat to warrant carceral confinement. But this justification is inapposite to immigration detention because immigrant detainees do not stand accused of crimes, and therefore do not present a threat warranting security and control.

The government might respond that it retains a legitimate interest in a carceral model of immigration detention because, pursuant to the INA’s mandatory detention provisions, a percentage of immigrant detainees necessarily have criminal records. This does not justify a carceral approach in immigration detention. These immigrant detainees are not confined to immigration detention until they have been punished for their predicate criminal convictions. So, as Professor Hernández ably argues in his article, Immigration Detention as Punishment, such a justification is illegitimate because it amounts to punishing immigrant detainees a second time for their predicate criminal convictions, which violates double jeopardy.

As stated by the Supreme Court:

The Double Jeopardy Clause provides: “[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb.” Although generally understood to preclude a second prosecution for the same offense, the Court has also

221 Salerno, 481 U.S. at 750 (“[The government’s] interest is heightened when [it] musters convincing proof that the arrested, already indicted or held to answer for a serious crime, presents a demonstrable danger to the community.”).
222 See TRAC, supra note 215 (“Just one in ten (10.7%) detainees, less than 6,000 detainees nationwide, have a serious criminal conviction on record as of July 2019[—]a five-year low.”).
223 Hernández, Immigration Detention, supra note 85, at 1379. Hernández criticizes the punitive reality of the modern U.S. immigration system:

[R]ooted as it is in the same fears and norms that spurred the war on drugs, is more properly characterized as punitive. The federal government’s fifteen-year history of intermingling immigration detention and crime-fighting legislation strongly implies that Congress and, at times, the president viewed this as a criminal law enforcement tool.

Id.
interpreted this prohibition to prevent the State from “punishing twice, or attempting a second time to punish criminally, for the same offense.”

In *Hudson v. United States*, the Supreme Court observed that the “Double Jeopardy Clause does not prohibit the imposition of all additional sanctions that could, ’in common parlance,’ be described as punishment. The Clause protects only against the imposition of multiple criminal punishments for the same offense, and then only when such occurs in successive proceedings.” The Court then explicated a framework for determining whether detention amounts to a criminal penalty and thus implicates double jeopardy. The inquiry asks whether the legislature indicated an intention to establish a civil penalty, or whether the statutory scheme is “so punitive either in purpose or effect,” as to “transform what was clearly intended as a civil remedy into a criminal penalty.” The Court also provided guideposts for determining whether a civil remedy has been transformed into a criminal penalty, including factors such as: “[w]hether the sanction involves an affirmative disability or restraint”; “whether an alternative purpose to which it may rationally be connected is assignable for it”; and “whether it appears excessive in relation to the alternative purpose assigned.”

Professor Hernández’s article demonstrates that immigration detention is a criminal penalty under the *Hudson* test in two independent ways. First, immigration detention is a criminal penalty because Congress intended it as such. This is evidenced by the political climate in which Congress nurtured the linkage between civil immigration and criminal law, as well as Congress’s importation of then-burgeoning penal norms, such as mandatory sentencing and reduced judicial discretion, into its immigration legislation. Second, even if Congress did not indicate a preference for immigration detention being a criminal penalty, immigration detention is so punitive in effect as to transform it into a criminal penalty.

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226 Id. at 98–99 (internal citations omitted) (emphasis in original).
227 Id. at 99 (quoting United States v. Ward, 448 U.S. 242, 248–49 (1980)).
228 Id. at 99–100 (quoting Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168–69 (1963)).
230 Id. at 1372–79.
231 Id. at 1388–92.
To be clear, this analysis does not alter the fact, established in Part I.C.3, that courts applying the detainee medical care doctrine should treat immigration detention as civil, not criminal. The Hudson analysis demonstrates that immigration detention amounts to a criminal penalty for double jeopardy purposes, not that it constitutionally is a criminal penalty. To reiterate Part I.C.3, though immigration detention bears descriptively criminal features, for the purposes of the detainee medical care doctrine, courts should treat immigration detention as civil.

