

No. 1-2017

---

IN THE  
**Supreme Court of the United States**

---

LAURA SECORD, Petitioner,  
v.  
WINFIELD SCOTT, in his Official Capacity as  
Director, Department of Immigration and  
Customs Enforcement, Respondent

and

LAURA SECORD, Petitioner,  
v.  
CITY OF ANGOLA, Respondent

---

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT

---

**BRIEF FOR PETITIONER**

---

TEAM NUMBER 11  
*Counsel of Record*  
123 NUMBER ST.  
SUNNY CITY, WC 90210  
(310) 867-5309  
Sun.City.Law@law.com

*Counsel for Petitioner*

---

## **QUESTIONS PRESENTED**

- I. Whether the Second Circuit applied the correct standard to determine if Deputy Pfieff had probable cause to arrest Petitioner; and
- II. Whether the “reasonableness test” to determine a time for bail hearings articulated by the Second Circuit protects the Due Process rights of undocumented aliens.

## **TABLE OF CONTENTS**

<b>QUESTIONS PRESENTED .....</b>	<b>I</b>
<b>TABLE OF CONTENTS .....</b>	<b>I</b>
<b>TABLE OF AUTHORITIES .....</b>	<b>III</b>
<b>OPINIONS BELOW.....</b>	<b>- 1 -</b>
<b>JURISDICTION .....</b>	<b>- 1 -</b>
<b>CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....</b>	<b>- 1 -</b>
<b>STATEMENT OF THE CASE.....</b>	<b>- 2 -</b>
<b>SUMMARY OF ARGUMENT .....</b>	<b>- 3 -</b>
<b>ARGUMENT.....</b>	<b>- 5 -</b>
<b>I. THE SECOND CIRCUIT APPLIED THE INCORRECT STANDARD TO DETERMINE IF DEPUTY PFIEFF HAD PROBABLE CAUSE TO ARREST MS. SECORD.....</b>	<b>- 5 -</b>
<b>A. Deputy Pfieff ignored available and undisputed facts when making his probable cause determination.....</b>	<b>- 6 -</b>
<b>B. Deputy Pfieff failed to show a belief of guilt to establish probable cause, particularized to Ms. Secord, with respect to all elements of the crime.....</b>	<b>- 8 -</b>

C.	<i>The all-elements approach to probable cause mirrors the standard that must be met in preliminary hearings.</i>	- 13 -
II.	THE SECOND CIRCUIT APPLIED AN ERRONEOUS STANDARD DEFINING THE REASONABLENESS OF DETAINMENT AUTHORIZED UNDER § 1226(C) AND INCORRECTLY DETERMINED THAT MS. SECORD’S LIBERTY INTERESTS HAD NOT BEEN VIOLATED BY AN UNREASONABLY PROLONGED DETENTION.	15
A.	<i>Section 1226(c) must be read to contain an implicit time limit to remain consistent with the Due Process Clause.</i>	15
B.	<i>This Court should adopt a bright line rule defining at what point an alien’s detention under §1226(c) becomes unreasonable.</i>	19
1.	A reasonable bright-line rule is necessary to ensure the protection of the rights of those detained while still upholding the Government's legitimate statutory purpose.	19
2.	The case-by-case standard adopted by the Second Circuit fails to adequately protect the liberty interest of the detained and should be rejected.	21
C.	<i>Alternatively, Ms. Secord must be afforded a bail hearing because the Second Circuit improperly applied the case-by-case standard.</i>	24
	<b>CONCLUSION</b>	<b>25</b>

## **TABLE OF AUTHORITIES**

### **Cases**

<i>Adams v. Williams</i> , 407 U.S. 143 (1972).....	6
<i>Baker v. McCollan</i> , 443 U.S. 137 (1979) .....	5
<i>Brinegar v. United States</i> , 338 U.S. 160 (1949).....	3
<i>Carroll v. United States</i> , 267 U.S. 132 (1925).....	5
<i>Chavez-Alvarez v. Warden York County Prison</i> , 783 F.3d 469 (3d. Cir. 2015) .....	19, 22, 23
<i>Cilman v. Reeves</i> , 452 F. App'x 263 (4th Cir. 2011).....	7
<i>Demore v. Kim</i> , 538 U.S. 510 (2003) .....	15
<i>Draper v. United States</i> , 358 U.S. 307 (1959).....	6
<i>Finigan v. Marshall</i> , 574 F.3d 57 (2d Cir. 2009) .....	4
<i>Florida v. Harris</i> , 133 S. Ct. 1050 (U.S. 2013) .....	4
<i>Gasho v. United States</i> , 39 F.3d 1420 (9th Cir. 1994).....	7
<i>Gonzalez v. City of Schenectady</i> , 728 F.3d 149 (2d Cir. 2013) .....	7
<i>Hunter v. Bryant</i> , 502 U.S. 224 (1991).....	4
<i>Illinois v. Gates</i> , 462 U.S. 213 (1983) .....	3, 4, 5, 6
<i>Jarpe v. Mumford</i> , No. PX 16-2649, 2016 WL 5661659 (D. Ma. Sept. 9, 2016) .....	17, 21
<i>Locke v. United States</i> , 7 Cranch. 339 (1813).....	11
<i>Lora v. Shanahan</i> , 804 F.3d 601 (2d. Cir. 2015) .....	17, 21
<i>Maryland v. Pringle</i> , 540 U.S. 366 (2003) .....	3, 6, 11
<i>People v. Graves</i> , 76 N.Y.2d 16 (N.Y. 1990).....	8
<i>Reid v. Donelan</i> , 819 F.3d 486, 497 (1st Cir. 2016). .....	19, 21, 23
<i>Rodriguez v. Robbins</i> , 715 F.3d 1127 (9th Cir. 2013) ( <i>Rodriguez II</i> ); .....	17, 18, 19
<i>Rodriguez v. Robbins</i> , 804 F.3d 1060 (9 <sup>th</sup> Cir. 2015) ( <i>Rodriguez III</i> ) .....	18, 20
<i>Sopo v. U.S. Attorney General</i> , 825 F.3d 1199 (11th Cir. 2016).....	14, 16, 21
<i>Spiegel v. Cortese</i> , 196 F.3d 717 (7th Cir. 1999) .....	7

