Case Nos.: 19-1787, 19-1900

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MARK ANTHONY REID; ROBERT WILLIAMS; AND LEO FELIX CHARLES, on behalf of themselves and others similarly situated,

Petitioners-Appellants/Cross-Appellees

v.

CHRISTOPHER J. DONELAN, Sheriff, Franklin County, Massachusetts; LORI STREETER, Superintendent, Franklin County Jail & House of Correction;

Respondents-Appellees/Cross-Appellants

Appeal from the United States District Court
for the District of Massachusetts
Case No. 3:13-cv-30125-PBS
(Hon. Patti B. Saris)

BRIEF OF THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS-APPELLANTS

Kevin P. Martin
Madelaine M. Cleghorn
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, Massachusetts 02210
Tel.: +1 617 570 1186
Fax.: +1 617 801 1231

February 19, 2020

Counsel for The American Immigration Lawyers Association as Amicus Curiae

Respondents-Appellees/Cross-Appellants continued:

THOMAS M. HODGSON, Sheriff, Bristol County, Massachusetts; JOSEPH D. MCDONALD, JR., Sheriff, Plymouth County, Massachusetts; STEVEN W. TOMPKINS, Sheriff, Suffolk County, Massachusetts; CHAD WOLF, Acting Secretary of the Department of Homeland Security; DENIS C. RIORDAN, Director, Immigration and Customs Enforcement Boston Field Office; WILLIAM P. BARR, Attorney General; JAMES MCHENRY, Director of the Executive Office for Immigration Review; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; DAVID DUBOIS, Sheriff, Strafford County, New Hampshire; CHRISTOPHER BRACKETT, Superintendent, Strafford County House of Corrections; MATTHEW T. ALBENCE, Acting Director, Immigration and Customs Enforcement

Respondents-Appellees/Cross-Appellants

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *Amicus Curiae* the American Immigration Lawyers Association avers that it is a non-profit that is not owned by any publicly traded company and that does not issue any shares of stock.

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

By its attorneys,

/s/ Kevin P. Martin

Dated: February 19, 2020

Kevin P. Martin
Madelaine M. Cleghorn
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, Massachusetts 02210
Tel.: +1 617 570 1186
Fax.: +1 617 801 1231

INTEREST OF THE *AMICUS CURIAE*

The American Immigration Lawyers Association (AILA) is the national association of more than 15,000 attorneys and law professors who practice and teach immigration law. AILA is a nonpartisan, not-for-profit organization that provides continuing legal education, information, professional services, and expertise through its 39 chapters and over 50 national committees. AILA's mission is to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members. AILA members routinely represent detained immigrants in immigration court and in habeas cases before federal courts. As a result, AILA has significant expertise on the legal and practical issues in this case. AILA also filed an *amicus* brief in the recent Supreme Court case referenced throughout this brief, *Jennings v. Rodriguez*, 138 U.S. 830 (2018).

AILA has moved for leave under Federal Rule of Appellate Procedure 29(b)(2) to file this brief; Petitioners-Appellants and Respondents-Appellees have assented to the filing of this brief.[1]

[1] No party's counsel authored this brief in whole or in part, and no party, counsel to a party, or any other person other than the *amicus* and its members contributed money that was intended to fund preparing or submitting the brief.

SUMMARY OF ARGUMENT

In its summary judgment decision, the District Court correctly recognized that "mandatory detention without a bond hearing under 8 U.S.C. § 1226(c) violates due process" when the detention becomes "unreasonably prolonged in relation to its purpose." (Add. at 2.) The District Court went astray, however, in holding that detention without a bond hearing—meaning detention without any independent review of the custody decision—pending completion of removal proceedings only is likely to be unreasonably prolonged when it has lasted for more than one year. (*Id.* at 2-3.) One year is an extraordinary period of time for someone to be held without a review of the detention—equivalent to the period of time that historically has distinguished the *punishment* for a felony conviction from that for a misdemeanor. *E.g., Burgess v. United States*, 553 U.S. 124, 130 (2008). Bond (or "reasonableness") hearings in other contexts typically are held well before the passage of an entire year. The District Court's reasoning for its one-year benchmark—that most removal proceedings are completed in one year anyways—appears to have been selected to avoid the need for many bond hearings, rather than to satisfy the Constitution's Due Process mandate. But constitutional standards should not be determined based on current administrative practices or a desire to avoid conflict with the Executive Branch. This Court should hold that detention without an individualized reasonableness hearing

pursuant to Section 1226(c) that lasts any more than six months is presumptively unconstitutional.