2. The reason for immigrant detainees’ confinement.

Though from the 1980s onward, Congress endeavored to import criminal law features into civil immigration law, the Supreme Court maintains that immigration detention is civil and nonpunitive.232 Unlike pretrial criminal detention, the reason for immigrant detainees’ confinement is administrative, not criminal. This means that the Constitution permits the government to detain immigrant detainees to facilitate their removal by ensuring they appear at removal proceedings.

Pretrial detention is a firmly rooted criminal institution.233 It exists partially to incapacitate persons accused of crimes who are adjudicated to be sufficiently threatening to warrant pretrial confinement.234 And thus, though custodial and nonpunitive, pretrial criminal detention necessarily prioritizes security and control. In contrast, immigration detention is civil detention with administrative origins; immigration detention was first declared constitutional as a necessary adjunct to deportation.235 It was later justified on the additional ground of national security.236 But, crucially, immigration detention remains civil and nonpunitive.237

That pretrial criminal detention necessarily prioritizes security and control because it operates to incapacitate criminal defendants, some of whom have been adjudicated sufficiently threatening to warrant pretrial confinement, invites criticism.

232 See Zadvydas, 533 U.S. at 690.
234 See id.
235 See Wong Wing v. United States, 163 U.S. 228, 235 (1896); see also Stumpf, supra note 26, at 62 (explaining that, at immigration detention’s inception, the Court found that the Constitution permits the government to detain noncitizens without a trial for the nonpunitive purpose of administering deportation).
236 See Stumpf, supra note 26, at 65.
237 See Zadvydas, 533 U.S. at 690.
The principal objection will be that there is a substantial disconnect between what the Bail Reform Act says and how the federal judiciary implements it, resulting in the pretrial criminal detention of persons who do not justify a model prioritizing security and control. The Bail Reform Act governs pretrial release and detention for federal criminal defendants. The Act sought to transition from pretrial detention based on arrestees’ ability to pay to a system that detains only those arrestees who pose serious flight risks or serious community threats. In 2022, Professor Alison Siegler and the University of Chicago Law School’s Federal Criminal Justice Clinic published Freedom Denied, a comprehensive study of the federal judiciary’s implementation of the Bail Reform Act. The study found that the Act is misapplied by federal judges such that many arrestees confined pretrial do not meet the statutory predicates for pretrial detention. Further, “judges consistently impose inequitable and burdensome financial conditions of release,” resulting in the jailing of “people for poverty.”

Yet, two observations militate against dismissing this Comment’s claim about the necessity of security and control in pretrial criminal detention. First, notwithstanding the federal judiciary’s frequent misapplication of the Bail Reform Act, pretrial jails still confine at least some criminal defendants properly adjudicated to be sufficiently dangerous to warrant pretrial confinement. This fact suffices for the government to legitimately require a detention model prioritizing security and control in pretrial criminal detention. Second—and more to the point—the federal judiciary’s misapplication of the Bail Reform Act does not alter the legitimacy of employing a carceral detention model for pretrial criminal detainees. If courts apply the Bail Reform Act as Congress wrote it, pretrial criminal detention legitimately requires a detention model prioritizing security and control because it confines at least some detainees adjudicated to be sufficiently dangerous by clear and convincing evidence. Contrastingly, when courts apply the INA as Congress wrote it, such a detention

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238 See LaFave et al., supra note 203, § 12.1(a).
240 See generally id.
241 Id. at 170.
model is illegitimate because there is no satisfactory basis, constitutional or otherwise, for a carceral approach to administrative civil detention.