<i>Stansbury v. Wertman</i> , 721 F.3d 84 (2d Cir. 2013) .....	5
<i>Thacker v. City of Columbus</i> , 328 F.3d 244 (6th Cir. 2003).....	7
<i>United States v. Cortez</i> , 449 U.S. 411 (1981) .....	6
<i>United States v. Joseph</i> , 730 F.3d 336 (3d Cir. 2013) .....	7
<i>United States v. Robinson</i> , 446 U.S. 544 (1980) .....	4
<i>United States v. Watson</i> , 423 U.S. 411 (1976).....	5
<i>Williams v. City of Alexander</i> , 772 F.3d 1307 (8th Cir. 2014) .....	7
<i>Ybarra v. Illinois</i> , 444 U.S. 85 (1979) .....	6
<i>Yorzinski v. City of New York</i> , 175 F.Supp.3d 69 (S.D.N.Y. 2016) .....	11
<i>Zadvydas v. Davis</i> , 533 U.S. 678 (2001) .....	14
 <b><u>State Statutes</u></b>	
Model Penal Code § 223.2(1) (2017) .....	9
Model Penal Code § 250.2 (2017) .....	10
N.Y. Penal Law § 140.00[5] (McKinney 2009) .....	7, 8
N.Y. Penal Law § 140.15 (McKinney 2009).....	7
 <b><u>Federal Statutes</u></b>	
8 U.S.C. § 1226(a) (West 2016) .....	14, 19
8 U.S.C. § 1226(c) (West 2016). .....	<i>passim</i>
 <b><u>Other Authorities</u></b>	
1 Fed. Prac. & Proc. Crim. § 91 (4th ed.) .....	12
5-82 Criminal Law Advocacy § 82.01 (2016).....	12

IN THE  
**Supreme Court of the United States**

---

No. 1-2017

LAURA SECORD, Petitioner,  
v.  
WINFIELD SCOTT, in his Official Capacity as  
Director, Department of Immigration and  
Customs Enforcement, Respondent

and

LAURA SECORD, Petitioner,  
v.  
CITY OF ANGOLA, Respondent

---

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT

---

**BRIEF FOR PETITIONER**

---

**OPINIONS BELOW**

This case arises from *Scott v. Secord*, 123 F.4<sup>th</sup> 1 (2nd Cir. 2016), which held, first, that Deputy Pfieff harbored probable cause to arrest Ms. Secord for trespass; and second, that Ms. Secord's prolonged civil detention in excess of six months was neither unreasonable nor an undue burden on her liberty protected by the Fifth Amendment.

**JURISDICTION**

Pursuant to Competition Rule III(b)(v), jurisdiction is proper before this Court.

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

This case concerns violations of the Fourth and Fifth Amendment of the United States Constitution. Additionally, this case involves the 8 U.S.C. § 1226(a) and (c). Read together,

these provisions mandate an alien's detention throughout the pendency of his or her deportation proceedings if the alien has been convicted of a crime enumerated in § 1226(c)(1).

### **STATEMENT OF THE CASE**

Petitioner Laura Secord's ("Ms. Secord") life changed in a dramatic way on the night of December 21, 2015. R. 2. James Fitzgibbon ("Fitzgibbon") invited Ms. Secord's group of friends to his uncle's spooky lake house in Angola, to play Dungeons and Dragons ("D&D") and jokingly celebrate the Winter Solstice. R. 8. Fitzgibbon drove the D&D players to the cottage and unlocked the front door with a key he knew to be on the patio. R. 9. Fitzgibbon knew the cottage well because his uncle requested he look after the cottage for the winter. R. 9. The group dressed in costume and enjoyed refreshments while playing D&D around a candlelit table. R. 9.

The group's presence did not go unnoticed. A local resident saw the group's candlelight and called the police. R. 2. Deputy Barnard Pfieff ("Deputy Pfieff") of the Erie County Sheriff's office arrived on the scene to investigate. R. 2. Deputy Pfieff snuck up to a window and spied on the group. R. 2. Deputy Pfieff saw the group dressed in costume, sitting around a candlelit table, playing a game, and eating snacks. R. 2. Deputy Pfieff reported that he observed "several hooded or masked individuals, gathered around a table in the gloom of the candlelight." R. 2. Next, the supervisor ordered Deputy Pfieff to "[g]o find out what's going on." R. 2.

The group was "scared out of their wits" and scattered when Deputy Pfieff unexpectedly knocked on the door and stated he was an officer. R. 9. Deputy Pfieff radioed for back-up and entered the unlocked door. R. 2. Deputy Pfieff tried to turn on the lights, which did not work, and instead of drawing his flashlight to illuminate the room, Deputy Pfieff drew his weapon. R. 2.

After composing themselves, six terrified young men and women, dressed as witches and ghouls, emerged to face Deputy Pfieff. R. 2; R. 9. Deputy Pfieff did not laugh off this misunderstanding, instead he ordered the group to the floor and searched them for weapons and

identification. R. 2. The search produced no weapons, only five New York State forms of identification. R. 2. Deputy Pfieff did not discover identification for Ms. Secord. R. 2.

More officers arrived on the scene and assisted Deputy Pfieff in questioning the group. R. 2. During these interrogations, Fitzgibbon informed the officers that he was the nephew of the owner and he had permission to be there. R. 3. Fitzgibbon then provided the key to the house and showed officers his face among numerous family pictures that hung on the walls. R. 9. After this information came to light, the group was transported to the Erie County Holding Center and processed. R. 3. During processing, brass knuckles were found in Ms. Secord's backpack. R. 3. Ms. Secord's friends were released, but she stayed in custody due to her immigration status. R. 3.

At trial, Ms. Secord was found guilty of criminal trespass in the second degree and criminal possession of a deadly weapon in the fourth degree, and concurrently served two one-year sentences. R. 3. After discharging her sentence, Immigration and Customs Enforcement ("ICE") detained Ms. Secord and initiated deportation proceedings. R. 3-4. Two petitions were filed in The United States District Court for the Western District of New York ("Western District") on Ms. Secord's behalf. R. 3-4. The first alleged that she was arrested without probable cause. R. 3-4. The second petition sought her release from civil detention, which exceeded the bright-line six-month reasonable standard in the United States Court of Appeals for the Second Circuit ("Second Circuit"). R. 3-4. Both petitions were granted. R. 4. The Government appealed both writs. R. 4. On Appeal, the Second Circuit reversed both writs of habeas corpus. R. 4. Ms. Secord urges this Court to reverse the decision of the Second Circuit and affirm both writs of habeas corpus.

