

**U.S. District Court
Eastern District of Virginia - (Alexandria)
CIVIL DOCKET FOR CASE #: 1:17-cv-01405-LMB-MSN**

Diaz v. Hott et al
Assigned to: District Judge Leonie M. Brinkema
Referred to: Magistrate Judge Michael S. Nachmanoff
Case in other court: 4th Circuit, 18-06419
Cause: 28:2241 Petition for Writ of Habeas Corpus
(Federal)

Date Filed: 12/07/2017
Date Terminated: 02/26/2018
Jury Demand: None
Nature of Suit: 463 Habeas Corpus -
Alien Detainee
Jurisdiction: U.S. Government
Defendant

Petitioner

Rogelio Amilcar Cabrera Diaz
*on behalf of himself and all others
similarly situated*

represented by **Simon Yehuda Sandoval-
Moshenberg**
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Petitioner

Jennry Francisco Moran Barrera
on behalf of himself and all others
similarly situated

represented by **James Reyes**
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Rachel Colleen McFarland
(See above for address)
ATTORNEY TO BE NOTICED

**Simon Yehuda Sandoval-
Moshenberg**
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Petitioner

**Rodolfo Eduardo Rivera
Flamenco**
on behalf of himself and all others
similarly situated

represented by **Rachel Colleen McFarland**
(See above for address)
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**Simon Yehuda Sandoval-
Moshenberg**
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V.

Respondent

Russell Hott
Field Office Director, U.S.

represented by **R. Trent McCotter**
United States Attorney's Office
(Alexandria)

Immigration and Customs
Enforcement

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Respondent

Jefferson B. Sessions, III
Attorney General

represented by **R. Trent McCotter**
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/07/2017	<u>1</u>	PETITION for Writ of Habeas Corpus (Filing fee \$ 5 receipt number 0422-5847609.), filed by Rogelio Amilcar Cabrera Diaz. (Attachments: # <u>1</u> Civil Cover Sheet)(acha,) (Entered: 12/12/2017)
12/15/2017	<u>2</u>	AMENDED Petition <i>First Amended Petition for Habeas Corpus (Class Action Habeas Corpus Petition)</i> against Russell Hott, Jefferson B. Sessions, III, filed by Rogelio Amilcar Cabrera Diaz.(Sandoval-Moshenberg, Simon) (Entered: 12/15/2017)
12/15/2017	<u>3</u>	NOTICE of Appearance by Mark Alastair Stevens on behalf of Rogelio Amilcar Cabrera Diaz (Stevens, Mark) (Entered: 12/15/2017)
01/05/2018	<u>4</u>	AMENDED Petition <i>Second Amended Petition</i> against Russell Hott, Jefferson B. Sessions, III, filed by Rogelio Amilcar Cabrera Diaz, Jennry Francisco Moran Barrera, Rodolfo Eduardo Rivera Flamenco. (Attachments: # <u>1</u> Exhibit A: Written Consent of Respondents, Fed.R.Civ.P. 15(a)(2))(Sandoval-Moshenberg, Simon) (Entered: 01/05/2018)
01/09/2018	<u>5</u>	Motion to appear Pro Hac Vice by Adam Hudes and Certification of Local Counsel Simon Sandoval-Moshenberg Filing fee \$ 75, receipt number 0422-5887443. by Rogelio Amilcar Cabrera Diaz, Jennry Francisco Moran Barrera, Rodolfo Eduardo Rivera Flamenco. (Sandoval-Moshenberg, Simon) (Entered: 01/09/2018)
01/09/2018	<u>6</u>	Motion to appear Pro Hac Vice by Paul W. Hughes and Certification of Local Counsel Simon Sandoval-Moshenberg Filing fee \$ 75, receipt number 0422-5887457. by Rogelio Amilcar Cabrera Diaz, Jennry Francisco Moran Barrera, Rodolfo Eduardo

