No. 14-11421-EE

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MAXI SOPO,

Petitioner-Appellant,

v.

U.S. ATTORNEY GENERAL,
SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY,
ICE FIELD OFFICE DIRECTOR, ATLANTA REGION,
STEWART DC WARDEN,

Respondents-Appellees.

Appeal from the United States District Court for the Middle District of Georgia
(Case No. 4:13-cv-00160-CDL-MSH, Hon. Clay D. Land)

BRIEF OF AMICI CURIAE ALABAMA COALITION FOR IMMIGRANT JUSTICE, AMERICAN IMMIGRATION LAWYERS ASSOCIATION, AMERICANS FOR IMMIGRANT JUSTICE, ASIAN AMERICANS ADVANCING JUSTICE-ATLANTA, CATHOLIC CHARITIES LEGAL SERVICES-ARCHDIOCESE OF MIAMI, EL REFUGIO, FLORIDA IMMIGRANT COALITION, GEORGIA LATINO ALLIANCE FOR HUMAN RIGHTS, HISPANIC INTEREST COALITION OF ALABAMA, AND SOUTHERN POVERTY LAW CENTER IN SUPPORT OF APPELLANT

Rebecca Sharpless
University of Miami School of Law
1311 Miller Drive
Coral Gables, FL 33146
Tel: (305) 284-3576
Fax: (305) 284-6093
rsharpless@law.miami.edu

Eunice Hyunhye Cho
Southern Poverty Law Center
1989 College Ave. NE
Atlanta, GA 30317
Tel: (404) 521-6700
Fax: (404) 221-5857
Eunice.cho@splcenter.org

Michael Vastine
St. Thomas University School of Law
16401 NW 37th Avenue
Miami Gardens, Florida 33054
Tel: (305) 623-2340
Fax: (305) 474-2412
mvastine@stu.edu

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

I, Rebecca Sharpless, attorney for *Amici Curiae*, certify that the Alabama Coalition for Immigrant Justice, American Immigration Lawyers Association, Americans for Immigrant Justice, Asian Americans Advancing Justice-Atlanta, Catholic Charities Legal Services-Archdiocese of Miami, Inc., El Refugio, Florida Immigrant Coalition, Georgia Latino Alliance for Human Rights, Hispanic Interest Coalition of Alabama, and Southern Poverty Law Center do not have any parent corporations or issue stock and consequently there exists no publicly held corporation which owns 10% or more of its stock.

Dated: July 17, 2015 /s/ Rebecca Sharpless

Counsel for Amici Curiae

CERTIFICATE OF INTERESTED PARTIES

I, Rebecca Sharpless, attorney for *Amici Curiae*, certify that, in addition to those parties who have already been disclosed, the following parties have an interest in the outcome of the appeal:

- Alabama Coalition for Immigrant Justice
- Americans for Immigrant Justice
- American Immigration Lawyers Association

- Asian Americans Advancing Justice—Atlanta
- Catholic Charities Legal Services, Archdiocese of Miami, Inc.
- Eunice Cho, Attorney for *Amici Curiae*
- El Refugio
- Florida Immigrant Coalition
- Georgia Latino Alliance for Human Rights
- Hispanic Interest Coalition of Alabama
- Rebecca Sharpless, Attorney for *Amici Curiae*
- Southern Poverty Law Center
- Michael Vastine, Attorney for *Amici Curiae*

Dated: July 17, 2015 /s/ Rebecca Sharpless

Counsel for Amici Curiae

STATEMENT PURSUANT TO FRAP 29(b) and (c)(5)

Pursuant to Federal Rule of Appellate Procedure 29(b), *Amici* state that all parties have consented to the filing of this brief. Pursuant to Federal Rule of Appellate Procedure (c)(5), *Amici* state that no party's counsel authored the brief in whole or in part; no party's counsel contributed money that was intended to fund preparing or submitting a brief; no person other than *Amici Curiae* or their counsel contributed money intended to fund preparing or submitting the brief.

Dated: July 17, 2015

/s/ Rebecca Sharpless

Counsel for Amici Curiae

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INTEREST OF THE *AMICI CURIAE*

Amici Curiae are a professional trade association and nine non-profit organizations dedicated to promotion of justice for immigrants. Through their experiences as attorneys and advocates for immigrants, *Amici* have gained extensive knowledge of the ways in which prolonged mandatory detention affects our nation's immigrants and their families and communities. *Amici* submit this brief to demonstrate the devastating real-life consequences of the federal government's mandatory detention practice for immigrants and their families in this Circuit, many of whom are long-time permanent residents with family, jobs, and homes in the United States.

The Alabama Coalition for Immigrant Justice (ACIJ) is a grassroots, statewide network of individuals and organizations that works to advance and defend the rights of immigrants in Alabama. The coalition consists of six non-profit organizations, fourteen grassroots immigrant community organizations, and hundreds of individual members. ACIJ has seen first-hand the devastating impact prolonged detention without opportunities for bond hearings can have on its members and their families. Its members and their families are and will continue to be directly impacted by the outcome of this case.

