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**Case No. 12-56734**

In the  
United States Court of Appeals  
for the  
Ninth Circuit

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**TIMOTHY ROBBINS, ET AL.,**  
*Respondents-Appellants,*

v.

**ALEJANDRO RODRIGUEZ, ET AL.,**  
*Petitioners-Appellees.*

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On Appeal from the United States District Court  
for the Central District of California  
*No. CV 07-3239-TJH (RNB)*

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**MOTION FOR LEAVE TO FILE BRIEF OF 26 PROFESSORS AND  
RESEARCHERS OF SOCIOLOGY, CRIMINOLOGY, ANTHROPOLOGY  
AND LAW AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS-  
APPELLEES AND URGING AFFIRMANCE**

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Angel L. Tang  
Marco J. Martemucci  
Elizabeth S. St. John  
ARNOLD & PORTER LLP  
777 South Figueroa Street, 44th Floor  
Los Angeles, California 90017  
Telephone: 213.243.4000  
Email: Angel.Tang@aporter.com  
Email: Marco.Martemucci@aporter.com  
Email: Elizabeth.StJohn@aporter.com

*Attorneys for Amici Curiae*

November 26, 2012

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Pursuant to Federal Rule of Appellate Procedure 29(b), 26 professors and researchers of sociology, criminology, anthropology and law respectfully request this Court's permission to file a brief as *amici curiae*, attached herewith, in the above-captioned appeal and in support of affirming the District Court's grant of Petitioners-Appellees' Motion for Preliminary Injunction. Pursuant to Ninth Circuit Rule 29-3, *amici curiae* endeavored to obtain consent from all parties to the filing of the brief. Petitioner-Appellees consent to the filing of the brief and Respondent-Appellants have communicated they take no position as to the filing of the brief.

*Amici curiae* are leading scholars and researchers in the fields of sociology, anthropology, criminology, and law whose work relates to incarceration and detention, migrant populations, and the effect U.S. immigration policies on detention and removal have on migrant populations. A full list of *amici curiae* – who join this brief as individuals and not as representatives of any institutions with which they are affiliated – is set forth in the Appendix to the attached brief.

At issue in this appeal is whether the District Court properly granted the Petitioner-Appellees' motion for preliminary injunction and ordered, *inter alia*, bond hearings for all class member immigration detainees who, pursuant to 8 U.S.C. §§ 1226(c) and 1225(b), have been detained by the government for longer than six months. In arguing for vacating the District Court's injunction providing

for bond hearings, Respondents-Appellants contend that the public interest favors their position, but fail to address the significant and well-documented harms and hardships suffered by class members in prolonged detention. The work of the *amici curiae* focuses on the plethora of severe harms associated with prolonged detention as it impacts detainees, their families and society at large. Research and scholarship in *amici's* fields of study provide an empirical basis for assessing both the public interest as well as the harms associated with prolonged detention. The research presented in the attached *amici curiae* brief will assist the Court in understanding how Petitioner-Appellees would suffer irreparable harm if incarceration were continued without bond hearings, and how the balance of public interests tips in favor of Petitioner-Appellees. For these reasons, the attached *amici curiae* brief should be considered when reviewing the correctness of the District Court's Order requiring bond hearings for long-term detainees.

WHEREFORE, *amici curiae* 26 professors and researchers of sociology, criminology, anthropology and law respectfully request that the Court grant them leave to file a brief in support of Petitioners-Appellees addressing the harms of prolonged detention and urging affirmance of the District Court's preliminary injunction order.

Date: November 26, 2012

Respectfully submitted,

s/Angel L. Tang

Angel L. Tang

Marco J. Martemucci

Elizabeth S. St. John

ARNOLD & PORTER LLP

777 South Figueroa Street, 44th Floor

Los Angeles, California 90017

Telephone: 213.243.4000

Email: Angel.Tang@aporter.com

Email: Marco.Martemucci@aporter.com

Email: Elizabeth.StJohn@aporter.com

*Attorneys for Amici Curiae*

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 26, 2012.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: November 26, 2012

ARNOLD & PORTER LLP

By: s/ Elizabeth S. St. John

*Attorneys for Amici Curiae*

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SOCIOLOGY, CRIMINOLOGY, ANTHROPOLOGY AND LAW  
AS AMICI CURIAE IN SUPPORT OF PETITIONERS-APPELLEES  
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Angel L. Tang  
Marco J. Martemucci  
Elizabeth S. St. John  
ARNOLD & PORTER LLP  
777 South Figueroa Street, 44th Floor  
Los Angeles, California 90017  
Telephone: 213.243.4000  
Email: Angel.Tang@aporter.com  
Email: Marco.Martemucci@aporter.com  
Email: Elizabeth.StJohn@aporter.com

*Attorneys for Amici Curiae*

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8 U.S.C. § 1226(c) .....	1
42 U.S.C. § 675(5)(E) .....	22
 <b>OTHER AUTHORITIES</b>	
<i>ACLU of Ariz., In Their Own Words: Enduring abuse in Arizona immigration detention centers</i> (2011). .....	4
<i>Am. Bar Ass’n, Comm’n on Immigration, Reforming The Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases</i> (2010) .....	15
<i>Amnesty Int’l, Jailed Without Justice: Immigration Detention in the USA</i> (Mar. 2009) .....	14, 18, 30
<i>Appleseed, Assembly Line Injustice: Blueprint to Reform America’s Immigration Courts</i> (2009) .....	15
<i>Nina Bernstein, Few Details on Immigrants Who Died in Custody</i> , N.Y. Times, May 5, 2008 .....	5



Nina Bernstein, *Ill and in Pain Detainee Dies in U.S. Hands*, N.Y. Times, Aug. 12, 2008.....5

Nina Bernstein, *Mentally Ill and in Immigration Limbo*, N.Y. Times, May 4, 2009.....9

Nina Bernstein, *U.S. Agency Issues Scathing Report on Death of Immigrant in its Custody*, N.Y. Times, Jan. 16, 2009 .....5

Kalina Brabeck & Qingwen Xu, *The Impact of Detention and Deportation on Latino Immigrant Children and Families: A Quantitative Exploration*, 32 *Hispanic J. of Behav. Sci.* 341 (2010).....21

Randy Capps et al., *The Urban Inst., A Profile of the Low-Wage Immigrant Workforce* (2003).....13, 18

Wendy Cervantes & Yali Lincroft, *First Focus & The Migration & Child Welfare Nat’l Network, The Impact of Immigration Enforcement on Child Welfare* (2010) .....23

Ajay Chaudry et al., *The Urban Inst., Facing Our Future: Children in the Aftermath of Immigration Enforcement* (2010)..... 12, 13, 14, 20, 23, 28

Jacob Chin et al., *Attorneys’ Perspectives on the Violation of the Civil Rights of Immigrants Detained in Minnesota*, 42 *CURA Reporter* 16 (Spring/Summer 2010) .....14

Todd R. Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse* (2007) .....28

Constitution Project, *Recommendations for Reforming our Immigration Detention System and Promoting Access to Counsel in Immigration Proceedings* (2009).....12

Susan Coutin, *Confined Within: National territories as zones of confinement*, 29 *Pol. Geography* 200 (2010).....18

Detention Watch Network, *Theo Lacy Detention Center California: Expose & Close* (2012).....7

Editorial, *Immigration & Keeping Families Intact*, L.A. Times, July 31, 2012.....22

Semuteh Freeman & Lauren Major, N.Y.U. Sch. of Law Immigration Policy  
 Ctr., *Immigration Incarceration: The Expansion and Failed Reform of  
 Immigration Detention in Essex County, NJ* (2012).....14, 15

Tanya Golash-Boza, *Immigration Nation: Raids, Detentions, and  
 Deportations in Post-9/11 America* (2012) .....6, 27, 28

John Hagan & Ronit Dinovitzer, *Collateral Consequences of Imprisonment  
 for Children, Communities and Prisoners, in Prisons* (Michael Tonry &  
 Joan Petersilia, eds. 1999).....28

Geoffrey Heeren, *Pulling Teeth: The State of Mandatory Immigration  
 Detention*, 45 Harv. C.R-C.L. L. Rev. 601 (2010) .....6, 10, 13

David Hernandez, *Pursuant to Deportation: Latinos and Immigrant  
 Detention*, 6 Latino Stud. 35 (2008) .....28, 29

*Holiday on ICE: The U.S. Department of Homeland Security’s New  
 Immigration Detention Standards: Hearing Before the Subcomm. on  
 Immigration Policy and Enforcement of the H. Comm. on the Judiciary,  
 112th Cong. (2012) (statement of Michelle Brané, Director, Detention  
 and Asylum Program Women’s Refugee Commission) .....4*

Human Rights First, *Jails and Jumpsuits: Transforming the U.S.  
 Immigration Detention System – A Two-Year Review* (2011).....24

