

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 4 2016

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BASSAM YUSUF KHOURY; et al.,

No. 14-35482

Plaintiffs-Appellees,

D.C. No. 2:13-cv-01367-RAJ

v.

MEMORANDUM*

NATHALIE ASHER, Field Office Director,
ICE; et al.,

Defendants-Appellants.

Appeal from the United States District Court
for the Western District of Washington
Richard A. Jones, District Judge, Presiding

Argued and Submitted July 8, 2015
Seattle, Washington

Before: KLEINFELD, NGUYEN, and FRIEDLAND, Circuit Judges.

Defendants appeal from the district court's order certifying a class of alien detainees and declaring that the class was entitled to bond hearings. The class comprised aliens who were subjected to mandatory detention under 8 U.S.C. § 1226(c) even though they were not detained immediately upon their release from

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

criminal custody. In granting class certification and declaratory relief, the district court concluded that § 1226(c) applies only to aliens who are detained immediately upon their release from criminal custody. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The plain language of § 1226(c) makes clear that mandatory detention applies only to those aliens detained “when [they are] released” from criminal custody. *See Preap v. Johnson*, slip op. at _____. Because the phrase “when . . . released” conveys a degree of immediacy, “§ 1226(c) applies only to those criminal noncitizens who are detained promptly after their release from criminal custody, not to those detained long after.” *Id.* at _____. We disagree with the government’s arguments under *United States v. Montalvo-Murillo*, 495 U.S. 711 (1990), that it should nonetheless be allowed to hold without bond aliens whose detention is untimely under § 1226(c). *Montalvo-Murillo* is distinguishable. *See Preap v. Johnson*, slip op. at _____.

AFFIRMED.