14-35482

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BASSAM KHOURY, ET AL.,
Plaintiffs-Appellees,
v.
NATHALIE ASHER, ET AL.,
Defendants-Appellants.

On Appeal From The United States District Court For The Western District Of Washington, The Honorable Richard A. Jones, Presiding
No. 2:13-cv-01367-RAJ

BRIEF OF *AMICI CURIAE*

DETENTION WATCH NETWORK; FAMILIES FOR FREEDOM; FLORENCE IMMIGRANT AND REFUGEE RIGHTS PROJECT; IMMIGRANT DEFENSE PROJECT; IMMIGRANT LEGAL RESOURCE CENTER; IMMIGRATION EQUALITY; LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA; NATIONAL IMMIGRANT JUSTICE CENTER; NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD; TRANSGENDER LAW CENTER; UNIVERSITY OF ARIZONA, JAMES E. ROGERS COLLEGE OF LAW IMMIGRATION LAW CLINIC; UNIVERSITY OF CALIFORNIA, DAVIS SCHOOL OF LAW IMMIGRATION LAW CLINIC; UNIVERSITY OF CALIFORNIA, IRVINE SCHOOL OF LAW IMMIGRANT RIGHTS CLINIC; WASHINGTON DEFENDER ASSOCIATION'S IMMIGRATION PROJECT; AND WASHINGTON SQUARE LEGAL SERVICES IMMIGRANT RIGHTS CLINIC

IN SUPPORT OF PLAINTIFFS-APPELLEES AND IN SUPPORT OF AFFIRMANCE

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DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 29(c), *amici curiae* state that no publicly held corporation owns 10% or more of the stock of any of the parties listed herein, which are nonprofit organizations and community groups.

Pursuant to Fed. R. App. P. 29(c)(5), *amici curiae* state that no counsel for the party authored any part of the brief, and no person or entity other than *amici curiae* and their counsel made a monetary contribution to the preparation or submission of this brief.

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STATEMENT OF INTEREST

Amici curiae[1] are community groups, immigrant rights organizations, and legal service providers whose members and clients are directly affected by the Government's improper, expansive interpretation of the mandatory detention statute under *Matter of Rojas*, 23 I&N Dec. 117 (BIA 2001). *Amici* include Detention Watch Network; Families for Freedom; Florence Immigrant and Refugee Rights Project; Immigrant Defense Project; Immigrant Legal Resource Center; Immigration Equality; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; National Immigrant Justice Center; National Immigration Project of the National Lawyers Guild; Transgender Law Center; University of Arizona, James E. Rogers College of Law Immigration Law Clinic; University of California, Davis School of Law Immigration Law Clinic; University of California, Irvine School of Law Immigrant Rights Clinic; Washington Defender Association's Immigration Project; and Washington Square Legal Services Immigrant Rights Clinic. Detailed statements of interest are submitted as Appendix A.

Amici share a profound interest in exposing the unjust, harsh, and arbitrary consequences of the Government's improper and expansive interpretation of the

[1] All parties consent to the filing of this brief.

mandatory detention statute. *Amici* agree with the Appellee's arguments in this case, and submit this brief to provide the Court with the broader context in which the Government's position operates. In Point I, *infra*, *amici* describe Congress's chosen statutory scheme and the limited role that mandatory detention serves within it. In Point II, *infra*, *amici* provide case stories to illustrate how the Government's interpretation of the law is contrary to this statutory scheme and leads to unreasonable and arbitrary results. Because of the harsh consequences for our members and clients, unintended by Congress in enacting its detention scheme, *amici* urge this Court to reject the Government's interpretation in this case.

ARGUMENT

I. Congress Did Not Intend For Mandatory Detention To Apply To Noncitizens Who Have Long Been Released From Any Past Criminal Incarceration And Have Reintegrated Into Their Communities.

Mandatory detention—detention without the opportunity to seek bond—has profound effects on noncitizens, their families, and communities. In the Ninth Circuit, numerous county jails and prison facilities hold immigrant detainees, many of whom have long resided within this Court's jurisdiction.[2] Individuals who find themselves subject to mandatory detention in these facilities are deprived of any individualized assessment of their risk of flight or danger to the community. 8

[2] *See* Detention Watch Network Map, *at* http://www.detentionwatchnetwork.org/dwnmap (identifying detention facilities by state).

U.S.C. § 1226(c); 8 C.F.R. § 1003.19(h)(2)(i)(D. As such, mandatory detention forces many of these individuals to remain detained for lengthy periods of time as they litigate their cases.[3]

Mandatory detention thus carries significant costs. Those who are detained are much more likely to lack legal representation and face other, often insurmountable, obstacles in defending their removal cases than non-detained noncitizens.[4] Detention also impacts the detainee's family members—including the children, spouse, or parents of the detained—and community.[5] While an immigration judge would typically be able to consider whether family and community ties merit an individual's release from detention, no such hearing can take place in a mandatory detention case. 8 C.F.R. § 1003.19(h)(2)(i)(D) An

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[3] *See* American Civil Liberties Union, Prolonged Detention Fact Sheet, *at* https://www.aclu.org/sites/default/files/assets/prolonged_detention_fact_sheet.pdf.

[4] Seventy-nine percent of detained noncitizens lack representation, compared to twenty-eight percent of noncitizens who were initially detained but released and twenty-three percent of noncitizens who were never detained. *See* U.S. Dep't of Justice, Executive Office of Immigration Review, Separate Representation for Custody and Bond Proceedings, 79 Fed. Reg. 55659-62 (Sept. 17, 2014), *available at* https://www.federalregister.gov/articles/2014/09/17/2014-21679/separate-representation-for-custody-and-bond-proceedings. Detention adversely affects noncitizens' ability to defend themselves against removal. *See* Amnesty International, *Jailed Without Justice: Immigration Detention in the U.S.A.* 30-36 (Mar. 25, 2009) *at* http://www.amnestyusa.org/pdfs/JailedWithoutJustice.pdf.

[5] The mandatory detention of noncitizens can create severe trauma for their families, particularly children. *See* Amy Bess, National Association of Social Workers, *Human Rights Update: The Impact of Immigration Detention on Children and Families* 1-2 (2011), *available at* http://www.socialworkers.org/practice/intl/2011/HRIA-FS-84811.Immigration.pdf

immigrant may languish in detention for months or even years awaiting an adjudication of his or her removal proceedings, at significant taxpayer expense.[6]

Mandatory detention was not intended to be the norm for the immigration detention system. Rather, Congress created mandatory detention as the exception to the general rule. Under the general rule, federal immigration officials have the authority to choose whether to arrest and detain *or* release noncitizens based on an individualized assessment of their risk of flight and dangerousness. *See* 8 U.S.C. § 1226(a); *see also Matter of Patel*, 15 I&N Dec. 666, 666 (BIA 1976) ("An alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, . . . or that he is a poor bail risk." (citations omitted)). This general authority allows federal immigration officials to make evidence-based decisions about whom to detain through both an initial assessment (at the time of the immigration arrest) and through a bond hearing (similar to a bail or bond hearing in the criminal context).

In denying the right to an individualized assessment on release for a subgroup of immigrants, Congress choose to focus on immigrants who were about to be released from criminal custody for certain types of removable offenses. *See* 8

[6] *See* National Immigration Forum, *Detention Costs Still Don't Add Up to Good Policy* (Sept. 24, 2014) *at* http://immigrationforum.org/blog/display/detention-costs-still-dont-add-up-to-good-policy (calculating that immigration detention costs taxpayers $161 per person per day).

U.S.C. § 1226(c) (providing for the "Detention of Criminal Aliens" such that the Attorney General "shall take into custody any alien who . . . is inadmissible . . . or deportable . . . [for enumerated categories of offenses] . . . *when the alien is released* . . ." (emphasis added)). As an exception to the general rule permitting individualized assessments, Congress sought to mandate the detention of these individuals at the time of their release from criminal custody so that there would be a continuous chain of custody from the jail or prison to the immigration detention facility. Congress sought to avoid a situation in which immigrants serving sentences for their deportable offenses would return to their communities where it would be difficult to "identify . . . much less locate . . . and remove [them] . . . from the country." *Demore v. Kim*, 538 U.S. 510, 518-20 (2003); *see also* S. Rep. No.104-48, at 21 (1995) (discussing the problem of noncitizens released from their "underlying sentences" before the agency could complete deportation proceedings).[7] However, for immigrants who *are* identified and located in their communities, and only then placed in removal proceedings—including immigrants who were released from criminal custody long ago—Congress intended for federal immigration officials to continue to make individualized assessments about

[7] *Amici* do not suggest that they agree with Congress's choice to deprive bond hearings to noncitizens who are detained at the time of their release from incarceration for an enumerated offense. Regardless of the merits of Congress's choice, however, *amici* submit that the Government's interpretation of the scope of the mandatory detention statute goes much further than Congress intended.

whether or not detention is necessary through bond hearings under 8 U.S.C. § 1226(a). Thus, rather than sweep up all immigrants with past criminal convictions and deny them all bond hearings, mandatory detention "'outlines specific, serious circumstances under which the ordinary procedures for release on bond at the discretion of the immigration judge should not apply.'" *Castañeda v. Souza*, No. 13-1994, -- F.3d --, 2014 WL 4976140, *8 (1st Cir. Oct. 6, 2014) (holding that the mandatory detention statute applies only to noncitizens who were timely detained under its provisions (quoting *Saysana v. Gillen*, 590 F.3d 7, 17 (1st Cir. 2009)); *see also Saysana*, 590 F.3d at 17 (holding that mandatory detention "serves this more limited but focused purpose of preventing the return to the community of those released in connection with the enumerated offenses").