The District Court also went astray in at least a second manner: By ruling that before a bond hearing is conducted, a noncitizen held for a presumptively unreasonable period—be it one year or six months—first must prevail on a petition for habeas corpus. (Add. at 3.) The requirement that a separate habeas petition be filed and reach a final judgment—and potentially also be resolved on appeal—*before* a bond hearing occurs interposes an unnecessary step that will cause significant delays in the review and remedy of unconstitutional deprivations of liberty. In its opinion, the District Court improperly relied on *Jennings v. Rodriguez*, 138 U.S. 830 (2018) and *Demore v. Kim*, 538 U.S. 510 (2003), which do not control the constitutional question at issue in this case.

ARGUMENT

I. NEITHER *JENNINGS* NOR *DEMORE* CONTROLS THIS CASE.

In its opinion, the District Court expressly rejected Appellants' argument that a six-month period of detention under 8 U.S.C. § 1226(c) without an individualized bond hearing is *unconstitutional* on the basis that, in *Jennings v. Rodriguez*, 138 U.S. 830 (2018), the Supreme Court held that Section 1226(c) does not require an individualized bond hearing after six months as a matter of *statutory interpretation*. (Add. at 20.) As the District Court put it, "[t]he six-month rule is .

. . inconsistent with the Supreme Court's opinion in *Jennings*." (*Id*.) The District Court similarly ruled that a six-month rule for bond hearings is "implicitly foreclose[d]" by *Demore v. Kim*, 538 U.S. 510 (2003), even though the *Demore* Court "was not directly presented with this question" because "[n]either the majority opinion nor Justice Kennedy's concurrence expressed any concern that [petitioner's] detention had become unreasonable by virtue of hitting the six-month mark." (Order at 19.)

The District Court's explanation that *Jennings* and *Demore* somehow required the holding below constitutes legal error. The Supreme Court went out of its way in *Jennings* to explain that, because the statute was unambiguous, it was *not* offering *any* opinion on the constitutional question. *Jennings*, 138 U.S. at 846. Specifically, the Supreme Court held that "§ 1226(c) does not on its face limit the length of the detention it authorizes" and that "an implicit 6-month time limit on the length of mandatory detention" is not a "plausible statutory construction." (internal quotation omitted). *Id.* Because, however, the Ninth Circuit "had no occasion to consider respondents' *constitutional* arguments on their merits," the Supreme Court declined to address any due process challenges, remanding the case to the Ninth Circuit "to consider them in the first instance." *Id*. at 851 (emphasis added).

In *Demore*, for its part, the question presented was whether *initial* detention

without a bond hearing violates the Due Process Clause. *Demore,* 538 U.S. at 527-28. To that question, the Supreme Court answered "no." *Id*. at 530. The Court had no occasion to (and did not) determine whether an unreasonably prolonged period of detention after the initial detention without a bond hearing violates the Due Process Clause and, if so, how long is "too long." Indeed, if the Supreme Court already had rejected a six-month rule as a matter of constitutional law in *Demore,* its consideration of a six-month rule in *Jennings* under the doctrine of constitutional avoidance would have been entirely superfluous.

The Solicitor General's brief in *Demore* further illustrates the point that a six-month rule was not at issue in that case. In arguing against a rule that any period of mandatory detention is unconstitutional, the Solicitor General expressly argued that "the duration of detention in aid of removal is another factor bearing upon its constitutionality." Br. for Petitioners, *Demore v. Kim*, 538 U.S. 510 (2003) (No. 01-1491) 2002 WL 31016560 at *48. The Solicitor General did not view this as a problem for the Government's case because, he represented, "detention under Section 1226(c) generally lasts approximately one month or less, which distinguishes *Zadvydas* and strongly supports the statute's constitutionality." *Id.* He then went on to provide this discussion of a related Fourth Circuit decision:

> In *Welch*, the Fourth Circuit relied upon the reasoning of *Zadvydas* to establish a rebuttable presumption that detention under Section 1226(c) for more than six months is unlawful. *See* 293 F.3d at 227, 228 (Widener,

> J., concurring), 234-235 (Williams, J., concurring in the judgment). That approach lacks a specific foundation in the text or history of Section 1226(c). Nevertheless, it does reinforce a critical point for purposes of respondent's facial challenge: The mandatory detention provisions of Section 1226(c) are constitutional in the ordinary case, and exceptional circumstances that present special due process concerns can be addressed on a case-by-case basis.

