No. 11-2133
No. 12-1070

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MANUEL MONDRAGON,
(A 094-127-367)

Petitioner-Appellant,

v.

ERIC H. HOLDER, JR., United States Attorney General,

Respondent-Appellee.

On Petitions for Review of Orders of
the Board of Immigration Appeals

BRIEF OF AMICI CURIAE IMMIGRANT DEFENSE PROJECT, MARYLAND OFFICE OF THE PUBLIC DEFENDER, NATIONAL IMMIGRANT JUSTICE CENTER, NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD, AND PROF. DEBORAH M. WEISSMAN OF UNC CHAPEL HILL SCHOOL OF LAW IN SUPPORT OF PETITIONER MANUEL MONDRAGON'S PETITION FOR REHEARING EN BANC

JAYASHRI SRIKANTIAH
ALISON KAMHI
Immigrants' Rights Clinic
Mills Legal Clinic
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305-8610
Telephone: (650) 724-2442

MANUEL VARGAS
ISAAC WHEELER
Immigrant Defense Project
28 W. 39th St., Suite 501
New York, NY 10018
Telephone: (212) 725-6422

DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 29(c), amici curiae the Immigrant Defense Project, the Maryland Office of the Public Defender, the National Immigrant Justice Center, the National Immigration Project of the National Lawyers Guild, and Professor Deborah M. Weissman state that no publicly held corporation owns 10% or more of the stock of any of the parties listed above, which are nonprofit organizations and a natural person.

Pursuant to Fed. R. App. P. 29(c)(5), amici curiae 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 curiae and their counsel contributed money that was intended to fund preparing or submitting the brief.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Administrative Decisions

Statutes and Session Laws

Regulations and Rules

Other Authorities

INTEREST OF AMICI

Amici include non-profit organizations and a law professor with specialized expertise in the interrelationship of criminal and immigration law, and a state public defender within this Circuit.[1] Amici have a strong interest in assuring that the rules governing classification of criminal convictions are fair and in accord with longstanding precedent on which immigrants, their lawyers, and the courts have relied for nearly a century. This case is of critical interest to amici because the analysis used by this Court to assess the immigration consequences of convictions fundamentally affects due process in the immigration and criminal systems.

SUMMARY OF ARGUMENT

The Court should hear this case en banc to revisit and reject the Court's prior holding in *Salem v. Holder*, 647 F.3d 111 (4th Cir. 2011), on which the Panel relied. That case considered whether a noncitizen is ineligible for discretionary relief from removal when he has been convicted of a prior criminal offense that could bar him from relief. *Salem* held that a noncitizen is ineligible for relief in such circumstances even when the formal record of conviction does not conclusively establish that the conviction falls within a bar to relief. Because the

[1] More information about individual amici is included in the motion for leave to file this brief. Amicus Professor Weissman's institutional affiliation is listed for identification only.

Panel concluded that the record in this case was inconclusive, the Panel was obligated to apply *Salem* to hold that Mr. Mondragon is ineligible for relief. *Mondragon v. Holder*, 706 F.3d 535, 544–48 (4th Cir. 2013).

The *Salem* rule raises an issue of "exceptional importance" meriting en banc reconsideration, Fed. R. App. P. 35(a)(2), for three principal reasons. First, it applies to restrict many types of relief from removal, including those intended to benefit vulnerable immigrants such as those fleeing persecution or who have been subjected to domestic violence and extreme cruelty. The issue has already arisen in a number of cases in the wake of *Salem* and will continue to arise frequently.

Second, the *Salem* rule misapprehends the statute and regulations and is inconsistent with nearly a century of law applying a categorical legal analysis to the question of whether a conviction triggers consequences under the immigration laws. As the Supreme Court has repeatedly explained, the categorical rule involves the purely legal inquiry of whether the statute or record of conviction demonstrates that a noncitizen was necessarily convicted of a removable offense. *See, e.g.*, *Carachuri-Rosendo v. Holder*, __ U.S. __, 130 S. Ct. 2577, 2586–89 (2010). *Salem* errs in concluding that 8 U.S.C. § 1229a(c)(4)(A)(i), the Immigration and Nationality Act (INA) provision pertaining to burdens of proof for immigration relief, is relevant to the purely legal inquiry of the categorical rule. That section places on the noncitizen "the burden of proof to establish . . . the

applicable eligibility requirements." *Id*. This burden applies to factual inquiries relevant to relief eligibility, such as residency requirements, the existence of qualifying relatives, or the authenticity of relevant documents. Once such facts are established, however, the legal determination of whether a conviction constitutes a bar to relief under the categorical approach does not hinge on who bears the burden of coming forward with factual evidence.

