No. 14-2042

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

JOSE RICARDO PERALTA SAUCEDA (A 073-613-148)
Petitioner,

v.

LORETTA E. LYNCH, United States Attorney General,
Respondent.

On Petition for Review of an Order of
the Board of Immigration Appeals

BRIEF OF AMICI CURIAE IMMIGRANT DEFENSE PROJECT, NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD, AMERICAN IMMIGRATION LAWYERS ASSOCIATION, DETENTION WATCH NETWORK, COMMITTEE FOR PUBLIC COUNSEL SERVICES, NEW HAMPSHIRE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, MAINE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, POLITICAL ASYLUM/IMMIGRATION REPRESENTATION PROJECT, HARVARD IMMIGRATION AND REFUGEE CLINICAL PROGRAM, BOSTON UNIVERSITY IMMIGRANTS' RIGHTS CLINIC, SUFFOLK UNIVERSITY LAW SCHOOL IMMIGRATION CLINIC, POST-DEPORTATION HUMAN RIGHTS PROJECT, NINTH CIRCUIT APPELLATE PROJECT AT BOSTON COLLEGE SCHOOL OF LAW, AND PROFESSORS MARY HOLPER AND IRENE SCHARF IN SUPPORT OF PETITIONER'S PETITION FOR REHEARING OR REHEARING EN BANC

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

MANUEL VARGAS
ANDREW WACHTENHEIM
Immigrant Defense Project
40 W. 39th St., Fifth Floor
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; National Immigration Project of the National Lawyers Guild; American Immigration Lawyers Association, Detention Watch Network; Committee for Public Counsel Services; New Hampshire Association of Criminal Defense Lawyers; Maine Association of Criminal Defense Lawyers; Political Asylum/Immigration Representation Project; Harvard Immigration and Refugee Clinical Program; Boston University Immigrants' Rights Clinic; Suffolk University Law School Immigration Clinic; Post-Deportation Human Rights Project; Ninth Circuit Appellate Program, Boston College School of Law; Professor Mary Holper (Supervisor, Boston College Immigration Clinic); and Professor Irene Scharf (Director, Immigration Law Clinic, University of Massachusetts School of Law) state that no publicly held corporation owns 10% or more of the stock of any of the parties listed above, which are nonprofit organizations, state public defender organizations, and law school clinics and professors.

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

Page(s)

State and Federal Cases

Agency Decisions

Statutes

Federal Regulations

State Court Rules

Other Authorities

INTEREST OF AMICI

Amici include national non-profit organizations with expertise in the interrelationship of criminal and immigration law, state public defender organizations practicing within this Circuit, and law school clinics and clinical professors practicing within this Circuit with expertise in both immigration and criminal issues.[1] Amici have a strong interest in assuring that rules governing classification of criminal convictions are fair and 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 grant the petition for rehearing or rehearing en banc for three principal reasons. First, the panel opinion conflicts with this Court's prior decisions in *Berhe v. Gonzales*, 464 F.3d 74 (1st Cir. 2006) and *Villanueva v. Holder*, 784 F.3d 51 (1st Cir. 2015), as well as the Supreme Court's decision in *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013). Under *Moncrieffe*—and contrary to the panel opinion—the modified categorical approach asks only whether the record of Mr. Peralta Sauceda's past conviction *necessarily* demonstrates that the

[1] More information about individual amici is included in the motion for leave to file this brief.

conviction was for a crime of violence. When—as here—the record of a prior conviction is ambiguous, the conviction does not, under *Berhe* and *Villanueva*, disqualify a noncitizen from cancellation of removal as a matter of law. Because application of the modified categorical approach involves a legal question—and not a factual one—that Mr. Peralta Sauceda bears the burden of proof to demonstrate eligibility does not matter.