Id.; *see also Welch v. Ashcroft*, 293 F.3d 213 (4th Cir. 2002) (abrogated by *Demore v. Kim*, 538 U.S. 510 (2003)) (adopting a six-month rule, albeit for habeas petitions challenging detention under Section 1226(c)). As can be seen, while the Solicitor General argued in *Demore* against a six-month rule as a matter of statutory construction—the eventual holding in *Jennings*—he did not argue that, as a matter of constitutional law, detentions lasting upwards of six months without an individualized reasonableness hearing at the six-month mark comport with the Due Process Clause. *See also* Reply Br. for Petitioners, *Demore v. Kim*, 538 U.S. 510 (2003) (No. 01-1491) 2002 WL 31969024 (never arguing against a six-month rule as a matter of Due Process). To the contrary, his opening brief could be read as conceding that a detention for six months or more constitutes "exceptional circumstances" justifying redress. Br. for Petitioners, *Demore v. Kim*, 538 U.S. 510 (2003) (No. 01-1491) 2002 WL 31016560 at *48.

II. DUE PROCESS PRESUMPTIVELY REQUIRES AN INDIVIDUALIZED HEARING AFTER SIX MONTHS.

While the District Court rejected Appellants' argument for a bright-line six-

month trigger for a bond hearing, it nonetheless concluded that "when mandatory, categorical detention lasts for more than one year during agency removal proceedings . . . the delay is likely to be unreasonable." (Add. at 2-3.) That conclusion—that a detention lasting one year is likely unreasonably prolonged yet a detention lasting six months is not likely unreasonably prolonged—was arbitrary and unsupported, and should be reversed.

The only evidence upon which the District Court relied in deciding that a noncitizen's detention only has become presumptively unreasonably prolonged after one year was evidence from the Executive Office of Immigration Review's ("EOIR") "own goals and statistics" concerning how long such detentions generally last. (*Id*. at 28.) That data purported to show that "over the past five years, the agency completed removal proceedings for all but 5.8% of aliens detained under § 1226(c) within a year." (*Id*. at 27-28.) According to the District Court, "[t]he one-year presumption simply acknowledges that, given EOIR's own goals and statistics, detention for longer than a year is likely to be unreasonably prolonged." (*Id*. at 29.)

As a matter of law, the Government's "own goals and statistics" based on current practices are not the yardstick by which the Due Process rights of detained noncitizens are measured.[2] Under the three-part test the Supreme Court established

[2] Moreover, the Government's statistics on the length of detentions should not be

in *Mathews v. Eldridge*, the "fiscal and administrative burdens" on the government from a "procedural requirement" comprise only a single factor, to be balanced against the "private interest" at stake and the risk of an "erroneous deprivation of such interest." 424 U.S. 319, 335 (1976).

Courts applying the *Mathews* framework have recognized that "[t]he general liberty interest in freedom from detention is perhaps the most fundamental interest that the Due Process Clause protects." *Francis v. Fiacco*, 942 F.3d 126, 141 (2d Cir. 2019); *United States v. White*, 927 F.3d 257, 264 (4th Cir. 2019) (petition for cert. pending) (describing the interest in freedom from detention as "extraordinarily weighty"). And courts applying the *Mathews* framework to the detention of noncitizens in particular have concluded that "[w]hen detention crosses the six-month threshold and release or removal is not imminent, the private interests at stake are profound." *Diouf v. Napolitano*, 634 F.3d 1081, 1091-92 (9th Cir. 2011); *see also Guerrero-Sanchez v. Warden York Cty. Prison*, 905 F.3d 208, 225 (3d Cir. 2018) (same, quoting *Diouf*); *Zadvydas v. Davis*, 533 U.S. 690 (2001) (in immigration context, stating that "[f]reedom from imprisonment—from