Human Rights Watch, *A Costly Move: Far and Frequent Transfers Impede  
 Hearings for Immigrant Detainees in the United States* (2011).....17

Human Rights Watch, *Detained and At Risk* (2010) .....8

Human Rights Watch, *Jailing Refugees: Arbitrary Detention of Refugees in  
 the US Who Fail to Adjust to Permanent Resident Status* (2009) .....12

Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to  
 Remote Detention Centers in the United States* (2009).....20

*Immigration and Crime: Race, Ethnicity, and Violence* (Ramiro Martinez Jr.  
 & Abel Valenzuela Jr., eds., 2006) .....29

Immigration Policy Ctr., *Unauthorized Immigrants Pay Taxes, Too* (2011).....27

Internal Revenue Serv., *Taxation of Nonresident Aliens*, IRS Gov .....27

Internal Revenue Serv., *Taxation of Resident Aliens*, IRS,  
<http://www.irs.gov/Individuals/International-Taxpayers/Taxation-of-Resident-Aliens>.....27

Allen Keller et al., *Mental Health of Detained Asylum Seekers*, 362 *Lancet* 1721 (2003).....11

Donald Kerwin & Serena Yi-Ying Lin, Migration Policy Inst., *Immigration Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?* (2009) .....9

Aarti Kohli et al., Univ. of Cal., Berkeley Sch. of Law, Chief Justice Earl Warren Inst. on Law & Soc. Policy, *Secure Communities by the Numbers: An Analysis of Demographics and Due Process* (Oct. 2011).....17

J.D. Kremer et al., Dorsey & Whitney LLP, *Severing a Lifeline: The Neglect of Citizen Children in America's Immigration Enforcement Policy* (2009).....21

Ruben Loyo & Carolyn Corrado, N.Y.U. Sch. of Law, Immigrant Rights Clinic, *Locked Up but Not Forgotten: Opening access to family and community in the immigration detention system* (2010).....16, 19

Peter L. Markowitz et al., *Accessing Justice: The Availability And Adequacy of Counsel In Removal Proceedings*, 33 *Cardozo L. Rev.* 357 (2011) .....12, 15

Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 *J. Am. Acad. Psychiatry L.* 104 (2010) .....10

Nick Miroff, *ICE Facility Detainee's Death Stirs Questions*, *Wash. Post*, Jan. 30, 2009 .....5

Nat'l Immigrant Justice Ctr., *Isolated in Detention: Limited Access to Legal Counsel in Immigration Detention Facilities Jeopardizes a Fair Day in Court* (2010).....17

Nat'l Immigration Forum, *The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies* (2012).....25, 26

Nat'l Prison Rape Elimination Comm'n, *National Prison Rape Elimination Commission Report* (2009).....7

Org. of Am. States, Inter-American Comm’n. on Human Rights, *Report on Immigration in the United States: Detention and Due Process* (2010) .....16

Scott Phillips, Jacqueline Maria Hagan, & Nestor Rodriguez, *Brutal Borders? Examining the Treatment of Deportees During Arrest and Detention*, 85 Soc. Forces 93 (2006). .....4

Physicians for Human Rights, *Punishment Before Justice: Indefinite Detention in the US* (2011). .....9

Christina Pourgourides, *A Second Exile: The Mental Health Implications of Detention of Asylum Seekers in the UK*, 21 Psychiatric Bull. 673 (1997) .....11

Dana Priest & Amy Goldstein, *Careless Detention*, Wash. Post, May 11, 2008.....5

Dana Priest & Amy Goldstein, *Suicides Point to Gaps in Treatment: Errors in Psychiatric Diagnoses and Drugs Plague Strained Immigration System*, Wash. Post, May 13, 2008.....10

Nina Rabin, Univ. of Ariz., *Disappearing Parents: A Report on Immigration Enforcement and the Child Welfare System* (2011).....23

Nina Rabin, Univ. of Ariz., *Unseen Prisoners: A Report on Women in Immigration Detention Facilities in Arizona* (2009).....16

*Reassessing Solitary Confinement: Hearing Before the Sen. Judiciary Subcomm. on Constitution, Civil Rights and Human Rights*, 112th Cong. (2012) (testimony of Craig Haney, Professor of Psychology, University of Santa Cruz) .....10

Ruben G. Rumbaut & Walter Ewing, Immigration Policy Ctr., *The Myth of Immigrant Criminality and the Paradox of Assimilation: Incarceration Rates Among Native and Foreign-born Men* (2007) .....29

Dora Schriro, U.S. Immigration & Customs Enforcement, *Immigration Detention Overview and Recommendations* (2009). .....passim

Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A brief history and review of the literature*, 34 Crim. Just. 441 (2006) .....10

Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 Am. U. L. Rev. 367 (2006) .....29

Eric Tucker, *Chinese Detainee’s Widow Wants Government Kept in Lawsuit*,  
 Boston Globe, Nov. 12, 2009. ....5

U.S. Dep’t of Homeland Sec., *Congressional Budget Justification: FY 2012*,  
*U.S. Immigration and Customs Enforcement Salaries and Expenses* .....26

U. S. Dep’t of Homeland Sec., *U.S. Dep’t of Homeland Security Annual  
 Performance Report: Fiscal Years 2011-2013, U.S. Immigration and  
 Customs Enforcement Salaries and Expenses, Fiscal Year 2013 Budget  
 Justification* (2011) ..... 24, 25, 26

U.S. Census Bureau, *Educational Attainment in the United States: 2009*  
 (2012) .....18

U.S. Citizenship and Immigration Servs., *Instructions for I-765, Application  
 for Employment Authorization* (2012) ..... 12

U.S. Dep’t of Homeland Sec., Office of Inspector Gen., *Management of  
 Mental Health Cases in Immigration Detention* (2011).....10, 11

U.S. Dep’t of Homeland Security, Office of Immigration Statistics,  
*Immigration Enforcement Actions: 2011* (2012) .....24

U.S. Dep’t. of Justice, Exec. Office for Immigration Review, *FY 2011  
 Statistical Year Book* (2012) .....14, 18

U.S. Gov’t Accountability Office, *GAO-07-875, Alien Detention Standards:  
 Telephone Access Problems Were Pervasive at Detention Facilities;  
 Other Deficiencies Did Not Show a Pattern of Noncompliance* (2007).....16

U.S. Immigration & Customs Enforcement, Press Release, *Secretary  
 Napolitano & ICE Assistant Secretary Morton Announce New  
 Immigration Detention Reform Initiatives* (Oct. 6, 2009). ....6

U.S. Immigration & Customs Enforcement, *Detainee Deaths - October 2003  
 through June 18, 2012, available at  
[www.ice.gov/doclib/foia/reports/detaineedeaths2003-present.pdf](http://www.ice.gov/doclib/foia/reports/detaineedeaths2003-present.pdf)* .....7

U.S. Immigration and Customs Enforcement, *Performance-Based Detention  
 Standards* (2012).....17

U.S. Immigration and Customs Enforcement, *Policy 11022.1: Detainee  
 Transfers* (2012) .....17

Seth Wessler, Applied Research Ctr., *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* (2011) .....19, 21, 22

Women’s Comm’n for Refugee Women & Children, *Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center* (2000) .....8

Women’s Refugee Comm’n & The Applied Research Ctr., *Maintaining Parental Rights During Immigration Enforcement Actions & Detention* (Nov. 2010) .....22

Women’s Refugee Comm’n, *Torn Apart by Immigration Enforcement: Parental Rights & Immigration Detention* (2010) .....22

**IDENTITY AND INTEREST OF AMICI CURIAE**

*Amici curiae* are 26 scholars and researchers in the fields of sociology, criminology, anthropology and law whose work relates to incarceration and detention, migrant populations, and the effect U.S. immigration detention and removal policies have on migrant populations. A full list of *amici curiae* – who join this brief as individuals, not as representatives of any institutions with which they are affiliated – is set forth in the Appendix to this brief.

At issue in this appeal is whether the District Court properly granted the class Petitioners-Appellees’ motion for preliminary injunction and ordered, *inter alia*, bond hearings for all class member immigration detainees who, pursuant to 8 U.S.C. §§ 1226(c) and 1225(b), have been detained by the government for longer than six months. The objective of the *amici curiae* in this case is to provide this Court with an empirically grounded understanding of the various harms of detention extending longer than six months as it affects the detainees, their families, and society.

This brief was authored in whole by *amici curiae* and their counsel, and no party to this litigation, their counsel, or any third party contributed money to fund this brief. The brief is being filed concurrently with a motion seeking leave to file.