In construing the statute, however, the Board of Immigration Appeals ("BIA") has adopted a much more expansive view of the scope of mandatory detention than Congress intended. In *Matter of Rojas*, the BIA held that mandatory detention may apply to individuals who are no longer incarcerated for their removable offenses and thus have already reintegrated into the community when they are placed in removal proceedings. 23 I&N Dec. at 127. The BIA did acknowledge that the plain language of 8 U.S.C. § 1226(c) "does direct the Attorney General to take custody of aliens *immediately* upon their release from criminal confinement." *Id.* at 122 (emphasis added) (noting that detention is

mandated "when the alien is released" for the enumerated offenses under 8 U.S.C. § 1226(c)). However, the BIA held that the "when . . . released" clause was a "statutory command" rather than a "description of an alien who is subject to detention," and therefore mandatory detention could apply to any noncitizens with a relevant conviction, even if months or years had passed since their release from criminal incarceration. *See id*. at 121, 122. Seven BIA members dissented from the decision, asserting that Congress intended for mandatory detention only to apply to individuals when they are released from criminal custody, and not individuals later placed in removal proceedings. *See id*. at 135 (Rosenberg, dissenting).

The majority of federal courts have rejected the BIA's reasoning on the "when . . . released" clause. *See* Appendix B (collecting cases). These courts have generally held that mandatory detention applies only when the Government detains a noncitizen when he or she is released from custody for the offense that renders him removable, not any time afterwards. *Id.* For noncitizens who are detained after they have been reintegrated into the community, sometimes months or years after their release from criminal incarceration, § 1226(a) applies and the government retains the authority to detain or release that person.

The minority of courts that have upheld the BIA's reasoning, however, have done so by ignoring the various rules of statutory construction. Rather than

construe the plain language within the statutory scheme as a whole, these courts have chosen a reading that "defies logic" and ignores the "context of § 1226 as a whole," as the district court below aptly described the Government's interpretation. *See Khoury v. Asher*, No. C13-1367RAJ, 2014 U.S. Dist. LEXIS 31540, at *27-28 (W.D. Wash. Mar. 11, 2014). Moreover, these courts have ignored other statutory interpretation tools, such as the canon of constitutional avoidance (which would construe the statute to avoid constitutional concerns) and the rule of lenity (which would construe any lingering ambiguities in the statute in favor of the immigrant).[8] Rather than give meaning to Congress's chosen statutory terms, protect due process, and alleviate the harsh implications of denying immigrants their bond hearings, these courts have deferred to the BIA based on Congress's purportedly "aggressive[]" view with respect to "criminal aliens." *Hosh v. Lucero*, 80 F.3d 375, 380 (4th Cir. 2012)*; see also Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 157, 159 (3d Cir. 2013) (siding with an expansive view of the mandatory detention statute in light of Congress's concerns regarding "dangerous aliens").

As the First Circuit recently held in *Castañeda*, however, these courts'

[8] *See also* Alina Das, *Unshackling Habeas Review:* Chevron *Deference and Statutory Interpretation in Immigration Detention Cases*, 90 N.Y.U. L. Rev. -- (forthcoming 2015), *available at* http://ssrn.com/abstract=2467196 (discussing the canon of constitutional avoidance, rule of lenity and other liberty-enforcing rules of statutory construction that should apply in detention cases).

"generalized statements of legislative intent paint with far too broad a brush" in light of the consequences that mandatory detention carries for immigrants who have long been in the community. 2014 WL 4976140, at *8 (citation and quotation marks omitted). The legitimacy of mandatory detention rests upon Congress's presumption that such detainees may appropriately be presumed flight risks and dangers to society. Yet "[w]hen the government has delayed several years before arresting an alien, the presumption of dangerousness and flight risk is eroded by the years in which the alien lived peaceably in the community." *Id.*; *see also Demore*, 538 U.S. at 532 (Kennedy, J., concurring) ("Were there to be an unreasonable delay by [ICE] in pursuing . . . deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons."). Uprooting the lives of individuals who are reintegrated into the community creates a ripple of harsh consequences in their families and communities, without serving the purpose that Congress intended by enacting mandatory detention.

The serious concerns and arbitrary consequences caused by the Government's position are illustrated by the case stories described below. The individuals swept up by the Government's position in this case are not the ones Congress sought to deny bond hearings—rather, they are among the individuals

who are *most likely* to merit release on bond and ultimately win their immigration cases due to their equities. These are individuals who have returned to their communities following their release from incarceration, for who immigration officials have delayed removal proceedings for months or years without explanation. They have used that time to live productive lives, care for their families, and give back to their communities. Denying them bond hearings after they have returned to the community, often for months or years following a past removable offense does not serve the limited and focused purposes of the mandatory detention statute.

II. As Case Examples Illustrate, *Matter of Rojas* Is Contrary To Congressional Intent Because It Deprives The Government Of Its Authority To Release Noncitizens Most Likely To Establish That They Are Not A Flight Risk Or Danger To The Community.

In the years following *Matter of Rojas*, the Government has vigorously applied that decision by detaining, without bond, untold numbers of noncitizens, many times months or years after their release from criminal custody. This expansion of mandatory detention flies in the face of Congress's statutory scheme, as demonstrated by the stories below.

A. Individuals Subject To *Matter of Rojas* Are Likely To Have Developed Positive Equities Relevant To Bond During Their Reintegration Into The Community.

Despite the mandatory detention statute's plain focus on denying bond hearings to noncitizens who are detained "*when . . . released*" from criminal

custody, the Government argues that Congress wanted "*all* criminal aliens" to be detained without bond hearings, no matter how long ago their conviction occurred or how much evidence of positive equities, family ties, work history, and rehabilitation they have accumulated in the interim. *See* Appellants Br. at 30 (quoting *Rojas*, 23 I. & N. Dec. at 122) (emphasis in original). The Government's position fails to consider the demonstrable differences in likelihood of flight risk and dangerousness between those detained "when . . . released" from criminal custody and those who have been reintegrated peaceably in to the community. *See Castañeda*, 2014 WL 4976140, at *11 ("[T]hose who have resided in the community for years after release cannot reasonably be presumed either to be dangerous or flight risks."); *Martinez Done v. McConnell*, No. 14 Civ. 3071 (SAS), -- F.3d --, 2014 U.S. Dist. LEXIS 143453, at *34 (Oct. 8, 2014) (noting that, for many individuals who return to the community but are later detained, "they often pose little to no risk of flight, and even less danger to 'public safety.'" (citations omitted)); *Monestime v. Reilly*, 704 F. Supp. 2d 453, 458 (S.D.N.Y. 2010) (for individuals who are living peaceably in the community since a past offense, "DHS can only determine whether [the petitioner] poses a risk of flight or danger to the community through an individualized bond hearing").

The stories of individuals affected by *Matter of Rojas* illustrate how necessary bond hearings are to determinations of flight risk and danger. The

individuals are likely to be able to demonstrate the numerous factors relevant to determining flight risk or danger to the community, include the "length of residence in the community," the "existence of family ties," and "stable employment history." *Matter of Andrade*, 19 I&N Dec. 488, 489 (BIA 1987) (describing the factors relevant to bond determinations).[9] Individuals affected by *Matter of Rojas* have often had months and years to build up positive equities—proving their rehabilitation from any past offenses, starting and caring for families, and gaining stable employment. Depriving them of bond hearings despite their reintegration with the community and evidence of rehabilitation demonstrates the arbitrary nature of the Government's position in this case.

Saul Martin

Saul Marin is a resident of Washington who came to the United States in 1988 and has lived here ever since. *See* Declaration of Robert Pauw (hereinafter "Pauw Decl.") (on file with *amici*). Over twelve years ago, Mr. Marin received two convictions for simple drug possession, in 2001 and 2002 respectively. *Id.*

[9] Similarly, these individuals are likely to able to overcome the various adverse factors considered in bond determinations, including dangerousness and "the recency of [criminal] activity." *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006); *see also Matter of Urena*, 25 I&N Dec. 140 (BIA 2009) (holding that an immigration judge may not release a noncitizen on bond if the noncitizen is determined to be a danger to the community).