---

presumed accurate. As the District Court recognized, the dissent in *Jennings* observed that the statistics the Government provided in *Demore* "turned out to be erroneous" and that, in fact, "detention normally lasts twice as long as the Government then said it did." (Add. at 15.); *Jennings v. Rodriguez*, 138 U.S. 830, 869 (2018) (Breyer, J., dissenting). Given the Government's history of providing inaccurate data, the data it provided in this case should be regarded skeptically.

government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects"). The evidence is that such prolonged detention of noncitizens under Section 1226(c) frequently is unjustified, as those detained for six months or more under Section 1226(c) often are determined to pose no risk to the public and no risk of flight. *See* Br. for Appellants at 6 (reporting that of the 104 *Reid* class members who were given bond hearings pursuant to the District Court's earlier injunction, "immigration judges ('IJs') set bond for 37 of those class members after determining that each individual would not pose a danger or flight risk if released on bond . . . and twelve additional class members were released under orders of supervision or orders of recognizance"). With such a substantial interest at stake, and a demonstrated risk of an "erroneous deprivation of such interest," the question under *Mathews* is whether it is nonetheless unreasonable to require the government to adhere to a six-month rule for bond hearings—not whether the government happens to have been doing so.

The District Court's decision discusses very little information pertinent to that dispositive question. Indeed, based on the information that the District Court *does* discuss, it is highly likely that the "fiscal and administrative burdens" on the government from moving the District Court's presumption up from one year to the Appellants' six months would not be onerous at all. After all, the District Court

observed that the government *already* "has set a goal that immigration courts complete 85% of removal cases involving detained aliens within sixty days of the filing of a Notice to Appear." (App. at 27.) In addition, the District Court noted, "an agency regulation requires the Board of Immigration Appeals ('BIA') to adjudicate appeals from the immigration court within six months absent 'exigent circumstances.'" (*Id.) (citing* 8 C.F.R. § 1003.1(e)(8)(i)). Conversely, nothing in the District Court's decision *precludes* a detained noncitizen from seeking habeas relief six months into his or her detention, which itself would impose fiscal and administrative burdens on the government, and the District Court's decision *requires* a noncitizen to file a habeas petition once he believes his detention has become unreasonable in order to secure a bond hearing (Add. at 29, 33.) Moreover, the cost of unnecessarily detaining individuals who present no danger to the community or risk of flight is greater than that of releasing such individuals with orders of supervision. (Appx. at 427, ¶¶22, 23.)

The net effect of all this is that requiring that a reasonableness hearing occur after six months is not likely to impose much in the way of *incremental* fiscal and administrative burdens on the government at all, as measured against a baseline of the District Court's hybrid one-year-plus-habeas construct. And whatever incremental costs are imposed do not come close to outweighing the unquestionably "profound" liberty interests of noncitizens whose detention past six

months cannot be justified by risks to the public or a risk of flight. *See supra*, at 8. The experience of AILA members has been that holding bond hearings at six months—in jurisdictions such as California, Arizona, New York, and New Jersey—has proven to be an administratively workable standard with low cost to the government, with such hearings often occurring alongside other pre-trial hearings in the case.

Tellingly, across a variety of civil commitment and pretrial detention contexts, legislatures and courts have mandated an individualized review of the reasonableness of an individual's detention by six months, if not sooner. As particularly relevant here, courts applying the *Mathews* framework to pre-removal detention under 8 U.S.C. § 1231(a)(6) have concluded that Due Process requires an individualized bond hearing after six months, unless the noncitizen's release or removal already is imminent. *See, e.g., Guerrero-Sanchez*, 905 F.3d at 226 ("We therefore adopt a six-month rule here—that is, an alien detained under § 1231(a)(6) is generally entitled to a bond hearing after six months (*i.e.*, 180 days) of custody."); *Diouf*, 634 F.3d at 1091-92 (same). Additionally, as Appellants note in their brief, "there is 'probable value' in the 'additional . . . procedural safeguard[]' of automatically calendaring an Immigration Court reasonableness hearing at six months." *See* Br. for Appellants at 52 (quoting *Mathews*, 424 U.S. at 335). By six months, the immigration judge "will have conducted a master calendar hearing and

received a pleading from the incarcerated individual outlining his or her requested relief" and the government will have already "set forth its grounds for removability" at the "outset of the immigration case." (*Id*. at 52). As such, "by six months, the immigration judge will have the information necessary to evaluate reasonableness." (*Id*. at 53).