Third, the *Salem* standard is unfair to noncitizens like Mr. Mondragon, who were convicted under statutes that are divisible (in that they include some crimes triggering immigration consequences, and others that do not). With divisible statutes, the modified categorical approach permits immigration judges to consider certain reliable criminal records to determine what a noncitizen was necessarily convicted of. Under *Salem*, noncitizens like Mr. Mondragon lose eligibility for relief even when such records do not conclusively indicate that the prior conviction is one that would bar relief. The *Salem* rule forces noncitizens like Mr. Mondragon to disprove a negative—the lack of a disqualifying conviction—on the basis of a limited universe of official court records, the content or existence of which is beyond their control.

ARGUMENT

I. The *Salem* Rule Presents an Issue of Exceptional Importance Because It Affects a Wide Range of Vulnerable Noncitizens.

The *Salem* rule imposes an unfair and often impossible burden on a wide range of noncitizens, including asylum-seekers, victims of crime, and longtime lawful permanent residents with U.S. citizen family members. The rule applies broadly to any form of immigration relief that restricts eligibility to individuals without certain prior criminal convictions, including the provision in this case, cancellation of removal under the Nicaraguan Adjustment and Central American Relief Act (NACARA), § 203, Pub. L. No. 105–100, 111 Stat. 2160, 2198 (1997); asylum, *see* 8 U.S.C. § 1158(b)(2)(A)(ii),(B)(i); the waiver of inadmissibility for certain lawful permanent residents as to whom the denial of admission would cause extreme hardship to a lawfully resident or U.S. citizen close family member, *see id*. §1182(h); cancellation of removal for certain lawful permanent residents, *see id.* § 1229b(a)(3); cancellation of removal for certain nonpermanent residents whose removal would result in extreme hardship to a lawfully resident or U.S. citizen close family member, *see id.* § 1229b(b)(1)(C); "special rule" cancellation for battered spouses and children, *see id.* § 1229b(b)(2)(A)(iv); voluntary departure, *see id.* §§ 1229c(a)(1),(b)(1)(C); and withholding of removal to a country where the noncitizen's life or freedom would be threatened, *see id.* § 1231(b)(3)(B). Unsurprisingly given the numerous contexts in which it may arise, several cases implicating the *Salem* rule have already reached this Court, even

though the decision is less than two years old. *See Mondragon*, 706 F.3d at 545; *Aleman-Coreas v. Holder*, 457 F. App'x 307 (4th Cir. 2011).[2]

Because the *Salem* rule extends to a broad class of noncitizens, including asylum-seekers and battered spouses, and is likely to be dispositive of many cases, the issue is one of exceptional importance meriting en banc review.

II. The *Salem* Rule Should Be Revisited Because It Is Inconsistent With the Longstanding Application of the Categorical Rule.

The Supreme Court and every federal court of appeals have unequivocally held that where, as here, the record of conviction does not conclusively show a prior aggravated felony conviction, such a conviction is not established to prove a noncitizen's removability. *See, e.g.*, *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 185–87 (2007); *see also* Alina Das, *The Immigration Penalties of Criminal*