The American Immigration Lawyers Association (AILA) is a national association with more than 13,000 members throughout the United States and abroad, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to advance the administration of law pertaining to immigration, nationality and naturalization; to cultivate the jurisprudence of the immigration laws; and to facilitate the administration of justice and elevate the standard of integrity, honor and courtesy of those appearing in a representative capacity in immigration and naturalization matters. AILA's members practice regularly before the Department of Homeland Security and before the Executive Office for Immigration Review, as well as before the United States District Courts, United States Courts of Appeals, and United States Supreme Court.

Americans for Immigrant Justice (formerly Florida Immigrant Advocacy Center) is a non-profit law firm dedicated to promoting and protecting the basic rights of immigrants. Part of its mission is to ensure that immigrants are treated justly, and to help bring about a society in which the contributions of immigrants are valued and encouraged. In Florida and on a national level, Americans for Immigrant Justice champions the rights of unaccompanied immigrant children; advocates for survivors of trafficking and domestic violence; serves as a watchdog on immigration detention

practices and policies; and speaks for immigrant groups who have particular and compelling claims to justice.

Asian Americans Advancing Justice-Atlanta (formerly Asian American Legal Advocacy Center) (AAAJ-Atlanta) is the first non-profit law center dedicated to promoting the civil, social, and economic rights of Asian immigrants and refugees in the Southeast. AAAJ-Atlanta is one of five independent organizations that make up the national Asian Americans Advancing Justice. Together with its affiliates in Chicago, DC, Los Angeles and San Francisco, AAAJ-Atlanta brings more than 100 years of collective experience in addressing the civil rights issues faced by Asian Americans and other vulnerable and underserved communities.

Catholic Charities Legal Services, Archdiocese of Miami, Inc. (CCLS) is a not-for-profit corporation with the express mission of providing legal representation and immigration services for those who come to South Florida from foreign lands. Currently, CCLS is the largest provider of pro bono and low-cost immigration services in the State of Florida. Nearly two thousand migrants and refugees seek the services of CCLS each month. Among them include mothers longing to be reunited with their children; political and religious refugees seeking security; religious workers offering their ministry to our faith communities; and battered spouses and their

children seeking safety. Many clients include foreign nationals who face deportation, or have been deported, based on invalid and unconstitutionally obtained convictions they have challenged in post-conviction and appellate proceedings.

El Refugio is a social justice ministry that serves detained immigrants and their families at Stewart Detention Center in Lumpkin, Georgia. El Refugio opens its doors each weekend to families traveling to visit their loved ones at Stewart and offers food and lodging free of charge, and also friendship and comfort to visitors. In addition, El Refugio has a visitation program which brings hundreds of volunteer visitors every year to visit with detained immigrants. El Refugio coordinators also offer education and advocacy programs throughout the Southeastern United States, with the goal of promoting a more just and humane immigration system.

The Florida Immigrant Coalition (FLIC) is a not-for-profit organization that includes over fifty member organizations working with immigrants throughout the state of Florida. FLIC and its member organizations advocate for, and provide services to immigrants throughout the state, including monitoring of conditions in detention.

The Georgia Latino Alliance for Human Rights (GLAHR) is a community-based organization that educates, organizes, and empowers

Latinos and immigrants living in Georgia to defend and advance their human rights. GLAHR's members include immigrant detainees and their families who are directly affected by the practice of prolonged detention without the opportunity for bond hearings.

The Hispanic Interest Coalition of Alabama (¡HICA!) is a non-profit organization dedicated to the social, civic, and economic integration of Hispanic families and individuals in Alabama. ¡HICA! engages and empowers Alabama's Hispanic community and its numerous cultures as an economic and civic integrator, social resource connector, and statewide educator. ¡HICA! serves immigrant families in Alabama that are affected by immigration detention and deportation programs through its Immigration and Access to Justice Program.

The Southern Poverty Law Center (SPLC) fights all forms of discrimination and works to protect society's most vulnerable members through litigation, education, and monitoring organizations that promote hate. The Immigrant Justice Project of the SPLC addresses the unique legal needs of immigrant communities including immigrant detainees and immigrant workers in administrative, state, and federal courts throughout the southern United States, including Alabama, Florida, Georgia, Louisiana, and Mississippi.

STATEMENT OF THE ISSUE

The case of Maxi Sopo presents an issue of exceptional importance to *Amici* and the many immigrants for whom they advocate: whether immigration authorities can detain individuals in removal proceedings without any opportunity for a bond hearing, for unreasonably long periods of time. For the last forty-two months, Immigration and Customs Enforcement (ICE) has detained Mr. Sopo while an immigration judge and the Board of Immigration Appeals (BIA) decide his case. The federal government interprets the pre-removal order detention statute, 8 U.S.C. § 1226(c), as mandating that Mr. Sopo be deprived of a bond hearing and held indefinitely until his immigration court case is resolved. Although Mr. Sopo filed a habeas petition requesting a bond hearing, the magistrate judge accepted the government's argument and denied his petition, which the district court summarily approved. To date, not one U.S. Court of Appeals has agreed with the government's position. And no less than three U.S. Courts of Appeals have rejected it.