		Rivera Flamenco. (Sandoval-Moshenberg, Simon) (Entered: 01/09/2018)
01/09/2018	<u>7</u>	NOTICE of Appearance by Rachel Colleen McFarland on behalf of Rogelio Amilcar Cabrera Diaz, Jennry Francisco Moran Barrera, Rodolfo Eduardo Rivera Flamenco (McFarland, Rachel) (Entered: 01/09/2018)
01/10/2018	<u>8</u>	AGREED ORDER- It is hereby ORDERED that the following schedule shall apply to this action: 1. All Respondents' answers are waived. 2. Petitioners shall file their Motion for Summary Judgment and Motion for Class on or before Friday, January 12, 2018. Signed by District Judge Leonie M. Brinkema on 1/10/2018. (acha,) (Entered: 01/10/2018)
01/10/2018	<u>9</u>	ORDER granting <u>5</u> Motion for Pro hac vice for Adam Hudes. Signed by District Judge Leonie M. Brinkema on 1/10/2018. (acha,) (Entered: 01/10/2018)
01/10/2018	<u>10</u>	ORDER granting <u>6</u> Motion for Pro hac vice for Paul W.Hughes. Signed by District Judge Leonie M. Brinkema on 1/10/2018. (acha,) (Entered: 01/10/2018)
01/10/2018		Alexandria Set Hearings: Summary Judgment Hearing set for 2/23/2018 at 10:00 AM in Alexandria Courtroom 700 before District Judge Leonie M. Brinkema. (acha,) (Entered: 01/12/2018)
01/12/2018	<u>11</u>	MOTION to Certify Class by Rogelio Amilcar Cabrera Diaz, Jennry Francisco Moran Barrera, Rodolfo Eduardo Rivera Flamenco. (Sandoval-Moshenberg, Simon) (Entered: 01/12/2018)
01/12/2018	<u>12</u>	Memorandum in Support re <u>11</u> MOTION to Certify Class filed by Rogelio Amilcar Cabrera Diaz, Jennry Francisco Moran Barrera, Rodolfo Eduardo Rivera Flamenco. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Proposed Order)(Sandoval-Moshenberg, Simon) (Entered: 01/12/2018)
01/12/2018	<u>13</u>	Notice of Hearing Date <i>February 23, 2018, 10:00am</i> re <u>11</u> MOTION to Certify Class , <u>12</u> Memorandum in Support, (Sandoval-Moshenberg, Simon) (Entered: 01/12/2018)
01/12/2018	<u>14</u>	NOTICE of Appearance by R. Trent McCotter on behalf of Russell Hott, Jefferson B. Sessions, III (McCotter, R.) (Entered: 01/12/2018)

01/12/2018	<u>15</u>	MOTION to Seal by Rogelio Amilcar Cabrera Diaz, Jennry Francisco Moran Barrera, Rodolfo Eduardo Rivera Flamenco. (Attachments: # <u>1</u> Proposed Order)(Sandoval-Moshenberg, Simon) (Entered: 01/12/2018)
01/12/2018	<u>16</u>	MOTION for Summary Judgment by Rogelio Amilcar Cabrera Diaz, Jennry Francisco Moran Barrera, Rodolfo Eduardo Rivera Flamenco. (Attachments: # <u>1</u> Proposed Order)(Sandoval-Moshenberg, Simon) (Entered: 01/12/2018)
01/12/2018	<u>17</u>	Memorandum in Support re <u>16</u> MOTION for Summary Judgment filed by Rogelio Amilcar Cabrera Diaz, Jennry Francisco Moran Barrera, Rodolfo Eduardo Rivera Flamenco. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N)(Sandoval-Moshenberg, Simon) (Attachment 5 replaced on 1/17/2018) (acha,). (Attachment 6 replaced on 1/17/2018) (acha,). (Attachment 7 replaced on 1/17/2018) (acha,). (Attachment 11 replaced on 1/17/2018) (acha,). (Attachment 12 replaced on 1/17/2018) (acha,). (Attachment 13 replaced on 1/17/2018) (acha,). per LMB chambers Modified on 1/17/2018 (acha,). (Entered: 01/12/2018)
01/12/2018	<u>18</u>	Notice of Hearing Date <i>Feb. 23, 2018</i> set for Feb. 23, 2018 re <u>17</u> Memorandum in Support, <u>16</u> MOTION for Summary Judgment , <u>15</u> MOTION to Seal (Sandoval-Moshenberg, Simon) (Entered: 01/12/2018)
01/16/2018		Set Deadlines as to <u>11</u> MOTION to Certify Class , <u>16</u> MOTION for Summary Judgment , <u>15</u> MOTION to Seal . Motion Hearing set for 2/23/2018 at 10:00 AM in Alexandria Courtroom 700 before District Judge Leonie M. Brinkema. (clar,) (Entered: 01/16/2018)
01/16/2018	<u>19</u>	ORDER- It is hereby ORDERED that <u>15</u> Petitioner's Motion to Seal and Redact is GRANTED; and further it is hereby ORDERED that the Proposed Sealed Documents shall be maintained under seal by the Clerk, until otherwise directed. The COURT further FINDS that Petitioners have established good cause to redact their entire Alien Registration Numbers from all other exhibits filed in support of their Motion for Summary Judgment and ORDERS that the unredacted copies of these exhibits be maintained under seal by the Clerk, until otherwise directed. Signed by District Judge Leonie M. Brinkema on 1/16/2018. (See order for further details). (acha,) (Entered: 01/16/2018)