A further objection will be that the government yet retains a legitimate interest in prioritizing security and control in immigration detention because immigration detention is justified on national security grounds. History—and the Supreme Court—disagree. National security was an independent justification for detaining immigrants only prior to the passage of the INA, during wartimes’ exigencies.242 Examples include Ellis Island’s function during World War I as “a holding center for enemy aliens” and Japanese internment during World War II.243 The constitutionality of such practices depends on the continuing force of Korematsu v. United States,244 wherein the Supreme Court proclaimed, “[the] power to exclude includes the power to do it by force if necessary” and “any forcible measure must necessarily entail some degree of detention or restraint whatever method of removal is selected.”245 In Trump v. Hawaii,246 the Court declared, “Korematsu was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—‘has no place in law under the Constitution.’”247 Thereby, one could argue that national security lost its claim to legitimacy as a constitutional justification for immigration detention.

Thus, the nonpenal reason for immigrant detainees’ confinement delegitimizes any purported government interests flowing from modern immigration detention’s carceral character. Courts traditionally have concluded that immigrant and pretrial criminal detainees are constitutionally comparable because immigration detention resembles pretrial criminal detention.248 But this descriptive resemblance does not legitimize the government’s purported interest in security and control in immigration detention facilities. Immigration detention’s carceral disposition is invalid; its constitutionally civil status and administrative origins

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242 See Stumpf, supra note 26, at 65.
243 Id.
244 323 U.S. 214 (1944).
245 Id. at 223.
247 Id. at 2423.
248 See, e.g., Charles v. Orange County, 925 F.3d 73 (2d Cir. 2019); Hope v. Warden York Cnty. Prison, 972 F.3d 310 (3d Cir. 2020); Doe v. Kelly, 878 F.3d 710 (9th Cir. 2017); Belbachir v. County of McHenry, 726 F.3d 975 (7th Cir. 2013).
instruct that the government’s legitimate interest is limited to facilitating deportation.\textsuperscript{249} Immigration detention’s administrative function does not legitimately require carceral institutions that prioritize security and control.

3. The inadequacy of the procedural protections preventing immigrant detainees’ confinement.

Immigrant detainees also warrant a higher constitutional standard of care than pretrial criminal detainees because they are subject to comparatively weaker procedural protections against detention. Before detaining someone before a criminal trial, the government must prove probable cause to charge them with a crime.\textsuperscript{250} Then, the government must prove by clear and convincing evidence that the accused is a sufficient flight risk, or poses a sufficient threat to the community, that they should not be released pending trial.\textsuperscript{251} Criminal defendants enjoy a presumption of release, meaning that the Bail Reform Act instructs judges to presume that the defendant should be released, unless the government meets its “clear and convincing” burden.\textsuperscript{252} Criminal defendants also enjoy procedural safeguards such as the rights to a prompt bond hearing,\textsuperscript{253} a speedy trial by an impartial jury, and appointed counsel.\textsuperscript{254}

Immigrant detainees lack these procedural protections. They are not entitled to prompt proceedings.\textsuperscript{255} They have no right to court-appointed counsel.\textsuperscript{256} And the threshold for their detention pending removal proceedings is much lower: “since 1996, regulations provide that the detainee bears the burden of proving that he or she... ‘would not pose a danger to other persons or to property.’”\textsuperscript{257} Further, the INA subjects a considerable portion of immigrant detainees to mandatory detention, irrespective of individualized determinations of flight risk or community threat.\textsuperscript{258}

\textsuperscript{249} See Wong Wing, 163 U.S. at 235.
\textsuperscript{250} See LaFave et al., supra note 203, § 14.1(a).
\textsuperscript{251} See Salerno, 481 U.S. at 741.
\textsuperscript{252} 18 U.S.C. § 3142(b), (f).
\textsuperscript{253} See Andrew D. Leipold, Federal Practice and Procedure: Criminal § 72 (5th ed. 2022).
\textsuperscript{254} U.S. CONST. amend. VI.
\textsuperscript{255} See Leipold, supra note 253, § 72.
\textsuperscript{256} See id.
\textsuperscript{257} Kreimer, supra note 29, at 1490 (quoting 8 C.F.R. § 1003.19(h)(3) (2012)).
\textsuperscript{258} See id.
These detainees “are afforded only a Joseph hearing, an administrative hearing in immigration court in which the detainee bear the burden of establishing that she is not ‘properly included’ within the mandatory detention provision.”259 Thus, while pretrial criminal detainees enjoy a presumption of release, immigrant detainees suffer a presumption of detention.