Second, this understanding—that the burden of proof provisions are not relevant to application of the modified categorical approach here—accords with the Board of Immigration Appeals' own interpretation of 8 C.F.R. § 1240.8(d), the regulatory provision at issue in the present case. Under *Matter of A-G-G-*, the government must make a prima facie showing that the "evidence indicates" that a mandatory bar to relief may apply in order to trigger an immigration judge's consideration of the bar. 25 I.&N. Dec. 486, 501 (BIA 2011). To satisfy this standard in Mr. Peralta Sauceda's case, which the Court concluded involves a divisible criminal statute, the government must provide a record of conviction indicating that he was necessarily convicted of a disqualifying offense. *See Moncrieffe*, 133 S. Ct. at 1687. Contrary to the panel opinion, when, as here, the record of conviction is ambiguous, the government has not made the requisite prima facie showing of ineligibility.

Third, the panel opinion is unfair to noncitizens like Mr. Peralta Sauceda because it forces them to prove 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.

If the Court does not revisit the panel opinion, it will have a broad-ranging and devastating impact in the many contexts where prior convictions may limit noncitizens' eligibility for relief from removal, lawful permanent resident status, or naturalization. *See, e.g.*, 8 U.S.C. § 1229b(a) (cancellation of removal for permanent residents); 8 U.S.C. § 1229b(b)(1) (cancellation of removal for nonpermanent residents); 8 U.S.C. § 1229b(b)(2) (cancellation of removal for nonpermanent residents who have been battered); 8 U.S.C. §§ 1158, 1158(b)(2)(B)(i) (aggravated felony bar to asylum); 8 U.S.C. §§ 1255(a), 1182(a)(2) (adjustment of status for relatives of permanent residents and U.S. citizens); 8 U.S.C. §§ 1255(l)(1)(B), 1255(h)(2)(B) (adjustment of status for trafficking victims and juveniles granted special immigrant juvenile status); 8 U.S.C. § 1427(a)(3) (naturalization).

Amendment of the panel opinion to make it consistent with *Moncrieffe* and this Court's precedent would not require immigration judges to grant the applications of individuals requesting these forms of relief. Rather, it would remove a mandatory bar in cases where the record does not necessarily

demonstrate a prior disqualifying conviction. Noncitizens would still be required to satisfy the other eligibility criteria, and also to persuade immigration judges to grant relief as a matter of discretion. *See Moncrieffe*, 133 S. Ct. at 1692. Any doubts raised by an ambiguous record of conviction could properly be considered in that discretionary phase, but a conviction with an ambiguous record should not suffice to prevent all consideration of an application in the first place.

The Court should therefore grant the petition for rehearing in this case and hold that, when, as here, the record of conviction is ambiguous, the conviction did not "'necessarily' involve facts that correspond" to a disqualifying offense. *Moncrieffe*, 133 S. Ct. at 1681.

ARGUMENT

I. The Court Should Revisit the Panel Opinion Because It Is Inconsistent With *Moncrieffe* and this Court's Decisions in *Berhe* and *Villanueva*.

The panel opinion runs contrary to Supreme Court precedent setting forth the categorical and modified categorical approach, which govern whether Mr. Peralta Sauceda's prior assault conviction constitutes a crime of domestic violence under 8 U.S.C. § 1227(a)(2)(E)(i). Because the Panel determined that the Maine assault statute is divisible—in that it punishes "bodily injury" and "offensive physical contact"—it employed the modified categorical approach. Contrary to the Panel's conclusion, the Supreme Court in *Moncrieffe* has made clear that the modified categorical approach involves a legal inquiry to determine "what the . . .

conviction *necessarily* involved." 133 S. Ct. at 1684 (emphasis added); *see also id.* at 1688 (question is "whether the record of conviction . . . necessarily establishes conduct that" qualifies as a generic offense). When, as here, the record fails to establish that the noncitizen has *necessarily* been convicted of an offense (here a crime of domestic violence), the conviction is not a disqualifying offense as a matter of law. *See id.* at 1687 ("Ambiguity on this point means that the conviction did not 'necessarily' involve facts that correspond to a[] [punishable] offense . . . ."). *See also Mellouli v. Lynch*, 135 S. Ct. 1980, 1987 (2015) (categorical rule asks "the legal question of what a conviction *necessarily* established").

