06-3745-cv(L)

06-3785-CV (CON); 06-3789-CV (CON); 06-3800-CV (CON); 06-4187-CV (XAP)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

IBRAHIM TURKMEN, ASIF-UR-REHMAN SAFFI, SYED AMJAD ALI JAFFRI, YASSER EBRAHIM, HANY IBRAHIM, SHAKIR BALOCH, AKHIL SACHDEVA AND ASHRAF IBRAHIM,

Plaintiff–Appellee–Cross-Appellants,

v.

JOHN ASHCROFT, ROBERT MUELLER, JAMES ZIGLAR, DENNIS HASTY, AND JAMES SHERMAN,

Defendant–Appellant–Cross-Appellees,

UNITED STATES OF AMERICA,

Defendant–Cross-Appellee,

JOHN DOES 1-20, MDC CORRECTIONS OFFICERS, MICHAEL ZENK, WARDEN OF MDC, CHRISTOPHER WITSCHEL, CLEMETT SHACKS, BRIAN RODRIGUEZ, JON OSTEEN, RAYMOND COTTON, WILLIAM BECK, SALVATORE LOPRESTI, STEVEN BARRERE, LINDSEY BLEDSOE, JOSEPH CUCITI, HOWARD GUSSAK, MARCIAL MUNDO, DANIEL ORTIZ, STUART PRAY, ELIZABETH TORRES, PHILLIP BARNES, SYDNEY CHASE, MICHAEL DEFRANCISCO, RICHARD DIAZ, KEVIN LOPEZ, MARIO MACHADO, MICHAEL MCCABE, RAYMOND MICKENS, SCOTT ROSEBERY, UNITED STATES,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

AMICUS CURIAE BRIEF FOR IMMIGRATION LAW PROFESSORS DEBORAH E. ANKER, STEPHEN LEGOMSKY AND HIROSHI MOTOMURA IN SUPPORT OF APPELLEES/CROSS-APPELLANTS

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STATEMENT OF INTEREST

Amici curiae Deborah E. Anker, Stephen Legomsky and Hiroshi Motomura are immigration law scholars who teach, research, and practice immigration law. This case concerns the constitutional limitations on the power of the Government to detain non-citizens after the issuance of a removal order. The district court's decision suggests that the Government may detain non-citizens for any reason so long as removal is reasonably foreseeable. That holding is not only inconsistent with the Court's statutory interpretation of the Government's immigration detention powers in *Zadvydas v. Davis*, 533 U.S. 678 (2001); it directly raises the constitutional problem the Court sought to avoid. *Amici curiae* have a professional interest in assuring that this court is fully informed as to the proper limits of the Government's powers to detain non-citizens, particularly the permissible reasons, and constitutional safeguards required, for post-removal order detention. *Amici curiae* have no personal, financial, or other professional interest, and take no position respecting any other issue raised in the case below.[1]

[1] A brief summary of *amici*'s professional qualifications is provided in the Appendix to this brief; their affiliations are included for identification purposes only.

SUMMARY OF THE ARGUMENT

Amici write to correct the district court's misreading of *Zadvydas*. The *Zadvydas* Court limited the Government's authority to detain post-removal-order non-citizens whom no country would accept. The Court held that the Government is allowed to detain in aid of removal provided that removal is reasonably foreseeable. In order to guide lower courts in cases where the first two premises are satisfied, the Court established a presumptive guideline period of six months. In short, the Supreme Court's opinion was based on the principle that to be lawful, post-removal-order detention must be necessary to achieve the goal of the regulatory scheme: to effect removal.

The district court in this case turned the *Zadvydas* Court's *limitation* on the Government's detention power on its head. Plaintiffs have alleged that the Government authorized and implemented a blanket policy, the "hold until cleared" policy, that Plaintiffs and the members of their class would be imprisoned for months, even though they could have been removed at any time. The district court ignored *Zadvydas*'s reaffirmation that civil detention is an extremely narrow power, instead holding that protracted detention is permissible so long as removal is reasonably foreseeable, even where, as here, detention serves no immigration purpose and the Government purposely delays removal.

