UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Nos. 14-50393 & 14-50394
District Court Nos. 14-cr-1308-LAB & 12-CR-3370-LAB

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.

RUFINO PERALTA-SANCHEZ,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of California Honorable Larry A. Burns, Judge Presiding

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BRIEF OF *AMICI CURIAE* LAW PROFESSORS, IMMIGRATION SCHOLARS, AND CLINICIANS IN SUPPORT OF DEFENDANT-APPELLANT

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FRAP RULE 29 STATEMENT OF CONSENT

Pursuant to Federal Rules of Appellate Procedure, Rule 29(a) and Circuit Rule 29-3, Amici Curiae Boston College Law School Ninth Circuit Appellate Project, Immigrant Law Group PC, and the signatory law professors, immigration scholars, and clinicians have secured the consent of the attorneys representing both of the parties to file this amicus brief. Pursuant to Circuit Rule 29-3, no concurrently filed motion for leave to file an amicus brief is required.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(c)(1), Amici Curiae Boston College Law School Ninth Circuit Appellate Project, Immigrant Law Group PC, and the signatory law professors, immigration scholars, and clinicians state that no subsidiaries or any corporation, and no publicly held corporation owns 10% or more of its stock.

/s Kari Hong
KARI HONG

/s Stephen Manning
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INTEREST OF AMICI

Amici include law professors, immigration scholars, clinicians, and lawyers with an expertise in immigration law and direct experience with removal-defense assistance to noncitizens. Amici have a strong interest in assuring that rules governing the adjudication of the rights of non-citizens are fair and uniformly applied. This case is of critical interest to Amici because the analysis used by this Court to assess which procedures that are due in the expedited removal proceedings fundamentally impacts the process that will be used when removing a sizeable number of individuals from the United States.

Pursuant to Federal Rules of Appellate Procedure, Rule 29(c)(5), Amici state that no counsel for the party authored this brief in whole or in part, and no party, party's counsel, or person or entity other than Amici and their counsel contributed money that was intended to fund the preparing or submitting of the brief.

/s Kari Hong
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/s Stephen Manning
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SUMMARY OF ARGUMENT

In *United States v. Peralta-Sanchez,* 847 F.3d 1124 (9th Cir. 2017), the majority held that, pursuant to *Matthew v. Eldridge,* 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), there is no Fifth Amendment right to counsel in expedited removal proceedings. The majority reasoned that there is no known "added value" that attorneys provide to those in expedited removal proceedings, that the Government will incur "significant" administrative and financial costs if non-citizens receive access to private counsel, and there is a "low risk" of erroneous adjudications that occur during expedited removal interviews. 847 F.3d at 1136–38.

Amici is filing the following factual and legal considerations that compel contrary conclusions:

First, there is no doubt that the right to counsel improves the accuracy of the determinations made in expedited removal interviews. From surveys conducted at two different detention centers where more than 35,000 non-citizens were provided legal representation in expedited removal proceedings, removals for those with legal representation dropped at rates of 97% and 99%. Lawyers stopped removal for those who had been wrongfully subjected to expedited removal proceedings or had a basis to request legal status.

Non-citizens (and citizens mistakenly placed in these proceedings) tremendously benefit from access to private attorneys in immigration proceedings. Immigration law is one of the most confusing areas of law; the stakes for those subjected to it could not be higher. A 2015 study documented substantial disparities in grant rates in immigration court based on whether the individual had legal representation.

Courts also benefit from having attorneys represent non-citizens. Federal courts, including this one, have devoted internal resources to making private attorneys available to non-citizens. Indeed, in this Court's own pro bono program, it explains that the volunteer services of the private bar "benefits the court in the increased efficiency and effectiveness of its review" of complex and novel claims.

Recognizing the critical value of attorneys to non-citizens, cities such as New York, San Francisco and Los Angeles, as well as the state of New York, have devoted financial resources to fund private attorneys who can provide quality representation to certain non-citizens.

Second, the costs to the Government if non-citizens are permitted to hire private counsel are minimal. As noted by a federal district judge in 2015, when private attorneys represented those in expedited removal proceedings, the procedure lasted two to four weeks. The Government further does not have to incur detention costs for the time needed for a non-citizen to secure counsel. As

represented to this Court by the Government in other litigation, alternatives to detention are both available and less costly. Lastly, there is no requirement for the Government to hire a new corps of attorneys to contest expedited removal interviews. The USCIS routinely processes claims by and schedules interviews with non-citizens, including those with private counsel. No disadvantage to the Government has occurred when it does not contest these proceedings, which include agency adjudication of applications for affirmative asylum, adjustment, waivers, and citizenship.

