

No. 15-1205

In the Supreme Court of the United States

CHRISTOPHER SHANAHAN, ET AL., PETITIONERS

v.

ALEXANDER LORA

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

REPLY BRIEF FOR THE PETITIONERS

DONALD B. VERRILLI, JR.
*Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

In the Supreme Court of the United States

No. 15-1205

CHRISTOPHER SHANAHAN, ET AL., PETITIONERS

v.

ALEXANDER LORA

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

REPLY BRIEF FOR THE PETITIONERS

This Court should hold this petition pending the disposition of the government’s petition for a writ of certiorari in *Jennings v. Rodriguez*, No. 15-1204 (filed Mar. 25, 2016). Respondent does not dispute that this case presents two of the same questions as *Rodriguez*. And respondent presses no argument that, if this Court grants certiorari in *Rodriguez*, it should nonetheless deny certiorari here rather than hold this case for *Rodriguez*. Respondent instead argues (Opp. 9) that the questions presented in *Rodriguez* and here regarding the interpretation of 8 U.S.C. 1226(c) do not warrant plenary review. But those are simply arguments against granting certiorari in *Rodriguez*, and are addressed as appropriate in the government’s reply brief in that case.

Only two points warrant mention here:

1. It is undisputed (Opp. 14) that the circuits are divided on the question whether an alien who is subject to mandatory detention under Section 1226(c) be-

comes entitled to a bond hearing if detention lasts for six months. This split has widened since the government filed its petition: The First Circuit has now joined the Third and Sixth Circuits in interpreting Section 1226(c) to authorize mandatory detention for a reasonable time, while rejecting the bright-line six-month cap imposed by the Second and Ninth Circuits. *Reid v. Donelan*, No. 14-1270, 2016 WL 1458915, at *9 (Apr. 13, 2016). The First Circuit concluded that “the Third and Sixth Circuits’ individualized approach adheres more closely to legal precedent than the extraordinary intervention” of the six-month cap. *Ibid.* *Reid* thus further underscores both that the circuits are divided and that the Second Circuit’s judgment below is wrong—and that this Court should grant certiorari in *Rodriguez* and dispose of this case accordingly.

2. Respondent contends (Opp. 32) that the judgment below may be affirmed on alternate statutory grounds, namely that respondent is exempt from detention under Section 1226(c) because he was taken into immigration custody years after his release from criminal custody, and also because he was sentenced to probation rather than incarceration. The Second Circuit squarely rejected both of those arguments, however. See Pet. App. 16a-25a. It would thus be inappropriate for this Court to affirm on those alternate grounds without first having plenary review thereof. Respondent in turn has filed a conditional cross-petition for a writ of certiorari on those alternative statutory arguments. See *Lora v. Shanahan*, No. 15-1307 (filed Apr. 21, 2016).

The conditional cross-petition provides no reason not to hold this case for *Rodriguez*. Instead, as set

forth in the government's response to the conditional cross-petition, the conditional cross-petition should itself be held for *Rodriguez*, and then denied or otherwise disposed of as appropriate in light of the Court's disposition of the government's petition for certiorari here. See Resp. Br. 7-8 (No. 15-1307).

* * * * *

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be held pending the disposition of the government's petition for a writ of certiorari in *Jennings v. Rodriguez*, No. 15-1204 (filed Mar. 25, 2016), and then disposed of accordingly.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General

MAY 2016