Given these procedural discrepancies, the Fifth Amendment’s Due Process Clause counsels minimal deprivations of immigrant detainees’ liberty while confined. As discussed in Part III.A, the detainee spectrum’s composition strongly suggests that the Constitution only permits deprivations of a detainee class’s liberty to the extent that such deprivations are commensurate with the level of procedure afforded to such detainee class. Compared to pretrial criminal detainees, immigrant detainees receive feeble procedural safeguards against confinement;260 weaker procedural protections thus warrant lesser governmental deprivations of liberty.

The procedural differences between immigrant detainees and pretrial criminal detainees also undermine the legitimacy of the government’s purported interest in prioritizing security and control in immigration detention. Immigration procedures do not reasonably imply that immigrant detainees pose the same security risks as pretrial criminal detainees.261 They are not accused of crimes nor adjudicated to be threatening by clear and convincing evidence.262 Immigrant detainees are merely presumed to be threats unless they prove their harmlessness by clear and convincing evidence, often without the benefit of counsel.263 This is insufficient to justify subjecting them to carceral conditions without criminal due process.

Cumulatively, applying the doctrinal test to immigrant detainees so undermines the legitimacy of the government’s interest in employing a carceral model in immigration detention that immigrant detainees merit a higher constitutional standard of care

259 Id. at 1491. A “Joseph hearing” is a proceeding at which an immigrant detainee who believes they are not properly included in a statutory mandatory detention category “may avoid mandatory detention by demonstrating that he is not [in the United States unlawfully], was not convicted of the predicate crime, or that the [government] is otherwise substantially unlikely to establish that he is in fact subject to mandatory detention.” Demore v. Kim, 538 U.S. 510, 514 n.3 (2003).
260 Kreimer, supra note 29, at 1490.
261 See id.
262 See id.
263 See id.
than pretrial criminal detainees. That standard is professional judgment.

C. Comparison to Civilly Committed Sex Offenders Affirms Immigrant Detainees’ Entitlement to Professional Judgment

Comparing immigrant detainees to civilly committed sex offenders affirms that immigrant detainees are constitutionally entitled to at least the professional judgment standard. As Part II illustrates, immigrant detainees most resemble civilly committed sex offenders on the detainee spectrum; both groups are civil detainees confined in carceral facilities, often pursuant to criminal charges for which they have already been punished. Thus, civilly committed sex offenders are their most appropriate comparator. Two doctrinally salient disparities instruct that the Constitution entitles to immigrant detainees an even higher standard of care than civilly committed sex offenders: differences in (1) procedure, and (2) the legitimacy of the government’s interest in a carceral detention model. Immigrant detainees are subject to far weaker procedural protections against confinement, and the government lacks a legitimate interest in security and control in immigration detention.

First, procedural disparities suggest that immigrant detainees are constitutionally entitled to a higher standard of care than civilly committed sex offenders. The standard-of-care framework indicates that the weaker the process a class receives, the higher the constitutional floor of their standard of medical care. And, as Part II established, immigration procedure is less protective than the procedure afforded to civilly committed sex offenders.\footnote{See supra Part II A.}

Second, the government has stronger interests in security and control for the civil commitment of sex offenders than for the detention of immigrants. Given civilly committed sex offenders’ robust procedural protections, the government is justified in inferring that such persons—many of whom are adjudicated sexually dangerous and likely to reoffend—require a carceral model. Contrastingly, immigrant detainees’ weak procedural protections prevent the government from reasonably inferring that immigrant detainees require a carceral model. And, unlike immigrant detainees, civilly committed sex offenders are confined partly for
treatment. Therefore, the interest in safety within the facility itself may be critical to the delivery of adequate treatment. In contrast, the government may constitutionally confine immigrant detainees only as an administrative adjunct to deportation. Prioritizing security and control is not a justifiable predicate to this government objective.