[2] Other courts of appeals have similarly considered numerous cases involving inconclusive records of conviction as they pertain to immigration relief. *See, e.g.*, *Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079 & n.4 (9th Cir. Feb. 1, 2013) (applying *Young v. Holder*, 697 F.3d 976 (9th Cir. 2012) (en banc)); *Velasquez v. Holder*, No. 11-70637, 2013 WL 226886 (9th Cir. Jan. 16, 2013) (same); *Tapia-Cruz v. Holder*, No. 10-73041, 2012 WL 6734477 (9th Cir. Dec. 26, 2012) (same); *Taylor v. Holder*, No. 11-35751, 2012 WL 6063852 (9th Cir. Nov. 30, 2012) (same); *De Leon v. Holder*, 488 F. App'x 239 (9th Cir. 2012) (same); *Reynoso-Rodriguez v. Holder*, 488 F. App'x 238 (9th Cir. 2012) (same); *see also, e.g.*, *Martinez-Diaz v. Holder*, 457 F. App'x 774 (10th Cir. 2012) (applying *Garcia v. Holder*, 584 F.3d 1288 (10th Cir. 2009)); *Navarro-Perez v. Holder*, 439 F. App'x 723 (10th Cir. 2011) (same); *In re Ramy Wasfy Beshay*, No. A041-503-363, 2010 WL 1976045 (BIA Apr. 23, 2010) (holding that *Garcia* applies to the noncitizen's burden in challenging whether he is properly subjected to mandatory detention); *In re Jose Leandro Martinez-Morales*, No. A070-924-468, 2010 WL 673473 (BIA Jan. 27, 2010) (same).

Conviction: Resurrecting Categorical Analysis in Immigration Law, 86 N.Y.U. L. Rev. 1669, 1688–1702 (2011) (collecting federal court and agency cases dating to 1913). In *Carachuri-Rosendo*, the Supreme Court applied this categorical analysis to the question of whether a conviction barred discretionary relief from removal under 8 U.S.C. § 1229b(a)(3), the provision at issue in *Salem*. 130 S. Ct. at 2586–89. Consistent with this approach, but contrary to *Salem*, three circuits have held that when the record of conviction is inconclusive as to whether a noncitizen was convicted of an aggravated felony, the conviction does not serve to preclude eligibility for relief. *See Thomas v. Att'y Gen. of U.S.*, 625 F.3d 134, 148 (3d Cir. 2010); *Martinez v. Mukasey*, 551 F.3d 113 (2d Cir. 2008); *Berhe v. Gonzales*, 464 F.3d 74, 86 (1st Cir. 2006). *But see Young v. Holder*, 697 F.3d 976 (9th Cir. 2012) (en banc);[3] *Garcia v. Holder*, 584 F.3d 1288 (10th Cir. 2009).

The en banc Court should revisit the *Salem* rule and hold that where, as here, the record of conviction does not conclusively show that a noncitizen necessarily was convicted of all the elements of an aggravated felony, the noncitizen meets his burden to establish eligibility for relief.

A. The Categorical Approach Applies to Determine Whether Mr. Mondragon Has Been Convicted of an Aggravated Felony.

[3] Notably, only two members of the *en banc* panel in *Young* agreed with both *Salem* and *Mondragon* that relief eligibility can never be shown when the record is complete yet inconclusive; the other nine expressed concerns about the unfairness of this outcome while disagreeing as to the proper solution. *See Young*, 697 F.3d at 990–1003 (Fletcher & Ikuta, JJ., each dissenting in part).

As this Court and every other circuit to address the issue have held, the categorical approach applies to determine whether a noncitizen has been convicted of a disqualifying aggravated felony for purposes of barring eligibility for discretionary immigration relief. *See, e.g.*, *Mondragon*, 706 F.3d at 545–48; *see also Young*, 697 F.3d at 976 (9th Cir.); *Garcia v. Holder*, 440 F. App'x 660, 663–64 (10th Cir. 2011); *Familia Rosario v. Holder*, 655 F.3d 739, 743 (7th Cir. 2011); *Thomas*, 625 F.3d at 143 (3d Cir.); *Nieto Hernandez v. Holder*, 592 F.3d 681, 686 (5th Cir. 2009); *Omoregbee v. U.S. Att'y Gen.*, 323 F. App'x 820, 824 (11th Cir. 2009); *Martinez*, 551 F.3d at 120 (2d Cir.); *Rashid v. Mukasey*, 531 F.3d 438, 447 (6th Cir. 2008); *Berhe*, 464 F.3d at 86 (1st Cir.).

