Nos. 13-1994 & 13-2509

United States Court of Appeals for the First Circuit

No. 13-1994

LEITICIA CASTANEDA

Petitioner-Appellee

v.

STEVE SOUZA, Superintendent, Bristol County House of Correction, in his official capacity and his successors and assigns

Respondent-Appellant

BRUCE E. CHADBOURNE, Field Office Director, Boston Field Office, Office of Detention and Removal, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security; SARAH SALDANA, Director, U.S. Immigration and Customs Enforcement; JEH JOHNSON, Secretary, U.S. Department of Homeland Security, in his official capacity and his successors and assigns; ERIC H. HOLDER, JR., Attorney General, U.S. Department of Justice, in his official capacity and his successors and assigns

Respondents

Appeal from the Final Judgment of the United States District Court for the District of Massachusetts, No. 1:13-cv-10874-WGY

No. 13-2509

CLAYTON RICHARD GORDON, on behalf of himself and others similarly situated

Petitioner-Appellee

PRECIOSA ANTUNES; GUSTAVO RIBEIRO FERREIRA; VALBOURN SAHIDD LAWES; NHAN PHUNG VU

Petitioners

v.

(Continued on inside cover)

ERIC H. HOLDER, JR., Attorney General; SARAH SALDANA, Director of Immigration and Customs Enforcement; SEAN GALLAGHER, Acting Field Office Director; CHRISTOPHER J. DONELAN; MICHAEL G. BELLOTTI, Sheriff; JEH CHARLES JOHNSON, as Secretary of Homeland Security; STEVEN W. TOMPKINS, Sheriff; THOMAS M. HODGSON, Sheriff; JOSEPH D. MCDONALD, JR., Sheriff

Respondents-Appellants

Appeal from the Final Judgment of the United States District Court for the District of Massachusetts, No. 3:13-cv-30146-MAP

BRIEF OF AMICI CURIAE FORMER IMMIGRATION JUDGES AND DEPARTMENT OF HOMELAND SECURITY OFFICIALS IN SUPPORT OF PETITIONERS-APPELLEES

February 23, 2015

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INTEREST OF AMICI CURIAE[1]

Amici are former officials of the Department of Homeland Security and former Immigration Judges who have spent their careers applying immigration laws, including the statute at issue in this case. Amici agree with the Panel's holding that the phrase "when … released" in 8 U.S.C. § 1226(c) refers to aliens who are "detained within a reasonable time after their release from state criminal custody," *Castaneda v. Souza*, 769 F.3d 32, 44 (1st Cir. 2014), and does not extend to aliens who are detained "at any time after release." *Id.* at 43-44.

In Amici's experience, aliens who have recently been released from criminal custody are differently situated than those who have resided in the community for a prolonged period since their release from criminal custody, and by using the words "when … released," Congress intended to distinguish among these two categories of aliens. While it may be challenging to ascertain whether an individual just released from criminal custody continues to present a danger to the community or a flight risk, such a determination is much easier for Immigration Judges and Immigration and Customs Enforcement ("ICE") officers to make with regard to alien who has an extensive track record post-release. Amici likewise disagree with

[1] Under Federal Rule of Appellate Procedure 29(c)(5), counsel for the Amici state that no counsel for a party authored this brief in whole or in part, no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than the Amici or their counsel made a monetary contribution for its preparation or submission.

the government's argument that its interpretation is necessary to maintain the government's authority to detain aliens. It has been Amici's experience that applying mandatory detention to individuals who have lived in the community for a prolonged period since their release from criminal custody would *limit*, rather than enhance, the authority of immigration officials, and, moreover, could frustrate immigration enforcement.

Therefore, Amici believe that Congress clearly intended to limit mandatory detention to individuals recently released from criminal custody. Congress did not intend to mandate detention in circumstances in which immigration authorities can make meaningful determinations of dangerousness and flight risk, because an alien has been living in the community for a prolonged period of time since release from criminal custody.

The signatories of this brief include:

Honorable Sarah Burr, United States Immigration Judge (retired). From 1994 to 2006, Judge Burr served as an immigration judge in New York. In 2006, the chief immigration judge appointed Judge Burr as an assistant chief immigration judge with jurisdiction over New York, Fishkill, Ulster, and Varick Street immigration courts. She returned to the bench full time in January 2011 until her retirement in 2012.