02/02/2018	<u>20</u>	Memorandum in Opposition re <u>16</u> MOTION for Summary Judgment filed by Russell Hott, Jefferson B. Sessions, III. (Attachments: # <u>1</u> Exhibit Davila Declaration, # <u>2</u> Exhibit Lee Declaration, # <u>3</u> Exhibit Davila Declaration II)(McCotter, R.) (Entered: 02/02/2018)
02/02/2018	<u>21</u>	Cross MOTION for Summary Judgment by Russell Hott, Jefferson B. Sessions, III. (McCotter, R.) (Entered: 02/02/2018)
02/02/2018	<u>22</u>	Memorandum in Support re <u>21</u> Cross MOTION for Summary Judgment filed by Russell Hott, Jefferson B. Sessions, III. (Attachments: # <u>1</u> Exhibit Davila Declaration, # <u>2</u> Exhibit Lee Declaration, # <u>3</u> Exhibit Davila Declaration II)(McCotter, R.) (Entered: 02/02/2018)
02/02/2018	<u>23</u>	Notice of Hearing Date set for February 23, 2018 re <u>21</u> Cross MOTION for Summary Judgment (McCotter, R.) (Entered: 02/02/2018)
02/02/2018	<u>24</u>	Memorandum in Opposition re <u>11</u> MOTION to Certify Class filed by Russell Hott, Jefferson B. Sessions, III. (McCotter, R.) (Entered: 02/02/2018)
02/05/2018		Set Deadlines as to <u>21</u> Cross MOTION for Summary Judgment . Motion Hearing set for 2/23/2018 at 10:00 AM in Alexandria Courtroom 700 before District Judge Leonie M. Brinkema. (clar,) (Entered: 02/05/2018)
02/09/2018	<u>25</u>	REPLY to Response to Motion re <u>16</u> MOTION for Summary Judgment filed by Rogelio Amilcar Cabrera Diaz, Jennry Francisco Moran Barrera, Rodolfo Eduardo Rivera Flamenco. (Sandoval-Moshenberg, Simon) (Entered: 02/09/2018)
02/09/2018	<u>26</u>	RESPONSE in Opposition re <u>21</u> Cross MOTION for Summary Judgment filed by Rogelio Amilcar Cabrera Diaz, Jennry Francisco Moran Barrera, Rodolfo Eduardo Rivera Flamenco. (Sandoval-Moshenberg, Simon) (Entered: 02/09/2018)
02/09/2018	<u>27</u>	REPLY to Response to Motion re <u>11</u> MOTION to Certify Class filed by Rogelio Amilcar Cabrera Diaz, Jennry Francisco Moran Barrera, Rodolfo Eduardo Rivera Flamenco. (Sandoval-Moshenberg, Simon) (Entered: 02/09/2018)
02/11/2018	<u>28</u>	NOTICE of Appearance by James Reyes on behalf of Rogelio Amilcar Cabrera Diaz, Jennry Francisco Moran Barrera (Reyes, James) (Entered: 02/11/2018)

02/16/2018	<u>29</u>	REPLY to Response to Motion re <u>21</u> Cross MOTION for Summary Judgment filed by Russell Hott, Jefferson B. Sessions, III. (McCotter, R.) (Entered: 02/16/2018)
02/23/2018	<u>30</u>	Minute Entry for proceedings held before District Judge Leonie M. Brinkema: Motion Hearing held on 2/23/2018. Appearances of counsel. Petitioners <u>11</u> MOTION to Certify Class and <u>16</u> MOTION for Summary Judgment are argued and TAKEN UNDER ADVISEMENT. (memorandum opinion to follow) (Court Reporter A. Thomson.) (yguy) (Entered: 02/26/2018)
02/26/2018	<u>31</u>	MEMORANDUM OPINION: For the reasons stated above, petitioners' Motion to Certify Class [Dkt. No. 11] and Motion for Summary Judgment [Dkt. No. 16] will be granted and respondents' Motion for Summary Judgment [Dkt. No. 21] will be denied by an appropriate Order to be issued with this Memorandum Opinion. Signed by District Judge Leonie M. Brinkema on 2/26/18. (yguy) (Entered: 02/26/2018)
02/26/2018	<u>32</u>	ORDER: For the reasons stated in open court and in the accompanying Memorandum Opinion, petitioners' Motion to Certify Class [Dkt. No. 11] and Motion for Summary Judgment [Dkt. No. 16] are GRANTED, respondents' Motion for Summary Judgment [Dkt. No. 21] is DENIED, and it is hereby ORDERED that this civil action be and is CERTIFIED AS A CLASS ACTION pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), with the class defined as all individuals who (1) are in withholding-only proceedings, having established a reasonable fear of persecution or torture, and such proceedings are not administratively final, or if final, a stay of removal has been granted by a United States Court of Appeals; and (2) as of December 7, 2017 or at any time thereafter are detained within the Commonwealth of Virginia under the authority of the United States Immigration and Customs Enforcement Agency; and it is further ORDERED that petitioners Rogelio Amilcar Cabrera Diaz, Jennry Francisco Moran Barrera, and Rodolfo Eduardo Rivera Flamenco be and are DESIGNATED AS CLASS REPRESENTATIVES of the certified class; and it is further ORDERED that the class claim is that respondents have erroneously determined that class members are detained pursuant to 8 U.S.C. § 1231, rather than 8 U.S.C. § 1226, and, on that basis, have illegally refused to provide class members who have not been designated as criminal aliens pursuant to 8 U.S.C. § 1226(c) with bond hearings, and as for class members designated as criminal aliens, a hearing under In re Joseph, 22 I. & N. Dec. 799 (BIA 1999), to challenge their classification as criminal aliens subject to mandatory detention; and it is further