Third, the majority decision misapprehended the private interest at stake because expedited removal is not limited in its reach. As detailed by other amici, immigration officers conducting expedited removal interviews make numerous and significant errors, which have resulted in wrongful removals of those with asylum claims, lawful permanent residents, and U.S. citizens.

ARGUMENT

I. STUDIES ESTABLISH THAT ACCESS TO COUNSEL IN EXPEDITED REMOVAL INTERVIEWS OVERWHELMINGLY IMPROVES THE ACCURACY OF PROCEEDINGS BY PREVENTING WRONGFUL REMOVALS

In holding there is no constitutional right to counsel in expedited removal proceedings, the majority reasoned that because there are no documented and recent erroneous adjudications, "[i]t is therefore unclear what added value counsel

could provide in expedited removal proceedings." 847 F.3d at 1136–38. The following rebuts this conclusion:

First, there is evidence to establish that legal representation for those in expedited removal process makes an overwhelming difference. In two surveys, which are both cited below, conducted by pro bono attorneys who provided representation at two separate detention centers, removal rates dropped 97% and 99% compared to those who were processed without legal representation.

For example, a collaborative project called the CARA Pro Bono Family Detention Project operates at the South Texas Family Residential Center in Dilley, Texas, to provide representation to any non-citizen detained at the center. Nearly every non-citizen is in expedited removal proceedings. According to project data of the more than 35,000 noncitizens the project has represented, nearly every expedited removal order—a rate of 99%—was vacated. *See* Migration Policy Institute & Catholic Legal Immigration Network, *Immigration Policy Enforcement Conference* (Sept. 12, 2016) at minute 4:33 (explaining that "nearly universally" expedited removal orders were vacated and fewer than 0.01% of CARA represented clients were removed during the expedited removal process),

https://www.c-span.org/video/?415068-102/immigration-policy-enforcement (hereinafter "CARA Report").[1]

Attorney representation for noncitizens in expedited removal proceedings at a similar detention center (located in Artesia, New Mexico) resulted in a 97% drop in the rate of removals over the course of just a few months. *See* Stephen W. Manning, *The Artesia Report* at Chap. X (stating that *after* attorney representation began, the "pace of removals fell 80% within one month and, within two months, it had fallen 97%."), https://innovationlawlab.org/the-artesia-report/the-artesia-report/ (last visited April 13, 2017); *see also* Cindy Carcamo, *Child's Detention Despite Citizenship Reveals Immigration Case Woes*, L.A. TIMES (Aug. 14, 2014), http://www.latimes.com/world/mexico-americas/la-na-citizen-detained-20140815-story.html (describing case of 11-year old U.S. citizen who was erroneously detained for a month while subjected to expedited removal before he found an attorney to intervene.

Second, there is also evidence that the outcomes in immigration court are significantly determined by whether a person is or is not represented by quality counsel. A comprehensive, nationwide study published in 2015 establishes that non-citizens who are represented in immigration proceedings have a significantly

[1] For information about the collaborative project, *see* American Immigration Lawyers Ass'n, *CARA Family Detention Project*, http://www.aila.org/practice/pro-bono/find-your-opportunity/cara-family-detention-pro-bono-project (last visited Apr. 16, 2017).

different outcome from those without representation. *See* Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1 (2015). This study, which analyzed data from 1.2 million removal cases decided between 2007 and 2012 found that represented immigrants were "almost seven times more likely to be released from the detention center (48% versus 7%)." *Id.* at 70. In addition, detained immigrants were nearly 11 times more likely to seek relief such as asylum than those without representation (32 percent with counsel versus 3 percent without). *Id.* at 51, fig. 15. Detained immigrants who sought relief with counsel were also more likely to prevail: 49 percent won their relief application with representation versus only 23 percent without. *Id*.

