In The

United States Court Of Appeals

For The Fourth Circuit

HOSH MOHAMED HOSH, # A076-863-283,

Petitioner – Appellee,

v.

ENRIQUE LUCERO, Field Office Director, Office of Enforcement and Removal, U.S. Immigration and Customs Enforcement; JOHN MORTON, Director, U.S. Immigration and Customs Enforcement; JAMES CHAPPARO, Executive Associate Director, U.S. Immigration and Customs Enforcement; JANET NAPOLITANO, Secretary, Department of Homeland Security; ERIC H. HOLDER, JR., Attorney General,

Respondents – Appellants,

and

DAVID L. SIMONS, Superintendent, Hampton Roads Regional Jail,

Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA AT ALEXANDRIA

BRIEF OF *AMICUS CURIAE* AMERICAN IMMIGRATION LAWYERS ASSOCIATION IN SUPPORT OF PETITIONER - APPELLEE

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DISCLOSURE OF CORPORATE AFFILIATIONS
AND OTHER INTERESTS

No. 11-1763 Caption: *Hosh v. Lucero, et al.*

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   NO

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   NO

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?

   NO

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?

   NO

5. Is party a trade association?

   N/A

6. Does this case arise out of a bankruptcy proceeding?

   NO

Dated: November 23, 2011 /s/ Andres C. Benach
Andres C. Benach

Table of Contents

Page

Table of Authorities

Page(s)

Cases:

Statutes:

Other Authorities:

Introduction

By any measure, the United States runs a massive immigrant detention system. It is a civil detention system wherein noncitizens are detained across the country in various types of facilities operated by the federal government, detention contractors or local jails. There appears to be a universal acknowledgement that the present immigrant detention system, civil in theory, is broken in practice. *See* National Immigrant Law Center, et al *A Broken System: Confidential Reports Reveal Failures in U.S. Immigrant Detention Centers* (July 2009) at vi (summarizing findings)[1]. Yet, the United States continues to lock up noncitizens at an alarming rate. Relying on a controversial and discredited agency interpretation of the governing statute, 8 U.S.C. § 1226(c), the United States has for several years asserted the right to lock up without possibility of bond noncitizens, long ago convicted of crimes but who pose no danger to the community or threat of absconding, and who are living at large in the community. *See Matter of Rojas*, 23 I&N Dec. 117 (BIA 2001) (published agency interpretation of § 1226(c)). To the contrary, the nearly universal opinion of district courts across the country, including in this circuit, disapproves of the agency position and instead interprets Congress's command that § 1226(c)'s mandatory custody regime is triggered *only* when the Attorney General assumes custody when the noncitizen is released from

[1] Available at <<http://www.nilc.org/immlawpolicy/arrestdet/A-Broken-System-2009-07.pdf>> (last visited Nov. 22, 2011)

criminal custody and not at any future date. Section 1226(c) has never mandated that every noncitizen who has ever committed a crime shall be detained and it is an error to interpret it as such.

In this brief, the American Immigration Lawyers Association ("AILA") explains how the plain language of the custody statute is intended to operate, especially so in light of its statutory history, and why the Court should disapprove of the agency decision in *Matter of Rojas*.

Statement of Interest

AILA is a national association with more than 11,000 members throughout the United States, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to advance the administration of law pertaining to immigration, nationality and naturalization; to cultivate the jurisprudence of the immigration laws; and to facilitate the administration of justice and elevate the standard of integrity, honor and courtesy of those appearing in a representative capacity in immigration and naturalization matters. AILA's members practice regularly before the Department of Homeland Security and before the Executive Office for Immigration Review (immigration courts and the Board of Immigration Appeals), as well as before the United States District Courts, Courts of Appeal, and the Supreme Court of the United States.

Argument

I. Congress did not intend for the immigration detention scheme to sweep in every immigrant with a past criminal conviction.