### **SUMMARY OF ARGUMENT**

This Court should reverse the Second Circuit's ruling that Deputy Pfieff had probable cause to arrest Ms. Secord. The Second Circuit erroneously considered facts not known to



Deputy Pfieff at the time of arrest. The Second Circuit also committed error by applying the incorrect approach for determining probable cause. The Second Circuit failed to determine that every element of the charged offense was satisfied by probable cause prior to Deputy Pfieff's arrest of Ms. Secord. For these reasons this Court should reverse the Second Circuit. In doing so, this Court should require that every element of the charged offence be satisfied by probable cause, viewed through a totality of the circumstances, prior to warrantless arrest because this doing so ensures all available evidence will be weighed by the arresting officer and this standard matches the burden that must be met at a preliminary hearing following the warrantless arrest.

Additionally, this Court should reverse the Second Circuit's ruling that Ms. Secord's unreasonably prolonged civil detention does not violate her constitutionally protected liberty interest. All Courts agree that unreasonably prolonged civil detention, pursuant to IRC § 1226(c), violates an individual's liberty interest protected by the Fourth Amendment's Due Process Clause. To cure this constitutional violation, courts read-in an implicit time limit that, if exceeded, requires the government to demonstrate that the detention is necessary to uphold the purpose of the statute – ensuring the individual appears for his or her deportation hearing.

Courts disagree on how to define an unreasonable detention. Courts apply one of two standards: the bright-line, or the case-by-case standard. This court should adopt the bright-line standard, which holds that detention becomes unreasonably prolonged after six months. Both precedence and practicality support this standard. The case-by-case standard, adopted by the Second Circuit in the decision below, has proven unworkable in practice. It fails to protect detainees' rights because it increases the complexity and length of immigration proceedings. Additionally, the case-by-case standard will inundate the federal court system with habeas

corpus petitions that are better heard before an Immigration Judge. This court should adopt the bright-line standard and reverse the Second Circuits decision.

### **ARGUMENT**

#### **I. THE SECOND CIRCUIT APPLIED THE INCORRECT STANDARD TO DETERMINE IF DEPUTY PFIEFF HAD PROBABLE CAUSE TO ARREST MS. SECOND.**

The Second Circuit erred in concluding Ms. Second's arrest was supported by probable cause because the Court took facts into account that were not known to Deputy Pfieff until after Ms. Second was placed under arrest. The Court further erred by applying the wrong standard when determining probable cause, because the Court did not ensure every element of the charged offense had been satisfied by probable cause viewed through a totality of the circumstances. Therefore, this Court should reverse the Second Circuit and hold that every element of a alleged offense must be satisfied by probable cause viewed through a totality of the circumstances.

"The right of the people to be secure in their persons . . . shall not be violated . . . but upon probable cause. . . ." U.S. Const. Amend. IV. Probable cause to make a warrantless arrest exists where an officer is aware of facts that would make a reasonable person believe a crime is, or has been, committed. *Maryland v. Pringle*, 540 U.S. 366, 370 (2003); *Illinois v. Gates*, 462 U.S. 213, 231 (1983); *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949). An arrest has occurred when a person is taken into custody for the purpose of commencing a criminal action. *United States v. Robinson*, 414 U.S. 218, 228 (1973). The facts leading to arrest must be viewed in the totality of the circumstances. *Gates*, 462 U.S. at 233. This determination is made at the moment of arrest and reviewed using only information known before the arrest was effectuated. *Hunter v. Bryant*, 502 U.S. 224, 228 (1991). The Supreme Court has declined to create an elemental based test for probable cause because probable cause can not be precisely defined or quantified.

*Florida v. Harris*, 133 S. Ct. 1050, 1056 (U.S. 2013). In the Second Circuit probable cause to arrest exists where, based on a totality of the circumstances, an officer has knowledge, or trustworthy information, of facts and circumstances that would warrant a reasonable person that a crime is, or has been, committed. *Finigan v. Marshall*, 574 F.3d 57, 62 (2d Cir. 2009).

Deputy Pfieff failed to establish probable cause for trespass prior to arresting Ms. Secord. Therefore, Deputy Pfieff's actions are in violation of the Fourth Amendment by arresting Ms. Secord without probable cause. In reviewing the case, the Western District found that Deputy Pfieff did not have probable cause to arrest Ms. Secord. R. 6. In overturning the Western District, the Second Circuit erroneously took facts into account that were not known to Deputy Pfieff until after the point of arrest. R. 6-7. Ms. Secord requests this Court to reverse the decision of the Second Circuit for three reasons. First, Deputy Pfieff ignored available and undisputed facts when making his probable cause determination. Second, Deputy Pfieff failed to show a belief of guilt to establish probable cause, particularized to Ms. Secord, with respect to all elements of the crime. Third, the all-elements approach to probable cause mirrors the standard that must be met in preliminary hearings.

**A. Deputy Pfieff ignored available and undisputed facts when making his probable cause determination.**

Probable cause is established through an examination of all of the facts and circumstances known to the arresting officer at the time of arrest. *Carroll v. United States*, 267 U.S. 132, 162 (1925). Probable cause is determined by evidence known to the arresting officer at the time of arrest by a totality of the circumstances. *Gates*, 462 U.S. at 233. Probable cause continues until intervening exculpatory evidence becomes available. *United States v. Watson*, 423 U.S. 411, 449 (1976). While, an officer is not required to investigate every claim of innocence when making a probable cause determination, *Baker v. McCollan*, 443 U.S. 137, 145

(1979), the Second Circuit has explained that, under the totality-of-the-circumstances approach, plainly exculpatory evidence must be weighed against inculpatory evidence to ensure the court has a full sense of the arresting officer's knowledge in formulating probable cause. *Stansbury v. Wertman*, 721 F.3d 84, 93 (2d Cir. 2013).

Requiring officers to weigh exculpatory evidence supports the reasoning behind the totality-of-the-circumstances approach to probable cause. In *Gates*, this Court adopted the flexible totality-of-the-circumstances approach to formulating probable cause. 462 U.S. at 233. In reaching that conclusion, the Court emphasized that probable cause is a nontechnical determination based upon facts and practical considerations, made by reasonable individuals, not attorneys. *Id.* at 231.