Under that approach, an individual has been convicted of an "aggravated felony" for immigration purposes when the statute of conviction demonstrates that he "necessarily" was convicted of all the elements necessary to establish an aggravated felony. *See Taylor v. United States*, 495 U.S. 575, 599 (1990); *Prudencio v. Holder*, 669 F.3d 472, 484 (4th Cir. 2012). In a small set of cases, when the statute of conviction contains multiple offenses, one of which is not an aggravated felony, a court may consider the formal record of conviction from the prior case to decide whether an individual "necessarily" was convicted of an

aggravated felony.[4] *See Shepard v. United States*, 544 U.S. 13, 26 (2005); *Prudencio*, 669 F.3d at 485. The Supreme Court has barred courts from considering any documents that extend "beyond conclusive records made or used in adjudicating guilt," *Shepard*, 554 U.S. at 20, in order to prevent courts "from considering unreliable evidence" in evaluating the legal question of whether an offense constitutes a disqualifying conviction. *United States v. Harcum*, 587 F.3d 219, 223 (4th Cir. 2009) (quoting *United States v. Pierce*, 278 F.3d 282, 286 (4th Cir. 2002)); *see also Prudencio*, 669 F.3d at 483.[5]

The precedent in this Court, ten other courts of appeals, and the Supreme Court builds on the use of the categorical approach over nearly a century of

---

[4] In the instant case, the Panel found that the Virginia common-law assault and battery statute under which Petitioner was convicted is divisible as to whether it is a "crime of violence" aggravated felony. *Mondragon*, 706 F.3d at 547. Notably, the Supreme Court is presently considering whether offenses can be deemed divisible for purposes of the Armed Career Criminal Act when conduct falling within the federal sentence enhancement is sufficient, though not necessary, to satisfy an element of the statute of conviction, a case that may well bear on whether an offense such as misdemeanor assault and battery under Virginia law can considered divisible in the present context. *Descamps v. United States* (No. 11-9540) (U.S. argued Jan. 7, 2012); *see also United States v. Gomez*, 690 F.3d 194, 202 (4th Cir. 2012) (reserving the question as to common-law offenses).

[5] In *Nijhawan v. Holder*, 557 U.S. 29 (2009), the Supreme Court applied what it called a "circumstance-specific" approach instead of the categorical approach to determine whether a conviction included the $10,000 loss necessary to be deemed an aggravated felony under 8 U.S.C. § 1101(a)(43)(M)(i). The Supreme Court clarified, however, that this circumstance-specific approach does not apply to evaluating "generic crime" categories; in determining whether a conviction falls within a "generic crime" category, such as the "crime of violence" aggravated felony category at issue in this case, the traditional categorical approach applies. *Id*. at 37.

immigration law. *See generally* Das, 86 N.Y.U. L. Rev. at 1688–1702. There can be no doubt that Congress approves of this long-settled understanding of its intent as regards the INA. *See Lorillard v. Pons,* 434 U.S. 575, 580 (1978); *Sanchez-Fajardo v. U.S. Att'y Gen.*, 659 F.3d 1303, 1309 (11th Cir. 2011) ("[D]uring any one of the forty times the statute has been amended since 1952 . . . . if Congress believed that the courts and the BIA had misinterpreted its intent, it could easily have amended the statute to allow adjudicators to consider the actual conduct underlying a conviction.").

B. The Panel's Decision That Mr. Mondragon Did Not Meet His Burden of Proof on an Inconclusive Record Is Inconsistent With the Categorical Approach.

In contravention of the longstanding application of the categorical approach, the Panel, in reliance on *Salem*, concluded that Mr. Mondragon did not meet his burden of proof even though the record of conviction does not establish that he was convicted of an aggravated felony. *Salem* relied heavily on the language of 8 U.S.C. § 1229a(c)(4)(A)(i), a provision generally governing removal proceedings, which requires the noncitizen to "establish that [he or she] satisfies the applicable eligibility requirements" for immigration relief. *Salem* incorrectly found that this provision has relevance as to the purely legal inquiry of the categorical rule. However, the provision applies instead to factual inquiries relevant to relief eligibility, such as residency requirements, the existence of qualifying relatives or

the authenticity of relevant documents. Once such facts are established, the legal determination of whether a conviction constitutes a bar to relief under the modified categorical approach does not hinge on who bears the burden of coming forward with factual evidence. Instead, the Court should simply apply the categorical rule to decide the legal question of whether the record establishes a prior aggravated felony conviction.