## **SUMMARY OF ARGUMENT**

On January 2, 2012, the United States held at least 2,952 people in immigration detention who had been detained six months or longer; 844 had been held longer than one year; and 149 had been held longer than two years.<sup>1</sup> The practice of detaining immigrants longer than six months without an individualized hearing to determine the need for such detention inflicts significant harms on detainees, their families, and society at large.<sup>2</sup> Prolonged detention exacerbates the mental, physical, and economic harms of transitory detention, and presents unique harms and risks of its own. The government should be required, as a prerequisite to such an extreme denial of liberty, to demonstrate on an individual basis that continued detention is justified. Immigrants held in prolonged detention suffer physically and psychologically from inadequate recreation, lack of visitation, isolation, substandard medical and mental health care, and physical and sexual assault. Detainees' financial and legal interests are also harmed as a result of long-term detention. Prolonged detention also severely impacts detainees' families, in psychological, emotional, and economic ways. It harms society and costs

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<sup>1</sup> U.S. Department of Homeland Security data produced on November 13, 2012 in accordance with the Stipulation and Order of Settlement and Partial Dismissal in *ACLU v. U.S. Dep't. of Homeland Sec.*, No. 11 Civ. 3786, (S.D.N.Y. Sept. 6, 2012), on file with the ACLU.

<sup>2</sup> For purposes of this brief, "prolonged" and "long-term" detention is defined as detention lasting longer than six months.



taxpayers billions of dollars. Prolonged detention destabilizes families and communities and engenders widespread negative perceptions of immigrants. In light of the significant and irreparable harms imposed by prolonged detention, this Court should affirm the District Court's order prohibiting the government's mass detention of individuals without first demonstrating that continued detention is necessary and justified.

This Circuit has held that other immigration statutes do not authorize detention for more than six months unless the government shows, by clear and convincing evidence at a bond hearing, that continued detention is justified. *See Diouf v. Napolitano*, 634 F.3d 1081, 1086 (9th Cir. 1011). As Appellees argue in their brief, the same rule should apply here. On September 13, 2012 the District Court correctly determined that the class detainees would suffer irreparable injury and that the balance of hardships tips sharply in their favor when it awarded injunctive relief. The harms and risks of prolonged detention described in this *amicus* brief should be considered in affirming the District Court's ruling.

## **ARGUMENT**

### **I. Prolonged Detention Is Harmful to Detainees and Weighs in Favor of Providing Bond Hearings**

The harms of prolonged detention go beyond the already serious harm to the liberty rights of the detained individual addressed in Petitioner-Appellees' brief. Individuals subject to prolonged detention also suffer tangible harms – physical,

psychological, economic, and legal – which differ in degree and kind from those suffered by short-term detainees.

**A. *Prolonged Detention Causes Physical Harm to Detainees***

Extended detention exacerbates a number of risks to the health and welfare of immigrant detainees, including insufficient medical care, incidents of physical and sexual assault, and severely limited recreation and visitation.<sup>3</sup> Long-term detainees suffer disproportionately from these problems.<sup>4</sup>

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<sup>3</sup> See *Holiday on ICE: The U.S. Department of Homeland Security's New Immigration Detention Standards: Hearing Before the Subcomm. on Immigration Policy and Enforcement of the H. Comm. on the Judiciary*, 112th Cong. 53-62 (2012) (statement of Michelle Brané, Director, Detention and Asylum Program Women's Refugee Commission), available at <http://judiciary.house.gov/hearings/Hearings%202012/Brane%2003282012.pdf>; Scott Phillips, Jacqueline Maria Hagan, & Nestor Rodriguez, *Brutal Borders? Examining the Treatment of Deportees During Arrest and Detention*, 85 Soc. Forces 93, 97, 101-104 (2006) [hereinafter *Brutal Borders*] (in a study involving 300 deported Salvadorians (36% detained longer than six months), 26% of interviewees reported verbal abuse, 31% reported inadequate provision of food or water, and 11% reported some sort of physical abuse in detention), available at <http://psfaculty.ucdavis.edu/bsjjones/phillips.pdf>.

<sup>4</sup> For example, some long-term detainees are held in facilities not designed to accommodate extended detention. See ACLU of Ariz., *In Their Own Words: Enduring abuse in Arizona immigration detention centers* (2011), available at <http://www.acluaz.org/sites/default/files/documents/detention%20report%202011.pdf>. (county jail contracted to house immigrants for extended periods was repeatedly found “deficient” in its provision of medical treatment, access to contact visitation and outdoor recreation, and was subject to abuse allegations). One study found that the likelihood of force being used against detainees was 2.4 times greater for those detained longer periods. *Brutal Borders*, *supra* note 3, at 105.

In 2008, news reporting on detainee deaths resulting from abuse, neglect, and insufficient medical care caused a public outcry.<sup>5</sup> A resulting independent government investigation led by DHS Special Advisor Dr. Dora Schriro identified numerous failures in the immigration system's ability to preserve the health and safety of detainees, including systematic failures to provide adequate medical care for individuals held in immigration detention facilities.<sup>6</sup>

There is no medical classification system other than a limited use coding of healthy and unhealthy, and there is no mental health classification system. There is no policy on the maintenance, retention, and centralized storage of medical records; instead, a new medical record

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<sup>5</sup> See, e.g., Nina Bernstein, *Few Details on Immigrants Who Died in Custody*, N.Y. Times, May 5, 2008, at A1; Nina Bernstein, *Ill and in Pain Detainee Dies in U.S. Hands*, N.Y. Times, August 12, 2008, at A1, available at <http://www.nytimes.com/2008/08/13/nyregion/13detain.html?pagewanted=all>; Nina Bernstein, *U.S. Agency Issues Scathing Report on Death of Immigrant in its Custody*, N.Y. Times, Jan. 16, 2009, <http://www.nytimes.com/2009/01/16/world/americas/16iht-detain.1.19422767.html>; Nick Miroff, *ICE Facility Detainee's Death Stirs Questions*, Wash. Post, Jan. 30, 2009, at C01, available at <http://www.washingtonpost.com/wp-dyn/content/story/2009/01/31/ST2009013101877.html>; Dana Priest & Amy Goldstein, *Careless Detention*, Wash. Post, May 11, 2008, at A1, available at [http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc\\_d1p1.html](http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d1p1.html); Eric Tucker, *Chinese Detainee's Widow Wants Government Kept in Lawsuit*, Boston Globe, Nov. 12, 2009, [http://www.boston.com/news/local/rhode\\_island/articles/2009/11/12/chinese\\_detainees\\_widow\\_wants\\_government\\_kept\\_in\\_lawsuit/](http://www.boston.com/news/local/rhode_island/articles/2009/11/12/chinese_detainees_widow_wants_government_kept_in_lawsuit/).

<sup>6</sup> Dora Schriro, U.S. Immigration & Customs Enforcement, *Immigration Detention Overview and Recommendations* (2009), available at <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.

is opened each time a detainee is transferred to another detention facility. After the detainee is transferred from the facility the file remains on site. While a medical summary should accompany detainees upon their transfer, it does not routinely occur.<sup>7</sup>

Detainees are often subject to substandard medical care, as the availability and competency of care varies significantly between facilities.<sup>8</sup> These failures leave long-term detainees exposed to deleterious conditions and without proper or continuous medical care for significant lengths of time. As a result, long-term detainees are at increased risk of suffering severe medical harm because of prolonged detention.<sup>9</sup>

In response to the Schriro Report, the government announced an initiative to improve accountability and safety in detention facilities.<sup>10</sup> Although reform efforts

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<sup>7</sup> *Id.* at 25.

<sup>8</sup> *Id.* (“medical care services provided vary considerably by location, as does the staffing in the specialty areas” and the Division of Immigration Health Services uses predominately contract employees subject to “relaxed professional credentialing” to care for immigrant detainees).

<sup>9</sup> *See, e.g.*, Tanya Golash-Boza, *Immigration Nation: Raids, Detentions, and Deportations in Post-9/11 America*, 65 (2012) (recounting how substandard medical care during prolonged detention resulted in an immigrant suffering serious health problems); Geoffrey Heeren, *Pulling Teeth: The State of Mandatory Immigration Detention*, 45 Harv. C.R.-C.L. L. Rev. 601, 602-03, 622 (2010) (same).