Deputy Pfieff failed to weigh exculpatory evidence when attempting to formulate probable cause. The only inculpatory evidence known to Deputy Pfieff at the time of arrest was the suspicion of criminal activity by a resident of Angola. R. 2. Deputy Pfieff arrested the group when he forced the group to the ground because he limited the group's freedom of movement. R. 2. This arrest was made with only a mere suspicion of criminal activity, not probable cause. A warrantless arrest may only be effectuated when the arresting officer has probable cause. *Pringle*, 540 U.S. at 370. Mere suspicion does not give rise to probable cause. *Gates*, 462 U.S. at 244. Rebutting this suspicion was exculpatory evidence offered by Fitzgibbon to Deputy Pfieff showing Fitzgibbon was the owner's nephew. R. 3. This claim is clearly supported by pictures of Fitzgibbon inside the cottage. R. 9. Moreover, Fitzgibbon stated that he had permission to access the cottage and he had access to a key to the cottage. R. 8-9. At the time of arrest, no facts were known to Deputy Pfieff to buttress a mere suspicion of criminal activity. The exculpatory evidence known to Deputy Pfieff destroys any evidence that would give rise to probable cause.

The totality of the circumstances faced by Deputy Pfieff does not give rise to probable cause. Even if Deputy Pfieff's initial suspicion of criminal activity was enough to give rise to probable cause, that probable cause would have been overcome when Fitzgibbon proved to Deputy Pfieff that he was authorized to be in the cottage. Under the Second Circuit's approach, Deputy Pfieff failed to balance inculpatory and exculpatory evidence. Therefore, Deputy Pfieff did not have probable cause to arrest Ms. Secord.

**B. Deputy Pfieff failed to show a belief of guilt to establish probable cause, particularized to Ms. Secord, with respect to all elements of the crime.**

The Fourth Amendment requires probable cause to be particularized to an individual. *Ybarra v. Illinois*, 444 U.S. 85, 92-96 (1979). When making assessments, the whole picture must be viewed and suspicion must be particularized toward a particular individual. *United States v. Cortez*, 449 U.S. 411, 418 (1981). The proof that formulates probable cause is not the same type of proof required to establish guilt. *Draper v. United States*, 358 U.S. 307, 312 (1959). The specific evidence required to support every element of an offense for a conviction is not required for probable cause. *Adams v. Williams*, 407 U.S. 143, 149 (1972).

Since *Adams*, a circuit split has developed concerning showing probable cause for every element of the accused offense in order to arrest. The "some-elements approach" advocates that every element of an offense does not have to be satisfied in order for an officer to establish probable cause to make a warrantless arrest. *Cilman v. Reeves*, 452 F. App'x 263, 270-71 (4th Cir. 2011); *Spiegel v. Cortese*, 196 F.3d 717, 724 n.1 (7th Cir. 1999); *Gasho v. United States*, 39 F.3d 1420, 1428 (9th Cir. 1994). A growing number of circuits apply an "all-elements approach," which requires that every element of the charged offense be satisfied by probable cause before making a warrantless arrest. *Williams v. City of Alexander*, 772 F.3d 1307, 1312 (8th Cir. 2014); *United States v. Joseph*, 730 F.3d 336, 342 (3d Cir. 2013); *Thacker v. City of*

*Columbus*, 328 F.3d 244, 256 (6th Cir. 2003). Unlike the some-elements approach, the all-elements approach stays in line with *Adams* and requires that every element be satisfied by probable cause, judged by a totality of the circumstances, rather than with specific evidence.

When reviewing probable cause, the Second Circuit examines the facts known to the officer in light of the elements of the crime alleged. *Gonzalez v. City of Schenectady*, 728 F.3d 149, 155 (2d Cir. 2013). In New York, a person is guilty of second-degree criminal trespass when “she knowingly enters or remains unlawfully in a dwelling.” N.Y. Penal Law § 140.15 (McKinney 2009). A person enters or remains in a premises unlawfully when the person is not licensed or privileged to enter the premises. N.Y. Penal Law § 140.00[5] (McKinney 2009).

The facts known to Deputy Pfieff at the time of arrest were (1) a group of individuals were playing a game around a candlelit table, (2) the group scattered when he entered the cottage with his gun drawn, (3) pictures of Fitzgibbon were on display inside the cottage, (4) Fitzgibbon told the officer he was the nephew of the owner, and (5) Fitzgibbon had a key to the cottage and permission to enter the cottage. R. 2-3; R. 8-9. Prior to arrest, no evidence came to light that would give rise to probable cause for Deputy Pfieff to arrest Ms. Secord.

**1. No reasonable person would believe that Ms. Secord knew she was entering the cottage unlawfully or that Ms. Secord remained in the cottage unlawfully**

The two basic elements that Deputy Pfieff had to satisfy were (1) Ms. Secord knowingly entered the cottage, or Ms. Secord remained in the cottage unlawfully, and that (2) Ms. Secord was not licensed or privileged to enter the cottage. N. Y. Penal Law §§ 140.00[5], 140.15. Neither the Supreme Court nor Second Circuit have reviewed a case involving New York’s second-degree criminal trespass statute; however, the Court of Appeals of New York has reviewed the statute and given clarity to its meaning. The Court has determined that the

knowledge and “remains unlawfully” requirement of trespass is defeated when the individual entering the property has obtained a license or other privilege. *People v. Graves*, 76 N.Y.2d 16 (N.Y. 1990). The Court held that a person is “licensed or privileged” to enter a property when the person has obtained consent from the owner, or someone with a relationship to give consent, to enter the property. *Id.* at 20.

In this case, probable cause is not established under the all-elements approach because Deputy Pfieff failed to satisfy the second element of trespass by probable cause. The first element of trespass is likely satisfied by probable cause because Ms. Secord did not own or rent the cottage she entered; however, Fitzgibbon gave Ms. Secord a license which defeats probable cause for the second element. In *Graves*, the live-in boyfriend of the person renting the apartment was able to grant a license to enter by using the phrase, “all right.” *Id.* In this case, Fitzgibbon is the nephew of the owner of the cottage, and the owner had requested Fitzgibbon to watch after the cottage. R. 2.; R. 9. This is the type of relationship that a reasonable person would believe would give rise to the authority to license people to enter the cottage. Fitzgibbon gave Ms. Secord a license to enter the cottage when he invited the group to the cottage to play D&D. R. 8-9. Deputy Pfieff failed to take the second element of trespass, Ms. Secord’s license to enter the cottage, into account when formulating probable cause. Failing to satisfy the second element of trespass by probable cause removes Deputy Pfieff’s ability to lawfully arrest Ms. Secord under the all-elements approach.