The *Salem* rule also misconstrues applicable regulations. Under the regulation generally applicable to relief from removal, if the "evidence indicates" that a mandatory bar to relief exists, such as an aggravated felony conviction, the noncitizen must prove "by a preponderance of the evidence" that the mandatory bar does not apply. 8 C.F.R. § 1240.8(d). The "preponderance of the evidence" standard applies to factual inquiries, *see* 2 *McCormick on Evidence* § 339, at 484 (6th ed. 2006), and "simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence before [the judge] may find in favor of the party who has the burden to persuade [the judge] of the fact's existence." *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622 (1993). The preponderance standard has no relevance as to the purely legal question of whether the proffered documents conclusively establish a prior aggravated felony conviction.

Contrary to the Panel's conclusion, 706 F.3d at 547, criminal records that fail to conclusively demonstrate "conviction" of an aggravated felony are not ambiguous. Such records simply fail to establish, as a legal matter, that an aggravated felony conviction exists. *See Castle v. INS*, 541 F.2d 1064, 1067 n.5 (4th Cir. 1976) (limiting the inquiry to the legal question of the "type of crime committed rather than . . . the factual context surrounding the actual commission of the offense").[6] Thus, Mr. Mondragon meets whatever burden of proof he has when, as here, the documents in the record of conviction do not establish that he was necessarily convicted of an aggravated felony. *See Thomas*, 625 F.3d at 148; *Martinez*, 551 F.3d at 113; *Berhe*, 464 F.3d at 86.

C. Application of the Categorical Approach Here to Accord Eligibility for Relief Is Consistent with the Statutory and Regulatory Framework of Removal Proceedings.

The categorical rule's application to Mr. Mondragon's case is consistent with the statutorily-defined structure of removal proceedings, which occur in two phases. In the first phase, the statute requires the government to produce documents to support a charge of removability based on a prior conviction. *See Mondragon*, 706 F.3d at 545 (citing 8 U.S.C. § 1229a(c)(3)(A)) (emphasizing that

[6] This understanding accords with the regulation governing NACARA applications, which requires that the applicant "must not have been convicted of an aggravated felony" and that he or she "establish" that he or she "is not . . . deportable under section 237(a)(2) . . . of the Act [8 U.S.C. § 1227(a)(2)]," 8 C.F.R. § 1240.66(a),(b), both legal questions.

the government bears the burden to prove removability).[7] In the second phase, noncitizens who are found deportable present their case for relief, such as NACARA. The immigration regulations assume that, by this phase, the government will have already produced criminal records as "evidence indicat[ing]" that a noncitizen is subject to the aggravated felony bar. *See* 8 C.F.R. § 1240.8(d); *see also Matter of A-A-G-*, 25 I&N Dec. 486, 501 (BIA 2011) (holding that the government bears the burden under § 1240.8(d) of making a prima facie showing that a bar to relief exists). Only then does the noncitizen bear the burden of proving any factual claim that such bar does not apply.

Salem is inconsistent with this framework because, when the record is inconclusive, it effectively requires noncitizens like Mr. Mondragon to attempt to produce additional documents that may not exist. *Salem*, 647 F.3d at 119. But the statute and regulations nowhere envision placing the burden of production on the noncitizen. Rather, the noncitizen's burden of proof pertains to any factual questions relating to the government's documents once produced.

[7] Although the government is not required to charge a conviction as a ground of removability in order to raise the conviction as a bar to eligibility for relief, if the statute and regulations were read to place the burden of production on the noncitizen (contrary to 8 C.F.R. § 1240.8(d)) whenever the government chooses not to charge an aggravated felony conviction at the removability stage, relief eligibility would arbitrarily "rest on the happenstance of an immigration official's charging decision." *See Judulang v. Holder*, __U.S.__, 132 S. Ct. 476, 486 (2011).

Consistent with this understanding, the Panel held that a relief applicant cannot resort to documents outside the record of conviction to attempt to meet the impossible burden imposed by *Salem*. *Mondragon*, 706 F.3d at 545–48. Documents outside the record of conviction may "contain little more than unsworn witness statements and initial impressions" and "[t]o confer upon such materials the imprimatur of fact . . . [would] accord[] these documents unwarranted validity." *Prudencio*, 669 F.3d at 484; *see also Castle*, 541 F.2d at 1066 n.5 ("Congress did not intend to saddle the Immigration Service and the courts with the extremely difficult and time-consuming burden of developing the facts surrounding the commission of the crime for which the alien was convicted.").