In New York, Chief Judge Robert Katzmann of the Second Circuit Court of Appeals helped create a program where quality immigration attorneys provide pro bono assistances to detained immigrants. "Katzmann's study found that detained immigrants with attorneys [in New York] were 500 percent more likely to win their cases than those without." Tiziana Rinaldi, *In New York City, Lawyers Make All The Difference for Immigrant Detainees Facing Deportation,* PRI'S THE WORLD (Sep. 20, 2016), https://www.pri.org/stories/2016-09-20/new-york-city-lawyers-make-all-difference-immigrant-detainees-facing-deportation.

Third, these astonishing results further should be of no surprise because immigration law is repeatedly described by even federal judges as one of the most complex and complicated fields of law. *See* Christina Wilkes, *Government-Funded Counsel for Children in Immigration Court?* Maryland State Bar Association (Aug. 11, 2016), http://www.msba.org/Bar_Bulletin/2016/08_-_August/Government-Funded_Counsel_for_Children_in_Immigration_Court_.aspx (in commenting on class action request for attorneys to represent children, Judge Milan Smith noted, "[a]mong the most complicated of all the laws I deal with is the immigration statute . . .).

The consequences facing those in deportation proceedings are dire. "For defendants in deportation proceedings, the stakes can be life or death, since some face torture or worse upon returning to their home countries." Bruce J. Einhorn, *L.A. Needs To Provide Attorneys To Immigrants Facing Deportation,* L.A. Times (Mar. 27, 2017), http://www.latimes.com/opinion/op-ed/la-oe-einhorn-immigration-lawyers-deportation-ice-20170327-story.html. Even for those who do not face persecution, a removal order may result in "permanent separation from their families." *Id*.

A resulting system that places such high stakes on complicated doctrines without the right of counsel results in removal cases being akin to "death penalty

cases heard in traffic court settings." Dana Leigh Marks, *Immigration Judge: Death Penalty Cases In A Traffic Court Setting,* CNN (Jun 23, 2016) http://www.cnn.com/2014/06/26/opinion/immigration-judge-broken-system/.

Fourth, in response, a number of cities, the State of New York, and federal courts—including the Ninth Circuit—have undertaken time and effort to provide legal representation to those who would have navigated immigration law without counsel. "Groundwork for the first legal defense program for immigrants came out of the Vera Institute of Justice in New York. Other cities have since sought to replicate the model, including Washington, Chicago and Boston. In San Francisco and Los Angeles, city funds have been approved or promised for such efforts." Jazmine Ullon, *California Lawmakers Want to Provide Attorneys to Immigrants Facing Deportation. But Who Gets The Help,* L.A. TIMES (Mar. 2, 2017), http://www.latimes.com/politics/la-pol-sac-california-legal-immigrant-defense-20170302-htmlstory.html ("The movement to increase government-funded access to counsel has centered on showing that many immigrants would be granted relief if they had the resources to prove their cases and that for some, the repercussions of deportation could be as dire as a death sentence").

This past week, New York became the first state to provide attorneys to detained immigrants. *See* Octavio Butler, *New York To Provide Lawyers for Immigrants In Detention,* CNN MONEY (Apr. 13, 2017),

http://money.cnn.com/2017/04/13/news/economy/new-york-immigrant-legal-defense-fund/. California is considering a similar program. *Id*.

In light of all of the studies, data, and policy responses set forth above, there is undisputed, unequivocal, and overwhelming evidence that attorney participation in expedited removal proceedings will result in substantial value to both the non-citizens and adjudicators.

II. THE GOVERNMENT WILL NOT INCUR SIGNIFICANT COSTS FROM A RIGHT TO COUNSEL BECAUSE DELAY ARISES FROM LEGITIMATE CLAIMS, THERE ARE ALTERNATIVES TO DETENTION, AND THE USCIS ADJUDICATES CLAIMS IN UNCONSTESTED PROCEEDINGS

The majority decision contends that the Government will be significantly burdened if non-citizens have a right to counsel because attorneys delay adjudications, non-citizens will be subjected to costly detention, and the DHS will have to provide government attorneys to contest all adjudications that occur within expedited proceedings. 847 F.3d at 1136–38. With all due respect, the majority decision is mistaken.

First, there is no data that supports the majority's assumption that a right to counsel causes delays. Indeed, the available empirical data indicates that attorney participation in the expedited removal proceedings has no meaningful impact on the pace of adjudication. At the Dilley detention center, known formally as the South Texas Family Residential Center, where counsel is available to any person

detained there, the expedited removal proceedings generally take two to four weeks. *See* Order re Response to Order to Show Cause, *Flores v. Lynch*, 2:85-CV-04544-DMG-AGR, ECF# 189, at 5 (Aug. 21, 2015).