The all-elements approach forces officers to analyze facts under a totality of the circumstances. Under this approach, each element of the offense of arrest must be satisfied by probable cause, viewed through a totality of the circumstances, before an officer has probable cause to effectuate the arrest. An individual is guilty of theft, for example, if the individual (1)

unlawfully takes or exercises control over, (2) movable property of another, and (3) with the purpose to drive the owner thereof. Model Penal Code § 223.2(1) (2017). In order to lawfully effectuate a warrantless arrest for theft under the all-elements approach, an officer must satisfy all three elements of theft by probable cause before the officer may effectuate the arrest.

Some courts have attempted to apply the some-elements approach. The some-elements approach rejects the idea that every element of a crime must be satisfied by probable cause, viewed through a totality of the circumstances, before an officer may effectuate an arrest. In further ambiguity, the approach does not specify precisely how many elements have to be satisfied before an officer has formulated probable cause to arrest. Under the some-elements approach, Deputy PfiEFF is only required to formulate probable cause for half of the elements of trespass. Although Deputy PfiEFF could likely formulate probable cause under the some-elements approach, this Court should not adopt this approach because it gives police broad discretion. For law enforcement, this power would extend beyond the instant case, and would grant law enforcement probable cause to arrest any individual who enters a dwelling they do not rent or own. Any social gathering, for example, could be broken up by law enforcement under trespass law as soon as an attendee entered the dwelling because the attendee did not own the dwelling they entered, even though the attendee was invited to the party.

Similar unseemly results would occur under the some-elements approach for the crime of disorderly conduct. An individual is guilty of disorderly conduct when (1) for the purpose of public inconvenience or annoyance engages in, (a) fighting or threatening, or (b) is unreasonably noisy or uses an offense gesture or language to any person present, or (c) creates a hazardous or offensive condition for no purpose. Model Penal Code § 250.2 (2017). Under this statute, being determined by the some-elements approach, an officer would be able to formulate probable cause



for disorderly conduct when a person is being too loud on the sidewalk. Simply put, under the some-elements approach, if a mother is speaking loudly to her children in the mall, an officer would have probable cause to arrest the mother for disorderly conduct. Results like these are unconscionable and illustrate why this Court should adopt the all-elements approach. The some-elements approach would give officers the discretion to arrest anyone at any time. This is repugnant to this Court's Fourth Amendment jurisprudence.

Deputy Pfieff did not particularize probable cause to Ms. Second because he arrested the entire group at the cottage. Deputy Pfieff failed to satisfy all elements of trespassing when formulating probable cause, because he failed to acknowledge Ms. Second license to enter the property. Therefore, Deputy Pfieff did not have probable cause to arrest Ms. Second, and thus, the Second Circuit's decision should be overturned.

**2. Deputy Pfieff failed to show that there was a lawful order excluding Ms. Second from the cottage, that the order was communicated to her by a person with authority to give the order, and that Ms. Second defied the order.**

While the Supreme Court and Second Circuit have not reviewed the statutes at issue, the Southern District of New York ("Southern District") has reviewed the statutes. *Yorzinski v. City of New York*, 175 F.Supp.3d 69 (S.D.N.Y. 2016). The Southern District established a three-part test for New York's trespass law which states "that (1) there was a lawful order excluding [the individual] from the property; (2) that the order was communicated to him by a person with authority to give the order; and (3) that [the individual] defied the order." *Id.* at 77.

Deputy Pfieff acted rashly and made unreasonable inferences when he arrested Ms. Second for trespass and didn't abide by the three-part test to formulate probable cause. Deputy Pfieff failed to establish that a lawful order excluding Ms. Second from the cottage was conveyed. The facts regarding a lawful order excluding Ms. Second are to the contrary, Ms.

Secord was given permission to enter the cottage by Fitzgibbon. R. 2.; R. 8-9. Moreover, Deputy PfiEFF failed to establish that a lawful order of exclusion was communicated to Ms. Secord by a person with authority to give the order. Again, all evidence available to Deputy PfiEFF at the time of arrest was to the contrary of this element of the test. R. 2.; R. 8-9. Furthermore, Deputy PfiEFF failed to show that Ms. Secord defied a lawfully given order of exclusion.

Probable cause protects citizens from rash and unreasonable inferences being used to establish unfounded charges of crime. *Pringle*, 540 U.S. at 370. Deputy PfiEFF failed to satisfy the simple three-element test set out by the Southern District to establish probable cause to arrest for trespassing. Therefore, Deputy PfiEFF did not have probable cause to arrest Ms. Secord, and thus, the decision of the Second Circuit is erroneous and should be reversed.

**C. The all-elements approach to probable cause mirrors the standard that must be met in preliminary hearings.**

Chief Justice Marshall pointed out that probable cause does not require the same level of evidence necessary to support a conviction. *Locke v. United States*, 7 Cranch. 339, 348 (1813). The all-elements approach supports this notion by requiring that every element of a crime be supported by probable cause before an officer may make an arrest. To ensure that probable cause exists, preliminary hearings are in place to examine the facts known to the arresting officer and the crime in which the defendant has been charged. 1 Fed. Prac. & Proc. Crim. § 91 (4th ed.)

At a preliminary hearing, the prosecution has the burden to prove a prima facie case that the defendant committed a crime. 5-82 Criminal Law Advocacy § 82.01 (2016). This burden is must be satisfied by a probable cause standard. *Id.* At the hearing, the reviewing court will examine the facts known to the arresting officer at the time of arrest to establish if all elements of the charged offense are satisfied by probable cause. *Id.*

There are no substantive differences between the burden required of prosecutors at the preliminary hearing and the standard established for officers by the all-elements approach. The only difference is the timing in which the burden must be met, at the moment of arrest or at the preliminary hearing. Adopting the all-elements approach would eliminate the possibility that an officer has probable cause at the time of arrest, without being able to formulate the probable cause at the preliminary hearing.