Since that time, Mr. Marin has rebuilt his life. He started a family and has four U.S. citizen children—two sets of twins, ages seven and nine. *Id.* He lives with the mother of his children and works hard to support his family financially. *Id.* In addition, Mr. Marin is very active in his children's schooling and upbringing. *Id.* He plays a particularly important role in caring for one his sons who has a learning disability and requires special education programming. *Id.* In fact, Mr. Marin served on the board of the Early Childhood Education and Assistance Program ("ECEAP") in the district where his children are in school. *Id.* He would regularly attend monthly meetings and coordinate with other parents, and advocated for the ECEAP program in Olympia, Washington. *Id.*

Despite the life that Mr. Marin built and the critical role he played for his family and for the community, Mr. Marin was arrested by ICE officers as he was leaving his home to go to work in September 2012. *Id.* ICE went to his apartment complex to arrest another person, but then asked Mr. Marin about his immigration status. *Id.* Taking him to the Northwest Detention Center, ICE refused to set bond on the basis of his 2001 and 2002 drug possession convictions. *Id.* Mr. Marin sought a bond redetermination hearing, but the Immigration Judge held that Mr. Marin was not eligible for bond due to his old convictions. *Id.*

As a result, Mr. Marin was unable to present the twelve years of evidence of his rehabilitation following his past drug possession convictions and spent a total

of seven months in mandatory immigration detention. His two sets of twins and the mother of his children suffered greatly while he was in detention, and were unable to present testimony of his strong ties to his family and community in Washington as part of any bond hearing. His contributions to the community were also ignored.

After the Immigration Judge refused to set bond, Mr. Marin filed a habeas petition in the U.S. District Court Western District of Washington challenging his mandatory detention. *Id*. In April 2013, the District Court ordered him a bond hearing. *Id*.; *Marin-Salazar v. Asher*, No. C13–96–MJP–BAT, 2013 WL 1499047, at*5 (W.D. Wash. Mar. 21, 2013). Finally he and his family were able to provide evidence of the last twelve years of his life and his contributions to his family and community. The Immigration Judge ordered his release on $6,000 bond, and Mr. Marin is now back with his family. Pauw Decl. Denying him a bond hearing for seven months after he had been a productive member of the community for twelve years failed to serve the purpose of mandatory detention.

Petro Snegirev

Petro Snegirev is a longtime lawful permanent resident who has resided in the United States for over forty-five years. *See Snegirev v. Asher*, No. 12-cv-1606 (MJP), 2013 WL 942607, at *1 (March 11. 2013). Since coming to the United States from Brazil when he was four years old, he has made the United States his

home. *See* Hab. Pet'n, *Snegirev v. Asher*, No. 12-cv-1606 (MJP) (W.D. Wash.) (filed on Sept. 18, 2012), at ¶5. Mr. Snegirev has a U.S. citizen wife, three U.S. citizen children, and four U.S. citizen step-children. *Id.* He and his wife owned their home in Salem, Oregon, where they were raising five of their children together. *Id.*

In July 2012, ICE officers arrested Mr. Snegirev outside his home in Salem, placing him in removal proceedings. *Id.* at ¶¶ 16-17. Despite his family obligations and longstanding ties to the community, he was taken out of state to the Northwest Detention Center in Tacoma, Washington, where he remained in detention without a bond hearing for the next eight months. *Id.* at ¶ 26. The government based his mandatory detention on his past removable drug convictions, the last of which occurred in 2006, six years before his removal proceedings. *Snegirev*, 2013 WL 942607, at *1. Immigration officials were apparently aware of Mr. Snegirev's possible deportability as early as 2005, when they initially spoke to him following an arrest, but declined to detain him and place him into removal proceedings at that time. *See* Hab. Pet'n, *Snegirev v. Asher*, No. 12-cv-1606 (MJP) (W.D. Wash.) (filed on Sept. 18, 2012), at ¶¶ 6-10, 17.[10]

[10] Many immigrants come into contact with immigration officials months or years prior to their detention. This includes voluntary contact (when immigrants apply for adjustment of status or citizenship or renew their greencards). Yet immigration officials still wait months or years before choosing to detain and initiate removal

In March 2013, the U.S. District Court for the Western District of Washington granted Mr. Snegirev's habeas petition challenging his mandatory detention on the grounds that he was not taken into custody "when . . . released" from criminal custody as required by § 1226(c) and ordered the government to provide him a bond hearing. *See* Snegirev, 2013 WL 942607, at *4. In rejecting the government's arguments, the Court placed heavy emphasis on the fact that Mr. Snegirev had been "a permanent resident of this country for more than forty-five years, [and] had been living in the community as a free man for more than six years before being taken into civil custody." *Id.* at *3. After eight months of detention far from his wife, children, and home in Oregon, Mr. Snegirev was finally provided with a bond hearing and was released on bond. *See* Decl. of Jesse Maanao (on file with *amici*).

B. *Matter of Rojas* Improperly Restricts the Government's Authority to Exercise Discretion, Preventing The Release Of Those Who Are Not A Flight Risk Or Danger.

The stories of people directly affected by *Matter of Rojas* not only undermine the Government's explanations for why mandatory detention should apply to people who have long been released from criminal custody, they also

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proceedings. This underscores the arbitrary nature of *Matter of Rojas*, which allows the Government to wait years before detaining someone without providing any rationale, and only then to deem that person to be categorically a flight risk and danger to the community.

underscore the problems with the Government's "better late than never" argument. The Government suggests that even if Congress intended for the Government to deny bond hearings only to those individuals who are detained when they are released from criminal custody, the Government does not "lose its authority" to deny bond hearings if the Government chooses to detain months or years later. *See* Appellants Br. at 38-53.

Contrary to this assertion, the Government loses no authority when mandatory detention is contained to its limited purpose; rather, it is the BIA's expansive reading of § 1226(c) that restricts the authority of ICE officers and immigration judges to exercise their discretion in determining custody conditions. Under § 1226(a), immigration officials may still detain a noncitizen after an individualized hearing. However, when district courts have rejected *Matter of Rojas* and ordered a bond hearing, immigration officials often choose to release the very individuals to whom *Matter of Rojas* applies. *See* Appellee Br. at 14-15 (discussing the 86% bond grant rate in cases following the district court's decision in *Khoury*).

The Government's own actions in these cases thus indicate that applying § 1226(c) only to those stepping directly out of criminal custody is not a "sanction," but rather allows immigration officials to release noncitizens who have demonstrated they are not flight risks or dangerous.

Roberto Sanchez Gamino

Roberto Sanchez Gamino first came to the United States over twenty years ago from Mexico and has resided here as a longtime lawful permanent resident ever since. *See* Hab. Pet'n, *Sanchez Gamino v. Holder*, No. 3:13-cv-05234-RS (N.D. Cal. Nov. 12, 2013), ECF No. 1 (hereinafter "Sanchez Gamino Hab. Pet'n"), ¶ 4. He has two U.S. citizen children and is a resident of Arbuckle, California. *Id.* In addition to his children, Mr. Sanchez Gamino has an extensive family in the United States, including his mother and five siblings, who are all U.S. citizens or lawful permanent residents. *Id.* ¶ 22.

In August 2013, ICE arrested Mr. Sanchez Gamino at his home. *Id.* ¶ 1. ICE initiated removal proceedings against him, charging him with deportability based on previous convictions he received in 1999 and 2003. *Id*. Despite having had no further criminal convictions in the *ten years* that had preceded his removal proceedings, Mr. Sanchez Gamino was denied bond on the theory that he was subject to mandatory detention pursuant to *Matter of Rojas*. *Id.* ¶ 19.

Mandatory detention exacted a considerable toll on both Mr. Sanchez Gamino and his family. For four months, Mr. Sanchez Gamino languished in detention. His children lost his financial support. *See* Decl. of Lamar Peckham (hereinafter Peckham Dec.) (on file with *amici*). His partner struggled to pay their mortgage. *Id.* In December 2013, the United States District Court for the Northern

District of California rejected the Government's reading of the mandatory detention statute and ordered the Government to provide Mr. Sanchez Gamino with a bond hearing. Order Granting Petition for Writ of Habeas Corpus, *Sanchez Gamino v. Holder*, No. 3:13-cv-05234-RS (N.D. Cal. Dec. 12, 2013), ECF No. 7.

Mr. Sanchez Gamino and his family were finally permitted to present evidence of his ten years of rehabilitation and community ties following his last conviction. On January 8, 2014, Immigration Judge Alison E. Daw released Mr. Sanchez Gamino on a $3,000 bond based on his strong equities, and the government waived its right to appeal this decision. *See* Peckham Decl.; *In re: Sanchez Gamino*, San Francisco, CA (Imm. Ct. Jan. 8, 2014) (on file with *amici*) (setting bond and noting parties' waiver of appeal). After four months of unnecessary detention, Mr. Sanchez Gamino is now able to pursue his removal proceedings at home with his family.

Bassam Khoury

Bassam Khoury, the Appellee in this case, also illustrates how *Matter of Rojas* prevents immigration officials from exercising discretion in cases that clearly merit it. Mr. Khoury is a longtime lawful permanent resident from Palestine who has lived in the United States for nearly forty years. *Khoury v. Ashar*, No. C13-1367RAJ, 2014 U.S. Dist. LEXIS 31540, at *6 (Mar. 11, 2014). He has an extended U.S. citizen family, including two sisters, one U.S. citizen son,

and one U.S. citizen granddaughter. Mem. In Support of Bond Determination, *In re: Khoury*, Tacoma, WA (Imm. Ct. filed Jun. 26, 2013) at 2 (hereinafter Mem. In Support of Bond) (on file with *amici*). Described by his family, neighbors, and employer as an exemplary caretaker and worker, Mr. Khoury has deep roots in Portland, Oregon where he was working steadily and spending time with his family for many years. Mem. In Support of Bond Exhs. at 7-19.