This Court's decisions in *Berhe* and *Villanueva* accord with the *Moncrieffe* framework and show why rehearing is necessary here. Like the present case, *Berhe* and *Villanueva* considered whether a noncitizen's prior convictions disqualified him from relief from removal. As here, this Court applied the modified categorical approach. In *Berhe*, similar to the present case, the record of conviction consisted of "the criminal complaint . . . and the official criminal docket." *Berhe*, 464 F.3d at 86. *Compare* CAR at 594-99 (copies of Mr. Peralta Sauceda's criminal complaint and judgment). In both *Berhe* and *Villanueva*, the Court concluded that the record of conviction was ambiguous, in that "it is not established from the record of conviction under which prong of the statute [the noncitizen] was convicted." *Villanueva*, 784 F.3d at 55. *See also Berhe*, 464 F.3d at 86. The Court held in both

cases that the convictions did not bar eligibility for relief from removal, without any suggestion that the statutory and regulatory burden of proof provisions should stand in the way of relief. Those provisions do not matter to the legal question of whether the record necessarily indicates a disqualifying offense. *See Moncrieffe*, 133 S. Ct. at 1685 n.4 (clarifying that application of the categorical analysis is the same as to both deportability, where the government bears the burden to show the noncitizen is deportable, 8 U.S.C. § 1229a(c)(3), and relief, where the noncitizen bears the burden to show that he satisfies eligibility requirements, 8 U.S.C. § 1229a(c)(4)).

The panel opinion erred in holding—contrary to *Berhe*, *Villanueva*, and *Moncrieffe*—that, because the "'burden of proof' [is] on the alien requesting cancellation of removal," he loses on an ambiguous record. *Peralta Sauceda v. Lynch*, 804 F.3d 101, 103 (1st Cir. 2015). An ambiguous record shows the absence of a disqualifying conviction; it can never "necessarily" show the presence of a conviction (or it would not be ambiguous). There is not, say, a 40% or 60% chance that the conviction was for a generic offense. There is *zero* chance, because when a conviction does not "necessarily" establish the elements of the federal offense, it does not qualify as a matter of law. The allocation of the burden of proof is irrelevant.

This conclusion reflects the general rule that the allocation of the burden of proof does not affect determinations made as a matter of law. *See In re Hannaford Bros. Co. v. Kash N' Karry Food Stores, Inc.*, 564 F.3d 75, 78 (1st Cir. 2009) ("the burden of proof is largely immaterial because the outcome turns purely on questions of law."); *United States v. Norbury*, 492 F.3d 1012, 1014 n.2 (9th Cir. 2007) (burden to establish a prior conviction was "irrelevant" to legal question "whether a dismissed conviction qualifies as a prior conviction"); *Sequa Corp. & Affiliates v. United States*, 350 F. Supp. 2d 447, 449 (S.D.N.Y. 2004) (G. Lynch, J.), *aff'd*, 437 F.3d 236 (2d Cir. 2006) ("the concept of 'burden of proof' has no relevance where a dispute is solely on a *question of law*.") (emphasis added). *Cf. Cheung v. Holder*, 678 F.3d 66 (1st Cir. 2012) (reviewing de novo legal questions related to whether noncitizen satisfied ten year continuous presence requirement for cancellation after acknowledging noncitizen bore burden of proof).

None of this renders irrelevant the rule that when a noncitizen applies for relief from removal and "the evidence indicates that one or more of the grounds for mandatory denial of the application may apply, the [noncitizen] shall have the burden of proving by a preponderance of the evidence that such grounds do not apply." 8 C.F.R. § 1240.8(d). This burden applies when a noncitizen must disprove grounds of ineligibility that turn on facts of his conduct or circumstances. Under 8 U.S.C. § 1158(b)(2)(A)(vi), for example, an asylum applicant must prove that he