The all-elements approach forces officers to articulate probable cause for a specific crime at the time of arrest. This increases judicial efficiency and limits the possibility of police making rash decisions that would curtail an individual's freedoms. Therefore, the all-elements approach mirrors other elements of criminal jurisprudence, and thus, this Court should adopt the all-elements approach to probable cause.

In conclusion, this Court should reverse the ruling of the Second Circuit and, in so doing, hold that all elements of an offense must be satisfied by probable cause before an officer may lawfully effectuate a warrantless arrest. The all-elements approach to probable cause necessarily requires an arresting officer to weigh all available evidence, both inculpatory and exculpatory, through a totality of the circumstances because all elements of the offense must be satisfied by a totality of the circumstances. Adopting this approach applies the same standard in reviewing evidence at the time of arrest as would be applied at a preliminary hearing. Therefore, the all-elements approach does not apply any further burden to law enforcement, reinforces current Fourth Amendment jurisprudence, and should be adopted by this Court.

**II. THE SECOND CIRCUIT APPLIED AN ERRONEOUS STANDARD DEFINING THE REASONABLENESS OF DETAINMENT AUTHORIZED UNDER § 1226(C) AND INCORRECTLY DETERMINED THAT MS. SECORD’S LIBERTY INTERESTS HAD NOT BEEN VIOLATED BY AN UNREASONABLY PROLONGED DETENTION.**

The Second Circuit erred in authorizing the Immigration and Customs Enforcement Agency (“ICE”) to detain Ms. Secord for as long as it took to build a case against her. R. 6. The court erroneously applied a standard that ignores the constitutionally protected right of liberty afforded to *all people* from unreasonable physical restraint without the opportunity of bail. R. 6. In reaching this determination, the Second Circuit overruled its bright-line presumption that detentions pending a deportation hearing violate the detainee’s Due Process rights after six months. R. 6, (overruling *Lora v. Shanahan*, 804 F.3d 601, 616 (2d. Cir. 2015)).

In the decision below, the Second Circuit determined that the bright-line six-month standard of reasonableness proved unworkable and necessitated reasonableness be proven on a case-by-case basis in the federal court system. R. 6. This new standard ignores the rights of aliens afforded under the Fifth Amendment, ignores the precedent set by this Court, and ignores the effect such an influx of habeas corpus petitions will have on the federal judicial system. Both practicality and precedence must compel this Court to reverse the decision of the Second Circuit and affirm Ms. Secord’s writ of habeas corpus.

**A. Section 1226(c) must be read to contain an implicit time limit to remain consistent with the Due Process Clause.**

Unreasonably prolonged civil detention under 8 U.S.C. § 1226(a) (West 2016) violates an alien’s Due Process rights. The Due Process Clause of the Fifth Amendment protects all individuals within the geographical borders of the United States. *Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001). “Freedom from imprisonment - from government custody, detention, or other forms of physical restraint - lies at the heart of the liberty” protected by the Due Process

Clause. *Id.* at 690 (citation omitted). “Under the Due Process clause, civil detention is permissible only when there is a *special justification* that outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Sopo v. U.S. Attorney General*, 825 F.3d 1199, 1210 (11th Cir. 2016) (emphasis added) (citing *Zadvydas*, 533 U.S. at 690). Once civil detention becomes unreasonably prolonged an individualized bail hearing must be held to insure the ongoing detention remains necessary to further the special justification that permitted the detention in the first place. *Zadvydas*, 533 U.S. at 699.

Pursuant to 8 U.S.C. § 1226(a) an “alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. 8 U.S.C. § 1226(a). During the pendency of the proceedings the Attorney General may continue detention, release the alien on bond, or release the alien on conditional parole. § 1226(a)(1)–(2). Conversely, any alien convicted of an enumerated crime “shall” be detained until a final deportation order has been entered and appeals resolved. 8 U.S.C. § 1226(c). Section 1226(c) does not authorize the release of any alien except into witness protection. § 1226(c)(2). Section 1226(c) does not even provide an alien with the right to demonstrate he or she is neither dangerous, nor a flight risk.

This Court previously found that § 1226(c) does not violate an alien’s Due Process right if held for a *brief period* necessary to complete deportation proceedings. *Demore v. Kim*, 538 U.S. 510, 513 (2003) (emphasis added). In that case, an admittedly deportable criminal alien argued that mandatory detention under § 1226 violated his Due Process rights. The Court reasoned that the alien’s restraint of liberty was specially justified by the governmental interest in preventing deportable criminal aliens from fleeing prior to their removal proceedings. *Id.* at 528. Importantly, the petitioner in *Demore* only challenged the Government’s authority to detain him; he did not challenge the length of his detention. *Id.* at 523. While there can be no doubt that ICE

may detain aliens for a brief period of time to ensure he or she will appear at their deportation hearing, it is just as clear that such detention may not be indefinite.

Shortly before *Demore*, this Court held that aliens, whose deportation has been ordered, may not be held beyond the reasonable period necessary to effectuate the purpose of the statute – actual deportation. *Zadvydas*, 533 U.S. at 699–700. There, the statute under consideration, 8 U.S.C. § 1231(a)(6), authorized detention post removal order beyond the ninety day limit if the Government could not find a county to accept the alien. *Id.* at 688–89. The Court applied the “cardinal principle of statutory interpretation” to find that Congress did not intend indefinite detention, but rather, only detention reasonable necessary to support the basic purpose of the statute, i.e the deportation of removable aliens. *Zedvydas*, 533 U.S. at 689. “If removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by the statute.” *Id.* at 673. Reasonableness must be measured in terms of the statute’s basic purpose. *Id.* at 689. Importantly, “for the sake of uniform administration in the federal courts,” this Court adopted a six-month bright-line presumption of reasonableness. *Id.* at 701.

In *Demore*, this Court went to great lengths to distinguish detentions post-deportation order from detentions pre-deportation hearing. *Demore*, 538 U.S. at 527–29. The former had the potential to be indefinite and in violation of the alien’s Due Process rights; whereas, the latter detention necessarily ended at the conclusion of the deportation proceedings. *Id.* While pre-hearing detentions may have been definite and reasonably brief when *Demore* was decided, sixteen years later these detentions have become virtually indefinite.

*Demore* stressed that the deprivation of an alien’s liberty interest was permissible because such a brief restraint did not outweigh the special justification of insuring individuals appeared at

their deportation hearings. *Id.* at 530. Justice Kennedy’s concurrence, whose vote created the majority, stressed that:

Were there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons.