Congress has created an immigration detention scheme premised on the idea that not every individual in removal proceedings should be detained. *See Matter of Rojas*, 23 I&N Dec. at 131 (Rosenberg, Member dissenting). As empowered by statute, the Government "may" detain an immigrant who is removable. 8 U.S.C. § 1226(a). For those immigrants detained by the Government, individualized release determinations are the general rule. 8 U.S.C. § 1226(a)(2). In the pre-hearing stages of a removal proceeding, most immigrants will be eligible for release because they do not pose a flight risk or danger to the community, and a set of conditions can be established (such as the posting of a bond, reporting requirements, or both) to satisfy the objectives of appearance and community safety. Section 1226(c) creates an exception to the general availability of individualized consideration of release. It sets forth a mandatory detention scheme bounded by fixed rules: an individual who falls within its scope must be detained until the conclusion of removal proceedings. *Diop v. ICE/Homeland Security*, 656 F.3d 221, 230-231 (3d Cir. 2011) (describing detention statutes); *Casas-Castrillon v. Dep't of Homeland Security*, 535 F.3d 942, 946-948 (9th Cir. 2008) (same). Thus, the claim here is a limited one: Congress specifically intended the statute requiring *mandatory* pre-hearing

detention to be restricted to immigrants detained by the Government "when released" from the confinement connected to a triggering ground for removal. The statute provides:

> Detention of Criminal Aliens
>
> (1) Custody
> The Attorney General shall take into custody any alien who—
>
> > (A) is inadmissible by reason of having committed any offense covered in section 212(a)(2),
> > (B) is deportable by reason of having committed any offense covered in section 237(a)(2)(A)(ii), (A)(iii), (B), (C), or (D),
> > (C) is deportable under section 237(a)(2)(A)(i) on the basis of an offense for which the alien has been sentenced to a term of imprisonment of at least one year, or
> > (D) is inadmissible under section 212(a)(3)(B) or deportable under section 237(a)(4)(B),
>
> when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation and without regard to whether the alien may be arrested or imprisoned again for the same offense.
>
> (2) Release. The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides. . .that release of the alien from custody is necessary [for certain witness protection matters], and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

8 U.S.C. § 1226(c).

By the plain language, a noncitizen must be "described in paragraph (1)" in order to be subjected to mandatory custody. Paragraph (1) describes a category of noncitizens based on two conditions. First, the noncitizen must be removable under one of the enumerated grounds. Second, the noncitizen must, as a temporal qualifier, be transferred directly from criminal custody to immigration custody. If a noncitizen satisfies paragraph (1)'s description both because he is removable for an enumerated reason *and* he is taken into immigration custody when released from criminal custody, then § 1226(c) mandatory rule for custody is triggered.

Because the statute is plain in its wording and straightforward in its operation, there is no reason to deviate from its unambiguous meaning. It is no mystery as to why Congress authorizes the pre-hearing detention of some immigrants during removal proceedings. Like other forms of pre-hearing detention, § 1226(c) permits the Government to detain an immigrant who presents a flight risk or a danger to the community. *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976). The general rule since the enactment of the Immigration and Nationality Act in 1952, *codified at* 8 U.S.C § 1101 *et seq.*, has been that all individuals subject to removal proceedings are entitled to a bond hearing, which gives individualized consideration of the immigrant's dangerousness to the community and risk of flight. *Id.* "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." *Id.* (internal citations omitted). The individualized factors include family ties, possibilities of immigration relief, length of residence in the United States, prior court appearances, employment history, criminal record and other relevant factors. *Matter of P-C-M,* 20 I&N Dec. 432, 434-435 (BIA 1991).

With mandatory detention, Congress is doing something different. Section 1226(c) is different because it is based on fixed rules that are applied to an entire group of individuals, without regard for their particular circumstances. Apparently, Congress found that there was a meaningful correspondence to the combination of recent removable activity and criminal custody with dangerousness or flight risk. In light of this correspondence, individualized determinations for persons being released from current criminal custody for a removable offense directly into immigration custody were deemed unnecessary because, on the whole, it was believed that individualized determinations would not actually result in a release decision. *See generally,* Stephen H. Legomsky, *The Detention of Aliens: Theories, Rules, and Discretion*, 30 U. of Miami Inter-Am. L. Rev. 531, 544 (1999) (describing theories for mandatory detention of immigrants). The Supreme Court succinctly explained that Congress' purpose for mandatory detention was to prevent "deportable criminal aliens from fleeing prior to or during their removal

proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed." *Demore v. Kim*, 538 U.S. 510, 528 (2003). Congress enacted 8 U.S.C. § 1226, "requiring the Attorney General to detain a *subset* of deportable criminal aliens pending a determination of their removability." *Id.* at 521 (emphasis added). In other words, the text reflects Congress' view that immigrants completing prison sentences or otherwise being released from custody in connection with a removable offense are sufficiently likely to pose a danger to the community or a risk of flight upon such release that individualized considerations are not necessary.

The statute's scheme reflects that the fixed rules of mandatory detention are inapplicable to any individual who is not immediately transferred from criminal custody because of a removable offense to immigration custody. It is clear that the statutory directive at § 1226(c) eliminates the need for separate bond hearings *only* for those individuals who have been or are about to be released from criminal custody in connection with certain specified conduct or offenses making them removable. *Waffi v. Loiselle*, 527 F. Supp. 2d 480, 487-88 (E.D. Va. 2007). This view does not extend, however, to individuals who were long ago convicted of crimes and reside in the community at large. *Id.*; *Louisaire v. Muller*, 758 F. Supp. 2d 229, 235 (S.D.N.Y. 2010). Congress's purpose to streamline the bond determination process for those individuals released directly from criminal to

immigration custody because of a removable offense by relying on fixed rules does not translate to individuals who committed removable offenses and were released back into the community years ago. There is no demonstrable correlation between these individuals who have lived in the community at large with the adverse criteria of dangerousness or flight risk. Accordingly, the statute should be enforced under its plain, unambiguous terms.

II. The agency interpretation in *Matter of Rojas* is incorrect.

In 2001, the Board of Immigration Appeals published *Matter of Rojas*, 23 I&N Dec. 117, which the Government has asserted provides the statutory interpretation of § 1226(c). As explained here, the BIA's decision in *Matter of Rojas* should be disapproved. *Louisaire*, 756 F. Supp. 2d at 236 (holding that "*Matter of Rojas*, however, is wrong as a matter of law and contrary to the plain language of the statute.")

In a highly divided decision, the BIA determined that mandatory detention applies to any enumerated individual even if he is not immediately taken into immigration custody when released from incarceration. Although the BIA conceded that "the statute does direct the Attorney General to take custody of aliens immediately upon their release from criminal confinement," it nonetheless held that the overall statutory scheme indicates an Congressional intent to "detain and remove all criminal aliens." *Matter of Rojas,* 23 I&N Dec. at 122. The BIA

found that the language of 8 U.S.C. § 1226(c) to be "susceptible to different readings" and that it was necessary for the Board to "turn in part to the remainder of the statutory scheme, taking into account its objectives and policy." *Id*. at 120.

The BIA started with what it terms the natural reading of 8 U.S.C. § 1226(c)(2) which prohibits the release of "an alien described in paragraph (1)" and concluded that such description "does not naturally appear to include any or all of the concluding clauses of paragraph (1) namely the clauses directing that a described alien be taken into custody 'when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned for the same offense.'" *Id* at 121. In other words, the BIA held that the "when released" language is a command to the Attorney General but not a limitation on the Attorney General's obligation to detain. The BIA then reviewed the overall statutory context and determined that the goal of IIRIRA's changes was "the removal of criminal aliens in general, not just those coming into service custody 'when released' from criminal incarceration." *Id*. at 122. The BIA then looked at predecessor statutes and determined that the statute has historically had some ambiguity in the issue of mandatory detention and the timing of release from custody. *Id*. at 123-24.