<sup>10</sup> *See* U.S. Immigration & Customs Enforcement, Press Release, *Secretary Napolitano & ICE Assistant Secretary Morton Announce New Immigration Detention Reform Initiatives*, (Oct. 6, 2009), <http://www.ice.gov/news/releases/0910/091006washington.htm>.

have begun, problems highlighted by the Schriro Report have not yet been resolved, and in fact, since the Report was issued, nearly 30 detainees have died in immigration custody.<sup>11</sup>

Prolonged detention also puts the large and growing population of detained immigrants at risk of sexual abuse. In 2009, the National Prison Rape Elimination Commission found that “[a]s a group, immigration detainees are especially vulnerable to sexual abuse and its effects while detained due to social, cultural, and language isolation; poor understanding of U.S. culture and the subculture of U.S. prisons; and the often traumatic experiences they have endured in their culture of origin.”<sup>12</sup> This vulnerability is particularly acute for asylum seekers. Immigrants and asylum seekers who fled violence in their home countries often have posttraumatic stress disorder (“PTSD”) and other trauma responses.<sup>13</sup> PTSD symptoms, including difficulty problem-solving and a sense of hopelessness or

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<sup>11</sup> See Detention Watch Network, *Theo Lacy Detention Center California: Expose & Close* (2012) (recounting continued violations in Southern California immigration detention facility), available at <http://www.detentionwatchnetwork.org/ExposeAndClose>; U.S. Immigration & Customs Enforcement, *Detainee Deaths - October 2003 through June 18, 2012*, (2012) available at <http://www.ice.gov/doclib/foia/reports/detaineedeaths2003-present.pdf>.

<sup>12</sup> Nat’l Prison Rape Elimination Comm’n, *National Prison Rape Elimination Commission Report* 176 (2009) (citations omitted), available at <http://www.ncjrs.gov/pdffiles1/226680.pdf>.

<sup>13</sup> See *id.* at 178 (citations omitted).

lack of control, render individuals more susceptible to sexual victimization and less likely to report it.<sup>14</sup> Sexual abuse within the detention system is well documented.<sup>15</sup> Despite recent reform efforts, the risk of sexual assault remains a reality for immigrant detainees, and longer exposure to detention increases that risk.

Detention facilities are also ill-equipped to handle immigrants who, by virtue of medical conditions, mental health problems, or protective custody requirements, cannot be mixed with the general population. As a result, “special populations” are frequently detained in segregation. The practice of housing vulnerable immigrant detainees in segregation further restricts their already limited mobility and access to scarce resources, including recreation time, and simultaneously subjects them to increased isolation. Despite widespread acknowledgment that prolonged exposure to such conditions is severely detrimental to the physical and mental health of

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<sup>14</sup> *Id.*

<sup>15</sup> See, e.g., Human Rights Watch, *Detained and At Risk* (2010), available at [www.hrw.org/sites/default/files/reports/us0810webwcover.pdf](http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf); Women’s Comm’n for Refugee Women & Children, *Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center* (2000), available at [http://womensrefugeecommission.org/component/docman/doc\\_download/272-behind-locked-doorsabuse-of-refugee-women-at-the-krome-detention-center-behind-locked-doorsabuse-of-refugee-women-at-the-krome-detention-center?q=behind+locked+doors](http://womensrefugeecommission.org/component/docman/doc_download/272-behind-locked-doorsabuse-of-refugee-women-at-the-krome-detention-center-behind-locked-doorsabuse-of-refugee-women-at-the-krome-detention-center?q=behind+locked+doors); Schriro, *supra* note 6, at 22 (“The system must make better use of sound practices such as ... practices that comply with the Prison Rape Elimination Act.”).

detainees, DHS continues to repurpose this mode of confinement, traditionally reserved for punishment, as a permanent condition of these immigrants' extended detention, thus subjecting long-term detainees to harms that differ in both degree and kind from other detainees.<sup>16</sup>

***B. Prolonged Detention Causes Psychological Harm to Detainees***

Without bond hearings, detention of class members can continue indefinitely. Detainees faced with uncertainty about when or whether they will be released suffer from high rates of severe anxiety, despair, and depression.<sup>17</sup> During prolonged detention, these feelings often manifest as diagnosable mental health conditions.<sup>18</sup> While most immigration detainees have no criminal record, they are held in prison-like facilities and housed with criminals, causing additional stress and anxiety.<sup>19</sup> Mentally ill persons fare particularly poorly in detention — either going untreated, receiving “one size fits all” medication, or being placed in solitary

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<sup>16</sup> See Schriro, *supra* note 6, at 21.

<sup>17</sup> See Physicians for Human Rights, *Punishment Before Justice: Indefinite Detention in the US* 11 (2011), available at <http://physiciansforhumanrights.org/library/reports/indefinite-detention-june2011.html>.

<sup>18</sup> *Id.* at 16.

<sup>19</sup> See Schriro, *supra* note 6, at 2, 21; Donald Kerwin & Serena Yi-Ying Lin, Migration Policy Inst., *Immigration Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?* 1 (2009) available at <http://www.migrationpolicy.org/pubs/detentionreportSept1009.pdf> (majority of immigrants in DHS custody as of January 25, 2009 had no criminal record at all).

confinement.<sup>20</sup> Detainees with mental illness or on suicide watch are often assigned to segregation,<sup>21</sup> despite the fact that “[s]egregation often exacerbates mental illness and is counterproductive to the goal of stabilizing a detainee.”<sup>22</sup> Prolonged detention almost invariably exacerbates existing mental health conditions, as detention facilities are neither equipped nor designed to provide adequate mental health care.<sup>23</sup> DHS’s failure to identify or track individuals with mental illness is particularly problematic for long-term detainees, who are more

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<sup>20</sup> Heeren, *supra* note 9, at 614 (citing Nina Bernstein, *Mentally Ill and in Immigration Limbo*, N.Y. Times, May 4, 2009, at A17; Dana Priest & Amy Goldstein, *Suicides Point to Gaps in Treatment: Errors in Psychiatric Diagnoses and Drugs Plague Strained Immigration System*, Wash. Post, May 13, 2008, at A1.).

<sup>21</sup> Schriro, *supra* note 6, at 26.

<sup>22</sup> U.S. Dep’t. of Homeland Sec., Office of Inspector Gen., *Management of Mental Health Cases in Immigration Detention* 15 (2011) [hereinafter *Mental Health Cases in Immigration Detention*]. Research from the criminal field also supports this finding. See Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. Am. Acad. Psychiatry L. 104, 104 (2010) (“Isolation can be psychologically harmful to any prisoner . . . [E]ffects can include anxiety, depression, anger, cognitive disturbances, perceptual distortions, obsessive thoughts, paranoia, and psychosis.”) (citing Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A brief history and review of the literature*, 34 Crim. Just. 441 (2006)); see also *Reassessing Solitary Confinement: Hearing Before the Sen. Judiciary Subcomm. on Constitution, Civil Rights and Human Rights*, 112th Cong. (June 19, 2012) (testimony of Craig Haney, Professor of Psychology, University of Santa Cruz) (discussing the health dangers of solitary segregation).

<sup>23</sup> See *supra* Part I.A.



likely to develop conditions because of extended periods of isolation, anxiety, and substandard treatment.<sup>24</sup>

Asylum seekers are particularly vulnerable as many arrive having escaped loss, persecution, harassment, rape, or torture, followed by the stress of leaving their home and often their families behind.<sup>25</sup> One study found that 74% of detained asylum seekers had been tortured before arriving to the United States, 67% had been imprisoned in their country of origin, 59% reported a murder of a family member or friend, and 26% reported having been sexually assaulted prior to immigrating.<sup>26</sup> The mental health issues associated with this population were striking: 77% had clinically significant symptoms of anxiety; 86% of depression; and 50% of PTSD.<sup>27</sup> Of these detainees, 26% reported thoughts of suicide while in detention, and just under 3% reported attempting suicide.<sup>28</sup> Asylum seekers who entered detention exhibiting symptoms of anxiety, depression, and PTSD

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<sup>24</sup> See Schriro, *supra* note 6, at 25; *Mental Health Cases in Immigration Detention*, *supra* note 22, at 1.

<sup>25</sup> Christina Pourgourides, *A Second Exile: The Mental Health Implications of Detention of Asylum Seekers in the UK*, 21 *Psychiatric Bull.* 673 (1997).

<sup>26</sup> Allen Keller et al., *Mental Health of Detained Asylum Seekers*, 362 *Lancet* 1721, 1722 (2003).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

developed elevated symptoms over the course of their detention.<sup>29</sup> Conversely, detainees who exhibited symptoms while detained showed significant improvement after release from detention.<sup>30</sup> Regardless of whether a detainee is an asylum seeker or detained on other grounds, the immigration detention system is simply not equipped to provide quality mental health care to long-term detainees.

### ***C. Prolonged Detention Causes Economic Harm to Detainees***

Lawful permanent residents, along with other immigrants legally eligible to work in the United States, are included in the class of individuals subject to long-term detention.<sup>31</sup> The economic hardship imposed from being unable to work for long periods of time is clear,<sup>32</sup> and is especially pronounced for immigrants, who

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See Peter L. Markowitz et al., *Accessing Justice: The Availability And Adequacy of Counsel In Removal Proceedings*, 33 *Cardozo L. Rev.* 357, 358 (2011) (“[I]ndividuals who face removal proceedings might be . . . the long-term lawful permanent resident.”); Constitution Project, *Recommendations for Reforming our Immigration Detention System and Promoting Access to Counsel in Immigration Proceedings* 22 (2009) (noting that lawful permanent residents involved in removal proceedings “may have held long term-jobs in this country”); see also U.S. Citizenship and Immigration Servs., *Instructions for I-765, Application for Employment Authorization* 1-6 (2012) (listing classes of aliens temporarily in the United States able to apply for work, including asylees/refugees, certain nationality categories, and others), available at <http://www.uscis.gov/files/form/i-765instr.pdf>.