Second, it is anomalous to characterize the participation of counsel in ensuring that the law is followed as a detrimental delay. According to CARA data, for individuals in expedited removal proceedings who receive representation, a significant number of removal orders are vacated. *See* CARA Report, *supra*. Any resulting delay arising from legal representation in expedited removal is only because the expedited removal order was erroneously entered in the first instance or that the noncitizen is entitled to other lawful process or benefits. The participation of attorneys then is not a detriment. No case has ever held that the Government is unfairly burdened by providing benefits and remedies that are due.

Third, the Ninth Circuit in operating its own pro bono program for meritorious claims arising in immigration and other contexts, does not see the participation of attorneys as being a detriment. To the contrary, the Court explains that the volunteer efforts of the private bar "benefits the court in the increased efficiency and effectiveness of its review of such cases [that are meritorious or complex]." Ninth Circuit Court of Appeals, Pro Bono Program Handbook at 1 (Jan. 11, 2012),

http://cdn.ca9.uscourts.gov/datastore/uploads/probono/Pro%20Bono%20Program%20Handbook.pdf.

Fourth, nothing compels the Government to detain non-citizens, especially because those who are being apprehended for civil violations, are not violent, and are seeking asylum. The federal government has previously acknowledged in filings—albeit in passing—before this Court that detention is not required in the expedited removal process. *See* Defendant-Appellants' Brief of Dep't of Homeland Security at 55, filed in *Flores v. Lynch*, No. 15-56434, ECF No. 10-3 (Jan. 15, 2016); *see also* 8 U.S.C. § 1182(d)(5)(A) (providing that DHS may "in [its] discretion parole into the United States temporarily . . . on a case-by-case basis for urgent humanitarian or significant public benefit any alien applying for admission to the United States. . . ."). The DHS has explained to this Court in the *Flores* litigation that it has a variety of release mechanisms at its disposal such as "bond, release on own recognizance, orders of supervision, or parole" when addressing expedited removal proceedings for family units. *See* Declaration of Thomas Homan, Assoc. Director ICE Enforcement & Removal Operations, filed in *Flores v. Lynch*, 2:85-CV-04544-DMG-AGR ECF 184-1 at 11 (Aug. 6, 2015).

Indeed, alternatives to immigration detention exist, which are effective and less costly. The existing Intensive Supervision Appearance Program (ISAP) uses "electronic ankle monitors, biometric voice recognition software, unannounced

home visits, employer verification, and in-person reporting to supervise participants." ACLU, *Alternatives to Immigration Detention: Less Costly and More Humane than Federal Lock-up*, https://www.aclu.org/other/aclu-fact-sheet-alternatives-immigration-detention-atd (last visited on Apr. 16, 2017). Community support programs—not funded by ICE but operated by religious organizations in cooperation with ICE—are also effective in assisting with court appearance rates and compliance with final removal orders. *Id*.

Fifth, nothing compels the Government to hire or place government attorneys to contest expedited removal proceedings. For all adjudications that occur before the USCIS—including affirmative asylum applications, family petitions, adjudication applications, naturalization applications, and waivers—the Government does not provide a single attorney to contest the determination made by the immigration officer tasked with the adjudication. In these proceedings, non-citizens have the right to hire attorneys and attend the interviews held before the officers. It is unclear why expedited removal proceedings would require the presence of government attorneys to contest matters when the USCIS adjudications occur without them. This is particularly true given that, unlike the USCIS, status is never given in expedited removal proceedings. If someone is eligible for asylum or has proven facts or law that make them ineligible for expedited proceedings, the person simply is no longer subjected to expedited removal. The DHS retains

jurisdiction over them to adjudicated any alleged immigration violations or confer lawful status to them. Those proceedings are contested by Government attorneys. There has been no compelling reason why they must also be present at the preliminary adjudication that occurs in expedited removal proceedings.

