



KeyCite Yellow Flag - Negative Treatment

Certiorari Granted by [Nielsen v. Preap](#), U.S., March 19, 2018

667 Fed.Appx. 966 (Mem)

This case was not selected for publication in West’s Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3.

United States Court of Appeals,
Ninth Circuit.

Bassam Yusuf KHOURY; et al., Plaintiffs–
Appellees,

v.

Nathalie ASHER, Field Office Director, ICE; et al.,
Defendants–Appellants.

No. 14-35482

Argued and Submitted July 8, 2015 Seattle,
Washington

Filed August 4, 2016

Appeal from the United States District Court for the Western District of Washington, Richard A. Jones, District Judge, Presiding, D.C. No. 2:13-cv-01367-RAJ

Attorneys and Law Firms

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Before: [KLEINFELD](#), [NGUYEN](#), and [FRIEDLAND](#),
Circuit Judges.

967 MEMORANDUM

Defendants appeal from the district court’s order certifying a class of alien detainees and declaring that the class was entitled to bond hearings. The class comprised aliens who were subjected to mandatory detention under [8 U.S.C. § 1226\(c\)](#) even though they were not detained immediately upon their release from criminal custody. In granting class certification and declaratory relief, the district court concluded that [§ 1226\(c\)](#) applies only to aliens who are detained immediately upon their release from criminal custody. We have jurisdiction under [28 U.S.C. § 1291](#), and we affirm.

The plain language of [§ 1226\(c\)](#) makes clear that mandatory detention applies only to those aliens detained “when [they are] released” from criminal custody. *See Preap v. Johnson*, slip op. at ——. Because the phrase “when ... released” conveys a degree of immediacy, “[§ 1226\(c\)](#) applies only to those criminal noncitizens who are detained promptly after their release from criminal custody, not to those detained long after.” *Id.* at ——. We disagree with the government’s arguments under *United States v. Montalvo–Murillo*, 495 U.S. 711, 110 S.Ct. 2072, 109 L.Ed.2d 720 (1990), that it should nonetheless be allowed to hold without bond aliens whose detention is untimely under [§ 1226\(c\)](#). *Montalvo–Murillo* is distinguishable. *See Preap v. Johnson*, slip op. at ——.

AFFIRMED.

All Citations

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Footnotes

- * This disposition is not appropriate for publication and is not precedent except as provided by [Ninth Circuit Rule 36–3](#).