The district court licensed the Government to use immigration detention as a device to circumvent the criminal process and its requisite protections. *Zadvydas* shows that the Government's statutory immigration detention authority includes no such power. Nor could it, because what the Government did in this case is precisely the sort of arbitrary use of extraordinary power that the Due Process Clause forbids. *Amici* respectfully urge this Court to reject the District Court's misreading of *Zadvydas* and instead apply it properly, in a way that vindicates its recognition that "[f]reedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that the [Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

ARGUMENT

The district court erred in holding that because detention of removable non-citizens is "within the bounds of the Government's authority" under 8 U.S.C. §1231(a)(6), the Government may detain non-citizens up to six months, regardless of whether such detention is in service of removal.[2] *See Turkmen v. Ashcroft,* 2006

[2] Plaintiffs have alleged that the sole purpose of their extended detention was to allow the Government to conduct a criminal investigation. *Turkmen*, at *40. Plaintiffs allege that their status as illegal aliens was used as a pretext to hold them in custody while the Government investigated them for possible terrorist connections—a claim that must be taken as true for the purposes of the motion to dismiss. *Id.* at *1. Thus, at least for part of Plaintiffs' detention, the purpose of effecting removal was no longer present. This was especially evident in the case of Turkmen, who was granted voluntary departure but then was prevented from complying with the voluntary departure order by the Government's own refusal to

WL 1662663, at *39, *41 (E.D.N.Y., June 14, 2006). Worse yet, the district court's decision suggests that detention would be permissible so long as removal is reasonably foreseeable, even where, as here, Plaintiffs allege that the Government purposely delays removal. To the contrary, *Zadvydas* teaches that a *proper purpose* for detention—to effect removal—is a prerequisite for legitimate exertion of immigration detention authority. To read *Zadvydas* to permit detention for non-immigration purposes subverts the Court's holding that civil detention authority must be wielded narrowly, and permits an easy end run around the Court's disavowal of arbitrary detention.

While the political branches generally enjoy plenary power over immigration matters, that power presupposes that the Government employs it for *immigration* purposes. Thus, while the political branches enjoy "broad power over naturalization and immigration," *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976), that power does not extend to all matters affecting non-citizens. To the contrary, "[o]utside the immigration process, aliens receive most of the constitutional protections afforded citizens." T. Alexander Aleinikoff, *Federal Regulation of Aliens and the Constitution*, 83 AM. J. INT'L L. 862, 865 (1989); *see also Hampton*

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release him from detention. *Id.* at *15. There was no removal-related reason for the Government to hold Turkmen because under the voluntary departure order, Turkmen, not the Government, had the responsibility to remove himself from the United States. 8 U.S.C. §1229c(a)(1). The order effectively relieved the Government of its duty to secure removal. As a result, Turkmen's continued detention served no removal purpose whatsoever.

v. Mow Sun Wong, 426 U.S. 88, 116-17 (1976); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). Thus, where, as in this case, the challenged government action is not immigration-related, the plenary power doctrine does not apply. Gerald L. Neuman, *Habeas Corpus, Executive Detention, and the Removal of Aliens*, 98 COLUM. L. REV. 961, 1047 (1998) ("Sovereignty has been understood as entailing Congress's power to expel aliens for reasons of public interest, but not the power to do so by any means of its choosing, and certainly not the power of executive officials to arrest and expel aliens for reasons of their own.").

Even when the plenary power doctrine does apply—that is, when immigration powers are properly used to regulate the admission and removal of non-citizens—that power is cabined by the Constitution, and courts have policed the constitutional limits of the Government's actions regarding non-citizens within the United States territory. *See, e.g., INS v. Chadha*, 462 U.S. 919, 941-942 (1983) (holding that Congress must choose "a constitutionally permissible means of implementing" its plenary power); *Yamataya v. Fisher*, 189 U.S. 86 (1903) (holding that non-citizens must receive a hearing prior to deportation); *The Chinese Exclusion Case*, 130 U.S. 581, 604 (1889) (holding that plenary power is limited "by the Constitution itself and considerations of public policy and justice which control, more or less, the conduct of all civilized nations"). *See generally* Hiroshi Motomura, *Immigration Law After a Century of Plenary Power: Phantom*

Constitutional Norms and Statutory Interpretation, 100 YALE L.J. 545 (1990) (describing historical erosion of plenary power doctrine in the face of "phantom constitutional norms" created by the constitutional avoidance doctrine). The executive branch can act only when it has specific statutory authority from Congress and this authority is consistent with constitutional principles. *See Carlson v. Landon*, 342 U.S. 524 (1952) (noting that executive power to expel non-citizens "is subject to judicial intervention under the paramount law of the Constitution") (internal quotations omitted); *Abdullah v. I.N.S.*, 184 F.3d 158, 165 (2d Cir. 1999) (agency decision regarding deportation is invalid if it "rest[s] on an impermissible basis such as an invidious discrimination against a particular race or group") (internal citations omitted).