Matter of Rojas has not fared well in the District Courts. The overwhelming majority of federal district courts to have interpreted this statute have held that it unambiguously applies only to noncitizens detained at or about the time of their release from criminal custody.[2]

In *Hosh v. Lucero*, 2011 WL 1871222 (E.D. Va. 2011) (Trenga, J.) the District Court joined all of the other district courts in the Eastern District of Virginia and held that Congress' inclusion of the "when the alien is released" language limits the mandatory detention provision only to those who are taken into immigration custody at their time of release from criminal custody. *See Keo v. Lucero*, No. 1:11cv614, 2011 U.S. Dist. LEXIS 75619 (E.D. Va. July 13, 2011)

[2]*See, e.g.*, *Parfait v. Holder*, 2011 WL 4829391 (D.N.J. October 11, 2011); *Rianto v. Holder*, 2011 WL 3489613 (D. Ariz. Aug. 9, 2011); *Beckford v. Aviles*, No. 10-235 (JLL), 2011 WL 3444125 at *7 (holding that *Rojas* misreads clear statutory command); *Jean v. Orsino*, No. 11-3682 (S.D.N.Y. June 30, 2011) (same); *Sylvain v. Holder*, No. 11-3006 (JAP), 2011 WL 2570506 at *5-*6 (D.N.J. June 28, 2011); *Louisaire v. Muller*, 758 F. Supp. 2d 229, 236 (S.D.N.Y. 2010) (same); *Gonzalez v. Dep't of Homeland Sec.*, No. 1:CV-10-0901, 2010 WL 2991396, at *1 (M.D. Pa. July 27, 2010) (same); *Dang v. Lowe*, No. 1:CV-10-0446, 2010 WL 2044634, at *2 (M.D. Pa. May 20, 2010); *Monestime v. Reilly*, 704 F. Supp. 2d 453, 458 (S.D.N.Y. 2010); *Khodr v. Adduci*, 697 F. Supp. 2d 774 (E.D. Mich. 2010); *Scarlett v. U.S. Dep't of Homeland Sec.*, 632 F. Supp. 2d 214 (W.D.N.Y. 2009); *Bromfield v. Clark*, No. C06-0757-JCC2006, 2007 WL 527511 at *4 (W.D. Wash. Feb. 14, 2007); *Zabadi v. Chertoff*, No. C05-0335, 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). But *see, e.g.*, *Diaz v. Muller*, No, 11-4029, 2011 WL 3422856 at *2 (D.N.J. Aug. 4, 2011) (holding "when released" to be ambiguous); *Sulayao v. Shanahan*, No. 09-Civ.-7347, 2009 WL 3003188 (S.D.N.Y. Sept. 15, 2009) (deferring to *Matter of Rojas*); *Serrano v. Estrada*, No. 3:01CV1916M, 2002 WL 485699 (N.D. Tex. Mar. 6, 2002) (holding that "when released" clause is ambiguous and deferring to *Matter of Rojas*).

(Cacheris, J.); *Bracamontes v. Desanti*, No. 2:09cv480, 2010 U.S. Dist. LEXIS 75977 (E.D. Va. July 26, 2010) (Jackson, J.); *Waffi v. Loiselle*, 527 F. Supp. 2d 480 (E.D. Va. 2007) (Brinkema, J.); *Aguilar v. Lewis*, 50 F. Supp. 2d 539, 544 (E.D. Va. 1999) (Cacheris, J.). In the case below, the court found that the "plain, unambiguous language of section 1226(c)" makes it clear that Congress intended to subject only those taken into custody at the time of their release to be subjected to the mandatory detention provisions. *Hosh*, 2011 WL 1871222 at *3. In so finding, the Court determined that although the Attorney General had discretion to detain Mr. Hosh under 8 U.S.C. § 1226(a), Mr. Hosh was entitled to an individualized bond hearing before an immigration judge. *Id.*

In reaching this conclusion, the court agreed with the logic used by Judge Brinkema in *Waffi v. Loiselle*, 527 F. Supp. 2d 480 (E.D. Va. 2007). In *Waffi*, the District Court engaged in a traditional *Chevron U.S.A. v. National Resources Defense Council, Inc*., 467 U.S. 837 (1984) analysis to determine if deference to the Board of Immigration Appeals' decision in *Matter of Rojas*, was owed. As discussed above, in *Rojas*, the Board determined that the "when released" language did not limit the government from imposing mandatory detention only to those who are taken into custody at the time of their release from criminal custody. In *Waffi*, the court examined the statute to determine if *Chevron* deference were owed to the Board's determination. *Waffi*, 527 F. Supp. 2d at 486. Holding that