Bruce Chadbourne, Former ICE Field Office Director for New England Field Office. Mr. Chadbourne held numerous positions within the immigration services over the course of his career. They included, from 1986 to 1987, a position as Director of the Legalization Program for the Washington, DC Field Office. From 1987 to 2003, he served as Assistant District Director for the former Immigration and Naturalization Service ("INS"). Between 2003 and 2011, he served as ICE Field Office Director for the New England Field Office, where he was in charge of immigration enforcement and detention for the New England region.[2]

Honorable Bruce J. Einhorn, United States Immigration Judge (retired). From 1979 through 1990, Judge Einhorn served as a prosecutor and litigation chief for the Office of Special Investigations in the United States Department of Justice. In 1990, he was appointed an Immigration Judge in Los Angeles, California, serving until 2007.

Honorable John F. Gossart, Jr., United States Immigration Judge (retired). Starting in 1975, Judge Gossart served in various positions with INS, including general attorney, naturalization attorney, trial attorney, and deputy

[2] Mr. Chadbourne appears on the caption for No. 13-1994 in his official capacity as "Field Office Director, Boston Field Office, Office of Detention and Removal, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security." However, Mr. Chadbourne no longer holds that position; it is now occupied by Sean Gallagher. *See* Fed. R. App. P. 43(c)(2).

assistant commissioner for naturalization. Judge Gossart was appointed an Immigration Judge in 1982 and served until his retirement in 2013, at which time he was the third most senior immigration judge in the United States. Judge Gossart is a former president of the National Association of Immigration Judges. Since 1997, Judge Gossart has been an adjunct professor of law at the University of Baltimore School of Law teaching immigration law, and more recently and adjunct professor of law at the University of Maryland School of Law also teaching immigration law.

Javad Khazaeli, former Associate Legal Advisor, ICE National Security Law Division. From 2004 to 2010, Mr. Khazaeli served with the ICE National Security Law Division ("NSLD"), the legal division that oversaw removal proceedings for aliens accused of terrorism, material support of terrorist organizations, terrorist financing, or espionage. At the time that Mr. Khazaeli left ICE, he was the longest serving NSLD attorney in the agency's history.

Honorable Nancy Reid McCormack, United States Immigration Judge (retired). Judge McCormack began her career as an immigration inspector in 1976. She was promoted to supervisory immigration inspector, then Officer in Charge at the Port of Miami, then examiner, before being appointed an Immigration Judge in 1994. Judge McCormack served as an Immigration Judge from 1994 until 2012.

Michael Rozos, Former ICE Field Office Director, Miami Field Office. From 1983 through 2004, Mr. Rozos served in many different positions within INS, as well as the Department of Homeland Security and ICE, including as Director of Case Management for the Removals Division of INS and the Department of Homeland Security. From 2004 through 2010, Mr. Rozos served as Field Office Director of the Miami Field Office of the Department of Homeland Security and ICE, managing a federal enforcement program with 1600 employees and contractors in the third largest field office in the United States. His responsibilities included removal case work, detention management, and removal of aliens ordered removed from the United States.

Amici file this brief with the consent of all parties.

SUMMARY OF ARGUMENT

The government's overbroad interpretation of the mandatory detention statute seeks to read the phrase "when … released" to mean "at any time after release." Because such an argument is inconsistent with the text, structure, and purpose of the statute, the government resorts to the argument that the Panel's interpretation would penalize the agency for tardy action by taking away its authority to detain. Accordingly, the government argues that it should be able to detain persons who have been living in the community for a prolonged period of time following release, without providing them a bond hearing. The premise of the

government's argument is wrong: the government does not lose its authority to detain when it fails to take an alien into custody within a reasonable time after release. Instead, it retains the authority to detain, but under Section 1226(a), following an individualized bond hearing.

Distinguishing between aliens who are taken into immigration custody within a reasonable time following their release from criminal custody, and those who live in the community for an extended period before they are taken into immigration custody, reflects a practical, common-sense judgment. Treating the former group in a categorical manner might be justified, as such aliens will not have any track record of conduct following their release from criminal custody and may pose a higher flight risk and/or danger to the community. It is thus challenging to determine whether they present a danger or a flight risk. But aliens in the latter category—who have spent a prolonged period of time following their release from custody living in the community—do have a track record on which Immigration Judges can rely in making a bond determination. Since their release from custody, many of these aliens have obtained jobs, started families, or formed other ties to the community that make them unlikely to abscond; and many have also been law-abiding since their release and present no danger to the community. Some may be legal permanent residents who have lived in the United States since childhood and have nowhere else to go; others may have successfully completed

drug treatment programs. Still others may be sole caregivers for ill or disabled family members, or even have terminal illnesses themselves. It is not reasonable to interpret the words "when … released" to include aliens who have been living in the community for a prolonged period of time following their release from criminal custody. The ordinary bond regulations provide the government with all the tools necessary to detain whichever of those aliens pose a flight risk or a danger. Thus, contrary to the government's argument, the Panel's interpretation would not result in a loss of authority to detain; that authority would simply be exercised under Section 1226(a) rather than 1226(c).