The *Zadvydas* Court reaffirmed these important limits on executive detention authority where core constitutional rights are implicated. T. Alexander Aleinikoff, *Detaining Plenary Power: The Meaning and Impact of Zadvydas v. Davis*, 16 GEO. IMMIGR. L.J. 365, 385-386 (2002) ("Five members of the Supreme Court looked past the plenary power doctrine to the persons, detained by administrative fiat, with no reasonable prospects of ever being released. [In *Zadvydas*,] justice has displaced [the plenary power] doctrine."). In that case, petitioners were lawful permanent residents who had been ordered removed due to criminal convictions and had been detained pending removal for years because the

Government could find no country to receive them. *Zadvydas,* 533 U.S. at 684-85. The Court rejected the Government's assertion of plenary power, recognizing that reading the statute to authorize indefinite detention would raise serious constitutional issues. *Id.* at 690. Instead, the Court implied a limitation so that detention is permitted only provided that removal is reasonably foreseeable. *Id.* at 699.

The district court misconstrued *Zadvydas* as merely limiting the *length* of detention, regardless of *purpose*. *Turkmen*, at *39. A closer reading, however, dispels the notion that the Government enjoys any such general detention authority. The *Zadvydas* Court read the underlying statute, 8 U.S.C. §1231(a), in light of "the statute's basic purpose, namely, assuring the alien's presence at the moment of removal."[3] *Zadvydas*, 533 U.S. at 697. Accordingly, the "Government may constitutionally detain aliens *during the limited period reasonably necessary for their removal proceedings.*" *Demore v. Kim*, 538 U.S. 510, 526 (2003) (emphasis added); *see also Tijani v. Willis*, 430 F.3d 1241, 1249 (9th Cir. 2005)

[3] The statute instructs the Government to remove non-citizens within 90 days, and mandates detention pending removal only during that 90-day window. 8 U.S.C. §1231(a)(1),(3). If removal is not possible within 90 days, the statute permits continued detention of only certain limited categories of people. There are only two statutory grounds for extension of the 90-day period: (1) if the alien thwarts or frustrates removal efforts; or (2) if the alien is deemed inadmissible or removable under certain limited circumstances, or is found to pose flight risk or a danger to the community. 8 U.S.C. §1231(a)(3),(6).

(Tashima, J., concurring) ("[D]etention incidental to removal must bear a reasonable relation to its purpose."). [4]

[4] Statutory provisions passed in the wake of September 11 support the view that Congress did not intend 8 U.S.C. §1231 to permit detention in the broad investigative manner alleged by Plaintiffs. *Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006) (interpreting *Clark v. Martinez*, 543 U.S. 371 (2005), to hold that "existence of statutes authorizing the detention of suspected terrorists . . . precludes the use of general statutes to authorize unlimited detention"). Cognizant of the limits set forth in *Zadvydas*, Congress responded by permitting detention of terrorism suspects, but only for limited periods and subject to certain procedural protections. For instance, 8 U.S.C. §1226a(a) allows the Attorney General to detain terrorist suspects before charges are brought against them or immigration proceedings are commenced, but only for seven days. 8 U.S.C. §1226(a) allows detention of suspected terrorists pending removal proceedings, and 8 U.S.C. §1226a(a)(6) permits their detention for additional six months after the removal period only if removal is unlikely in the reasonably foreseeable future. The government may also use 8 U.S.C. §1537(b)(2)(C) for continued detention of aliens ordered removed because of their terrorism activities. All of the statutes specifically addressed to terrorism contain procedural protections not present in 8 U.S.C. §1231(a)(6), thereby suggesting that Congress understood that it was forbidden from authorizing investigatory detention absent procedural safeguards. *See* 8 U.S.C. §1537(a) (requiring Attorney General to submit written report detailing grounds for designation of "alien terrorist" to removal court for finding of probable cause); *Nadarajah*, 443 F.3d at 1069 (discussing procedures that have to be satisfied before the Government can use 8 U.S.C. §1226a(a) to detain terrorist suspects). This is supported by the language in *Zadvydas*, where the Court refused to extend 8 U.S.C. §1231(a) detention authority to cover "special circumstances," such as terrorism because Congress had created separate statutory provisions to cover these circumstances. *See Clark v. Martinez*, 543 U.S. 371, 386 n.4 (2005) (interpreting *Zadvydas* to hold that 8 U.S.C. 1231(a)(6) did not apply to "detention of alien terrorists for the simple reason that sustained detention of alien terrorists is a "special arrangement" authorized by a different statutory provision, 8 U.S.C. §1537(b)(2)(C)"). While *amici* express no view on the constitutional sufficiency of procedural protections under these statutes, we note that the district court's opinion would permit the Government to evade even these modest requirements. That would be particularly inappropriate, where, as here, Plaintiffs allege that the only basis for their identification as "of interest" was due to their nationality and/or