*Demore*, 538 U.S. at 532–33 (Kennedy, J. concurring). Justice Kennedy’s warning in *Demore* has become a reality.

Detention pursuant to § 1226(c) is no longer brief; but now, sufficiently prolonged to question the logic undergirding this Courts reasoning in *Demore*. The *Demore* court noted that the average detention lasted a mere 47 days. *Id.* at 529. While no government statistics have recently been released, “academic researchers estimate that in 2012 the average amount of time an alien with a criminal conviction spent in removal proceedings (and likely in detention) was 455 days.” *Sopo*, 825, F.3d 1199, 1213. In the case at hand, ICE plainly admits that “the first available immigration judge to even hear a bail request could not be scheduled until eleven months after Ms. Secord began her detention.” R. 6. Such prolonged detention can no longer be considered brief as contemplated in *Demore*.

Six Courts of Appeals and countless district courts have held § 1226(c) must contain an implicit temporal limit in order to avoid the infringement of a constitutional right. *Jarpe v. Mumford*, No. PX 16-2649, 2016 WL 5661659,\* 7, (D. Ma. Sept. 9, 2016) (comparing the case-by-case and the bright-line standards) (citations omitted). In fact, neither ICE nor the Second Circuit dispute the fact that § 1226(c) “includes some ‘reasonable’ limit on the amount of time that an individual can be detained without a bail hearing . . .” R. 5. There can be no doubt that mandatory detention under § 1226(c) violates the Due Process Clause when the detention becomes unreasonably prolonged. Therefore, the question this Court must answer is at what

point prolonged detention under 1226(c) becomes unreasonable in light of the alien's fundamental right to be free from restraint protected by the Due Process Clause.

**B. This Court should adopt a bright line rule defining at what point an alien's detention under §1226(c) becomes unreasonable.**

Two standards of reasonableness have emerged to determine the point mandatory detention without a bail hearing becomes unconstitutional. The Second and Ninth Circuit have adopted a bright-line standard that a detention lasting longer than six months is unreasonable unless, at an individualized bond hearing, the Government can establish the alien is dangerous or presents a flight risk. *Rodriguez v. Robbins*, 715 F.3d 1127,1139 (9th Cir. 2013) (*Rodriguez II*); *Lora v. Shanahan*, 804 F.3d 601, 616 (2d. Cir. 2015). Conversely, the First, Third, Sixth, and Eleventh Circuits have declined to adopt a bright-line reasonableness test and apply a cases-by-case standard, which requires the assessment of all the circumstance of any given case to determine whether detention without an opportunity for a bond hearing is unreasonable. *Jarpe*, 2016 WL 5661659,\* 8, (comparing the case-by-case and the bright-line standards).

The bright-line standard more efficiently protects detainee's liberty interest while upholding the Government's legitimate interests in protecting the public from aliens that might abscond or commit crimes before deportation. Conversely, the case-by-case standard is practically unworkable. This Court should adopt the bright-line standard.

**1. A reasonable bright-line rule is necessary to ensure the protection of the rights of those detained while still upholding the Government's legitimate statutory purpose.**

A bright-line standard is necessary to ensure individuals detained pursuant to § 1226(c) are afforded procedural safeguards to adequately protect them from prolonged detention that fails to further the statutory purpose of the detention. As stated above, in order "to avoid constitutional concerns, § 1226(c)'s mandatory language must be construed 'to contain an



implicit reasonable time limitation, the application of which is subject to federal-court review.’’  
*Rodriguez II*, 715 F.3d at 1138 (citing *Zadvydas*, 533 at 682). Similar to the reasonable standard as set forth in *Zadvydas*, “[w]hen detention becomes prolonged, i.e. at the six-month mark, § 1226(c) becomes inapplicable; the government’s authority to detain the non-citizen shifts to § 1226(a), which provides for discretionary detention and detainees are then entitled to bond hearings. *Rodriguez v. Robbins*, 804 F.3d 1060, 1079 (9<sup>th</sup> Cir. 2015) (*Rodriguez III*) (affirming the bright-line standard adopted in *Rodriguez II*).

This mechanism announced by the Ninth Circuit protects the liberty interest of the detained while providing the Department with the ultimate discretion to determine if a particular alien is in fact dangerous or a flight risk. The right to a bond hearing is drastically different from the right to be released. Even after the six months, INS may continue detention by demonstrating special justification that outweighs the restraint of the individual’s liberty interest. Such special justification requires ICE show “clear and convincing evidence that an alien is a flight risk or a danger to the community.” *Rodriguez III*, at 1077. Only if ICE fails to present evidence that the alien is either dangerous or poses a flight risk may the alien be released. Even then, ICE retains full authority to implement monitoring procedures and conditional release. § 1226(a).

Critics of the bright-line standard accuse the Second and the Ninth Circuit of reading a six-month expiration into § 1226(c). *Reid v. Donelan*, 819 F.3d 486, 497 (1st Cir. 2016). This interpretation is misguided. Mandatory detention is premised on a presumption that every individual detained under § 1226(c) is dangerous and a flight risk. *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d 469, 473 (3d. Cir. 2015) (interpreting *Demore*, 538 U.S. at 528). As the length of detention grows, so too does the restraint on the detainee’s liberty interest. After six months, the detainee’s liberty interest outweighs the presumption that initially authorized his

or her detention. *Rodriguez II*, 715 F.3d at 1138–39. ICE must then specially justify continued detention by demonstrating that the individual is in fact dangerous or a flight risk. If ICE cannot prove the alien is dangerous or a flight risk after six months of investigations, then the alien’s right to be free from imprisonment outweighs the government’s arbitrary civil detention.

“[T]he failure to adopt a bright-line rule may have the perverse effect of increasing detention times for those least likely to actually be removed at the conclusion of their proceedings.” *Id.* Aliens always have the right to return to their home country. Many of the aliens who are detained pending deportation proceedings do voluntarily return to their home country. It is those dedicated aliens who submit to prolonged detention for the opportunity to prove, or gain, their lawful status in this country. These detained individuals endure detention as the government searches, often in vein, for evidence to justify deportation. Fruitless investigations persist as deportation becomes less certain. The bright-line standard strikes a necessary balance between the legitimate interests of the government, while at the same time, protecting those dedicated aliens who will become productive members of our American society.