was not "firmly resettled in another country prior to arriving in the United States" and under 8 U.S.C. § 1255(c)(8), an applicant for adjustment of status must prove that he was not "employed while" unauthorized. *See also* 8 U.S.C. § 1227(a)(4)(A)(ii), (noncitizen is barred from cancellation of removal if he "engaged" in, rather than was convicted of, numerous types of unlawful activity, including criminal activity which endangers public safety or national security); 8 U.S.C. § 1158(b)(2)(A) (for asylum, whether there are reasonable grounds to believe he is a danger to the security of the United States, or serious reasons for believing he "committed" a serious political crime). In these contexts, consistent with consideration of a factual (and not legal) question, immigration courts properly place the evidentiary burden on noncitizens. Courts of appeals then apply a "substantial evidence" standard to review the agency's determination, and not the de novo review applicable in this case and others resolving the legal question of eligibility through application of the modified categorical approach. *Compare, e.g.*, *Villanueva*, 784 F.3d at 53 (applying "de novo review" in reviewing application of modified categorical approach), *with Cho v. Gonzales*, 404 F.3d 96 (1st Cir. 2005) (applying substantial evidence standard in reviewing BIA's determination whether marriage fraud existed to bar eligibility for hardship waiver).[2]

[2] While the panel opinion notes that "five other circuits . . . have held that an inconclusive record cannot satisfy an alien's burden of proving eligibility," *Sauceda*, 804 F.3d at 103, three of those circuit decisions predate *Moncrieffe*, and

Consistent with *Berhe*, *Villanueva*, and *Moncrieffe*, the Court should revisit its opinion to hold that, because the record of conviction here is ambiguous, Mr. Peralta Sauceda's prior conviction is not, as a legal matter, one that disqualifies him from cancellation of removal.

II. The Panel Opinion is Contrary to the Structure of Removal Proceedings, the Regulations, and the BIA's Decision in *A-G-G-*.

The reading of the statute that is consistent with *Moncrieffe*—under which the burden of proof is not relevant to the application of the modified categorical approach—also accords with the BIA's interpretation of the regulatory provision at issue, 8 C.F.R. § 1240.8(d). Section 1240.8(d) states that, only once the "evidence indicates" that a mandatory bar to relief "may apply" does a noncitizen bear the burden of showing that the mandatory bar does not apply. The BIA has held in the context of the firm resettlement bar to asylum[3] (where 8 C.F.R. § 1240.8(d) also applies), that the noncitizen's burden is not triggered unless the government provides evidence "indicating" that a bar applies. *A-G-G-*, 25 I. & N. Dec. at 501.

---

the Ninth Circuit is reconsidering the issue en banc post-*Moncrieffe*. *See Garcia v. Holder*, 584 F.3d 1288 (10th Cir. 2009); *Salem v. Holder*, 647 F.3d 111 (4th Cir. 2011); *Almanza-Arenas v. Holder*, Nos. 09-71415 & 10-73715 (9th Cir.) (en banc). As more fully explained in the Petition for Rehearing, the Seventh Circuit has not squarely considered the issue, *see Sanchez v. Holder*, 757 F.3d 712, 720 n.6 (7th Cir. 2014), and on-point Third Circuit decisions actually approach the issue consistently with *Berhe* and *Moncrieffe*. *See Johnson v. Att'y Gen.*, 605 F. App'x 138, 141-42 (3d Cir. 2015) (post-*Syblis* unpublished decision); *Thomas v. Att'y Gen.*, 625 F.3d 134, 146-48 (3d Cir. 2010).

[3] A noncitizen is ineligible for asylum if she "was firmly resettled in another country prior to arriving in the United States." 8 U.S.C. § 1158(b)(2)(A)(vi).

Thus, for example, if the government submits evidence indicating the possibility of firm resettlement—that "may include evidence of refugee status, a passport, a travel document, or other evidence indicative of permanent residence," *id.* at 501-02—the noncitizen must then prove (to a 51% certainty) that she was not actually firmly resettled in that country.