Because 8 U.S.C. §1231(a) authorizes detention only where the goal of effecting removal is present, the Government cannot detain non-citizens when this goal is lacking or no longer attainable. *Zadvydas*, 533 U.S. at 688; *Demore*, 538 U.S. at 527 (reading *Zadvydas* to forbid continued detention where no immigration purpose existed); *Clark*, 543 U.S. at 386-87 (2005) (applying *Zadvydas*' reading of 8 U.S.C. §1231 to apply to all categories of removable and inadmissible aliens). An otherwise legitimate goal, such as protecting the community, will not suffice if the detention does not serve to effect removal. *Zadvydas*, 533 U.S. at 690 (dangerousness alone is insufficient to justify deprivation of liberty);[5] *Andreasyan v. Gonzales,* 446 F. Supp. 2d 1186 (W.D. Wash. 2006) (rejecting danger to the community as justification for a non-citizen's continued post-final order detention). *Cf*. JA 366 (citing memorandum by INS General Counsel's office that

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religion and Plaintiffs were cleared of all ties to terrorism. Brief for Plaintiff Appellee-Cross Appellants at 5, *Turkmen v. Ashcroft*, No. 06-3745 (2d Cir. Mar. 26, 2007).

[5] Both regulatory purposes advanced by the Government were considered by the *Zadvydas* Court in light of the "statute's primary purpose . . . assuring the alien's presence at the moment of removal." Preventing flight was rejected as a legitimate purpose for continued detention because when removal is no longer a possibility, there is no deportation to flee from and thus the purpose ceases to exist. *Zadvydas*, 533 U.S. at 691. Protecting the community was held to be a legitimate purpose for continued detention, but not where removal was impossible, because dangerousness alone is insufficient to permit continued detention, and "once the flight risk justification evaporates, the only special circumstance present is the alien's removable status itself, which bears no relation to a detainee's dangerousness." *Id*. at 691-92. *See generally* Stephen H. Legomsky, *The Detention of Aliens: Theories, Rules and Discretion*, 30 U. MIAMI INTER-AM. L. REV. 531 (1998) (discussing purposes served by immigration detention).

"case law provides that detention must be related to removal and cannot be solely for the purpose of pursuing criminal prosecution"). Moreover, even when the removal purpose is present, the Government cannot use its detention powers for certain additional purposes, such as infliction of punishment. *Zadvydas*, 533 U.S. at 690; *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

The *Zadvydas* Court's creation of a presumptively reasonable period of post-final order detention must be understood against this backdrop of core constitutional protections. To avoid the inherent constitutional conflict posed by a statute that would authorize arbitrary detention, the Court read 8 U.S.C. §1231(a)(6) to authorize continued detention only where it was reasonably necessary to secure removal. *Cf. United States v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention prior to trial or without trial is the *carefully limited exception*.") (emphasis added). Wishing to avoid excessive judicial review of garden-variety post-removal order detentions and to encourage uniformity across the federal system the Court relied upon legislative history to infer a six month period during which detention would be presumptively reasonable. *Id.* at 700-01.