In April 2013, ICE arrested Mr. Khoury at his home and detained him pending removal proceedings. Decl. of Robert Jaeggli, Exh. Record of Deportable Alien (on file with *amici*). Despite his family ties and life in Oregon, ICE detained him out of state at the Northwest Detention Center in Tacoma, Washington, far from home. *Id.* His removal proceedings were based on Mr. Khoury's single drug conviction from 2011. *Id.* He had not been convicted of any other offense prior to or following his 2011 conviction. *Id.*

Mr. Khoury was subject to more than six months of mandatory detention. Eventually, on October 24, 2013, Mr. Khoury received a bond hearing pursuant to this Court's decision in *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013), which places a six-month limit on mandatory detention under § 1226(c). The IJ found that he posed no danger to the community and no flight risk requiring his detention and set an $8,000 bond. Mr. Khoury posted the bond on same day and was released. In June 2014, the Immigration Judge terminated Mr. Khoury's

removal proceedings, without opposition from government counsel. *See* Order of Termination, *In re: Khoury*, Portland, OR (Imm. Ct. filed June 2, 2014) (on file with *amici*). Had he been afforded a bond hearing at the outset of his removal proceedings, he could have defended his removal proceedings from home, with his family, instead of being needlessly separated from them.

C. Individuals Subject To *Matter of Rojas* Are Likely To Have Challenges To Removal And An Incentive To Pursue Their Case.

Mr. Khoury's case, among others, also undermines one of the Government's key arguments—that *Matter of Rojas* comports with Congressional purpose to prevent immigrants from absconding because those facing "certain" removal "possess a strong incentive to flee after—but not necessarily before—immigration authorities turn their attention to them." Appellants Br. at 32 (citations omitted). As an initial matter, the Government's reasoning is overbroad and unpersuasive. *See Castañeda*, 2014 WL 4976140, at *8 n.7 ("This theory is speculative and exists with respect to all detainees, not only to detainees who have been convicted of a predicate offense."). But in addition, as Mr. Khoury's case and others demonstrate, many of the individuals subject to *Matter of Rojas* are likely to have strong claims in their removal cases. Far from facing certain removal, noncitizens living in the community often have a strong incentive to return to Immigration Court to pursue their case, and many ultimately prevail.

Abner Eugenio Dighero-Castaneda

Abner Eugenio Dighero-Castaneda is one of many individuals whose strong ties to the community and substantial—and ultimately successful—claims against removability undermine the Government's characterization of the immigrants subject to *Matter of Rojas*.

Mr. Dighero-Castaneda was born in Guatemala and has lived in the United States for more than 30 years, first as a lawful permanent resident and then as a U.S. citizen. *See* Hab. Pet'n, *Dighero-Castaneda v. Napolitano*, No. 2:12-cv-02367-DAD (E.D. Cal. Sep. 14, 2012), ECF No. 1 (hereinafter "Dighero-Castaneda Hab. Pet'n"), ¶¶ 14-17. In 1990, when Mr. Dighero-Castaneda was only eight years old, his father abandoned him and his mother. *Id.* ¶ 16. Mr. Dighero-Castaneda's mother later naturalized as a U.S. citizen in 1997, when Mr. Dighero-Castaneda was fifteen. *Id.* Subsequently, in 2012, Mr. Dighero-Castaneda's mother filed a petition regarding the dissolution of her marriage, which would establish Mr. Dighero-Castaneda's derivation of U.S citizenship given that his mother had sole custody of him at the time of her naturalization. *Id.* ¶ 16-17.

During that same year, however, ICE placed Mr. Dighero-Castaneda into removal proceedings, charging him as deportable based on convictions he received in 2002 and 2008 for theft. *See* Declaration of Anoop Prasad (hereinafter "Prasad Decl.") (on file with *amici*). For his 2008 conviction, he was sentenced to sixteen

months in prison. Dighero-Castaneda Hab. Pet'n ¶ 18. He completed his sentence and was released from custody on March 3, 2009, completing his parole in April 2010. *Id.*

In the years following his release from his last conviction, Mr. Dighero-Castaneda turned his life around. He was gainfully employed and married his U.S. citizen wife. *Id.* ¶ 23. However, in July 2012, ICE officers called Mr. Dighero-Castaneda, stating they were probation officers seeking to meet with him, and then arrested him outside his home when he appeared with his paperwork. *Id.* ¶ 20-22.

ICE detained Mr. Dighero-Castaneda without bond at the Yuba County Jail in Marysville, California for the next eight months, even though ICE was aware that he would automatically obtain citizenship upon his mother's dissolution of marriage. *Id.* ¶ 22; Prasad Decl ¶ 6. Mr. Dighero-Castaneda requested an individualized bond hearing from the Immigration Judge, but the judge held that he was subject to mandatory detention under § 1226(c). Dighero-Castaneda Hab. Pet'n ¶ 24. On September 14, 2012, Mr. Dighero-Castaneda filed his habeas petition in the U.S. District Court for the Eastern District of California challenging his mandatory detention on the grounds that ICE did not take him into custody "when . . . released" from relevant criminal custody, as the statute requires. *Id.* On March 15, 2013, the District Court granted his habeas and ordered he be provided

with an individualized bond hearing. *Dighero-Castaneda v. Napolitano*, No. 2:12–cv–2367 DAD, 2013 WL 1091230, at *7 (E.D. Cal. Mar. 15, 2013).

On March 20, 2013, Mr. Dighero-Castaneda was released on a $3,000 bond based on his strong equities. Prasad Decl. ¶ 10. On May 9, 2013, Mr. Dighero-Castaneda's mother was granted dissolution of marriage, and Mr. Dighero-Castaneda was granted citizenship automatically retroactive to May 16, 1990, the day his parents had separated. *Id*. ¶¶ 10-12.

Mr. Dighero-Castaneda's mandatory detention exacted a terrible toll on Mr. Dighero-Castaneda's life and family. In detention, he suffered from physical ailments and depression and still suffers from depression in the time following his release. *Id*. ¶ 9. He lost his job, which created financially difficulty for his wife, and the stress from his eight-month-long detention from his wife ultimately caused them to separate. *Id.* ¶¶ 7-8. Although he is a U.S. citizen and need not live in fear of being detained again, he will never be able to regain what he lost, needlessly, during his mandatory detention.

Ysaias Quezado-Bucio

Ysaias Quezado-Bucio is a longtime lawful permanent resident who came to the United States from Mexico in 1984. *Quezada-Bucio v. Ridge*, 317 F. Supp. 2d 1221, 1225 (W.D. Wash. 2004). Detained in 2003, three years after his allegedly removable conviction, Mr. Quezado-Bucio was held without the opportunity to

seek bond under *Matter of Rojas*. *Id.* After the U.S. District Court for the Western District of Washington rejected *Matter of Rojas* and ordered a bond hearing for Ysaias Quezada-Bucio, the Immigration Judge ordered his release on $7,500 bond. *See id.* at 1231; Pet'r Motion for EAJA Fees, *Quezada-Bucio v. Ridge*, No. C03-3668L (W.D. Wash.) (filed on Jul. 1, 2004), at 2 (noting release on $7,500 bond). After his release, Mr. Quezada-Bucio eventually won his case, five years after ICE put him into removal proceedings. *See In re: Quezada-Bucio*, Seattle, WA (Imm. Ct. Oct. 28, 2008) (on file with amici) (terminating Mr. Quezada-Bucio's case on the ground that his conviction is not a removable offense).

The cases of Mr. Khoury, Mr. Dighero-Castaneda, and Mr. Quezada-Bucio are not unusual. In Fiscal Year 2014, 49.8% of all noncitizens in removal proceedings nationwide were ultimately allowed to stay in the United States.[11] Individuals subject to *Matter of Rojas*—lawful permanent residents and others with extensive ties to the community and years of rehabilitation—are among those most likely to successfully pursue relief. Yet they are deprived of a bond hearing based on the Government's strained interpretation of the mandatory detention statute.

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[11] *See* Transactional Records Access Clearinghouse, *U.S. Deportation Outcomes By Charge*, *at* http://trac.syr.edu/phptools/immigration/court_backlog/deport_outcome_charge.php (last visited Oct. 9. 2014).