Outside the immigration context, courts also have focused on six months as a marker for when an individualized reasonableness hearing must occur.[3] In the pretrial detention context, the Ninth Circuit held that a "detainee, having been incarcerated for over six months without a constitutionally adequate bail hearing, would be irreparably harmed" if the federal court could not interfere with the state court to require a bail hearing. *Arevalo v. Hennessy*, 882 F.3d 763 (9th Cir. 2018). In the civil detention context, the Supreme Court upheld a statutory scheme for individuals deemed "sexually dangerous" confined in the federal system, which established "ongoing psychiatric and judicial review of the individual's case, including judicial hearings at the request of the confined person at 6-month intervals." *United States v. Comstock*, 560 U.S. 126, 131 (2010).

At bottom, the District Court was right to set a benchmark at which continued detention of a noncitizen pursuant to Section 1226(c) without a bond

[3] *See* Br. for Appellants at 44-45 for additional cases outside of the immigration context requiring individual review at the six month mark.

hearing is presumptively unconstitutional. It went astray by deciding to set that benchmark at one year, rather than six months. Applying the *Mathews* framework, and in light of the substantial precedent in a variety of contexts supporting bond hearings by six months, this Court should reverse the District Court's decision to the extent it rejected a six-month rule for bond hearings.

III. A HABEAS PETITION SHOULD NOT BE REQUIRED BEFORE A REASONABLENESS HEARING IS CONDUCTED.

The District Court also committed error by holding that, before any bond hearing occurs, "a noncitizen subject to mandatory detention without a bond hearing under § 1226(c) must bring a habeas petition in federal court." (Add. at 3.); (*see also id*. at 31.) ("The Government responds that the proper mechanism for a criminal alien to challenge his mandatory detention as unreasonable is via an individual habeas petition in federal court. I agree.").

Beyond the District Court's misplaced argument that an immigration judge lacks jurisdiction to adjudicate a reasonableness hearing, *see infra* at 14-16, the Court cited no precedent in support of its holding that a habeas petition—as opposed to a reasonableness hearing—is the proper mechanism for reviewing a noncitizen's prolonged detention. In contrast, the Supreme Court in *Demore*—upon which the District Court relied heavily to reach its other holdings—only observed that Section 1226(c) "contains no explicit provision barring habeas review, and we think that its clear text does not bar respondent's constitutional

challenge to the legislation authorizing his detention without bail." *Demore*, 538 U.S. at 517. The Court's statement that there is no "bar" to habeas corpus petitions does not mean that habeas corpus petitions are *required* before an individualized reasonableness hearing occurs. In fact, in Justice O'Connor's concurring opinion in *Demore*, she interpreted the statute to "plainly deprive[] courts of federal habeas jurisdiction." *Demore*, 538 U.S. at 537 (O'Connor, J., concurring). Justice Kennedy stated clearly in his concurring opinion that "due process requires individualized procedures to ensure there is at least some merit to the Immigration and Naturalization Service's (INS) charge and, therefore, sufficient justification to detain a lawful permanent resident alien pending a more formal hearing." *Demore*, 538 U.S. at 531 (Kennedy, J., concurring).

The District Court also concluded that immigration judges lack jurisdiction to decide the "constitutional" question whether a noncitizen's detention has become unreasonably prolonged, which Appellants agree could be considered together with a noncitizen's risk of flight and risk to public safety. (Add. at 33-34). As Appellants explain in their brief, however, the District Court's reasoning on this point was flawed. *See* Br. for Appellants at 22-28. At a reasonableness hearing, an immigration judge would merely be applying constitutional standards set by the judiciary to the facts of a particular case, not himself deciding what the Due Process Clause requires. Precedent confirms that administrative law judges

have jurisdiction to apply judicially-formulated constitutional standards to the facts before them. *See* Br. for Appellants at 24-25 (citing cases in which immigration courts have applied Fourth and Fifth Amendment standards).