Nothing in *Zadvydas* suggests, however, that the Court intended its six-month period to permit the Government to sidestep long-recognized constitutional limits and to wield its detention authority freely in the absence of any underlying

immigration-related justification. To the contrary, the Court inferred the six-month period based on its finding that Congress had previously expressed doubts that immigration detention beyond six months was constitutional. *Id*. at 701. Moreover, the Court's holding was predicated on the fact that the Government in that case had attempted and failed to effect removal, and was continuing its removal efforts. *Id*. at 684-88. Thus, detention is presumptively reasonable within six months only when the purpose of effecting removal is being served. Accordingly, courts in this Circuit have upheld continued immigration detention only where *Zadvydas*' core purpose—to effectuate removal—is applicable, such as where the petitioner has refused removal via successive challenges. *See Wang v. Ashcroft*, 320 F.3d 130, 146-47 (2d Cir. 2003) (stating that *Zadvydas*' "reasonably foreseeable" test provides the "outer bounds" to detention authority, and refusing to apply it where petitioner had repeatedly interfered with his own removal).[6]

[6] *See also Evangelista v. Ashcroft*, 204 F.Supp.2d 405 (E.D.N.Y. 2002) (rejecting challenge to continued detention where the "sole reason that Petitioner continues to be in the custody of the INS is the fact that he has asked for, and been granted a stay of removal."). *See also Andrade v. Gonzales*, 459 F.3d 538 (5th Cir. 2005) (holding that continued detention after entry of a final removal order was permissible where the detainee offered merely conclusory statements that removal could not be achieved upon termination of appeals) *and Lema v. INS,* 341 F.3d 853 (9th Cir.2003) (holding that continued detention after the final removal order was permissible when the detainee interfered with removal efforts). *Cf. Rajigah v. Conway*, 268 F. Supp. 2d 159 (E.D.N.Y. 2003) (holding that post-removal detention of two years or more is unreasonable).

Broad deference to executive detention is especially inappropriate where, as here, Plaintiffs allege that their detention served no immigration purpose and was intended to evade the procedural protections owed to criminal Defendants. By holding Plaintiffs under the immigration detention statute, Defendants prevented Plaintiffs from availing themselves of any of the procedures that permit suspected criminals to challenge the charges against them and regain their liberty. Perhaps most fundamentally, Defendants avoided the requirement to show probable cause for arrest, Fed. R. Crim. P. 4, and the prohibition on detention longer than 48 hours absent indictment and a bond hearing. *See County of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991); Fed. R. Crim. P. 5. Defendants also denied Plaintiffs the normal procedures by which criminal suspects learn of the nature of the charges and evidence against them, namely indictment and discovery. Fed. R. Crim. P. 16 (discovery and inspection); Fed. R. Crim. P. 17 (subpoena). Plaintiffs were also deprived of the opportunity to consult counsel. *Procunier v. Martinez*, 416 U.S. 396, 419 (1974) ("Regulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid."); Fed. R. Crim. P. 5(d); Fed. R. Crim. P. 44 (right to and appointment of counsel), and to have independent judicial review of the factual allegations against them. Fed. R. Crim. P. 5.1 (preliminary hearing); Fed. R. Crim. P. 10 (arraignment). In sum, the Government deprived Plaintiffs of the adversary

process due to criminal suspects, instead shunting them into an arbitrary detention to continue further criminal investigation. *See* Aleinikoff, 16 GEO. IMMIGR. L.J. at 382 (outlining procedures and burdens of proof required to prove the need for detention in criminal context and noting that they do not exist in the immigration system).

These allegations—that the Government purposely wielded their immigration detention powers to circumvent Plaintiffs' rights as criminal detainees—strike at the heart of due process. *See Wolff v. McDonnell*, 418 U.S 539, 558 (1974) ("The touchstone of due process is protection of the individual against arbitrary action of government."); Alexander Hamilton, THE FEDERALIST No. 84, in THE FEDERALIST PAPERS: A COLLECTION OF ESSAYS WRITTEN IN SUPPORT OF THE CONSTITUTION OF THE UNITED STATES 261 (Roy P. Fairfield, ed. 1981) ("[T]he practice of arbitrary imprisonments have been in all ages the favourite and most formidable instruments of tyranny."). Accordingly, the presumption of reasonableness is unwarranted. *County of Riverside*, 500 U.S. at 56 (creating 48-hour pre-indictment detention as presumptively reasonable, but contemplating challenges even within that period for "unreasonable delay," such as for "the purpose of gathering additional evidence to justify the arrest"). *Cf. Zadvydas*, 533 U.S. at 701 (citing *County of Riverside* for proposition that court may imply presumptively reasonable detention period where none appears in the

statute). Rather, the "if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees qua detainees." *Bell v. Wolfish*, 441 U.S. 520, 539 (1979).