<sup>32</sup> See Ajay Chaudry et al., The Urban Inst., *Facing Our Future: Children in the Aftermath of Immigration Enforcement* 27 (2010) (noting families “generally lose[] a breadwinner” during immigration detention); Human Rights Watch, *Jailing Refugees: Arbitrary Detention of Refugees in the US Who Fail to Adjust to*

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often have low-income employment.<sup>33</sup> Immigrants in extended detention almost invariably lose their jobs, and thus income for necessities, including food and shelter for their families.<sup>34</sup> Many immigrants are forced to foreclose on their homes as a direct result of prolonged detention.<sup>35</sup> For the few detainees fortunate enough to be able to hire a lawyer, the concurrent inability to work and the assumption of legal expenses exacerbates the economic harm imposed by prolonged detention.<sup>36</sup>

An individual's ability to work is hindered not only during detention, but also after release because of the stigma associated with detention. It is often impossible for a detainee to regain his previous employment after being absent for

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*Permanent Resident Status* 36 (2009) (noting that the detention of refugees “results in loss of jobs”).

<sup>33</sup> See Randy Capps et al., The Urban Inst., *A Profile of the Low-Wage Immigrant Workforce* 6 (2003) (nearly half of immigrants earn less than twice minimum wage).

<sup>34</sup> See *infra* Part II. for discussion of the economic impact of prolonged detention on families.

<sup>35</sup> See Heeren, *supra* note 9, at 622 (immigrant lost his home as a result of three-year long detention); see also Chaudry, *supra* note 32, at ix, 30-31.

<sup>36</sup> See *Nat'l Ctr. for Immigrants Rights, Inc. v. INS*, 743 F.2d 1365, 1369 (9th Cir. 1984) (noting that the “hardship from being unable to work . . . to pay for legal representation is beyond question”).

months or years, and employers may avoid hiring formerly detained immigrants because they are “afraid of having problems with ICE.”<sup>37</sup>

***D. Prolonged Detention Causes Legal Harm to Detainees***

Individuals subjected to prolonged detention face significant obstacles to asserting their legal rights, both in immigration proceedings and in other legal proceedings. The vast majority of detainees – over 80% – lack counsel in immigration proceedings.<sup>38</sup> From 2007 to 2011, over 700,000 immigrants faced the possibility of removal without the benefit of legal counsel.<sup>39</sup> Having a lawyer in these proceedings is crucial: “the outcome of immigration cases depend[s] largely on access to counsel; [a]bout 67 percent of all immigrants with counsel during [a] five-year period had successful outcomes in their cases, while only

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<sup>37</sup> See Chaudry, *supra* note 32, at 28.

<sup>38</sup> See Semuteh Freeman & Lauren Major, N.Y.U. Sch. of Law Immigration Policy Ctr., *Immigration Incarceration: The Expansion and Failed Reform of Immigration Detention in Essex County, NJ* 31 (2012) (“Only 16 percent of immigration detainees nationwide have legal representation.”); Amnesty Int’l, *Jailed Without Justice: Immigration Detention in the USA* 30-32 (Mar. 2009) [hereinafter *Jailed without Justice*]; Jacob Chin et al., *Attorneys’ Perspectives on the Violation of the Civil Rights of Immigrants Detained in Minnesota*, 42 CURA Reporter 16, 19 (Spring/Summer 2010) (“the majority of immigrants nationwide go through immigration court proceedings without representation.”).

<sup>39</sup> See U.S. Dep’t. of Justice, Exec. Office for Immigration Review, *FY 2011 Statistical Year Book G1* (2012) [hereinafter *FY 2011 Year Book*] available at <http://www.justice.gov/eoir/statspub/fy11syb.pdf>.

8 percent of those without lawyers prevailed.”<sup>40</sup> These results are not surprising; without a lawyer, *pro se* immigrants “enter the system without any understanding of the process before them, much less of the grounds for relief that may be available to them.”<sup>41</sup> Yet, when it comes to procuring legal representation, long-term detainees are at a distinct disadvantage as many are held in remote locations far from legal services and have little ability to contact or pay for representation.<sup>42</sup>

Irrespective of whether a detainee has legal counsel, the circumstances of long-term detention render effective representation nearly impossible. Despite standards requiring access to legal resources, detention facilities often have inadequate resources available, and limited materials in languages other than

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<sup>40</sup> Freeman & Major, *supra* note 38, at 32 (footnote and internal quotation marks omitted); *see also* Markowitz, *supra* note 31, at 383 (finding “a high correlation between representation and successful outcomes”); Am. Bar Ass’n, Comm’n on Immigration, *Reforming The Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases* 5-3 (2010) [hereinafter *Reforming The Immigration System*] (“[T]he disparity in outcomes of immigration proceedings depending on whether noncitizens are unrepresented or represented is striking.”).

<sup>41</sup> *See* Appleseed, *Assembly Line Injustice: Blueprint to Reform America’s Immigration Courts* 29 (2009); *Reforming The Immigration System*, *supra* note 40, at 5-10.

<sup>42</sup> *See* Markowitz, *supra* note 31, at 369 (study of detainees in New York concluded that representation rates for detainees transferred out of state were “dismal”); *Reforming The Immigration System*, *supra* note 40, at 5-9 (stating that “remote facilities . . . and the practice of transferring detainees from one facility to another - often more remote - location without notice stand in the way of retaining counsel for many detainees”).

English.<sup>43</sup> Detainees attempting to gather evidence or contact a lawyer must make telephone calls, but making a phone call is, at best, challenging.<sup>44</sup> Routine confiscation of personal items and cellular telephones limits detainees' access to contact information for those who could offer assistance. Assuming a detainee is able to locate contact information, the detainee must pay to make phone calls, a cost that many long-term detainees find prohibitive.<sup>45</sup> If detainees are able to successfully make a call, the recipient may not answer, forcing the detainee to leave a message. Many detention facilities' phone systems, however, do not allow outgoing messages.<sup>46</sup> Assuming a detainee is able to leave a message, the detainee likely will not be available if and when the recipient returns the call. Moreover,

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<sup>43</sup> See Schriro, *supra* note 6, at 23; Org. of Am. States, Inter-American Comm'n. on Human Rights, *Report on Immigration in the United States: Detention and Due Process* 117 (2010); Nina Rabin, Univ. of Ariz., *Unseen Prisoners: A Report on Women in Immigration Detention Facilities in Arizona* 33 (2009) [hereinafter *Unseen Prisoners*] (finding multiple Arizona detention facilities fail to comply with detention standards providing for access to legal resources like law libraries).

<sup>44</sup> See *Unseen Prisoners*, *supra* note 43, at 29-30.

<sup>45</sup> See Ruben Loyo & Carolyn Corrado, N.Y.U. Sch. of Law, Immigrant Rights Clinic, *Locked Up but Not Forgotten: Opening access to family and community in the immigration detention system* 23 (2010); see generally U.S. Gov't Accountability Office, *GAO-07-875, Alien Detention Standards: Telephone Access Problems Were Pervasive at Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance* 15-17 (2007) (discussing deficiencies with phone system).

<sup>46</sup> See *Unseen Prisoners*, *supra* note 43, at 30.

according to a recent survey, “78 percent [of detainees] were in facilities where lawyers were prohibited from scheduling private calls with clients.”<sup>47</sup>

Mail communication is not an effective alternative. In addition to being slow and costly, mail is an unreliable means of communication for long-term detainees because they may be transferred between immigration detention facilities. Between 1998 and 2010, 52% of detainees were transferred at least once, and 46% were moved multiple times,<sup>48</sup> and the likelihood of multiple transfers is higher the longer one was detained.<sup>49</sup> With no mail forwarding, mail intended for the detainee is often returned or lost due to these transfers. While recent DHS policy changes may help limit problematic transfers,<sup>50</sup> they will not eliminate them altogether. Long-term detention facilities are also often located far

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<sup>47</sup> Nat’l Immigrant Justice Ctr., *Isolated in Detention: Limited Access to Legal Counsel in Immigration Detention Facilities Jeopardizes a Fair Day in Court* 4 (2010).

<sup>48</sup> See Human Rights Watch, *A Costly Move: Far and Frequent Transfers Impede Hearings for Immigrant Detainees in the United States* 1, 17 (2011).

<sup>49</sup> Aarti Kohli et al., Univ. of Cal., Berkeley Sch. of Law, Chief Justice Earl Warren Inst. on Law & Soc. Policy, *Secure Communities by the Numbers: An Analysis of Demographics and Due Process* 10-11 (Oct. 2011).