These doctrinally salient factors thus instruct that immigrant detainees are entitled to a higher constitutional standard of care than civilly committed sex offenders. At minimum, that standard is professional judgment.

IV. MEDICAL PROFESSIONAL JUDGMENT

This Part proposes that, to vindicate immigrant detainees’ constitutional right to a heightened standard of medical care, the professional judgment standard must be defined as “medical professional judgment.” Part IV.A sketches how courts apply the professional judgment standard to civilly committed sex offenders. The prevailing approach is to interpret professional judgment to include government officials’ professional judgments concerning how best to prioritize security and control. Part IV.B explains that this prevailing approach is problematic in the immigration detention context. The government’s carceral prerogative to prioritize security and control is unjustified in immigration detention, and deferring to this prerogative imperils immigrant detainees’ right to a heightened standard of medical care. Part IV.C proposes a better-defined standard: “medical professional judgment.” Under this standard, immigrant detainee medical care may not substantially depart from accepted medical opinion.

A. The Prevailing Approach to Applying Professional Judgment Outside of Psychiatric Hospitals Is Inappropriate for Immigration Detention

The prevailing approach to applying the professional judgment standard to civilly committed sex offenders’ claims of constitutionally inadequate care is to defer to officials’ professional judgments about how to prioritize security and control. The Fourth and Seventh Circuits provide representative examples. In

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265 Menninger, supra note 122.
266 Healy v. Spencer, 765 F.3d 65, 78 (1st Cir. 2014).
267 See Wong Wing, 163 U.S. at 235.
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Matherly v. Andrews, the Fourth Circuit found that “officials exercised their professional judgment to institute an unwritten policy which calls for strip search[es]” and “mass shakedowns.” The court deferred to the facility’s carceral prerogative “given the reasonable relationship between these practices and institutional security.” Similarly, the Seventh Circuit applies professional judgment with deference to the government’s carceral prerogative by distinguishing between “treatment decisions” and “security or other administrative decisions.” Upholding the constitutionality of a practice of isolating detainees for up to eighty-two days, the court intimated that official action may “be defended either on security grounds or as an exercise of professional judgment” such that justifying the action on security grounds satisfies the Constitution “without regard to the question whether [such action] is justified as treatment.”

This approach of construing the professional judgment standard to encompass the government’s carceral prerogative of prioritizing security and control is perhaps untroubling in detention settings that do not employ a carceral model, such as many psychiatric hospitals. But it is inappropriate for immigration detention, where the government lacks a legitimate interest in security and control. Just a small subset of immigrant detainees is confined upon an adjudication that they are dangerous. And such adjudications are untrustworthy given the absence of appropriate procedural safeguards. Though detainees’ safety and security are important, the government cannot legitimately justify prioritizing safety and security at the expense of adequate medical care.

In addition to being constitutionally infirm, deferring to the government’s carceral prerogative in immigration detention is improper because such prerogative conflicts with a heightened standard of medical care. Instead, a medical perspective is paramount to vindicating detainees’ right to adequate medical care. Dr. Christine Montross’s Waiting for an Echo exposes a carceral medical care model’s shortcomings. First, the rigid rules and

268 859 F.3d 264 (4th Cir. 2017).
269 Id. at 279.
270 Id.
271 Lane v. Williams, 689 F.3d 879, 882–83 (7th Cir. 2012).
272 Id. at 883 (quoting West v. Schwecke, 333 F.3d 745, 748 (7th Cir. 2003) (emphasis in original)).
273 See generally CHRISTINE MONTROSS, WAITING FOR AN ECHO: THE MADNESS OF AMERICAN INCARCERATION (2020).
structures inherent to a carceral detention model are fundamentally misaligned with mental health conditions. For instance, persons with mental illnesses detained in carceral facilities disproportionately endure solitary confinement because their symptoms cause them to frequently transgress their facilities’ rigid rules.\textsuperscript{274} Second, both medical and nonmedical personnel in carceral facilities stray from medical standards of care. Dr. Montross observes that in carceral settings, personnel too often respond to mental health symptoms with unhelpful measures like solitary confinement.\textsuperscript{275} Personnel perceive these persons as insolent; in truth, their conditions are exacerbated by a carceral setting.\textsuperscript{276} And when personnel do recognize the mental illness at play, at best they utilize misguided tactics like extensive charting, which Dr. Montross describes as observation but not care.\textsuperscript{277}