Indeed, the government's reliance on loss-of-authority cases is particularly perplexing because, if anything, it is the *government's* interpretation that limits the agency's authority. Section 1226(c) eliminates all of the agency's discretion and leaves the agency with no choice but to detain, without regard to the equities in any particular case, the agency's enforcement and detention priorities, and the resource limitations that such mandatory rules can exacerbate. The government's authority is maximized when Section 1226(c) is read narrowly, as Congress intended in crafting that provision to apply only to aliens "when … released."

In practice, applying Section 1226(c) more broadly than Congress intended risks frustrating immigration enforcement efforts. Congress drafted the mandatory detention statute knowing that ICE only has so many detention beds available to it,

and thus limited Section 1226(c) to apply to a very specific category of criminal aliens at a specific time. The government's overbroad interpretation of the statute could potentially force ICE to take actions that undermine, rather than advance, Congress's purposes. For example, in order to make room for an alien who falls within the criminal history categories of Section 1226(c), but has been living in the community for a prolonged period and poses neither a flight risk nor a danger, ICE could be forced to release another alien who falls outside the mandatory detention statute, but whom ICE believes *does* pose a flight risk or danger to the community. Or ICE could be forced to redirect resources from other enforcement and removal functions in order to fund extra detention space. Congress understood these circumstances when it drafted Section 1226(c) narrowly, so as to maximize the agency's authority, as well as its capability for achieving Congress's overall immigration enforcement objectives.

ARGUMENT

I. Section 1226(c) Does Not Mandate Detention of Aliens Who Have Lived in the Community For Prolonged Periods of Time Since Their Release From Criminal Custody.

The question in this case is whether Congress intended to subject aliens who have lived in the community for prolonged periods of time following their release from criminal custody to the mandatory detention provisions of the Immigration and Nationality Act. The Panel correctly held that Congress did not so intend

because such aliens were not taken into custody "when … released" from criminal custody. To the contrary, Ms. Castaneda spent four and a half years living with her son and working as a night cleaner, while Mr. Gordon spent more than four years developing a successful business, working to open a halfway house for women released from incarceration, and starting a family with his fiancée and young son. Petitioners do not fall into the category of persons about whom Congress was concerned in Section 1226(c), and the Panel decision should be affirmed.

A. The Government's Argument Is Inconsistent With the Plain Language and Structure of the Statute.

Section 1226(c) is an exception to the general rule in Section 1226 that aliens arrested and charged with removal may be released on bond pending removal proceedings. *See* 8 U.S.C. § 1226(a) (providing for a bond hearing "[e]xcept as provided in subsection (c)"). The exception mandates that the government detain certain criminal aliens "when … released" from criminal custody. The statute by its terms does not apply to persons who are *not* detained "when … released," but instead who live in the community for a prolonged period following release. Amici agree with the Panel decision that Congress's use of the word "when" connotes a reasonable degree of immediacy. *See Castaneda*, 769 F.3d at 44.

In place of the phrase "when … released," the government attempts to substitute the words "at any time since release." *See also Matter of Rojas*, 23

I. & N. Dec. 117 (BIA 2001). It justifies this substitution by arguing that "when … released" was intended to distinguish between aliens released from criminal custody and aliens who still remained in criminal custody. *See* Gov't Gordon Br. 24. But in Amici's experience, there has never been any confusion that the immigration authorities cannot detain someone until they have been released from custody. Indeed, Congress had no reason to worry that the Attorney General might detain the alien *before* release from state custody; that is because Congress has already provided in 8 U.S.C. § 1231(a)(4)(A) that an alien typically could not be detained until release from state or federal custody. In light of the statute as a whole, the government's reading is unreasonable. *See Doyle v. Huntress, Inc.*, 419 F.3d 3, 14 (1st Cir. 2005) ("The 'cardinal rule [is] that a statute is to be read as a whole ..., since the meaning of statutory language, plain or not, depends on context.'" (quoting *Conroy v. Aniskoff*, 507 U.S. 511, 515 (1993)) (alteration and ellipses in original)).