<sup>50</sup> See U.S. Immigration and Customs Enforcement, *Policy 11022.1: Detainee Transfers*, (2012), available at <http://www.ice.gov/doclib/detention-reform/pdf/hd-detainee-transfers.pdf> (aiming “to minimize, to the extent possible, detainee transfers outside the area of responsibility and to provide cost savings to the agency”); U.S. Immigration and Customs Enforcement, *Performance-Based Detention Standards* 377 (2012), available at [www.ice.gov/detention-standards/2011/](http://www.ice.gov/detention-standards/2011/) (incorporating new detainee transfer policy).

from a detainee's home, effectively isolating the detainee and making it difficult for attorneys, family, and friends to visit and communicate with the detainee in person.<sup>51</sup> Many detainees also have limited English-language skills and educational backgrounds, further hindering their ability to communicate, conduct legal research, and gather records essential for their case.<sup>52</sup>

Individuals subject to prolonged detention fight their protracted removal proceedings while being denied the means and assistance necessary to mount an effective defense. This often results in individuals, particularly those appearing *pro se*, waiving legal arguments and making other errors that negatively impact the ultimate determination of their cases. And, of course, immigrants subject to prolonged detention may simply give up on their immigration cases, rather than facing the prospect of continued detention.<sup>53</sup>

Prolonged detention not only harms detainees' immigration cases, but causes harm in other legal proceedings as well. Extended detention often makes it

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<sup>51</sup> See Schriro, *supra* note 6, at 23-24.

<sup>52</sup> See *FY 2011 Year Book*, *supra* note 39, at F-1, Figure 8 (showing percentage of immigration proceedings completed in English was less than 18%); U.S. Census Bureau, *Educational Attainment in the United States: 2009* 2 (2012) ("The percentage of foreign-born Hispanics who had completed at least high school was 48%."); Capps, *supra* note 33, at 3-4.

<sup>53</sup> See *Jailed Without Justice*, *supra* note 38, at 20; see also Susan Coutin, *Confined Within: National territories as zones of confinement*, 29 *Pol. Geography* 200, 204

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impossible for detainees to comply with legal obligations or court orders. Most notably, this problem raises serious concerns in the context of parental rights, where the possibility of legal harm is inexorably intertwined with the length of time a parent is separated from the child, thus subjecting parents in long-term detention to distinct harms.<sup>54</sup>

## **II. Prolonged Detention Harms the Families of Detainees, Especially Children**

Prolonged detention adversely affects detainees' families, especially children. Immigration detainees have minimal contact with their families during prolonged detention. Detained immigrants are transported an average of 370 miles from the location of their initial detention, making regular contact with their children and families virtually impossible.<sup>55</sup> In addition, arbitrary transfers between detention facilities impair detainees' ability to communicate with their families.<sup>56</sup> ICE does not inform family members when transfers occur, so relatives

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(2010) (recounting the story of one deportee who gave up his appeal rather than remain in detention any longer).

<sup>54</sup> See *infra* at Part II.

<sup>55</sup> Seth Wessler, Applied Research Ctr., *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* 38 (2011).

<sup>56</sup> See Loyo & Corrado, *supra* note 45, at 1, 9. But see *supra* note 50.

often experience stress and anxiety trying to locate detained family members.<sup>57</sup> In addition, “[m]inor children and their parents often suffer acutely when they are separated by transfer, especially when the detained parent is sent to a location so far away that regular visits become impossible.”<sup>58</sup> Even if accessible, not all long-term facilities provide adequate visitation or contact visits.<sup>59</sup> Further, legitimate fears over being detained themselves may result in non-citizen family members being unable to visit detainees, even if close enough to do so.

Increased anxiety, stress, and depression have been documented in children who have had one or both parents detained during immigration enforcement. A report by the Urban Institute examined the consequences of parental arrest, detention, and deportation on 190 children in 85 families in six locations across the U.S.<sup>60</sup> The report found that children whose parents were held in immigration detention for longer periods were more likely to exhibit adverse changes in sleeping habits and behavior, including increased anger and withdrawal, as compared with children who were reunited with their parents within a month of

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<sup>57</sup> Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States* 79-80 (2009).

<sup>58</sup> *Id.* at 80.

<sup>59</sup> Schriro, *supra* note 6, at 23-24.

<sup>60</sup> Chaudry, *supra* note 32, at vii.

arrest.<sup>61</sup> Beyond the emotional toll on families, the harm imposed by prolonged detention of a parent also translates to quantifiable harms to children's well-being in other areas, such as academic performance.<sup>62</sup>

The extended detention of one or both parents can result in children being removed from the family entirely and placed in foster care. It is estimated that at least 5,100 children currently living in foster care are children whose parents have been either detained or deported.<sup>63</sup> Detention obstructs parent-child communication, which becomes particularly problematic for long-term detainees.<sup>64</sup>

Detained parents are also often unable to access resources needed to meet court mandates, such as parenting classes or visits with the child, or to participate in custody proceedings regarding their children, which may lead to the termination

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<sup>61</sup> *Id.* at 43. Ten parents in the population tracked by the Urban Institute study were detained up to one month and eighteen parents were detained longer than one month. *Id.* at 14.

<sup>62</sup> Kalina Brabeck & Qingwen Xu, *The Impact of Detention and Deportation on Latino Immigrant Children and Families: A Quantitative Exploration*, 32 *Hisp. J. of Behav. Sci.* 341 (2010) (parents with higher levels of legal vulnerability (i.e., personal history of detention) report a greater impact of detention/deportation on the family environment (e.g., relationship with children) and children's well-being (e.g., academic performance)).

<sup>63</sup> Wessler, *supra* note 55, at 6.

<sup>64</sup> Schriro, *supra* note 6, at 24 ("Family visitation is often limited to noncontact visits of fairly short duration. With many facilities a considerable distance away, some families are unable to afford a facility visit. Phone calls are also expensive."); J.D. Kremer et al., Dorsey & Whitney LLP, *Severing a Lifeline: The*

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of parental rights.<sup>65</sup> The risk of inappropriate termination of parental rights is particularly troubling for immigrants subject to prolonged detention. The Adoption and Safe Families Act mandates that proceedings to terminate parental rights be brought if a child is in foster care for 15 out of the most recent 22 months.<sup>66</sup> This poses a serious problem for parents who are detained longer than this period.<sup>67</sup> This danger is not merely theoretical: a study released in May 2011 by the Southwest Institute for Research on Women at the University of Arizona found that personnel in the child welfare system in Pima County, Arizona, had little knowledge of immigration detention facilities, where they were located, or

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*Neglect of Citizen Children in America's Immigration Enforcement Policy* 48 (2009).

<sup>65</sup> Wessler, *supra* note 55, at 8; *see also* The Women's Refugee Comm'n, *Torn Apart by Immigration Enforcement: Parental Rights & Immigration Detention* 10 (2010); The Women's Refugee Comm'n & The Applied Research Ctr., *Maintaining Parental Rights During Immigration Enforcement Actions & Detention* 2 (Nov. 2010) (“[P]arents actually have their parental rights terminated, often because they cannot participate in custody proceedings while they are in detention or because of a bias against immigrant parents in the family courts and child welfare system.”); Editorial, *Immigration & Keeping Families Intact*, L.A. Times (July 31, 2012), <http://articles.latimes.com/2012/jul/31/opinion/la-ed-custody-immigrant-missouri-20120731> (“Experts say parents who are detained or face immigration-related prosecutions often face obstacles communicating with family courts or accessing foster care systems, making it difficult to keep track of their children or assert their rights.”).

<sup>66</sup> 42 U.S.C. § 675(5)(E).

how to communicate with detained parents whose children were in the child welfare system.<sup>68</sup>

The economic impact of prolonged detention also significantly affects family members of detained individuals, many of whom may be U.S. citizens. Nearly two-thirds of families in the Urban Institute study examining the effects of parental arrest, detention and deportation reported difficulty paying household bills at the time of the first interview, and two out of every five families reported missing at least one payment for basic utilities.<sup>69</sup> Most families lost a working parent and as a result nearly three out of five households in the study reported difficulty paying for food “sometimes” or “frequently” in the months following the arrest of one of the parents.<sup>70</sup> One in four families moved in with others to save on housing costs, and half of the observed families that owned their homes prior to parental arrest lost their homes afterward.<sup>71</sup>

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<sup>67</sup> Wendy Cervantes & Yali Lincroft, First Focus & The Migration & Child Welfare Nat'l Network, *The Impact of Immigration Enforcement on Child Welfare* 6 (2010).

<sup>68</sup> Nina Rabin, Univ. of Ariz., *Disappearing Parents: A Report on Immigration Enforcement and the Child Welfare System* (2011).