Third, personnel in carceral facilities approach detainee medical care with cynicism. Too often, detainees’ complaints or symptoms are dismissed as evidencing recalcitrance.\textsuperscript{278} At worst, “[d]etainees with psychiatric symptoms are . . . disproportionately victimized by . . . correctional staff . . . they are viewed as raving lunatics.”\textsuperscript{279} Fourth, personnel in carceral facilities—especially nonmedical personnel—are ill-equipped to address detainees’ medical issues. At one immigration detention facility, detainees “described a system that depended on nonmedically trained people to make health care decisions. For example, if a person was experiencing pain, the guard in the housing unit might tell them to wait to go to the doctor until the morning.”\textsuperscript{280}

At another facility, detainees reported that “any staff member, whether or not that individual was medically trained, could place a detainee on suicide watch.”\textsuperscript{281} Detainees claimed that non-medical staff abused this authority, “plac[ing] detainees on suicide watch for raising mental health concerns.”\textsuperscript{282} While

\textsuperscript{274} See id. at 30, 118–19, 165.
\textsuperscript{275} See id.
\textsuperscript{276} See id.
\textsuperscript{277} Id. at 35.
\textsuperscript{278} See MONTROSS, supra note 273, at 35–37.
\textsuperscript{279} Id. at 37.
\textsuperscript{280} MAJORITY STAFF REPORT, supra note 50, at 14.
\textsuperscript{281} Id. at 17.
\textsuperscript{282} Id.
Dr. Montross focused on mental health care, surveys of immigrant detainees’ complaints reveal that these issues also afflict physical health care.\(^{283}\)

These flawed approaches to medical care are perhaps mildly understandable in a carceral setting where the government legitimately prioritizes security and control over care. Descriptively, “[i]ncarcerated people who are mentally ill are viewed . . . within a framework of . . . their potential future threat to safety and security.”\(^{284}\) But in immigration detention, where the population especially does not require carceral tactics,\(^{285}\) a carceral model is inappropriate; immigrant detainees are constitutionally entitled to a noncarceral approach to medical care. Dr. Montross underscores the starkly contrasting reality of such an approach to the present carceral approach in immigration detention: On her “psychiatric hospital unit, patients are seen and understood within a framework of their symptoms, diagnoses, and treatment plans.”\(^{286}\)

B. Medical Professional Judgment Is the Appropriate Constitutional Standard of Medical Care for Immigrant Detainees

To resolve the incompatibility between the prevailing deferential approach to professional judgment and immigrant detainees’ constitutional right to a heightened standard of medical care, courts must define professional judgment for immigration detention as “medical professional judgment”: medical care must not substantially depart from accepted medical standards (rather than all manners of professional judgment that the government may invoke, particularly those based on a carceral prerogative). This standard is both doctrinally appropriate and workable.

First, a medical professional judgment standard is doctrinally proper because *Youngberg* permits courts to prescribe the

\(^{283}\) Id. at 13–16.

\(^{284}\) See *Montross*, supra note 273, at 36.

\(^{285}\) See *Schriro*, supra note 45, at 21:

The demeanor of the Immigration Detention population is distinct from the Criminal Incarceration population. The majority of the population is motivated by the desire for repatriation or relief, and exercise exceptional restraint. According to reports provided by contract monitors and submitted by the field, relatively few detainees file grievances, fights are infrequent, and assaults on staff are even rarer.