We respectfully urge this Court to correct the District Court's reading of *Zadvydas*, which would permit continued detention in all cases provided that removal was reasonably foreseeable, regardless of whether the Government actually intended to effect removal. That application is fundamentally flawed because it misconstrues *Zadvydas* to sanction precisely what it was meant to avoid: arbitrary detention. Here, Plaintiffs allege that the Government resorted to immigration detention because it preferred to avoid criminal process. The Constitution does not contemplate such gamesmanship with core liberties, and the district court's ruling should be reversed.

CONCLUSION

For the foregoing reasons, the decision below granting Defendants' motion to dismiss Claim 2 should be reversed.

Respectfully submitted,

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Deborah E. Anker is Clinical Professor of Law and Director of the Immigration and Refugee Clinical Program at Harvard Law School. Professor Anker is the author of the leading treatise, *Law of Asylum in the United States*. She speaks regularly at conferences as well as programs for continuing education and training of judges and lawyers, including most recently for the International Association of Refugee Law Judges.

Stephen Legomsky is the John S. Lehmann Professor of Law at Washington University School of Law in St. Louis. Professor Legomsky has chaired the immigration law section of the Association of American Law Schools, the Law Professors Committee of the American Immigration Lawyers Association, and the Refugee Committee of the American Branch of the International Law Association. He has testified before Congress and has consulted for President Bush's Commissioner of Immigration, the Administrative Conference of the United States, the UN High Commissioner for Refugees, and several foreign governments, on migration, refugee, and citizenship issues. He is the author of a major treatise, *Immigration and Refugee Law and Policy*, now in its third edition.

Hiroshi Motomura is the Kenan Distinguished Professor of Law and Associate Dean for Faculty Affairs at University of North Carolina School of Law. Professor Motomura has served as co-counsel or a volunteer consultant in several immigration cases in the U.S. Supreme Court and the federal appeals courts. He has been a member of the American Bar Association's Commission on Immigration and is currently chair of the immigration law section of the Association of American Law Schools. Professor Motomura has published widely on the subject of immigration law and constitutional rights, and co-authored *Immigration and Citizenship: Process and Policy* with Professor Aleinikoff.

*Amici's affiliations are listed for identification purposes only.

CERTIFICATE OF COMPLIANCE WITH RULE 32(A)

The attached *amicus curiae* brief of Immigration Law Professors submitted in support of appellants complies with the type-volume limitation of Fed.R.App.32(a)(7)(B) because it contains 3,549 words, excluding the parts of the brief exempted by Fed.R.App.P. 32(a)(7)(B)(iii). In calculating the number of words, I have relied on the word count of the word-processing system (Microsoft Word) used to prepare the brief.

Dated: April 4, 2007

_____

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PROOF OF SERVICE BY OVERNIGHT COURIER

In Re: Brief for Amici Curiae Immigration Law Professors Deborah E. Anker, Stephen Legomsky and Hiroshi Motomura in Support of Appellees/ Cross-Appellants

Caption: Turkmen v. Ashcroft, U.S., and Does 1-20

Filed: In the Second Circuit Court of Appeals (sent by Overnight Courier) and in PDF by e-mail

I am a citizen of the United States of America and I am employed in Omaha, Nebraska. I am over the age of 18 and not a party to the within action. My business address is 2311 Douglas Street, Omaha, Nebraska 68102. On this date, I served the above-entitled document, pdf copy by e-mail, and two printed copies on the parties or their counsel shown below, by placing sealed envelopes in the service of an overnight courier for next business day delivery, addressed as follows:

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I certify under penalty of perjury that the foregoing is true and correct. Service and court filing executed on April 4, 2007, at Omaha, Nebraska.

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