D. By Disrupting the Stable Lives of Individuals, Families, and Communities, *Matter of Rojas* Leads to Harsh Results.

Matter of Rojas's utter lack of a temporal limitation creates considerable hardship for noncitizens, their families and communities. *See Martinez Done*, 2014 U.S. Dist. LEXIS 143453, at *32 ("[T]he government's construction of section 236(c) would confer limitless authority on the Attorney General to pluck immigrants from their families and communities with no hope of release pending removal—even decades after criminal confinement."); *see also Castañeda*, 2014 WL 4976140 at *11 (noting that "the harsh consequences of uprooting these individuals from the community" is "a feature which only underscores the arbitrary nature of the detention" (internal quotation marks omitted)). These harsh consequences underscore why courts have seen fit to invoke the rule of lenity as a ground for refusing to apply *Matter of Rojas*. *See, e.g., Castañeda v. Souza*, 952 F. Supp. 2d 307, 320 (D. Mass. 2013); *Castillo v. Ice Field Office Dir.*, 907 F. Supp. 2d 1235, 1240 (W.D. Wash. 2012). The stories of individuals subjected to the holding in *Matter of Rojas* further illustrate the importance of avoiding harsh consequences.

Bertha Mejia Espinoza

Bertha Mejia Espinoza is a 54-year-old resident of Oakland, California, and has lived in the United State for over thirty years. *See* Hab. Pet'n, *Espinoza v. Aitken*, No. 5:13-cv-00512-EJD (N.D. Cal. Feb. 6, 2013), ECF No. 1 (hereinafter

"Espinoza Hab. Pet'n"), ¶¶ 10, 15. Ms. Mejia has a large U.S. citizen family, including four U.S. citizen children and several U.S citizen grandchildren. *Id.* She is the primary caretaker of one of her grandsons. *Id.* ¶ 15.

Before coming to the U.S., Ms. Mejia experienced a difficult childhood in El Salvador. Ms. Mejia was forced to leave school at a young age to support her impoverished family, and resorted to stealing food so that her siblings would not go hungry. *Id.* ¶ 16. When she was twelve years old, Ms. Mejia's older cousin began to sexually abuse and beat her. *Id.* Her stealing became more frequent as she experienced the stress and shame of this ongoing abuse. *Id*. She eventually fled El Salvador and settled in California. *Id.* ¶ 17.

Ms. Mejia was able to start a family and provide for them in her new country, supporting them by cleaning homes and business. *Id.* at ¶¶ 17-18. However, in 2011, ICE officers arrived at Ms. Mejia's home and arrested her for purposes of removal proceedings. *Id.* ¶ 20. Despite the fact that she was the primary caretaker for her young grandchild, ICE took Ms. Mejia into custody and denied her bond, asserting that she was subject to mandatory detention based on her past convictions. *Id.* Over the years, Ms. Mejia had been arrested for shoplifting food items from stores. *Id.* Although she no longer needed to steal food to survive when she came to the United States, Ms. Mejia continued to feel urges to steal food when experiencing anxiety or depression. *Id.* ¶ 19. In 2005,

after coming to the U.S., she had been raped by an employer, which deepened her depression and trauma. *Id.* ¶ 18. In 2011, she was diagnosed with kleptomania by a clinical psychologist, for which she is currently receiving counseling. *Id.*; *see also* Decl. of Rosy Cho (on file with *Amici*) (hereinafter "Cho Decl."). Her last arrest for shoplifting occurred on October 21, 2010. Espinoza Hab. Pet'n ¶ 20. She was released on the same day and has not been in criminal custody since then. *Id.*

Nonetheless, nearly a year following her last conviction, ICE placed her in removal proceedings, where Ms. Mejia applied for asylum and withholding of removal based on the persecution she had and would face if removed to El Salvador, and sought a U visa, which is available to victims of certain types of crime (including rape). *Id.* ¶ 21. Despite the strength of her applications for relief, ICE mandatorily detained Ms. Mejia, and the Immigration Judge denied her a bond hearing based on *Matter of Rojas. Id.* ¶ 26. Ms. Mejia eventually filed a habeas petition with the U.S. District Court for the Northern District of California, and in March 2013, the District Court granted the petition, ordering that Ms. Mejia be provided with an individualized bond hearing before an Immigration Judge. *See Espinoza v. Aitken*, No. 5:13-cv-00512 EJD, 2013 WL 1087492 (N.D. Cal. Mar. 13, 2013).

Following the subsequent court-ordered bond hearing—where approximately fifteen members of Ms. Mejia's family were present, and her clinical psychologist testified—the Immigration Judge denied bond. *See* Cho Decl. Off the record, the Immigration Judge noted that he disagreed with the district court's ruling that Ms. Mejia was not subject to mandatory detention. *See id*. Based on this and several problematic comments the Immigration Judge made regarding Ms. Mejia's eligibility for relief, Ms. Mejia's attorney raised concerns about bias to the judge and the BIA. *See id.* Following several motions, appeals, and a remand for further consideration, the Immigration Judge eventually held a custody redetermination hearing and granted Ms. Mejia release on $10,000 bond. *See id.* On November 15, 2013, after more than two years of detention, Ms. Mejia was finally released. *See id.* She is now before a different Immigration Judge with a strong claim for relief from removal. *See id.* She is back with her family and receives counseling for her kleptomania. *See id.* However, the two years of detention without bond devastated Ms. Mejia and her family, depriving her grandson of his primary caretaker, separating a grandmother and mother from her numerous children and grandchildren. *See id.* Had immigration officials been able to consider these factors at the outset of her removal proceedings, these years of hardship could have been avoided.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to reject he Government's interpretation of the mandatory detention statute as contrary to Congressional intent and wholly unreasonable. Doing so will ensure that our community members and clients will receive bond hearings where they may present their individual circumstances, so that the months and years of evidence of their rehabilitation and reintegration into their families and our communities will not be ignored.

Dated: November 3, 2014
New York, NY

Respectfully submitted,

/s/ Alina Das

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APPENDIX A:
STATEMENTS OF INTEREST OF *AMICI CURIAE*

Detention Watch Network

As a coalition of approximately 200 organizations and individuals concerned about the impact of immigration detention on individuals and communities in the United States, Detention Watch Network (DWN) has a substantial interest in the outcome of this litigation. Founded in 1997, DWN has worked for more than two decades to fight abuses in detention, and to push for a drastic reduction in the reliance on detention as a tool for immigration enforcement. DWN members are lawyers, activists, community organizers, advocates, social workers, doctors, artists, clergy, students, formerly detained immigrants, and affected families from around the country. They are engaged in individual case and impact litigation, documenting conditions violations, local and national administrative and legislative advocacy, community organizing and mobilizing, teaching, and social service and pastoral care. Mandatory detention is primarily responsible for the exponential increase in the numbers of people detained annually since 1996, and it is the primary obstacle before DWN members in their work for meaningful reform of the system. Together, through the "Dignity Not Detention" campaign, DWN is working for the elimination of all laws mandating the detention of immigrants.

Families for Freedom

Families for Freedom (FFF) is a multi-ethnic network for immigrants and their families facing deportation. FFF is increasingly concerned with the expansion of mandatory detention. This expansion has led to the separation of our families without the opportunity for a meaningful hearing before an immigration judge and has resulted in U.S. citizen mothers becoming single parents; breadwinners becoming dependents; bright citizen children having problems in school, undergoing therapy, or being placed into the foster care system; and working American families forced to seek public assistance.

Florence Immigrant and Refugee Rights Project

The Florence Immigrant and Refugee Rights Project ("Florence Project") provides free legal services to *pro se* immigrants, refugees, and United States citizens detained by the Immigration and Customs Enforcement agency in Arizona for immigration processing. In 2013, more than 8,200 detained individuals facing removal charges observed a Florence Project presentation on immigration law and procedure. That same year, the staff provided representation or individualized pro se support services to approximately 5,600 detained immigrants.

Many of the adults who receive Florence Project services are subject to detention because of a criminal record. In Arizona, most cases involving an application for relief from removal take well more than six months to reach a decision. The

availability of an individualized bond hearing for immigrants is critical to limiting the unnecessary detention of the population that the Florence Projects serves. Beyond these organization-specific concerns, the Florence Project has a keen interest in seeing that the immigration detention statutes are applied in a constitutional, consistent, predictable, and just manner nationwide.

Immigrant Defense Project

The Immigrant Defense Project ("IDP") is a not-for-profit legal resource and training center dedicated to promoting fundamental fairness for immigrants accused and convicted of crimes. IDP provides defense attorneys, immigration attorneys, and immigrants with expert legal advice, publications, and training on issues involving the interplay between criminal and immigration law. IDP seek to improve the quality of justice for immigrants accused of crimes and therefore has a keen interest in ensuring that immigration law is correctly interpreted to give noncitizens convicted of criminal offenses the full benefit of their constitutional and statutory rights.

Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) is a national back-up center that is committed to fair and humane administration of United States immigration laws and respect for the civil and constitutional rights of all persons. The ILRC has special expertise in immigration consequences of crimes and since 1990 has

consulted on thousands of cases in criminal and immigration proceedings, and has provided training to criminal court defense counsel, prosecutors and judges, as well as immigration practitioners. The ILRC has filed briefs as amicus curiae in key decisions in this area, including Supreme Court cases such as *Padilla v. Kentucky*, 559 U.S. 336 (2010).