\(^{286}\) *Montross*, supra note 273, at 36.
appropriate standard of care. Though the Youngberg Court express-ly admonished lower courts not to choose which of the many possible accepted professional standards officials must adhere to,
Youngberg was predicated on a single context: psychiatric hospitals. Thus, it assumed medical professional standards and objected only to courts choosing among acceptable medical standards for fear of invading the government's zone of discretion and preventing the government from staying current as medical understanding evolves. Outside the context of a medical facility, prescribing the appropriate standard of care comports with Youngberg, provided that such prescription is not excessively narrow. Doe is instructive. When the Fourth Circuit applied professional judgment to UMCs, it prescribed trauma-informed care. This prescription consists with Youngberg's admonition. By prescribing the appropriate category of standards to vindicate the rights that professional judgment aims to secure, the Fourth Circuit did not inappropriately usurp government discretion. Indeed, the government is free to exercise discretion within whatever category a court prescribes. Concededly, trauma-informed care may yet be excessively narrow considering Youngberg's concern about evolving medical understanding. But this defect lies with the standard’s specificity, not with the act of prescribing the appropriate standard of care itself. And, notably, the medical professional judgment formulation suffers no such defect; it is sufficiently general to account for advances in medical understanding.

Medical professional judgment is also a practicable adjudicatory standard, even when applied to nonmedical personnel, for three reasons. First, consistent with Youngberg, the standard captures only conduct that is clearly unconstitutional. Medical professional judgment requires that care not substantially depart from accepted medical opinion. And accompanying this intrinsic constraint is the extrinsic constitutional limitation that mere negligence cannot amount to a violation of one’s constitutional

See Youngberg, 457 U.S. at 321 (quoting Romeo v. Youngberg, 644 F.2d 147, 178 (3d Cir. 1980) (Seitz, C.J., concurring)) (“It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made.”).

See id.

Id. at 322.

See Doe 4, 985 F.3d at 344–45.

Courts applying the professional judgment standard outside of the psychiatric hospital context, such as the Fourth Circuit in Doe 4, have not squarely addressed the implications of extending professional judgment beyond its originating context. As such, this Comment is left to grapple with these implications anew.
rights.\textsuperscript{292} So the standard does not—and could not—punish borderline instances of inadequate care.

Consider, for example, the case of Rafael Barcenas Padilla, who died from bronchopneumonia after nurses at the Otero County Processing Center waited three days before hospitalizing him despite his dangerously low oxygen levels.\textsuperscript{293} If Padilla’s estate sued the government for violating his Fifth Amendment right to adequate medical care, under the medical professional judgment standard, his estate would likely prevail. A failure to respond more promptly to such serious symptoms is likely a substantial departure from accepted medical opinion. Now, suppose alternatively that Padilla died from bronchopneumonia only a few hours after he presented with dangerously low oxygen levels. Suppose further that, under accepted medical opinion, nurses should respond to such symptoms with close monitoring at least every hour, but the Otero nurses checked on Padilla every ninety minutes. Given the limiting principle that to give rise to a constitutional violation, an official’s conduct must \textit{substantially depart} from accepted medical opinion, Padilla’s estate likely would not prevail on these facts. To be sure, the nurses departed from accepted medical opinion. But their conduct was \textit{negligent}, not a \textit{substantial} departure from accepted medical opinion.

Second, medical professional judgment need not require nonmedical personnel to have full medical training nor act beyond the scope of their expertise. The government has at least two workable options. One possibility is for nonmedical personnel to promptly seek out a medical professional when medical care is necessary. This is practicable in immigration detention facilities, which usually have on-site medical professionals.\textsuperscript{294} When this proves difficult, the limiting principles discussed above will prevent a court from unreasonably finding the government liable. A second possibility is for the government to develop standards that

\textsuperscript{292} See County of Sacramento v. Lewis, 523 U.S. 833, 849 (1998) (“[L]iability for negligently inflicted harm is categorically beneath the threshold of constitutional due process.”).

\textsuperscript{293} See generally Long, supra note 2.

