

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

Wilson RODRIGUEZ MACARENO,

Plaintiff,

v.

Joel THOMAS, in his official and individual capacities; Craig GARDNER, in his official and individual capacities; Peter TIEMANN, in his official and individual capacities; Arthur STEPHENSON, in his official and individual capacities; and CITY OF TUKWILA,

Defendant.

No. C18-421 RAJ

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF BY AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON

**NOTE ON MOTION CALENDAR  
NOVEMBER 16, 2018**

**I. INTRODUCTION**

Contrary to Defendants’ claim, ACLU-WA’s proposed amicus brief provides this Court with a unique perspective born from ACLU-WA’s history of education and advocacy as to criminal justice and civil rights issues, and provides important background about Washington and national norms as to the limits of local law enforcement officers’ authority to detain immigrants. ACLU-WA respectfully requests this Court grant it leave to file the proposed amicus brief so the Court may take into account this broader perspective.

Further, while ACLU-WA does not respond to Defendants’ arguments on the merits of the proposed amicus brief in this reply, ACLU-WA respectfully requests the opportunity to file an amicus reply brief to address the substantive points Defendants raise if the Court allows

1 ACLU-WA to file the proposed amicus brief. *See* Fed. R. App. P. 29(a)(7) (“Except by the  
2 court’s permission, an amicus curiae may not file a reply brief.”); *Ctr. for Biological Diversity*  
3 *v. U.S. EPA*, 90 F. Supp. 3d 1177, 1184-86 n.5 (W.D. Wash. 2015) (granting leave to file  
4 amicus reply brief notwithstanding Ninth Circuit rule disallowing amicus reply briefs in federal  
5 Ninth Circuit appeals).

## 6 II. ARGUMENT

7 Defendants effectively concede the Court’s discretion to consider amicus briefing is  
8 well-placed when the proposed briefing provides “unique information or perspective.” Resp. to  
9 Mot. for Leave (Dkt. 52) at 2 (citation & internal quotation marks omitted). While Defendants  
10 baldly assert ACLU-WA’s proposed amicus brief “adds no new perspective” and “simply  
11 reiterates Plaintiff’s arguments,” *id.* at 1, they provide little more than conclusory assurances to  
12 make their case.

13 In fact, ACLU-WA’s proposed amicus brief provides important background  
14 information and case analysis that the parties in this case have not raised. This is evident from  
15 Defendants’ substantive attack on ACLU-WA’s proposed amicus brief, which devotes  
16 significant effort to addressing and attempting to distinguish the decisions ACLU-WA alone  
17 has cited. Those cases show that numerous courts have recognized a constitutional violation  
18 when local law enforcement officers try to rely on ICE forms as a basis for arrest. *See* Resp. to  
19 Mot. for Leave (Dkt. 52) at 5:19-7:16; *compare* Mot. for Summ. J. (Dkt. 25) at 14-16 (citing  
20 *United States v. Gomez-Robles*, 2017 WL 6558595 (D. Ariz. Nov. 28, 2017); *Miranda-Olivares*  
21 *v. Clackamas County*, 2014 WL 1414305 (D. Or. Apr. 11, 2014); *Ochoa v. Campbell*, 266 F.  
22 Supp. 3d 1237 (E.D. Wash. 2017); *Roy v. County of Los Angeles*, 2018 WL 914773 (C.D. Cal.  
23 Feb. 7, 2018) (“*Roy I*”), with Proposed Amicus Br. (Dkt. 45, Ex. A) at 4:7-19 (additionally  
24 citing *Roy v. County of Los Angeles*, 2018 WL 3439168 (C.D. Cal. July 11, 2018) (“*Roy II*”);  
25 *Lopez-Aguilar v. Marion Cty. Sheriff’s Dep’t*, 296 F. Supp. 3d 959 (S.D. Ind. 2017); *Lunn v.*  
26 *Commonwealth*, 477 Mass. 517 (2017); *Moreno v. Napolitano*, 213 F. Supp. 3d 999 (N.D. Ill.

1 2016); *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014); *Esparza v. Nobles County*, No. 53-  
2 CV-18-751 (Minn. Dist. Ct. Oct. 19, 2018)). As Mr. Rodriguez’s arguments rest on other  
3 theories and authorities, he has not provided this background, and this perspective is missing  
4 from this case. *See* Opp. to Summ. J. (Dkt. 42) at 21:21-22:19. ACLU-WA believes this Court  
5 would benefit from the context these additional decisions provide in establishing the  
6 constitutional norms which form the backdrop of this dispute, and requests this Court grant  
7 ACLU-WA’s motion so these cases can be properly considered.

8 Similarly, ACLU-WA’s proposed amicus brief provides important background  
9 information about Defendants’ authority to detain under Washington state law. This is an area  
10 where ACLU-WA has particular expertise compared to the parties in this case, as shown by  
11 ACLU-WA’s experience litigating these issues in Washington state courts. *See, e.g., Ramirez-*  
12 *Rangel v. Kitsap County*, No. 12-2-09594-4 (Wash. Sup. Ct., Aug. 16, 2013) (plaintiffs  
13 represented by ACLU-WA), *cited in* Proposed Amicus Br. (Dkt. 45, Ex. A) at 9; *compare* Opp.  
14 to Summ. J. (Dkt. 42) at 20:22-21:16 (abbreviated discussion of authority to detain under  
15 Washington law), *with* Proposed Amicus Br. (Dkt. 45, Ex. A) at 9-12 (reviewing and rejecting  
16 potential sources of authority under Washington law). Defendants’ claim that the proposed  
17 amicus brief “focuses almost entirely on immigration law,” Resp. to Mot. for Leave (Dkt. 52)  
18 at 1, ignores that the proposed brief provides a civil liberties and criminal justice perspective on  
19 immigration law that is demonstrably absent from the parties’ briefing. The entire last third of  
20 the proposed amicus brief is devoted to the topic of local law enforcement authority to detain  
21 under Washington law, not including additional resources provided solely by ACLU-WA such  
22 as the March 2017 statement by the Washington State Sheriffs’ Association. Proposed Amicus  
23 Br. (Dkt. 45, Ex. A) at 4:20-25.

### 24 III. CONCLUSION

25 For all of the reasons stated above and in its motion, ACLU-WA respectfully requests  
26 this Court grant it leave to file its proposed amicus curiae brief. Should the Court grant ACLU-

1 WA's motion, ACLU-WA respectfully requests this Court also grant it the opportunity to file  
2 an amicus reply brief to address Defendants' substantive discussion of ACLU-WA's proposed  
3 amicus brief.

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5 DATED this 16th day of November, 2018.

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7 DAVIS WRIGHT TREMAINE LLP  
Cooperating Attorneys for ACLU-WA

8  
9 By s/Jennifer K. Chung

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19 *Attorneys for Proposed Amicus Curiae*  
20 *American Civil Liberties Union of*  
21 *Washington*

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 16<sup>th</sup> day of November, 2018.

s/Jennifer K. Chung  
Jennifer K. Chung, WSBA #51583

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