Immigration Equality

Immigration Equality is a national organization that works to end discrimination in immigration law against those in the lesbian, gay, bisexual, and transgender ("LGBT") community and immigrants who are living with HIV or AIDS. Incorporated in 1994, Immigration Equality helps those affected by discriminatory practices through education, outreach, advocacy, and the maintenance of a nationwide resource network and a heavily-trafficked website. Immigration Equality also runs a pro bono asylum program and provides technical assistance and advice to hundreds of attorneys nationwide on sexual orientation, transgender, and HIV-based asylum matters. Immigration Equality is concerned by the Department of Homeland Security's use of *Matter of Rojas* to detain noncitizens and hold them for months and years without the possibility of a bond determination to assess their individualized risk of flight or community ties. While in detention, noncitizens, particularly LGBT noncitizens, often face hostile and unsafe detention conditions that deprive them of access to medically

necessary treatments and leave them vulnerable to abuse. Also, detained noncitizens are routinely transferred far from available counsel and family to remote and rural detention facilities, where the noncitizen faces insurmountable odds in defending against a removability charge.

Lawyers' Committee for Civil Rights of the San Francisco Bay Area

Founded in 1968, Lawyers' Committee for Civil Rights of the San Francisco Bay Area (LCCR) is a civil rights and legal services organization that protects and promotes the rights of communities of color, low-income individuals, immigrants, and refugees. LCCR is committed to ending the excessive incarceration of all people, including the no-bond detention of individuals who do not pose a flight risk or a danger to their communities. LCCR is keenly aware of the immeasurable costs exacted from the families and communities of those subject to detention. As such, we support a fair, reasonable, and statutorily correct interpretation of the mandatory detention statute.

National Immigrant Justice Center

Heartland Alliance's National Immigrant Justice Center (NIJC) is a Chicago-based organization working to ensure that the laws and policies affecting non-citizens in the United States are applied in a fair and humane manner. NIJC provides free and low-cost legal services to approximately 10,000 noncitizens per year, including 2000 per year who are detained. NIJC represents hundreds of noncitizens who

encounter serious immigration obstacles as a result of entering guilty pleas in state criminal court without realizing the immigration consequences.

National Immigration Project of the National Lawyers Guild

The National Immigration Project of the National Lawyers Guild (National Immigration Project) is a nonprofit membership organization of immigration attorneys, legal workers, jailhouse lawyers, grassroots advocates, and others working to defend immigrants' rights and to secure a fair administration of the immigration and nationality laws. The National Immigration Project provides technical assistance to the bench and bar, litigates on behalf of noncitizens as amici curiae in the federal courts, hosts continuing legal education seminars on the rights of noncitizens, and is the author of numerous practice advisories as well as IMMIGRATION LAW AND DEFENSE and three other treatises published by Thompson-West. Through its membership network and its litigation, the National Immigration Project is acutely aware of the problems faced by noncitizens subject to mandatory detention under 8 U.S.C. § 1226(c).

Transgender Law Center

Transgender Law Center (TLC) is the nation's largest organization dedicated to advancing the rights of transgender and gender nonconformìng people. TLC strives to change law, policy, and attitudes so that all people can live safely, authentically, and free from discrimination regardless of their gender identity or expression. TLC

pursue a multidisciplinary approach to advocacy, including impact litigation, policy advocacy, and a legal helpline that serves approximately 2,500 people each year. The work of TLC includes the Immigration Detention Project, which works to improve conditions for detained transgender immigrants, many of whom have faced prolonged detention due to long ago convictions. The issues involved in this case will have major implications for Transgender Law Center's client community.

University of Arizona, James E. Rogers College of Law Immigration Law Clinic

The Immigration Law Clinic is a clinical program of the James E. Rogers College of Law that provides pro bono representation to detained immigrants in Eloy Detention Center. The Clinic has a direct interest in the issues presented in this case, as many of the Clinic's clients are subject to mandatory detention. The Clinic confronts the many challenges that mandatory detention poses to our clients' ability to effectively present their claims in court, as well as the impact it has on their emotional and physical wellbeing. Furthermore, the Clinic has an interest in ensuring that the immigration detention statutes are interpreted in a manner that does not violate our clients' constitutional rights.

University of California, Davis School of Law Immigration Law Clinic

The University of California, Davis School of Law Immigration Law Clinic ("the Clinic") is an academic institution dedicated to the defending the rights of detained noncitizens in the United States. The Clinic provides direct representation to

detained immigrants who are placed in removal proceedings. In addition, the Clinic screens unrepresented individuals in order to facilitate placement with pro bono attorneys and presents legal orientation programs for detained individuals in removal proceedings who are unable to obtain direct representation. Thus, the Clinic has a direct interest in the issues presented in this case, as the ability of immigrants to be released on bond greatly increases their ability to obtain legal representation, and to assist in the preparation and presentation of their cases in removal proceedings. The Clinic also has an interest in seeing that the immigration detention statutes are applied in a constitutional, consistent, predictable, and just manner.

University of California, Irvine School of Law Immigrant Rights Clinic

The University of California, Irvine School of Law Immigrant Rights Clinic provides pro bono legal services to immigrants in removal proceedings. The Clinic also partners with community and legal advocacy organizations on policy and litigation projects to advance immigrants' rights and immigrant workers' rights. Over the past year, students working under the close supervision of clinical faculty have represented detained immigrants in bond proceedings at the Adelanto Detention Center in Adelanto, California. Many of these individuals had been subject to mandatory detention, isolated from their families and communities.

Washington Defender Association's Immigration Project

The Washington Defender Association is a statewide non-profit organization whose membership is comprised of public defender agencies, indigent defenders and those who are committed to improving in indigent defense. The purpose of WDA is to protect and insure by rule of law those individual rights guaranteed by the Washington and Federal Constitutions, including the right to counsel and the right to be free from unnecessary restraint, and to resist all efforts made to curtail such rights. In 1999, WDA established the Immigration Project. Since inception, WDA's Immigration Project has worked to defend and advance the rights of noncitizens within the criminal justice system and noncitizens facing the immigration consequences of crimes, including mandatory detention.

Washington Square Legal Services Immigrant Rights Clinic

Immigrant Rights Clinic (IRC) of Washington Square Legal Services, Inc., has a longstanding interest in advancing and defending the rights of immigrants. IRC has been counsel of record or counsel for *amicus* in several cases involving federal courts' interpretation of the government's mandatory detention authority under 8 U.S.C. § 1226(c). *See, e.g.*, *Demore v. Kim*, 538 U.S. 371 (2005) (*amicus*); *Castañeda v. Souza*, No. 13-1994, -- F.3d --, 2014 WL 4976140 (1st Cir. Oct. 6, 2014) (*amicus*) *Desrosiers v. Hendricks*, 532 Fed. Appx. 283 (3d Cir. 2013) (*amicus*); *Sylvain v. Atty. Gen. of the United States*, 714 F.3d 150 (3d Cir. 2013)

(*amicus*); *Hosh v. Lucero*, 80 F.3d 375 (4th Cir. 2012) (*amicus*); *Straker v. Jones*, No. 13 civ 6915(PAE), 2013 WL 6476889 (S.D.N.Y. Dec. 10, 2013) (counsel of record); *Beckford v. Aviles*, No. 10-2035 (JLL), 2011 WL 3444125 (D.N.J. Aug. 5, 2011) (*amicus*); *Jean v. Orsino*, No. 11-3682 (LTS) (S.D.N.Y. June 30, 2011) (*amicus*); *Louisaire v. Muller*, 758 F.Supp.2d 229 (S.D.N.Y. 2010) (counsel of record); *Monestime v. Reilly*, 704 F. Supp. 2d 453 (S.D.N.Y. 2010) (counsel of record); *Garcia v. Shanahan*, 615 F. Supp. 2d 175 (S.D.N.Y. 2009) (counsel of record); *Matter of Garcia-Arreola*, 25 I. & N. Dec. 267 (BIA 2010) (*amicus*).

APPENDIX B:

Courts That Have Considered Challenges To *Matter of Rojas*

I. The following courts (84) have rejected *Matter of Rojas*

Castañeda v. Souza, No. 13-1994, -- F.3d --, 2014 WL 4976140, at *1-12 (1st Cir. Oct. 6, 2014)

Martinez-Done v. McConnell, No. 14 Civ. 3071 (SAS), 2014 U.S. Dist. LEXIS 143453, at *23-29 (S.D.N.Y. Oct. 8, 2014)

Araujo-Cortes v. Shanahan, No. No. 14 Civ. 4231(AKH), -- F.Supp.2d --, 2014 WL 3843862, at *5-9 (S.D.N.Y. Aug. 5, 2014)

Masih v. Aviles, No. 14 Civ. 0928 (JCF), 2014 U.S. Dist. LEXIS 69136, at *7-14 (S.D.N.Y. May 20, 2014).