III. EXPEDITED REMOVAL EXTENDS TO THOSE WITH CLAIMS TO POTENTIAL REMEDIES, THOSE WHO ARE MISTAKENLY FOUND NOT TO HAVE STATUS, AND THOSE WHO ARE LIVING WITHIN 100 MILES OF *ANY* BORDER, WHICH REACHES 66% OF THE U.S. POPULATION

In analyzing the nature of the private interest at stake, the majority reasons that those subjected to expedited removal proceedings have interests "much more limited than that of an alien already living here who has been placed in formal removal proceeding and stands to lose, perhaps, formal legal status here, and certainly the life he or she has created here." 847 F.3d at 1136. The majority opinion describes reasonable administrative procedures that are designed to quickly remove individuals who have no right to be in the United States and who are apprehended in the manner Mr. Peralta-Sanchez was, by following a trail of fresh footsteps from the border to the point of apprehension.

As is detailed by other amici, this picture of expedited removal is incomplete, inaccurate, and overlooks the vast reach of its practice and operation.

First, even certain arriving aliens who do leave a trail of fresh footsteps for the border patrol to apprehend still have a compelling stake in being properly and

accurately screened. For instance, asylum seekers who are fleeing persecution have a stake to receive protections from this country if they are eligible. Long-term residents who are potentially eligible for cancellation of removal and have departed to attend to funerals or care for elderly family members, have a stake in being properly identified as eligible to apply for protections. *See generally Mendiola-Sanchez v. Ashcroft,* 381 F.3d 937, 938 (9th Cir. 2004) (in holding that a father and his son were not legally eligible for suspension of removal, the case involved individuals who had lived in the United States without status since 1983. In 1993, they visited family in Mexico—without visas—and eventually returned to the United States. The father and son were rendered ineligible to apply for relief because a short trip "was unexpectedly extended because both of his parents were injured during his visit and he stayed to help care for them." Although the panel upheld the legal reason for disqualifying the father and son relief, the panel—convinced by their equities—sua sponte requested that the agency exercise discretion to permit them to remain in the United States.)

Second, the majority opinion does not consider the reality that border patrol officers make mistakes. 847 F.3d at 1136. This majority decision overlooks that:

- **ICE officers who conduct interviews with non-citizens who are native Spanish speakers are not required to be fluent in the Spanish language**. *See United States v. Ramos*, 623 F.3d 672, 678 (9th Cir. 2010) (commenting on an ICE officer who explains that she conducts interviews with non-citizens about their status and rights in Spanish. "Olson, however, is not fluent in Spanish, and her

Spanish language education was limited to 'several classes' during her training with DHS's Bureau of Immigration and Customs Enforcement ("ICE")." When the officer testified in court and recited the advisals she provides to non-citizens, the Spanish language court interpreter "had difficulty comprehending," what the officer was saying, explaining that the alleged advisal was "nonsensical in part").

- **The ICE officers "tasked with identifying potential asylum seekers at the border are openly skeptical of asylum claims.** For example, a Border Patrol officer questioned the veracity of Chinese Christians' asylum claims because they could not name the church they attended; the official did not know that many Chinese Christians worship at home." U.S. Commission on International Religious Freedom, Serious Flaws in U.S. Treatment of Asylum Seekers in Expedited Removal: Children Especially Harmed (Aug. 2, 2016), at http://www.uscirf.gov/news-room/press-releases/serious-flaws-in-us-treatment-asylum-seekers-in-expedited-removal-children.

- As reported in a 2016 study based on observations of 400 interviews conducted at ports of entry, **the Border Officers did not properly advise non-citizens of their rights, did not fully conduct the credible fear interview, and recorded erroneous information on the forms**. "In more than half of the interviews . . . [U.S. Customs and Border Protection Officer of Field Operations] officer failed to read the required information advising the non-citizen to ask for protection without delay if s/he feared return. . . . [I]n 86.5 percent of the cases where a fear question was not asked, the record inaccurately indicated that it had been asked, and answered. And in 72 of the cases, asylum seekers were not allowed to review and correct the form before signing, as required." Elizabeth Cassidy & Tiffany Lynch, U.S. Commission of International Religious Freedom, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal*, 17 (Aug 2, 2016), https://uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf.

- **U.S. Citizens have erroneously, and illegally, been subjected to expedited removal**. In a 2014 report, the ACLU details five

specific individuals who were U.S. citizens but whom the border agents wrongfully concluded was not a citizen because s/he "does not speak English or were born in a hospital." ACLU, American Exile: Rapid Deportations That Bypass the Courtroom, 48 (Dec. 2014).