III. This Case Demonstrates the Extreme Unfairness of the *Salem* Rule.

The *Salem* rule can impose an impossible burden on immigrants who merit relief: to produce records that do not exist or that may be unavailable. The harsh result of applying the *Salem* rule to a case where no conclusive records exist clearly troubled the Panel in the case at bar. *See Mondragon*, 507 F.3d at 538, 540 (observing that Petitioner presented an "appealing . . . case" that "makes a strong claim to fairness" but finding *Salem* and other precedents requiring a modified categorical analysis controlling).

As in Mr. Mondragon's case, the government's assertion of ineligibility for relief can turn on conviction records that simply do not exist. *See Mondragon*, 706

F.3d at 539 (noting that the immigration judge determined that the record of conviction was "complete," yet remained inconclusive). The Virginia General District Courts, which have jurisdiction of misdemeanor charges, are not courts of record under Virginia law and produce no record of the charges, trial or plea, conviction and sentence beyond an "executed warrant of arrest." *United States v. White*, 606 F.3d 144, 146 (4th Cir. 2010). That document forms the entire record of conviction in Mr. Mondragon's case (JA 302–04), and it does not contain sufficient information to establish whether a Virginia assault and battery conviction of the type at issue here is violent in nature. *Id.* Other state and local courts within this Circuit operate in the same way. North Carolina District Courts, for example, do not create any transcript or recording of misdemeanor criminal proceedings.[8]

Even if more detailed conviction records are created at the time of a noncitizen's conviction, they may no longer exist years later, when the noncitizen's eligibility for relief arises in immigration court. In Maryland, for example, district courts permit the destruction of criminal court records as little as three years after conviction. Md. Code Ann., Cts. & Jud. Proc. § 16-505(d)(4),(5) (West 2013). In South Carolina, untranscribed recordings of trial court criminal proceedings may

[8] *See* North Carolina Administrative Office of the Courts, *The North Carolina Judicial System* 27–28 (2008 ed.), *available at http://www.nccourts.org/citizens/publications/documents/judicialsystem.pdf#page=6&zoom=auto,0,537.*

be destroyed five years after the date of the proceedings.[9] Virginia routinely destroys most criminal records ten years after final disposition.[10]

Even in cases where detailed, admissible records were created and are preserved, *Salem*'s holding that the noncitizen must find conclusive records places significant, often insurmountable, burdens on noncitizens in removal proceedings, 44% of whom are unrepresented, 36% of whom are detained, and 82.5% of whom are not fluent in English.[11] *Salem*'s holding is particularly harsh for detained noncitizens, who often lack reliable access to telephones, computers, or the Internet, even when access is necessary to obtain records.[12]

The solution to the unfairness of Mr. Mondragon's situation, and of other similarly situated immigrants, is to reject *Salem* and join the courts that have correctly held that an inconclusive record of conviction does not categorically establish that a criminal bar to relief applies.

CONCLUSION

---

[9] South Carolina App. Court R. 607(i), *available at* http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=607.0&subRuleID=&ruleType=APP.

[10] *See Virginia General District Court Manual,* Chapter 6- Records Retention, Destruction and Expungement, at 6-6, *available at* http://www.courts.state.va.us/courtadmin/aoc/djs/resources/manuals/gdman/chapter_6.pdf.

[11] *See* Executive Office of Immigration Review, *FY 2012 Statistical Year Book* G-1, 0-1, F-1 (2013), *available at* http://www.justice.gov/eoir/statspub/fy12syb.pdf.

[12] *See, e.g.*, Detention Watch Network, *Expose and Close Facility Reports* (2012), *available at* http://www.detentionwatchnetwork.org/ExposeAndClose.

For the foregoing reasons, the Court should grant Mr. Mondragon's Petition for Rehearing En Banc.

Dated: March 18, 2013

Respectfully submitted,

_____/s/_____

Jayashri Srikantiah
Counsel for *Amici*
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305-8610
Telephone: (650) 724-2442

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

U.S. Court of Appeals Docket Numbers 11-2133, 12-1070

I, Jayashri Srikantiah, hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on March 18, 2013. I certify that all participants in the case *that require service* are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Date: March 18, 2013
Stanford, CA

_____/s/_____
Jayashri Srikantiah
Immigrants' Rights Clinic
Mills Legal Clinic
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305-8610
Telephone: (650) 724-2442