Lora v. Shanahan, No. 14 Civ. 2140, 2014 WL 1673129 at *6-7 (S.D.N.Y. Apr. 29, 2014)

Preap v. Johnson, No. 13 Civ. 5754, 2014 WL 1995064 at *9 (N.D. Cal. May 15, 2014)

Gordon v. Johnson, 13 Civ. 30146, 2014 WL 2120002 at *8 (D. Mass. May 21, 2014)

Khoury v. Asher, No. C13–1367RAJ, 2014 WL 954920, at *12 (W.D. Wash. Mar. 11, 2014) (certifying class and granting declaratory judgment in favor of those held subject to mandatory detention under *Rojas*)

Olmos v. Holder, No. 13–cv–3158–RM–KMT, 2014 WL 222343, at *6 (D. Colo. Jan. 17, 2014)

Gordon v. Johnson, No. 13–cv–30146–MAP, 2013 WL 6905352, at *5 (D. Mass. Dec. 31, 2013)

Sanchez-Penunuri v. Longshore, No. 13–cv–02586–CMA–CBS, 2013 WL 6881287, at *19 (D. Colo. Dec. 31, 2013)

Castillo-Hernandez v. Longshore, No. 13–cv–02675–CMA–BNB, 2013 WL 6840192, at *19 (D. Colo. Dec. 27, 2013)

Sanchez-Gamino v. Holder, No. CV 13–5234 RS, 2013 WL 6700046, at *5 (N.D. Cal. Dec. 19, 2013)

Rosciszewski v. Adducci, No. 13–14394, 2013 WL 6098553, at *4 (E.D. Mich. Nov. 14, 2013)

Castañeda v. Souza, No. 13–10874–WGY, 2013 WL 3353747, at *8 (D. Mass. July 3, 2013)

Gomez-Ramirez v. Asher, No. C13–196–RAJ, 2013 WL 2458756, at *3 (W.D. Wash. June 5, 2013)

Bacquera v. Longshore, No. 13–cv–00543–RM–MEH, 2013 WL 2423178, at *4 (D. Colo. June 4, 2013)

Deluis-Morelos v. ICE Field Office Dir., No. 12CV–1905JLR, 2013 WL 1914390, at *5 (W.D. Wash. May 8, 2013)

Aguasvivas v. Ellwood, No. 13–1161 (PGS), 2013 WL 1811910, at *8 (D.N.J. Apr. 29, 2013), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Pellington v. Nadrowski, No. 13–706 (FLW), 2013 WL 1338182, at *5 (D.N.J. Apr. 1, 2013), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Martinez-Cardenas v. Napolitano, No. C13–0020–RSM–MAT, 2013 WL 1990848, at *9 (W.D. Wash. Mar. 25, 2013)

Pujalt-Leon v. Holder, 934 F. Supp. 2d 759, 766 (M.D. Pa. 2013), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Marin-Salazar v. Asher, No. C13–96–MJP–BAT, 2013 WL 1499047, at *5 (W.D. Wash. Mar. 21, 2013)

Santos-Sanchez v. Elwood, No. 12-6639 (FLW), 2013 WL 1165010, at *6 (D.N.J. Mar. 20, 2013), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Dighero-Castaneda v. Napolitano, No. 2:12–cv–2367 DAD, 2013 WL 1091230, at *7 (E.D. Cal. Mar. 15, 2013)

Burmanlag v. Durfor, No. 2:12–cv–2824 DAD P, 2013 WL 1091635, at *7 (E.D. Cal. Mar. 15, 2013)

Gayle v. Napolitano, No. 12–2806 (FLW), 2013 WL 1090993, at *5 (D.N.J. Mar. 15, 2013), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Espinosa v. Aitkin, No. 5:13–cv–00512 EJD, 2013 WL 1087492, at *6 (N.D. Cal. Mar. 13, 2013)

Snegirev v. Asher, No. C12–1606MJP, 2013 WL 942607, at *1 (W.D. Wash. Mar. 11, 2013)

Thai Hong v. Decker, No. 3:CV–13–0317, 2013 WL 790010, at *2 (M.D. Pa. Mar. 4, 2013), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Vicencio v. Shanahan, No. 12-7560 (JAP), 2013 WL 705446, at *5 (D.N.J. Feb. 26, 2013), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Almonte v. Shanahan, No. 12-05937 (CCC) (D.N.J. Feb. 25, 2013), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Ferguson v. Elwood, No. 12-5981 (AET), 2013 WL 663719, at *4 (D.N.J. Feb 22, 2013), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Popo v. Aviles, No. 13-0331 (JLL) (D.N.J. Feb. 21, 2013), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Nikolashin v. Holder, No. 13-0189 (JLL), 2013 WL 504609, at *5 (D.N.J.

Feb. 7, 2013), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Foster v. Holder, No. 12-2579 (CCC), 2013 U.S. Dist. LEXIS 20320 (M.D. Pa. Feb. 4, 2013), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Balfour v. Shanahan, No. 12-06193 (JAP), 2013 WL 396256, at *6 (D.N.J. Jan. 31, 2013), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Rodriguez v. Shanahan, No. 12-6767 (FLW), 2013 WL 396269, at *4 (D.N.J. Jan. 30, 2013), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Dussard v. Elwood, No. 12-5369 (FLW), 2013 WL 353384, at *4 (D.N.J. Jan. 29, 2013), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Davis v. Hendricks, No. 12–6478 (WJM), 2012 WL 6005713, at *10 (D.N.J. Nov. 30, 2012), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Morrison v. Elwood, No. 12–4649 (PGS), 2012 WL 5989456, at *4 (D.N.J. Nov. 29, 2012), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Castillo v. ICE Field Office Dir., 907 F. Supp. 2d 1235, 1238 (W.D. Wash. 2012)

Kerr v. Elwood, No. 12–6330 (FLW), 2012 WL 5465492, at *3 (D.N.J. Nov. 8, 2012), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Baguidy v. Elwood, No. 12–4635 (FLW), 2012 WL 5406193, at *9 (D.N.J. Nov. 5, 2012), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Nabi v. Terry, 934 F. Supp. 2d 1245, 1248 (D.N.M. 2012)

Charles v. Shanahan, No. 3:12–cv–4160 (JAP), 2012 WL 4794313, at *8 (D.N.J. Oct. 9, 2012), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Kporlor v. Hendricks, No. 12–2744 (DMC), 2012 WL 4900918, at *7 (D.N.J. Oct. 9, 2012), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Campbell v. Elwood, No. 12–4726 (PGS), 2012 WL 4508160, at *4 (D.N.J. Sept. 27, 2012), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Martinez v. Muller, No. 12–1731 (JLL), 2012 WL 4505895, at *4 (D.N.J. Sept. 25, 2012), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Nimako v. Shanahan, No. 12–4909 (FLW), 2012 WL 4121102, at *8 (D.N.J. Sept. 18, 2012), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Cox v. Elwood, No. 12–4403 (PGS), 2012 WL 3757171, at *4 (D.N.J. Aug. 28, 2012), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Martial v. Elwood, No. 12–4090 (PGS), 2012 WL 3532324, at *3 (D.N.J. Aug. 14, 2012), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Bogarin-Flores v. Napolitano, No. 12cv0399 JAH(WMc), 2012 WL 3283287, at *3 (S.D. Cal. Aug. 10, 2012)

Dimanche v. Tay-Taylor, No. 12–3831, 2012 WL 3278922, at *2 (D.N.J. Aug. 9, 2012), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Munoz v. Tay-Taylor, No. 12–3764 (PGS), 2012 WL 3229153, at *3-4 (D.N.J. Aug. 2, 2012), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Gonzalez-Ramirez v. Napolitano, No. 12–2978 (JLL), 2012 WL 3133873, at

*5 (D.N.J. July 30, 2012), *rev'd sub nom. Gonzalez-Ramirez v. Sec'y of United States Dep't of Homeland Sec.*, 529 Fed. Appx. 177, 179 (3d Cir. 2013)

Kot v. Elwood, No. 12–1720 (FLW), 2012 WL 1565438, at *8 (D.N.J. May 2, 2012), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Valdez v. Terry, 874 F. Supp. 2d 1262, 1265 (D.N.M. 2012)

Nunez v. Elwood, No. 12–1488 (PGS), 2012 WL 1183701, at *3 (D.N.J., Apr. 9, 2012), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Ortiz v. Holder, No. 2:11CV1146 DAK, 2012 WL 893154, at *3 (D. Utah Mar. 14, 2012)

Harris v. Lucero, No. 1:11–cv–692, 2012 WL 603949, at *3 (E.D. Va. Feb 23, 2012), *abrogated by Hosh v. Lucero*, 680 F.3d 375, 380 (4th Cir. 2012)

Zamarial v. Lucero, No. 1:11–cv–1341, 2012 WL 604025, at *2 (E.D. Va. Feb. 23, 2012), *abrogated by Hosh v. Lucero*, 680 F.3d 375, 380 (4th Cir. 2012)

Jaghoori v. Lucero, No. 1:11–cv–1076, 2012 WL 604019 (E.D. Va. Feb. 22, 2012), *abrogated by Hosh v. Lucero*, 680 F.3d 375, 380 (4th Cir. 2012)

Christie v. Elwood, No.11–7070 (FLW), 2012 WL 266454, at *9 (D.N.J. Jan. 30, 2012), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Rosario v. Prindle, No. 11–217, 2011 WL 6942560, at *3 (E.D. Ky. Nov. 28, 2011), *adopted by* 2012 WL 12920, at *1 (E.D. Ky. Jan. 4, 2012)