- The same report detailed two U.S. citizens who were illegally subjected to expedited removal because their mental impairments prevented them from providing accurate information about their status. *Id.* at 48–50.

Third, expedited removal proceedings are not limited in their physical reach. Contrary to the majority's suggestion, expedited removal is not simply for individuals who have been in the country for fewer than 14 days and for whom no remedies are available. When first created in 1996, expedited removal was used by border patrol officers only at the actual ports of entry. *See* 8 U.S.C. § 1225(b)(1)(A)(i) (authorizing expedited removal against "arriving aliens" at ports of entry). In 2004, the government expanded the geographic and temporal reach of expedited removal to individuals apprehended within 100 air miles of the U.S. land border who are unable to prove presence in the U.S. for more than 14 days. *See* Dep't Homeland Security, *Designated Aliens for Expedited Removal*, 69 Fed. Reg. 48,877 (Aug. 11, 2004); *see also* Jennifer Lee Koh, *Removal in The Shadows of Immigration Court,* 90 S. CAL. LAW R. 181, 194–203 (2017).

This expansion has now brought nearly 200 hundred million people potentially within ambit of the expedited removal. *See* Todd Miller, *66 Percent of Americans Now Live In A Constitution-Free Zone,* THE NATION (July 15, 2014)

(describing population of 197.4 million people or 66% of the country's population living within the 100-mile zone of the 2004 expansion notice). While the expansion is limited in temporal scope, the federal government has consistently argued in litigation and some courts have found that there is no judicial review of expedited removal orders, including whether a person should be subject to expedited removal at all. *See, e.g.*, *M.S.P.C. v. U.S. Customs and Border Protection*, 60 F. Supp. 3d 1156, 1164 (D. New Mexico 2014).

Therefore, denying a right to counsel to the large portion of the population of the United States—citizen and non-citizen alike—who could potentially be ensnared in the expedited removal program is based on the mistaken notion that expedited removal is narrow in scope. Indeed, the Trump administration has indicated an intent to expand the expedited removal statute even more to possibly include the entire geography of the United States to any individual who cannot prove to the satisfaction of immigration agents physical presence for more than two-years. *See Border Security and Immigration Enforcement Improvements*, Executive Order No. 13767 (Jan. 25, 2017) at § 11(c) (directing consideration of expansion of expedited removal); Memorandum from John Kelly, Sec'y, Dep't of Homeland Sec., to Kevin McAleenan, et al., Acting Comm'r, Customs & Border Protection, *Implementing the President's Border Security and Immigration Enforcement Improvements Policies*, Feb. 20, 2017, at 5–6 (considering expansion

of expedited removal) (on file at https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf.).

CONCLUSION

For the foregoing reasons, the relevant law and facts compel granting rehearing and holding due process affords the right of counsel to expedited removal proceedings.

Dated: April 17, 2017

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

We certify that: Pursuant to FED. R. APP. P., Rule 32(a)(7)(B) and (C), Rule (a)(5) and (6), and Ninth Circuit Rules 32-1 and 32-4, the attached brief is proportionally spaced, has a typeface of 14 points or more, and contains approximately 3,717 words, exclusive of the table of contents, table of authorities, and certificates of counsel, which is does not exceed the 4,200 word-limit for an amicus brief.

/s Kari Hong
KARI HONG

/s Stephen Manning
STEPHEN MANNING

Counsel for Amici

CERTIFICATE OF SERVICE

I declare that I am over the age of eighteen (18) years and not a party to the instant action. I am in good standing with the Ninth Circuit Court of Appeals and the State Bar of California. My work address is Boston College Law School, 885 Centre Street, Newton, MA 02459.

On the date listed below, I served one copy of the attached document, entitled **BRIEF OF *AMICI CURIAE* LAW PROFESSORS, IMMIGRATION SCHOLARS, AND CLINICIANS IN SUPPORT OF DEFENDANT-APPELLANT** to the following individuals:

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[x] BY ELECTRONIC SERVICE. On the date listed below, I filed a copy of the attached motion with the Court using the CM/ECF system. To counsel's knowledge all parties above are registered CM/ECF users and will be served by the appellate CM/ECF system.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 17, 2017 at Newton, MA.

s/ Kari E. Hong
KARI HONG