Congress spoke unambiguously in using the "when released" language, Judge Brinkema concluded that the Board was not owed deference and the judiciary had to give effect to the unambiguously expressed intent of Congress. *Id.* at 488. Judge Brinkema concluded that the natural meaning of the when released language "includes the characteristic of 'immediacy,' referring in its primary, conjunctive sense, to activity occurring 'at the time that' or 'as soon as' other action has ceased or begun." *Id*.

Here and elsewhere, the Government has attempted to imbue the "when released" language with ambiguity. *See, e.g., Saysana v. Gillen*, 590 F.3d 7 (1st Cir. 2009) (in parallel context, rejecting Government's "strained" reading of "when released"). The Government argues that since the term "when" can have several different meanings, the statute is ambiguous. *See* Appellant Brief at 21. The Government argues that the district court was wrong to reject alternative meanings of the term "when released" and relied upon a "formalistic" approach that can undermine congressional intent. *See id*. at 20. Yet, it is the Government's position that undermines the unequivocally expressed congressional intent. In determining the ordinary meaning of the term "when" courts have held that the term conveys immediacy and relates to a specific period in time. The district court's interpretation of the term "when" is the plain and ordinary meaning that the law requires. Like their position in *Saysana,* the Government again "strains" to muddle

what is clear. The government compares the term "when" to the term "employee" at issue in *Robinson v. Shell Oil Company*, 519 U.S. 337, 341 (1997), which the court found to be ambiguous. Such a comparison is absurd. The government compares a term "when" that has a standard and ordinary English meaning with the term "employee" which is the subject of volumes of legal analysis. *See e.g. Dellinger v. Sci. Applications Int'l Corp.*, 2011 WL 3528750 (4th Cir. Aug. 12, 2011).

The U.S. Court of Appeals for the First Circuit rejected the Government's efforts to find ambiguity in the term "when released." In *Saysana*, the First Circuit analyzed the term "when released" in the statute. *Saysana*, 590 F.3d at 13. The issue in *Saysana* was whether DHS could subject a noncitizen to mandatory detention if he was released from custody for a non-deportable offense if he had previously been convicted and released due to a deportable offense. The court found the "when released" language to be clear and held that the government's alternative formulations were "strained" and not consistent with the legislative scheme.

> In our view, a natural reading of the statutory provision from top to bottom makes clear that the congressional requirement of mandatory detention is addressed to the situation of an alien who is released from custody for one of the enumerated offenses. The statutory language embodies the judgment of Congress that such an individual should not be returned to the community pending disposition of his removal proceedings. Both the language and the structure of the statutory provision state this mandate in a clear and straightforward manner.

Saysana, 590 F.3d at 13.

III. The statute's history indicates that "when released" means "when released".

The plain meaning of the "when released" language is also consistent with the statute's history. Since the enactment of mandatory detention provisions in 1988, Congress has *always* tied the imposition of mandatory detention to the release from criminal custody. The first mandatory detention provision was added to the INA in 1988: "the Attorney General shall take into custody any alien convicted of an aggravated felony upon completion of the alien's sentence for such conviction." Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690 Sec. 7343, 102 Stat. 4181 (1981). The use of the phrase "upon completion of the alien's sentence" leaves no doubt that the event that triggered mandatory detention was the release from custody. In 1990, Congress foreshadowed the current version of the statute and amended the statute by replacing "upon completion of the alien's sentence for such conviction" with "upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of re-arrest or further confinement in respect of the same offense)." Immigration Act of 1990, Pub. L. No. 101-649, Sec. 504, 104 Stat. 4978 (1990). "Presumably, . . . the legislature was seeking to thwart arguments by aliens that because they were subject to parole or other community supervision they could not be taken into immediate immigration detention. . . . " *Quezada-Bucio*, 317 F. Supp. 2d at 1230. Again, Congress made it clear that the event that triggered

mandatory detention was the release from confinement and not at some future point, such as the completion of parole or supervised release. As the First Circuit stated in *Saysana* stated, "[t]he statutory language embodies the judgment of Congress that such an individual should not be returned to the community pending disposition of his removal proceedings." *Saysana*, 590 F.3d at 13.