By contrast, in the present case, the government cannot meet its initial showing under Section 1240.8(d) until it provides evidence indicating that the conviction is for a crime of violence rather than a non-disqualifying offense (and here such evidence indisputably does not exist). This is because the modified categorical rule asks a binary legal question: is Mr. Peralta Sauceda's prior conviction "necessarily" a crime of violence or not? The "evidence" can only "indicate" that the prior conviction is a crime of violence if it *necessarily* demonstrates that it is. By contrast, where there is an evidentiary dispute (such as whether the record of conviction is properly authenticated), the showing required for a prima facie case may be different and the noncitizen may counter with evidence addressing the factual dispute. The prima facie showing required by Section 1240.8(d) also applies with full force in the numerous contexts of other bars to relief that raise factual questions. *See supra* Section I (identifying contexts where application of Section 1240.8(d) requires resolution of factual questions).

Decisions from the BIA and this Court are consistent with this understanding. In *A-G-G-*, the BIA held that, to trigger a mandatory bar to relief from removal for the purposes of 8 C.F.R. § 1240.8(d)—there, the firm resettlement bar—the government must first make a prima facie showing that the bar may apply. 25 I.&N. Dec. at 501; *see also Matter of Acosta*, 19 I. & N. Dec. 211, 219 n.4 (BIA 1985), *overruled on other grounds by Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987) (clarifying that persecutor bar to asylum may apply "only if the evidence raises the issue."). Although *A-G-G-* considered a different context and form of relief, the BIA interpreted 8 C.F.R. § 1240.8(d), the same regulatory provision that governs the present case. *Cf. Clark v. Martinez*, 543 U.S. 371 (2005) (statutory language must be interpreted in the same way across different contexts in which it applies). The framework from *A-G-G-* has since been applied in the circuit courts, and reflects this Court's understanding of the burdens of proof in the firm resettlement context. *See, e.g.*, *Naizghi v. Lynch*, __ F. App'x __, 2015 WL 5257067 (4th Cir. Sept. 10, 2015) (applying *A-G-G-* holding); *Hanna v. Holder*, 740 F.3d 379 (6th Cir. 2014) (same). *See also Salazar v. Ashcroft*, 359 F.3d 45, 50 (1st Cir. 2004) (pre-*A-G-G-* decision observing "[t]he government bears some initial burden of showing firm resettlement."). Under these decisions and the language of 8 C.F.R. § 1240.8(d), the government here must make a prima facie showing that Mr. Peralta Sauceda's prior conviction was for a crime of

violence; it has failed to do so because the record of that conviction does not conclusively "indicate" a disqualifying offense.

A-G-G- and the appellate decisions applying it accord with the statutorily defined structure of removal proceedings, which occur in two phases. In cases involving prior convictions, the issue in the first phase is typically whether a noncitizen is removable based on the conviction. In the second phase, noncitizens who are found removable present their case for relief, such as cancellation of removal or asylum. It makes sense that, by this phase, the immigration regulations assume that the government will have already produced criminal records as "evidence indicat[ing]" that a noncitizen is subject to a disqualifying conviction. *See* 8 C.F.R. § 1240.8(d). When the record of conviction is ambiguous and does not establish removability based on a prior conviction, the conviction also should not bar the noncitizen from eligibility for relief from removal. *See Moncrieffe*, 133 S. Ct. at 1692 (if the government fails to meet its burden to show removability based on a disqualifying conviction, "the noncitizen may seek relief from removal . . . assuming he satisfies the other eligibility criteria."). Although the government is not required to charge a conviction as a ground of removability 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 a conviction at the

removability stage, relief eligibility would arbitrarily "rest on the happenstance of an immigration official's charging decision." *See Judulang v. Holder*, 132 S. Ct. 476, 486 (2011).

III. The Panel Decision Would Require Noncitizens to Produce Records That Do Not Exist or That They Are Powerless to Access.

The panel decision would impose an impossible burden on immigrants who otherwise merit relief: to produce records that do not exist or that may be unavailable. Mr. Peralta Sauceda's case is illustrative. Although he provided the immigration court with the complaint and judgment in his case, he was unable to obtain the plea transcript or other documents because (as he was told after multiple attempts) they do not exist. *See, e.g.*, CAR at 13. Indeed, the Maine Supreme Court has upheld group instructions in misdemeanor arraignments and observed in an appeal from one such case that "[t]he transcript or tape was unavailable in this case." *State v. Holmes*, 818 A.2d 1054, 1057, 1058 (Me. 2003).