**2. The case-by-case standard adopted by the Second Circuit fails to adequately protect the liberty interest of the detained and should be rejected.**

The case-by-case standard is unduly burdensome for both the detainee and the federal court system. “Under this approach, *every detainee* must file a habeas petition challenging detention, and the district courts must then adjudicate the petition to determine whether the individual’s detention has crossed the ‘reasonableness’ threshold, thus entitling him to a bail hearing.” R. 5 (emphasis added). In adopting the case-by-case approach the federal court systems will adopt the burden of sorting through the crippling backlog of cases properly before the ICE.

Furthermore, the case-by-case approach has proven inadequate in protecting the rights of those detained, and produces inconsistent and often confusing results.

The case-by-case standard is unworkable because it requires federal courts to determine if ICE violated each individual detainee's constitutionally protected liberty interest. ICE detains more than 429,000 individuals over the course of a year. *Rodriguez III*, 804 F.3d at 1065. A majority of those detained will file a habeas petition as their detention becomes unreasonably prolonged. As the number of detainees grows, so too does the time each detainee will be held. Under the case-by-case standard, federal courts must conduct an intensive review of the status of each individual alien. This creates the very real potential that the federal court system will be overwhelmed with habeas petitions just as the INS has been overwhelmed with immigration proceedings.

Federal courts inconsistently interpret reasonableness. The Second Circuit refused to adopt the case-by-case standard, in large part, because of district court's wildly inconsistent interpretation of the amount of time that constituted unreasonable. *Lora*, 804 F.3d at 615 (comparing interpretations of unreasonable detentions). An increase of habeas corpus petitions in federal courts will create more confusion rather than reliable precedent. Such inconsistencies justify the application of a bright-line rule similar to that established by this Court in *Zadvydas*.

Additionally, requiring federal courts to conduct in-depth, fact intensive determinations of the reasonableness of each individual's detention is unnecessary and duplicative. Under the case-by-case approach, federal courts consider a myriad of factors to determine if an alien's detention has become unreasonable. The most common factors considered by the court are:

- (1) The length of time that the criminal alien has been detained without a bond hearing;
- (2) the reason for prolonged detention;
- (3) whether any impediments exist to final removal if ordered;
- (4) whether the alien's civil immigration detention exceeds the time the alien spent in prison for the crime that rendered

him removable; (5) whether the facility for the civil immigration detention is meaningfully different from a penal institution for criminal detention; and (6) the foreseeability of proceedings concluding in the near future (or the likely duration of future detention).

*Jarpa*, \*8 (citing *Sopo*, 825 F.3d at 1217–19). The Immigration Judge should consider these factors at a bond hearing, because he or she is in a better position to understand the reasonableness of each individual’s detention. *Lora*, 804 F.3d at 615–16. While federal judges may certainly consider reasonableness, they should not have to. That responsibility properly falls to an immigration judge.

Courts adopting the case-by-case standard frequently do so out of a misguided interpretation of this Court’s precedent. *See Reid*, 819 F.3d at 497; *see also Sopo*, 825 F.3d at 1217. In adopting the case-by-case standard, the First Circuit started that “[d]espite the practical advantages of [the bright-line standard], we have surveyed the legal landscape and consider ourselves duty bound to follow the [case-by-case approach].” *Reid*, 819 F.3d at 498. There, the court found the declination of announcing a bright-line reasonableness standard in *Demore* as foreclosing such a standard altogether. This reasoning is misguided.

*Demore* established that the Government had the authority to detain individuals under § 1226(c). While the Court strongly hinted that reasonableness may be an issue in the future, the decision in *Demore* did not extend beyond announcing the special justification authorizing detention under § 1226(c). Conversely, the Court did address the reasonableness of detention in *Zadvydas*, where this Court adopted a bright-line test. When read in conjunction, *Zadvydas* establishes the reasonableness analysis and *Demore* provides the special justification the Government must prove to support continued detention beyond a reasonable time. Therefore, when this Court seeks to establish reasonableness, this Court should apply the bright-line standard adopted in *Zadvydas*.

**C. Alternatively, Ms. Secord must be afforded a bail hearing because the Second Circuit improperly applied the case-by-case standard.**

Even if this Court adopted the case-by case standard, Ms. Secord's detention must be considered unreasonable because she is neither a flight risk nor dangerous. The Second Circuit applied a version of the case-by-case standard that fails to consider, let alone protect, Ms. Secord's liberty interest. Applying the case-by-case standard as articulated by the Third and the Sixth Circuit demonstrates the unreasonableness of Ms. Secord's detention.

Detention becomes unreasonable when "the burden to an alien's liberty outweighs a mere presumption that the alien will flee and/or is dangerous." *Chavez-Alvarez*, 783 F.3d at 474–75. Therefore, the reasonableness analysis must balance the burden on the individual's rights against the probability that the individual will commit a crime or may not appear at his or her deportation hearing. In considering the burden to the individual's liberty, courts consider the length of the detention and the type of facility the individual is imprisoned. *Id.* at 478–79.

The Second Circuit made no effort to look into the reasonableness of burden place on Ms. Secord's liberty. In fact, the court did not even mention how long she had been detained or the facility in which she is held. Instead, the Second Circuit erroneously focused on ICE's excuses for the delay.

"It is possible that a detention may be unreasonable even though the Government handled the removal case in a reasonable way." *Id.* at 475. In blunt terms, "due process demands a better answer than 'we haven't gotten around to it yet.'" *Reid*, 819 F. 499. However, the Second Circuit found Ms. Secord's detention reasonable because "ICE officials simply had no time" to prepare a case against Ms. Secord. R. 6. This excuse does not establish reasonableness. To the contrary, the lack of preparation demonstrates the low probability that Ms. Secord's proceedings will be accomplished within a reasonable time. Clearly, ICE has simply not gotten around to justify why

Ms. Secord is detained indefinitely. Such detention cannot be considered reasonable. For these reasons we respectfully ask this Court to reverse the Second Circuit's decision and affirm Ms. Secord's writ of habeas corpus.

**CONCLUSION**

For the foregoing reasons, the judgment of the Second Circuit should be reversed.

Respectfully submitted,

TEAM NUMBER 11

*Counsel for Petitioner*

March 20, 2017