Parfait v. Holder, No. 11–4877 (DMC), 2011 WL 4829391, at *9 (D.N.J. Oct. 11, 2011), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Rianto v. Holder, No. CV–11–0137–PHX–FJM, 2011 WL 3489613, at *3 (D. Ariz. Aug. 9, 2011)

Beckford v. Aviles, No. 10-2035 (JLL), 2011 WL 3515933, at *9 (D.N.J. Aug. 5, 2011), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Keo v. Lucero, No. 11-614 (JCC), 2011 WL 2746182 (E.D. Va. July 13, 2011), *abrogated by Hosh v. Lucero*, 680 F.3d 375, 380 (4th Cir. 2012)

Jean v. Orsino, No. 11-3682 (LTS) (S.D.N.Y. June 30, 2011)

Sylvain v. Holder, No. 11-3006 (JAP), 2011 WL 2580506, at *7 (D.N.J. June 28, 2011), *rev'd sub nom.*, *Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Aparicio v. Muller, No. 11-cv-0437 (RJH) (S.D.N.Y. Apr. 7, 2011)

Louisaire v. Muller, 758 F. Supp. 2d 229, 236 (S.D.N.Y. 2010)

Gonzalez v. Dep't of Homeland Sec., No. 1:CV-10-0901, 2010 WL 2991396, at *1 (M.D. Pa. July 27, 2010), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Bracamontes v. Desanti, No. 2:09cv480, 2010 WL 2942760 (E.D. Va. June 16, 2010), *adopted by*, 2010 WL 2942757 (E.D. Va. July 26, 2010), *abrogated by Hosh v. Lucero*, 680 F.3d 375, 380 (4th Cir. 2012)

Dang v. Lowe, No. 1:CV-10-0446, 2010 WL 2044634, at *2 (M.D. Pa. May 20, 2010), *abrogated by Sylvain v. Att'y Gen. of the United States*, 714 F.3d 150, 161 (3d Cir. 2013)

Monestime v. Reilly, 704 F. Supp. 2d 453, 458 (S.D.N.Y. 2010)

Khodr v. Adduci, 697 F. Supp. 2d 774, 778 (E.D. Mich. 2010)

Scarlett v. U.S. Dep't of Homeland Sec., 632 F. Supp. 2d 214, 219 (W.D.N.Y. 2009)

Waffi v. Loiselle, 527 F. Supp. 2d 480 (E.D. Va. 2007), *abrogated by Hosh v. Lucero*, 680 F.3d 375, 380 (4th Cir. 2012)

Bromfield v. Clark, No. C06-0757-JCC2006, 2007 WL 527511, at *4 (W.D. Wash. Feb. 14, 2007)

Roque v. Chertoff, No. C06 0156 TSZ, 2006 WL 1663620, at *4-5 (W.D. Wash. June 12, 2006)

Zabadi v. Chertoff, No. C05-03335, 2005 WL 3157377, at *5 (N.D. Cal. Nov. 22, 2005)

Quezada-Bucio v. Ridge, 317 F. Supp. 2d 1221, 1228 (W.D. Wash. 2004)

II. The following courts (26) have deferred to *Matter of Rojas* either as a holding or in dicta:

Hosh v. Lucero, 680 F.3d 375, 380 (4th Cir. 2012)

Nunez Pena v. Tryon, No. 14-CV-282 (JTC), 2014 U.S. Dist. LEXIS 114422, at *7-14 (W.D.N.Y. Aug. 18, 2014)

Charles v. Aviles, No. 14 Cv. 3483 (MHD), 2014 U.S. Dist. LEXIS 105765, at *10-26 (S.D.N.Y. Jul. 23, 2014)

Debel v. Dubois, No. 13 Civ 6028, 2014 WL 1689042, at *4 (S.D.N.Y. Apr. 24, 2014)

Clarke v. Phillips, No. 13 Civ. 1052, 2014 WL 1716311, at *4 (W.D.N.Y. May 1, 2014)

Thompson v. Napolitano, No. 13 Civ. 9126, 2014 WL 2609701 at *1 (S.D.N.Y. June 2, 2014)

Mora-Mendoza v. Godfrey, No. 3:13–cv–01747–HU, 2014 WL 326047, at *3 (D. Or. Jan. 29, 2014)

Straker v. Jones, No. 13-cv-6915(PAE), 2013 WL 6476889, at *9 (S.D.N.Y. Nov. 20, 2013) (deferring to *Matter of Rojas* in dicta but finding that petitioner was not subject to mandatory detention because he had not been "released" for the purposes of § 1226(c))

Johnson v. Orsino, 942 F. Supp. 2d 396, 407 (S.D.N.Y. 2013)

Cisneros v. Napolitano, No. 13–700 (JNE/JJK), 2013 WL 3353939, at *9 (D. Minn. July 3, 2013)

Khetani v. Petty, 859 F. Supp. 2d 1036, 1038 (W.D. Mo. 2012)

Castillo v. Aviles, No. 12–2388 (SRC), 2012 WL 5818144, at *4 (D.N.J. Nov. 15, 2012)

Silent v. Holder, No. 4:12–cv–00075–IPJ–HGD, 2012 WL 4735574, at *2 (N.D. Ala. Sept. 27, 2012)

Espinoza-Loor v. Holder, No. 11–6993 (FSH), 2012 WL 2951642, at *4 (D.N.J. July 2, 2012)

Santana v. Muller, No. 12 Civ. 430(PAC), 2012 WL 951768, at *4 (S.D.N.Y. Mar. 21, 2012)

Guillaume v. Muller, No. 11 Civ 8819, 2012 WL 383939 (S.D.N.Y. Feb. 7, 2012)

Mendoza v. Muller, No. 11 Civ. 7857(RJS), 2012 WL 252188 (S.D.N.Y. Jan. 25, 2012)

Hernandez v. Sabol, 823 F. Supp. 2d 266, 270 (M.D. Pa. 2011)

Desrosiers v. Hendricks, No. 11–4643 (FSH) (D.N.J. Dec. 30, 2011), *aff'd*, 532 Fed. Appx. 283, 284 (3d Cir. 2013)

Garcia Valles v. Rawson, No. 11-C-0811, 2011 WL 4729833 (E.D. Wis. Oct. 7, 2011)

Diaz v. Muller, No. 11-4029 (SRC), 2011 WL 3422856, at *3 (D.N.J. Aug. 4, 2011)

Gomez v. Napolitano, No. 11-cv-1350, 2011 WL 2224768 (S.D.N.Y. May 31, 2011)

Garcia-Valles v. Rawson, No. 11–C–0811, 2011 WL 4729833, at *3 (E.D.

Wis. Oct. 7, 2011)

Sidorov v. Sabol, No. 09–cv–1868 (M.D. Pa. Dec. 18, 2009)

Sulayao v. Shanahan, No. 09-Civ.-7347, 2009 WL 3003188 (S.D.N.Y. Sept. 15, 2009).

Serrano v. Estrada, No. 3–01–CV–1916–M, 2002 WL 485699, at *3 (N.D. Tex. Mar. 6, 2002) (deferring to *Matter of Rojas* in dicta but granting the habeas petition based on due process concerns)

III. The following courts (5) have refused to decide the issue of deference to *Matter of Rojas* but instead found mandatory detention to apply to those not detained "when . . . released" based on the theory that officials do not lose authority to impose mandatory detention if they delay

Desrosiers v. Hendricks, 532 Fed. Appx. 283, 285 (3d Cir. 2013) (following *Sylvain*)

Gonzalez-Ramirez v. Sec'y of United States Dep't of Homeland Sec., 529 Fed. Appx. 177, 179 (3d Cir. 2013) (same)

Sylvain v. Att'y Gen. of the United States, 714 F.3d 150, 161 (3d Cir. 2013)

Marlon v. Holder, No. 13 Civ 2375, 2014 WL 1321105, at *6 (M.D. Penn. Apr. 1, 2014) (following *Sylvain*)

Guttierez v. Holder, No. 13–cv–05478–JST, 2014 WL 27059, at *5 (N.D. Cal. Jan. 2, 2014)

IV. The following courts in the Fourth Circuit (5) have not specifically examined *Matter of Rojas* but have found the *Hosh* opinion controlling

Pasicov v. Holder, 488 Fed. Appx. 693, 694 (4th Cir. 2012) (following *Hosh*)

Thakur v. Morton, No. ELH–13–2050, 2013 WL 5964484, at *3 (D. Md. Nov. 7, 2013) (same)

Ozah v. Holder, No. 3:12–CV–337, 2013 WL 709192, at *4 (E.D. Va. Feb. 26, 2013) (same)

Velasquez-Velasquez v. McCormic, No. CCB–12–1423, 2012 WL 3775881, at *2 (D. Md. Aug. 28, 2012) (same)

Obaid v. Lucero, No. 1:12cv415 (JCC/JFA), 2012 WL 3257827, at *2 (E.D. Va. Aug. 8, 2012) (same)

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(d) because this brief contains 6,970 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman.

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