If, unlike in this case, more detailed conviction records were 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. For example, in misdemeanor and less serious felony cases in Massachusetts, in which plea colloquies are recorded by audiotape, the tapes are destroyed 2 ½ years after the original recording. Mass. Dist./Mun. Court Civil Rule 211. For more serious felony

cases in Massachusetts, in which proceedings are recorded by stenographers, stenographic notes may be destroyed after six years. Mass. Supreme Judicial Court Rule 1:12. New Hampshire and Maine likewise provide for the destruction of stenographic notes and other criminal records. *See, e.g.*, N.H. Super. Ct. Rule 3-1; State of Maine Supreme Judicial Court, Records Retention Schedule (Aug. 1, 2005), *available at* http://www.courts.maine.gov/rules_adminorders/adminorders/JB-05-21.html.

Even in cases where detailed, admissible records were created and are preserved, the Panel's holding that the noncitizen must find conclusive records places significant, often insurmountable, burdens on noncitizens in removal proceedings, 45% of whom are unrepresented,[4] 37% of whom are detained,[5] and 85% of whom cannot proceed in English.[6] The Panel's holding is particularly harsh for detained noncitizens, who face innumerable barriers to requesting state court records of prior convictions,[7] including extremely limited access to the Internet,

[4] *See* Department of Justice, FY 2014 Statistical Yearbook F1, Fig. 10, *available at* http://www.justice.gov/eoir/statistical-year-book ("EOIR Statistical Yearbook").
[5] EOIR Statistical Yearbook, at G1, Fig. 11.
[6] EOIR Statistical Yearbook, at E1, Fig. 9.
[7] Many states impose various burdensome requirements to obtain records. Rhode Island only accepts payment for copies of criminal records by business/certified check or money order, and requires a self-addressed stamped envelope to return records. Rhode Island Judiciary, Judicial Records Center, *available at* https://www.courts.ri.gov/JudicialRecordsCenter. And it may not be clear where a detainee should send a business/certified check, even if he is able to somehow obtain one. *See id.* (Rhode Island criminal files are stored in both Judicial Records

telephones, and mail (such as "postcard-only" policies that prohibit them from sending or receiving envelopes).[8] *See Moncrieffe*, 133 S. Ct. at 1690 (citing Katzmann, *The Legal Profession and the Unmet Needs of the Immigrant Poor*, 21 Geo. J. Legal Ethics 3, 5-10 (2008), to observe that noncitizens, especially those who are detained, "have little ability to collect evidence").

The solution to this unfairness is to revisit the panel decision and hold, consistent with *Moncrieffe, Villanueva,* and *Berhe,* that an ambiguous record of conviction does not establish that a criminal bar to relief applies.

CONCLUSION

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

Dated: December 18, 2015

Respectfully submitted,

/s/Jayashri Srikantiah
Jayashri Srikantiah
Counsel for Amici Curiae

Center and local courts, with no "guarantee that a specific individual record will be at the listed location.").

[8] *See, e.g.*, Amnesty International, *Jailed Without Justice: Immigration Detention in the USA* 35 (2009), *available at* http://www.amnestyusa.org/pdfs/JailedWithoutJustice.pdf; National Immigration Law Center, *A Broken System: Confidential Reports Reveal Failures in U.S. Immigration Detention Centers* 26-30 (2009), *available at* https://nilc.org/document.html?id=9. *See also Prison Legal News v. Columbia County*, 942 F. Supp. 2d 1068 (D. Or. 2013) (lawsuit challenging postcard-only policy in St. Helens, Oregon); Prison Policy Initiative, *Return to Sender: Postcard-only Mail Policies in Jail* 2 (2013), *available at* http://static.prisonpolicy.org/postcards/Return-to-sender-report.pdf.

CERTIFICATE OF SERVICE

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

U.S. Court of Appeals Docket Number 14-2042

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 First Circuit by using the appellate CM/ECF system on December 18, 2015. 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: December 18, 2015
Stanford, CA

___/s/Jayashri Srikantiah__

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