B. The Government's Argument Is Inconsistent With the Purpose of Section 1226(c).

Congress's use of the phrase "when … released" reflects a deliberate and categorical judgment that aliens just released from criminal custody pose a degree of dangerousness or risk of flight that merits mandatory detention, rather than individualized scrutiny. As this Court recognized in *Saysana v. Gillen*, 590 F.3d 7 (1st Cir. 2009), Congress intended in Section 1226(c) to distinguish between

persons recently released from custody and persons who have resided in the community for prolonged periods of time following their release from criminal custody. *Id.* at 17 ("The mandatory detention provision does not reflect a general policy in favor of detention; instead, it outlines specific, serious circumstances under which the ordinary procedures for release on bond at the discretion of the immigration judge should not apply."). In other words, Congress used the phrase "when … released" to distinguish between two differently-situated categories of aliens: those who have just been released from criminal custody, and those who have resided in the community for prolonged periods of time since their release from criminal custody.

Congress's decision to distinguish aliens detained "when … released" from other aliens was sensible. Congress knew that criminal aliens were highly likely to reoffend, and thus were likely to pose a danger to the community; but that generalization does not apply to individuals who have resided in the community for prolonged periods of time since their release from criminal custody and now have a track record of law-abiding conduct. In *Saysana*, this Court recognized as much, stating that:

> It is counter-intuitive to say that aliens with potentially longstanding community ties are, as a class, poor bail risks. The affected aliens are individuals who committed an offense, and were released from custody for that offense, more than a decade ago. They have continued to live in the United States. By any logic, it stands to reason

> that the more remote in time a conviction becomes and the more time after a conviction an individual spends in a community, the lower his bail risk is likely to be.

Id. at 17-18.

Amici's experience reflects this Court's intuition. Aliens who have resided in the community for prolonged periods of time since release frequently develop significant ties – such as families, jobs, and eligibility for green-card status[3] – that minimize any risk that they will abscond. Accordingly, the panel decision correctly interpreted Section 1226(c) in light of Congressional intent.

II. The Government's Reliance on the "Loss-of-Authority" Doctrine Is Misplaced, Because the Government's Interpretation In Fact Limits Governmental Authority and Interferes With the Enforcement of the Immigration Laws.

The government argues that the Panel's interpretation cannot be correct, because it would cause the government to lose its authority to act due to its failure to abide by a statutory deadline. Invoking the "loss-of-authority" doctrine, the government asserts that it should not lose that authority absent some clear indication from Congress. *See also Sylvain v. Attorney General*, 714 F.3d 150 (3d Cir. 2013); *Hosh v. Lucero*, 680 F.3d 375 (4th Cir. 2012) (relying upon the same notion).

[3] Many aliens who are deportable for criminal convictions described in Section 1226(c)(1)(A)-(D) may nevertheless obtain work authorization or may possess a green card following release from criminal custody. *See* 8 C.F.R. § 274a.12(a)(1) (authorizing employment for many categories of aliens, including those who are lawful permanent residents like Petitioner Gordon).

The government's reliance on the loss-of-authority doctrine is misplaced. The government does not lose the authority to detain criminal aliens if it does not endeavor to detain someone "when … released." To the contrary, Congress intended all along that the government would have such authority under the discretionary detention provisions of Section 1226(a). Indeed, in Amici's experience, the government's interpretation would actually constrict governmental authority by removing discretion from immigration officials in cases where discretion can meaningfully be exercised. Accordingly, the loss-of-authority doctrine cannot be used to justify the government's interpretation.

A. The Panel's Interpretation Does Not Result In a Loss of Authority to Detain.

The loss-of-authority doctrine traditionally applies where the government could lose the authority to act if it fails to do so before a statutory deadline; in such cases, the Supreme Court has held that the statutory deadline should be construed so that the government's authority to act is not waived. *See, e.g.*, *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 158-63 (2003); *United States v. Montalvo-Murillo*, 495 U.S. 711, 717-20 (1990).