<sup>69</sup> Chaudry, *supra* note 32, at 29.

<sup>70</sup> *Id.* at ix.

<sup>71</sup> *Id.*

### III. Prolonged Detention Harms Society

Subjecting immigrants to prolonged detention without opportunity for bond is contrary to the public interest and harms society. On a macro scale, prolonged detention is expensive and drains public resources. “The costs of immigration detention have risen dramatically over the past 15 years, as detention capacity has more than tripled — from 108,454 detainees in 1996 to approximately 363,000 in 2010.”<sup>72</sup> In 2011, the United States detained 429,000 immigrants.<sup>73</sup> In its most recent budget proposal, DHS requested nearly \$2 billion — over a third of its budget — to fund detention.<sup>74</sup> This amounts to approximately \$5.4 million per day to detain immigrants, many of whom pose no danger to society whatsoever.<sup>75</sup>

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<sup>72</sup> Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review*, at iii (2011).

<sup>73</sup> U.S. Dep’t of Homeland Security, Office of Immigration Statistics, *Immigration Enforcement Actions: 2011* 5, Table 4 (2012), available at [http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement\\_ar\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf).

<sup>74</sup> U. S. Dep’t of Homeland Sec., *U.S. Dep’t of Homeland Security Annual Performance Report: Fiscal Years 2011-2013, U.S. Immigration and Customs Enforcement Salaries and Expenses, Fiscal Year 2013 Budget Justification 1036* (2011) [hereinafter *FY 2013 Budget Justifications*], available at <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>. The House of Representatives sought to increase the budget for DHS custody operations to \$2.026 billion (an increase of over \$66 million dollars) to fund 1,200 additional beds for immigrant detainees. See Nat’l Immigration Forum, *The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies 2* (2012) [hereinafter *Math of Immigration Detention*], available at

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According to DHS, the average daily rate per detainees for immigration detention is \$122.<sup>76</sup> This number does not square with DHS's own reports and fails to incorporate operating costs; as a result the actual daily cost for detaining a single immigrant is higher, up to \$164 per day,<sup>77</sup> and the cost is only increasing.<sup>78</sup> Looking specifically at long-term detention, the Schriro Report found in 2009 that a significant number of immigrants (2,100) were detained for a year or longer.<sup>79</sup> Based on the above estimates, and assuming that the number of detainees held for one year or longer remained at 2,100 individuals, despite increases in overall number of detentions, the cost of holding 2,100 immigrants for an additional six

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<http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>.

<sup>75</sup> *Math of Immigration Detention*, *supra* note 74, at 2.

<sup>76</sup> *FY 2013 Budget Justifications*, *supra* note 74, at 1111.

<sup>77</sup> *Math of Immigration Detention*, *supra* note 74, at 2 (estimating the actual cost of immigration detention closer to \$164 per day).

<sup>78</sup> The Government's plan to aggressively pursue immigration enforcement while simultaneously attempting to implement and enforce enhanced facility standards and improve the treatment and living conditions of immigrant detainees (*see* Schriro, *supra* note 6, (outlining recommendations)), while necessary, will likely only further increase the cost of detention.

<sup>79</sup> Schriro, *supra* note 6, at 6. Although not specifically addressing prolonged detention, the study found that 5% of immigrants detained by ICE (approximately 19,000 immigrants in 2009) were held in custody for longer than 4 months.

months is between approximately \$47 million to \$63 million.<sup>80</sup> Most of these individuals are held without any hearing to determine whether they pose a threat to society. Conversely, alternatives to detention, such as those identified by the District Court,<sup>81</sup> cost as little as \$0.17 to \$17.78 per day for each immigrant subject to monitoring.<sup>82</sup> Such programs have exceptionally high compliance rates, achieving 93.8% appearance rates in 2010.<sup>83</sup>

On the other side of the equation, detaining productive, contributing members of society and preventing them from working, earning, and spending in our communities presents an opportunity cost for society. Despite common mythology, both documented and undocumented immigrants contribute financially

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<sup>80</sup> Six months equals approximately 182 days. 182 days x \$164 per day = \$29,848 for six months of detention per detainee. \$29,848 x 2,100 detainees = \$62,680,800 to hold 2,100 detainees for six months at a rate of \$164 per day. At \$122 per day, the cost to detain 2,100 immigrants for an additional 6 months is \$46,628,400.

<sup>81</sup> September 13, 2012 Order and Preliminary Injunction (Doc. No. 255), at ¶ 1.

<sup>82</sup> *FY 2013 Budget Justifications*, *supra* note 74, at 1085. *Compare Math of Immigration Detention*, *supra* note 74, at 8 (citing a range of 30 cents to \$14 per day per individual to implement alternatives to detention). The National Immigration Forum estimates that by using such programs and detaining only individuals who have committed violent crimes DHS could reduce the cost of detention by 82%. *Id.*

<sup>83</sup> U.S. Dep't of Homeland Sec., *Congressional Budget Justification: FY 2012, U.S. Immigration and Customs Enforcement Salaries and Expenses 925*, available at <http://www.dhs.gov/xlibrary/assets/dhs-congressional-budget-justification-fy2012.pdf>.



to the U.S. economy. All immigrants pay property and sales taxes.<sup>84</sup> Those authorized to work in the U.S., including legal permanent residents, pay income taxes,<sup>85</sup> and “at least half of unauthorized immigrants pay income taxes.”<sup>86</sup> Add this all up and it amounts to billions in revenue.<sup>87</sup> A 2010 study by the Institute for Taxation and Economic Policy found that households headed by unauthorized immigrants contributed approximately \$11.2 billion in taxes to state and local governments (\$1.2 billion in personal income taxes, \$1.6 billion in property taxes, and \$8.4 billion in sales taxes).<sup>88</sup> And this study did not even address the contributions of immigrants authorized to be in the U.S. These revenues are put at risk by extended detention.

There are also human costs associated with prolonged immigration detention. Long-term detention destabilizes family and community structures and

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<sup>84</sup> See *Golash-Boza*, *supra* note 9, at 148 (citing White House, Economic Report of the President, 2005); Immigration Policy Ctr., *Unauthorized Immigrants Pay Taxes, Too* 1 (2011) [hereinafter *Immigrants Pay Taxes*], available at <http://immigrationpolicy.org/just-facts/unauthorized-immigrants-pay-taxes-too> (noting rent payments incorporate property tax).

<sup>85</sup> *Taxation of Resident Aliens*, IRS, <http://www.irs.gov/Individuals/International-Taxpayers/Taxation-of-Resident-Aliens> (last updated Aug. 23, 2012); *Taxation of Nonresident Aliens*, IRS, <http://www.irs.gov/Individuals/International-Taxpayers/Taxation-of-Nonresident-Aliens> (last updated Aug. 21, 2012).

<sup>86</sup> *Immigrants Pay Taxes*, *supra* note 84, at 1.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 3.

requires both families and communities to go through significant reorganization in order to cope with prolonged absences.<sup>89</sup> This is particularly true where the persons detained provide critical emotional, financial, or political support and leadership to other community members.<sup>90</sup> Such destabilization negatively impacts child development and school-related performance.<sup>91</sup> Further, the constant threat of long-term detention brings about a “pervasive anxiety” in immigrant communities that is unhealthy for individuals and the community at large.<sup>92</sup>

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<sup>89</sup> See David Hernandez, *Pursuant to Deportation: Latinos and Immigrant Detention*, 6 *Latino Stud.* 35, 44 (2008), available at <http://www.palgrave-journals.com/lst/journal/v6/n1/abs/lst20082a.html> (“When considering Latino detainees, gender, for example, can be located as a factor in immigrant detention, in the criminalization of immigrants, the conditions of detention, and in the broader effects on family and community structures which are reorganized due to the absence of detained family members.”); see also Todd R. Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse* 73 (2007) (discussing that in the context of criminal detention, “[i]ncarceration can operate as a kind of ‘coercive mobility’ destabilizing neighborhoods by increasing levels of disorganization . . .”).

<sup>90</sup> See *supra* Part II.; see also Chaudry, *supra* note 32, at 55-68 (documenting the massive community upheaval and reorganization in the wake of coordinated workplace raids resulting in widespread detention of community members).

<sup>91</sup> Clear, *supra* note 89, at 97 (finding that studies show children of incarcerated adults tend to experience difficulties with scholastic performance, depression and anxiety, low-self-esteem, and aggressiveness) (citing John Hagan & Ronit Dinovitzer, *Collateral Consequences of Imprisonment for Children, Communities and Prisoners*, in *Prisons* 121-162 (Michael Tonry & Joan Petersilia, eds. 1999)).

<sup>92</sup> See Hernandez, *supra* note 89, at 38 (noting wide-spread fear among Muslim communities post-9/11 resulting from stringent immigration enforcement is also a common fixture among Mexican immigrant communities targeted for immigration enforcement); Golash-Boza, *supra* note 9, at 113, 147-157.