In 1996, Congress replaced the generic phrase "aggravated felony" with the itemized list "any criminal offense covered in section 241 [of the INA]. . . "The Antiterrorism and Effective Death Penalty Act ("AEDPA"). Pub. L. No. 104-132, Sec. 440, 110 Stat. 1214. This change did nothing to alter the basic structure tying the obligation of DHS to take into custody to the individual's release from criminal custody. Thus, under each version of 8 U.S.C. § 1226, Congress continually linked mandatory detention to the timing of the release from custody.

As Judge Cacheris wrote in *Keo*, a requirement that mandatory detention applies only to those taken into custody immediately upon their release from criminal custody provides DHS with the impetus to be on "the jailhouse steps": "Congress' point in enacting sec. 1226(c) was to assure that a certain class of deportable aliens would not abscond before they could be deported. Perhaps the most obvious step towards such a goal is to detain such aliens immediately upon their release from state or federal custody, before they have a chance to vanish." *Keo*, 2011 U.S. Dist. LEXIS 75619 at *11-12.

When enacting the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Div. C, Pub. L. No. 104-208, § 303(b), 110 Stat. 3009-586 (Sept. 30, 1996), Congress created a transition program to move the Government into a system that could accomplish mandatory detention. *See* Removal of Criminal and Illegal Aliens: Hearing Before the Subcommittee in Immigration and Claims of the House Committee on the Judiciary, 104th Cong. 15-16 (1996) (statement of David Martin General Counsel, INS) (requesting "greater flexibility" given the ongoing work required to "make additional detention spaces available, improve "systematic county jail programs," and obtain '[a]dditional investigative resources").

The detention rules in effect during the transition were called the Transition Period Custody Rules ("TPCR"). *See* IIRIRA Sec. 303(b)(3). The transition period lasted from September 30, 1996 until October 9, 2008. Both the TPCR and the permanent detention rules at § 1226(c) use the language "when released." *Cf.* IIRIRA Sec. 303(b); 8 U.S.C. § 1226(c). Under the TPCR, noncitizens taken into custody "when released" were subject to the TPCR's temporary rules, which were different from the rules that were to come into effect after the TPCR's expiration. Plainly, Congress anticipated that the "when released" language in the TPCR detention provisions required an alien be taken into custody promptly *within* the transition period. If the Government's construction of "when released" were

correct, however, the TPCR's temporary rules would actually be permanent rules because their interpretation eliminates the temporal qualifier that "when released" is meant to be. Namely, if the "when released" clause means "at any time after release," the Attorney General could have taken individuals released during TPCR into custody after the TPCR's expiration. *See Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999) (holding that individuals released from custody prior to the expiration of the TPCR on October 9, 1998, are not subject to mandatory detention.") This would be an illogical result since the TPCR would have no applicability to those individuals released prior to the TPCR's expiration. Congress plainly could not have intended for the TPCR language when the alien is released" to permit a taking into custody at any time after release. Section 1226(c) is similarly structured and uses the same "when released" qualifier. There is no reason why the same words would not have the same meaning given their context and placement in the detention statutes.

Conclusion

The plain language of the statute, the statutory history, and the combined weight of numerous district courts have all held that "when released" is unambiguous and, in its ordinary meaning, means "when released." The BIA's interpretation of this language in *Matter of Rojas* clearly does not comport with legislative intent as expressed in the unambiguous language of the statute. Thus,

this court must reject the BIA's interpretation and give effect to the plain meaning of the statute: that mandatory detention only applies to those who are taken into custody immediately upon their release from criminal custody.

Respectfully submitted,

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Dated: November 23, 2011

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/s/ Andres C. Benach
Counsel for Appellee

Dated: November 23, 2011

Certificate of Filing and Service

I hereby certify that on November 23, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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