These cases and the doctrine on which they rely are inapplicable here. Unlike in those cases, if the government does not endeavor to detain a criminal alien "when … released" from custody, the government does not lose its authority to detain that person—it retains that authority under Section 1226(a). Furthermore,

the authority to detain under Section 1226(a) is substantial. Under that provision, the government may detain individuals who generally pose a danger or a flight risk, and that authority is regularly exercised by IJs. Indeed, it has been Amici's experience that immigration judges regularly deny release following individualized bond hearings.[4]

The question in this case is therefore not whether the government should have the authority to detain persons like Petitioners, but rather whether Congress intended that authority to be exercised under Section 1226(a) or Section 1226(c). For persons who have resided in the community for prolonged periods of time following their release from criminal custody, Congress intended that the government's authority to detain would derive from the general rule of 1226(a), rather than the exception in 1226(c).

The main case on which the government relies, *Montalvo-Murillo*, 495 U.S. 711, perfectly illustrates why the loss-of-authority doctrine has no application here. That case involved a claim that the government's failure to hold a prompt bond hearing prevented the government from detaining an arrestee altogether. The Court held that Congress did not clearly intend such a drastic outcome simply by specifying that a suspect be given a bail hearing "'immediately upon the person's

[4] In the class action underlying the *Gordon* case, Immigration Judges granted bond for 54 of the 108 individuals for whom individualized bond hearings were held. *See* ECF No. 140-2 (Ex. B to status report), *Gordon v. Johnson*, No. 3:13-cv-30146 (D. Mass. filed Jan. 16, 2015).

first appearance.'" *Id*. at 714 (quoting 18 U.S.C. § 3142(f) (1988)). There is no comparable loss of authority in this case. Unlike *Montalvo-Murillo*, the statute at issue here authorizes the government to detain in two ways, and the question presented is simply which one applies where a person is not detained "when … released." The statutory language itself makes clear that it is Section 1226(a), not 1226(c).

Nor can the government argue that a loss of authority to *mandatorily* detain compels this Court's acceptance of its interpretation. Mandatory detention does not provide the government with any more authority than discretionary detention under Section 1226(a). In either case, the government may detain persons who qualify as criminal aliens under the statute. Nor is detention under Section 1226(a) meaningfully more burdensome for the government. In Amici's experience, custody determinations and bond hearings do not take up considerable amounts of time or impose significant administrative costs on ICE or Immigration Courts. To the contrary, bond proceedings are generally very short with each side stating their position; there is usually no testimony when the individual is represented by counsel, and a hearing may last fewer than 10 minutes. Depending on the jurisdiction, an Immigration Judge may conduct several bond hearings each week. Certainly, bond proceedings are generally no more of a burden on enforcement authorities or immigration courts than *Joseph* hearings, which aliens subject to

mandatory detention are entitled to request. *See Demore v. Kim*, 538 U.S. 510, 514 n.3 (2003). If anything, discretionary detention eases burdens on the immigration courts because when someone is granted bond, that provides greater flexibility and helps conserve the resources of the immigration courts, which must prioritize detained cases.

B. The Government's Interpretation In Fact *Limits*, Rather Than Maximizes, Governmental Authority and Frustrates Immigration Enforcement Efforts.

Far from maximizing governmental authority, the government's interpretation of Section 1226(c), as applied to aliens who have resided in the community for prolonged periods of time since their release from criminal custody, would *limit* the government's authority and frustrate its efforts to enforce immigration law.

1. The Government's Overbroad Interpretation Would Limit the Government's Authority to Respond Appropriately to the Equities of Individual Cases.

The experience of Amici is that applying the mandatory detention statute to aliens who have resided in the community for prolonged periods of time since their release from criminal custody would result in the detention of many individuals who pose no danger to the community or flight risk, and who the government – and more importantly, Congress – has no interest in detaining. Aliens with criminal convictions frequently go on to live law-abiding lives and develop

significant community ties following their release. They get married and have children. They support their families by working meaningful jobs. They become sole caregivers for ill or disabled family members. Although minor drug possession convictions in some cases can qualify someone for mandatory detention, for many persons those actions reflect youthful indiscretions rather than the start of a criminal career. Many persons emerge from criminal custody to complete drug treatment programs and will never re-offend. Certainly, many criminal aliens *do* pose a danger to the community or a risk of flight. And Congress reasonably provided immigration officials with the authority to detain such persons. But Congress did not compel the government to ignore the equities of individual cases where the government does not endeavor to detain someone "when … released" from criminal custody. The government's argument would mandate just such an outcome, which Amici submit would limit rather than strengthen the authority of immigration officials.