The District Court's reasoning overlooks the crucial fact that, in determining whether a noncitizen's detention has become unreasonably prolonged, an immigration judge would be acting to *comply with a declaratory judgment* duly entered by an Article III court. Specifically, an Article III court will have ruled that a noncitizen presumptively cannot be detained pursuant to Section 1226(c) for more than six (or twelve) months without an individualized bond hearing, unless the noncitizen's own dilatory conduct is the reason for the delay. (Add. at 21-22.) The immigration judge, as a member of the Executive Branch, will simply be scheduling a reasonableness hearing after six (or twelve) months unless, based on the immigration judge's review of the facts, the particular noncitizen's case falls outside the scope of the declaratory judgment because the noncitizen's own conduct was behind the delay.

In this way, an immigration judge acting in compliance with the declaratory judgment by scheduling an individualized reasonableness hearing after six or 12 months (unless he concludes that the noncitizen's dilatory action was responsible for the delay), is no different than an executive branch employee not attempting to enforce a law that has been declared unconstitutional as applied to some, but not

all, sets of circumstances. In both scenarios, the Executive Branch employee is required to exercise some judgment in deciding whether the facts before him come within, or fall outside, the scope of the declaratory judgment. But no one would say that, in making that determination, the Executive Branch employee is adjudicating the constitutionality of the underlying statute. This case therefore is nothing like *Hinds v. Lynch*, 790 F.3d 259 (1st Cir. 2015), a case on which the District Court relied. In *Hinds*, petitioner was not asking the Board of Immigration Appeals ("BIA") to act in compliance with an existing declaratory injunction, but to consider his constitutional claims in the first instance.

The question whether a habeas petition is required before any mandated bond hearing occurs is one with serious real-world implications. Anecdotal evidence demonstrates that requiring a noncitizen who already has been detained for an unreasonably prolonged time—be it six months or a year—to first prevail on a habeas petition before a reasonableness hearing occurs will add months or years to the period of detention. In particular, a review of cases in which habeas petitions were filed to challenge detentions under Section 1226(c) demonstrates that even *successful* petitions can take about a half year to reach a decision in the district court. *See, e.g.*, *Lemonious v. Streeter*, (D. Mass. Feb. 14, 2020) (11 months); *Abreu v. Green*, 2019 WL 325543, at *1 (D.N.J. Jan. 25, 2019) (five months); *Baez-Sanchez v. Kolitwenzew*, 360 F. Supp.3d 808 (C.D. Ill. 2018) (seven

months); *Alexis v. Sessions*, 2018 WL 5921017, at *2 (S.D. Tex. Nov. 13, 2018) (five months; *Kleinauskaite v. Doll*, 2018 WL 6112482, at *1 (M.D. Pa. Oct. 9, 2018) (11 months); *Cabral v. Decker*, 331 F. Supp.3d 255, 257 (S.D.N.Y. 2018) (six months); *Vega v. Doll*, 2018 WL 3765431, at *1 (M.D. Pa. July 11, 2018) (11 months); *Perez-Cobon v. Bowen*, 2017 WL 6039733, at *1 (M.D. Pa. Dec. 6, 2017) (four months).

As a practical matter, therefore, the District Court's "one-year" benchmark will result in at least a year-and-a-half passing before a bond hearing is ordered in a contested case—and that assumes that the government does not appeal. Even once there is a final decision from the Article III judiciary, a bond hearing must be scheduled and the immigration judge must rule, which could take weeks or months longer still. The Constitution's guaranty of Due Process would be meaningless if noncitizens who pose no risk of flight, no risk to the public, and who are not responsible for delays in the processing of their removal can be detained for 18 months or more before a bond hearing is conducted.

CONCLUSION

This Court should hold that the District Court committed error in holding that: 1) detention without a bond hearing pending completion of removal proceedings only is likely to be unreasonable when it has stretched on for more than one year, rather than six months; and 2) in order to obtain an individualized

bond hearing, noncitizens first must file a petition for habeas corpus and prove that their detention has been unreasonably prolonged.

Respectfully submitted,

By its attorneys,

/s/ Kevin P. Martin

Dated: February 19, 2020

Kevin P. Martin
Madelaine M. Cleghorn
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, Massachusetts 02210
Tel.: +1 617 570 1186
Fax.: +1 617 801 1231

Counsel for The American Immigration Lawyers Association as Amicus Curiae

***AMICUS CURIAE*'S CERTIFICATE OF COMPLIANCE**

The undersigned, Kevin Martin, counsel for *Amicus Curiae,* the American Immigration Lawyers Association, hereby certifies that the Brief *Amicus Curiae* in Support of Petitioners-Appellants complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B). According to the word count of Word for Windows, the word-processing system used to prepare the brief, the brief contains 4,069 words, excluding the portions of the brief exempted by Federal Rule of Appellate Procedure 32(f). 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).