\textsuperscript{294} See U.S. IMMIGR. & CUSTOMS ENFT, supra note 49, at 258 (2011). While unlicensed and underlicensed medical professionals are overextended in many facilities, see supra Part I, immigration detention centers ordinarily have access to physicians, either on site or at local medical facilities. So the standard remains workable as applied to unlicensed and underlicensed medical personnel because it is fact-specific such that whether such personnel acted unconstitutionally will turn on factors like whether they could have acted within their competence and whether a more qualified person was reasonably reachable.
comport with accepted medical judgment. Then, nonmedical personnel would need only follow such standards appropriately to satisfy medical professional judgment.

Finally, medical professional judgment need not unduly limit government discretion. Though medical professional judgment requires conformity with some accepted medical opinion, courts may need to define the term “accepted.” The law governing expert witnesses supplies a useful rubric. When litigants offer expert witnesses, courts must assess the reliability of the witnesses’ expertise. Courts solved this dilemma as to expert witnesses with the Daubert test. Daubert is a flexible approach that requires an expert opinion to be reliable according to some combination of factors, such as whether the opinion has been peer-reviewed and the known or potential error rate. Courts should consider a medical opinion to be “accepted” under the medical professional judgment standard when such opinion would be admissible under Daubert. Such approach is strikingly consistent with the detainee medical care doctrine’s governing principles. The doctrine values balancing between detainee rights and legitimate government interests. And Youngberg admonishes courts to permit the government flexibility in choosing among accepted opinions. The flexible Daubert standard would permit courts to balance the parties’ interests and account for cases’ discrete facts. And crucially, it would permit the government flexibility to make the standard workable without sacrificing immigrant detainees’ right to a heightened standard of care.

CONCLUSION

Federal detention is a quid pro quo: the government may constitutionally detain persons so long as it reciprocates with an appropriate level of care. This Comment has argued that, under the detainee medical care doctrine, federal courts have unconstitutionally given immigrant detainees the shortest end of the stick. The doctrine’s original sin is treating immigrant detainees as constitutionally comparable to pretrial criminal detainees. Though immigration detention descriptively resembles criminal confinement, constitutionally, it is civil. And thus, the comparison is ill

296 See id.
298 Youngberg, 457 U.S. at 321, 324.
299 See id. at 321.
founded. The doctrine’s seminal cases reflect that to determine the constitutional standard of medical care that the government owes to a detainee class, courts must balance the detainee class’s constitutional rights and the government’s legitimate interests. Three factors inform this balancing: (1) the detainee class’s constitutional liberty interest, (2) the reason for its confinement, and (3) the quality of the process preventing its confinement. In all three respects, immigrant detainees differ from pretrial criminal detainees such that the Constitution entitles them to a higher standard of medical care than pretrial criminal detainees: the professional judgment standard.

Yet, a constitutional standard of care is only as competent as its accompanying adjudicatory standard. To vindicate immigrant detainees’ right to a heightened standard of medical care—in the face of a descriptively carceral, constitutionally civil, detention system—the professional judgment standard must be defined as medical professional judgment. That is, medical care in immigration detention must not substantially depart from accepted medical opinion. Since 1929, the year in which George Smoot published The Law of Insanity, the quid pro quo theory has remained the theoretical anchor of the detainee medical care doctrine. It is time that immigrant detainees enjoy the benefit of the bargain to which they are constitutionally entitled. The government may not constitutionally detain immigrant detainees as it does without reciprocating with medical professional judgment.

Had Efrain Romero de la Rosa received the standard of care to which he was constitutionally entitled, he might have survived his stay at Stewart Detention Center. The same is true of Jose Azurdia, Thongchay Saengsiri, Rafael Barcenas Padilla, and many more who have suffered the consequences of inadequate medical care while confined in U.S. immigration detention. Immigrant detainees are entitled to a heightened standard of medical care; the medical professional judgment standard achieves that. The mandate is clear: “[e]stablishing standards for Immigration Detention is our challenge and our opportunity.”

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300 SCHRIRO, supra note 45, at 4.