		ORDERED that Legal Aid Justice Center; Mayer Brown LLP; Murray Osorio PLLC; and the Law Offices of James Reyes PLLC be and are APPOINTED AS CLASS COUNSEL; and it is further ORDERED that judgment be and is entered in favor of petitioners; and it is further ORDERED that, within fifteen (15) days of the date of entry of this Order, respondents identify all class members to class counsel and provide a copy of this Order to all class members as well as to any attorney who has noticed an appearance on behalf of any class member in any pending immigration proceeding; and it is further ORDERED that respondents provide each class member an individualized bond hearing before an immigration judge or a Joseph hearing before an immigration judge within thirty (30) days of the date of entry of this Order. Signed by District Judge Leonie M. Brinkema on 2/26/18. (yguy) (Entered: 02/26/2018)
02/26/2018	<u>33</u>	CLERK'S JUDGMENT: JUDGMENT is hereby entered in favor of the petitioners, Rogelio Amilcar Cabrera Diaz, et al on Behalf of Themselves and All Other Similarly Situated. (yguy) (Entered: 02/26/2018)
03/12/2018	<u>34</u>	PROTECTIVE ORDER. Signed by District Judge Leonie M. Brinkema on 3/12/2018. (rban,) (Entered: 03/12/2018)
03/28/2018	<u>35</u>	Joint MOTION for Extension of <i>Deadline to Provide Hearings</i> by Russell Hott, Jefferson B. Sessions, III. (McCotter, R.) (Entered: 03/28/2018)
03/28/2018	<u>36</u>	Waiver of re <u>35</u> Joint MOTION for Extension of <i>Deadline to Provide Hearings ORAL ARGUMENT</i> by Russell Hott, Jefferson B. Sessions, III (McCotter, R.) (Entered: 03/28/2018)
03/28/2018	<u>37</u>	ORDER- It is hereby ORDERED that the deadline for defendants to provide each class member either an individualized bond hearing or a Joseph hearing before an immigration judge pursuant to this <u>32</u> Court's Order of February 26, 2018 be and is EXTENDED until April 6, 2018. Signed by District Judge Leonie M. Brinkema on 3/28/2018.(See order for further details.) (acha,) (Entered: 03/29/2018)
04/19/2018	<u>38</u>	NOTICE OF APPEAL as to <u>31</u> Memorandum Opinion, <u>32</u> Order,,,,,,,,, <u>33</u> Clerk's Judgment by Russell Hott, Jefferson B. Sessions, III. (McCotter, R.) (Entered: 04/19/2018)
04/20/2018	<u>39</u>	Transmission of Notice of Appeal to US Court of Appeals re <u>38</u> Notice of Appeal (All case opening forms, plus the transcript

		guidelines, may be obtained from the Fourth Circuit's website at www.ca4.uscourts.gov) (dest,) (Entered: 04/20/2018)
04/23/2018	40	USCA Case Number 18-6419 4th Circuit, Case Manager C. Halupa for 38 Notice of Appeal filed by Russell Hott, Jefferson B. Sessions, III. (acha,) (Entered: 04/24/2018)
02/14/2020	41	USCA Mandate re 38 Notice of Appeal. The judgment of this court, entered October 10, 2019, takes effect today. (acha,) (Entered: 02/14/2020)

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