Dated: February 19, 2020

/s/ Kevin P. Martin

Kevin P. Martin
Madelaine M. Cleghorn
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, Massachusetts 02210
Tel.: +1 617 570 1186
Fax.: +1 617 801 1231

Counsel for The American Immigration Lawyers Association as Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system on February 19, 2020.

I certify that all participants in the case, including those listed below, are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

For the Petitioners-Appellants:

Lauren Carasik
Western New England College School
of Law
1215 Wilbraham Road
Springfield, MA 01119

Marisol Orihuela
Jerome N. Frank Legal Services
Organization
127 Wall Street
New Haven, CT 06511

Matthew Segal
American Civil Liberties Union
211 Congress Street
Boston, MA 02110

Michael Tan
American Civil Liberties Union
Federation Immigrants Rights Project
39 Drumm Street
San Francisco, CA 94111

Michael J. Wishnie
Yale Law School 127 Wall Street
New Haven, CT 06511

Muneer I. Ahmad
Jerome N. Frank Legal Services
Organization,
Yale Law School PO Box 209090
New Haven, CT 06511

My Khanh Ngo
Jerome N. Frank Legal Services
Organization
Yale Law School
P.O. box 209090
New Haven, CT 06511

Reena Parikh
Robert M. Cover Clinical Teaching
127 Wall Street
New Haven, CT 06511

Zachary−John Manfredi
Jerome N. Frank Legal Services
Organization
Yale Law School
P.O. Box 209090
New Haven, CT 06511

Ahilan Arulanantham
American Civil Liberties Union of
Southern California
1313 West 8th Street
Los Angeles, CA 90017

Amber Qureshi
Jerome N. Frank Legal Services Organization
127 Wall Street
New Haven, CT 06511

Anant K. Saraswat
Wolf, Greenfield & Sacks, PC
600 Atlantic Avenue
Boston, MA 02210

Clare Kane
Jerome N. Frank Legal Services Organization
127 Wall Street
New Haven, CT 06511

Erin Drake
Jerome N. Frank Legal Services Organization
127 Wall Street
New Haven, CT 06511

Lunar Mai
Yale Law School 127 Wall Street
New Haven, CT 06511

Michelle K. Nyein
Wolf, Greenfield & Sacks, PC
600 Atlantic Avenue
Boston, MA 02210

For the Respondents-Appellees:

Elianis N. Perez
U.S. Department of Justice, Office of Immigration Litigation
P.O. Box 868
Ben Franklin Station
Washington, DC 20044

Karen L. Goodwin
United States Attorney's Office
300 State Street
Suite 230
Springfield, MA 01105

Catherine M. Reno
U.S. Department of Justice
P.O. Box 868
Ben Franklin Station
Washington, DC 20044

Colin Abbott Kisor
U.S. Department of Justice Office of
Immigration Litigation
P.O. Box 878
Ben Franklin Station
Washington, DC 20044

Huy Le
United States Department of Justice
P.O. Box 868
Ben Franklin Station
Washington, DC 20044

J. Max Weintraub
U.S. Department of Justice, Office of
Immigration Litigation
P.O. Box 868
Ben Franklin Station
Washington, DC 20044

Janette L. Allen
U.S. Department of Justice, Civil
Division
Benjamin Franklin Station
P.O. Box 868
Washington, DC 20044

Lauren E. Fascett
U.S. Department of Justice, Civil
Division Office of Immigration
Litigation, District Court Section
450 5th Street, NW
Washington, DC 20001

Yamileth G. Davila
U.S. Department of Justice
Civil Division, Office of Immigration
Litigation
P.O. Box 878
Ben Franklin Station
Washington, DC 20044

Respectfully submitted,

/s/ Kevin P. Martin

Kevin P. Martin
Madelaine M. Cleghorn
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, Massachusetts 02210
Tel.: +1 617 570 1186
Fax.: +1 617 801 1231

Counsel for the American Immigration Lawyers Association as Amicus Curiae

Dated: February 19, 2020