Finally, the practice of imposing extended detention on immigrants, many of whom pose no danger to society, reinforces the erroneous yet pervasive public perception of immigrants as criminals or “illegal,” which in turn negatively affects communities perceived as being home to immigrant populations.<sup>93</sup>

### **CONCLUSION**

The deleterious circumstances and isolation of prolonged detention, systemic hurdles to effective representation, and staggering time and effort required to prepare and fight removal proceedings take their toll on detainees. It is a sobering reality that on a daily basis the stresses and harms imposed by long-term detention cause detained immigrants to forfeit their legal rights and accept adverse immigration determinations, despite the fact that their cases may well be meritorious. “Because these cases can take years to resolve and wreak havoc on families, . . . mandatory detention often results in the decision to give up the fight

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<sup>93</sup> See Hernandez, *supra* note 89, at 38-39 (discussing criminalization of immigrants and the affect such perceptions have on the entire Latino community); Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 Am. U. L. Rev. 367 (2006) (arguing the confluence of criminal and immigration law acts to exclude immigrants from U.S. society); *Immigration and Crime: Race, Ethnicity, and Violence* (Ramiro Martinez Jr. & Abel Valenzuela Jr., eds., 2006) (debunking the myth of immigrant criminality); Ruben G. Rumbaut & Walter Ewing, Immigration Policy Ctr., *The Myth of Immigrant Criminality and the Paradox of Assimilation: Incarceration Rates Among Native and Foreign-born Men* (2007) (same).

to remain in the United States, even when relief from deportation is available.”<sup>94</sup>

Such decisions have far-reaching consequences for detainees and their families, not the least of which include bars from returning to the United States, a country that the immigrant may have called home for many years or seen as salvation from persecution abroad. The fact that the decision is often motivated primarily by the individual’s inability to cope with the prospect of further prolonged detention without a foreseeable end – a largely remediable by-product of the U.S. immigration system – makes such decisions all the more tragic.

For the foregoing reasons, this Court should affirm the District Court’s Order and Preliminary Injunction.

Date: November 26, 2012

Respectfully submitted,

s/ Angel L. Tang

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Angel L. Tang  
Marco J. Martemucci  
Elizabeth S. St. John  
ARNOLD & PORTER LLP  
777 South Figueroa Street, 44th Floor  
Los Angeles, California 90017  
Telephone: 213.243.4000  
Email: Angel.Tang@aporter.com  
Email: Marco.Martemucci@aporter.com  
Email: Elizabeth.StJohn@aporter.com

*Attorneys for Amici Curiae*

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<sup>94</sup> See *Jailed Without Justice*, *supra* note 38, at 20.

**STATEMENT OF RELATED CASES**

There are no known Ninth Circuit cases related to the case at bar.

**STATEMENT OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 29(d) and Ninth Circuit Rule 32-1, this *amicus* brief is proportionally spaced, has a typeface of 14 points or more and contains 6,914 words.

Date: November 26, 2012

Respectfully submitted,

s/ Angel L. Tang

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Angel L. Tang  
Marco J. Martemucci  
Elizabeth S. St. John  
ARNOLD & PORTER LLP  
777 South Figueroa Street, 44th Floor  
Los Angeles, California 90017  
Telephone: 213.243.4000  
Email: Angel.Tang@aporter.com  
Email: Marco.Martemucci@aporter.com  
Email: Elizabeth.StJohn@aporter.com

*Attorneys for Amici Curiae*

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 26, 2012.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: November 26, 2012

ARNOLD & PORTER LLP

By: s/ Elizabeth S. St. John

*Attorneys for Amici Curiae*

**APPENDIX**

*Amici Curiae*

Prof. Ameena Ahmed  
Assistant Clinical Professor  
Department of Epidemiology and  
Biostatistics  
Box 0560  
University of California,  
San Francisco  
San Francisco, CA 94143-0560

Prof. David C. Brotherton  
Professor and Chair  
Department of Sociology  
John Jay College of Criminal Justice  
City University of New York  
899 10<sup>th</sup> Avenue  
New York, NY 10019

Prof. Irene Bloemraad  
Associate Professor  
Department of Sociology  
University of California, Berkeley  
410 Barrows Hall  
Berkeley, CA 94720-1980

Dr. Todd R. Clear  
Dean  
School of Criminal Justice  
Rutgers University  
123 Washington Street  
Newark, NJ 07102-3094

Prof. Deborah Boehm  
Assistant Professor  
Anthropology and Women's Studies  
University of Nevada, Reno  
Gender, Race, and Identity Program  
Reno, NV 89557-0046

Prof. Susan Bibler Coutin  
Professor of Criminology,  
Law & Society and Anthropology  
Dept. of Criminology, Law & Society  
School of Social Ecology  
University of California, Irvine  
Irvine, CA 92697

Prof. Tanya Golash Boza  
Associate Professor  
School of Social Sciences,  
Humanities and Arts  
University of California, Merced  
5200 North Lake Road  
Merced, CA 95343

Prof. Joanna Dreby  
Assistant Professor  
Department of Sociology  
University at Albany, State University  
of New York  
Arts and Sciences 327  
1400 Washington Avenue  
Albany, NY 12222

**APPENDIX**

*Amici Curiae*

Prof. David FitzGerald  
Theodore E. Gildred Chair  
in U.S.-Mexican Relations  
Associate Professor of Sociology  
University of California, San Diego  
9500 Gilman Drive  
La Jolla, CA 92093-0548

Prof. Nancy Hiemstra  
Assistant Professor  
Dept. of Cultural Analysis and Theory  
Stony Brook University  
Stony Brook, NY 11794

Prof. Jacqueline M. Hagan  
Professor of Sociology  
Department of Sociology  
University of North Carolina  
at Chapel Hill  
Chapel Hill, NC 27599

Prof. Daniel Kanstroom  
Professor of Law and Director,  
International Human Rights Program  
Boston College Law School  
885 Centre Street  
Newton, MA 02459

Prof. Craig Haney  
Director, Graduate Program in Social  
Psychology and Director, Program in  
Legal Studies  
Department of Psychology  
University of California, Santa Cruz  
Santa Cruz, CA 95064

Aarti Kohli  
Senior Fellow  
Warren Institute on Law  
and Social Policy  
UC Berkeley Law  
215 Boalt Hall  
Berkeley, CA 94720-7200

Prof. David Manuel Hernandez  
Assistant Professor  
Dept. of Spanish, Latina/o, and  
Latin American Studies  
50 College Street  
Mount Holyoke College  
South Hadley, MA 01075

Prof. Charis E. Kubrin  
Associate Professor  
Department of Criminology,  
Law and Society  
University of California, Irvine  
Social Ecology II, Room 3379  
Irvine, CA 92697-7080



**APPENDIX**

*Amici Curiae*

Dr. Jenna M. Loyd  
Post Doctoral Fellow  
318 Tolley Hall  
Humanities Center  
Syracuse, NY 13244

Prof. Nestor P. Rodriguez  
Professor of Sociology  
Department of Sociology  
University of Texas at Austin  
Austin, TX 78712

Prof. Ramiro Martinez  
Criminology, Criminal Justice,  
Sociology and Anthropology  
Northeastern University  
360 Huntington Avenue  
Boston, MA 02115

Prof. Ruben G. Rumbaut  
Professor of Sociology  
School of Social Sciences  
University of California, Irvine  
3151 Social Science Plaza  
Mail Code: 5100  
Irvine, CA 92697

Prof. Nina Rabin, Esq.  
Associate Clinical Professor of Law  
Director, Bacon Immigration Law  
and Policy Program  
James E. Rogers College of Law,  
University of Arizona  
1145 N. Mountain  
Tucson, AZ 85719

Prof. Carola Suárez-Orozco  
Professor of Human Development  
and Psychology  
Co-Director, Institute for Immigrant  
Children & Youth  
UCLA-Graduate School of Education  
& Information Studies  
Moore Hall, Room #3128  
405 Hilgard Avenue  
Los Angeles, CA 90095

Prof. Keramet Reiter  
Assistant Professor  
Criminology, Law & Society  
& School of Law  
University of California, Irvine  
3373 Social Ecology II  
Irvine, CA 92697-7080

Prof. Jonathan Simon  
Adrian A. Kragen Professor of Law  
UC Berkeley School of Law  
215 Boalt Hall  
Berkeley, CA 94720-7200

**APPENDIX**

*Amici Curiae*

Prof. John D. Skrentny  
Professor of Sociology  
University of California, San Diego  
9500 Gilman Drive  
La Jolla, CA 92093-0548

Prof. Michael Welch  
Criminal Justice  
Rutgers University  
54 Joyce Kilmer Avenue  
Piscataway, NJ 0885

**APPENDIX**  
*Amici Curiae*