2. The Government's Overbroad Interpretation Risks Frustrating Immigration Enforcement Efforts, Contrary to Congress's Intent.

The government's overbroad interpretation of Section 1226(c) not only would result in the detention of many individuals whom the government has no strong interest in detaining, but also limits ICE's authority to make rational detention decisions during situations when its detention capacity is reached.

In those circumstances, the government's interpretation could potentially force ICE to release an alien who is *not* subject to mandatory detention – despite having been found by ICE or an Immigration Judge to be a danger to the public or a flight risk – in order to make room for an alien who *is* subject to mandatory detention, despite having lived in the community for a prolonged period since release from criminal custody and presenting neither a danger nor a flight risk. For example, ICE could be forced to release a recent undocumented arrival who has no fixed address, and thus is likely to abscond upon release; or a known gang member who has not been charged with any criminal conduct, and thus is not subject to mandatory detention; or even another criminal alien whose offenses fall outside the categories set forth in Section 1226(c)(1), but who nevertheless poses a danger if released. Congress did not intend to force the agency to abandon high priority detentions in order to make room for a category of aliens whose dangerousness and risk of flight could be ascertained by an Immigration Judge based on their extended period of residence following release from criminal custody.

The possibility that ICE would face detention capacity constraints is not merely theoretical. In February 2013, eleven ICE Field Offices—including Atlanta, Chicago, Miami, New Orleans, Newark, Phoenix, San Antonio, and San

Diego—had detention populations in excess of their budget targets.[5] Initially, ICE responded by "transferring funding from other programs"—an approach that "leaves ICE with inadequate resources when there is an increase in detainees."[6] Of course, raiding other budgets to pay for detention ultimately undermines the agency's enforcement capabilities. Ultimately, between February 9, 2013, and March 1, 2013, ICE released 2,226 immigration detainees.[7] The DHS Office of Inspector General explained that ICE was forced to take this action as a result of inadequate congressional appropriations to cover ICE's detention needs, together with a significant increase in total apprehensions in the Rio Grande Valley.[8]

This situation may yet repeat itself, as DHS itself anticipates in its budget request for Fiscal Year 2016. Currently, ICE receives congressional appropriations for 34,000 detention beds each year. In DHS's proposed budget for FY2016, it has sought funds "to enable ICE to maintain more than the 34,000 detention beds."[9] The Department has explained that this increase is needed "[t]o meet operational

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[5] U.S. Dep't of Homeland Security, Office of Inspector General, *ICE's Release of Immigration Detainees* 32 (Aug. 2014), at 32, *available at* http://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-116_Aug14.pdf.
[6] *Id.* at 1.
[7] *Id.*
[8] *Id.*
[9] U.S. Dep't of Homeland Security, *Budget-in-Brief: Fiscal Year 2016* 5, 54, *available at* http://www.dhs.gov/sites/default/files/publications/FY_2016_DHS_Budget_in_Brief.pdf .

needs to detain and remove both criminal aliens and recent border entrants."[10] In recent years, the average daily number of ICE detainees has hovered close to 34,000.[11] It is certainly foreseeable that, in the event of a surge in the number of undocumented aliens crossing illegally into the United States, ICE could run out of detention beds.

The mandatory detention statute should be read narrowly, so as to give ICE the maximum discretion to respond to limits on available detention space by declining to detain aliens who have resided in the community for prolonged periods prior to their arrests by ICE, and whom ICE therefore does not regard as a danger to the community. Accordingly, consistent with Congress's intent, Section 1226(c) should be read according to its plain language, as requiring mandatory detention only of those individuals who are taken into ICE custody within a reasonable period of time following their release from criminal custody.

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[10] U.S. Dep't of Homeland Security, *Congressional Budget Justification FY2016* 1435, *available at* http://www.dhs.gov/sites/default/files/publications/DHS_FY2016_Congressional_Budget_Justification.pdf.

[11] *Id.* at 49.

CONCLUSION

For these reasons, this Court should affirm the Panel decision.

Dated: February 23, 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the page limits imposed by the Court's February 2, 2015 Order.

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

Dated: February 23, 2015

/s/ Matthew E. Price
Matthew E. Price

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2015, using the Appellate CM/ECF system, I electronically caused to be filed with the Clerk of Court for the U.S. Court of Appeals for the First Circuit the foregoing Amicus Brief. Participants in the case are registered CM/ECF users and service will be accomplished by the Appellate CM/ECF system.

/s/ Matthew E. Price
Matthew E. Price