SUMMARY OF THE ARGUMENT

Many men and women in unreasonably prolonged, pre-removal order immigration detention in Alabama, Florida, and Georgia possess compelling

claims against deportation. During their detention, they endure lengthy and complex legal proceedings and abusive detention conditions. These individuals are married to U.S. citizens, have U.S. citizen children, and care for U.S. citizen parents. They have served honorably in support of our nation's military. They have operated businesses and have contributed to our communities. Some have been victims of domestic violence, trafficking, or other crimes, or suffer from serious illness while detained. Some face persecution or torture in their home countries. Often their last contact with the criminal justice system was years, if not decades, ago.

Despite the reality that many present no danger to the community and no risk of flight, these individuals suffer unnecessary months and years separated from loved ones at great cost, often losing homes, income, relationships, and careers while detained. Without the opportunity for release on bond, these individuals must struggle with the decision of whether to endure the heavy burden of prolonged detention or to abandon their legal claims and return to a country that is often unfamiliar and sometimes dangerous. These costs are not borne by immigrant detainees alone: immigration detention costs U.S. taxpayers $5.46 million per day.[1]

[1] National Immigration Forum, *Detention Costs Still Don't Add Up to Good Policy* (Sept. 24, 2014), *available at*

An understanding of how prolonged detention operates in actual cases in this Circuit, and its impact on immigrant detainees and their families, is essential to the Court's analysis in this case. The Court must consider whether whether the mandatory detention statute, 8 U.S.C. § 1226(c), authorizes the continued detention of Mr. Sopo and others like him without the opportunity for a bond hearing, in light of the Due Process Clause. This brief provides a portrait of only a handful of the many individuals who have needlessly languished in immigration detention without the opportunity for bond and serves as a reminder of the human and social costs of prolonged detention.

ARGUMENT

I. Legal Context

When the Supreme Court upheld mandatory pre-removal order detention in *Demore v. Kim*, it did so with the understanding that removal proceedings, and the accompanying deprivation of liberty, would be "brief." 538 U.S. 510, 513 (2003). The Court explicitly relied on the government's representations that removal proceedings spanned on average "roughly a month and a half in the vast majority of cases" and five months for cases

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https://immigrationforum.org/blog/detention-costs-still-dont-add-up-to-good-policy/.

involving a BIA appeal to affirm detention with a bond hearing "for the limited period" governed by § 1226(c). *Id.* at 530-31. Justice Kennedy, who supplied the fifth vote necessary to the majority opinion, emphasized in his concurrence that the Due Process Clause may require "individualized determination as to [an alien's] risk of flight and dangerousness if the continued detention [under § 1226(c)] became unreasonable or unjustified." *Id.* at 532 (Kennedy, J., concurring). He observed that § 1226(c) may well raise constitutional concerns "[w]ere there to be an unreasonably delay" in completing a noncitizen's removal proceedings that prolonged his detention. *Id.*

Indeed, every Court of Appeals to have to addressed the issue presented since *Demore* has agreed that 8 U.S.C. § 1226(c) does not authorize mandatory detention for an unreasonable period of time. *See Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2004). Nonetheless, as the stories presented here illustrate, the government routinely subjects individuals to mandatory detention in this Circuit that far exceed the "brief period" for removal proceedings contemplated in *Demore*. Although immigration courts prioritize adjudication of cases for people who are detained, many people detained in

this Circuit, particularly those who ultimately prevail in their cases, are detained for well over six months while pursuing their claims. From the most recent, publicly available data, seventy-eight people were detained in the Eleventh Circuit for six months or longer, with the longest period being over twenty-eight months.[2]

II. Individuals with Meritorious Claims Are Subject to Unnecessary and Prolonged Detention While Litigating Their Cases.

Immigration and Customs Enforcement (ICE) detains many people with bona fide defenses to, or claims to relief from, removal. ICE requires these individuals to surrender their liberty for unreasonable periods of time in exchange for the opportunity to defend themselves against deportation. These detained men and women must decide whether to endure this heavy cost, or to abandon their efforts and return to a country that may be largely unfamiliar, or for those who fear persecution, may pose grave danger to their lives. Such detention is plainly unreasonable. As the Third Circuit explained, courts should not "'effectively punish' these aliens for choosing to exercise their legal right to challenge the Government's case against them . . . ."

[2] Immigration and Customs Enforcement, Database Released in Response to Freedom of Information Act Request No. 2009 FOIA 1238, filed by American Civil Liberties Union (Jan. 12, 2012) (on file with authors).

Chavez-Alvarez v. Warden York Cnty. Prison, 783 F.3d 469, 476 (3d Cir. 2015); *see also Ly*, 351 F.3d at 271-72.

Litigating an ultimately successful challenge to removal may require many months, even years, of litigation involving close analysis of state penal codes and complex immigration statutes, requiring decisions from U.S. Courts of Appeals and even the U.S. Supreme Court. The prolonged detention of such individuals comes at an enormous human cost to them and their families, and at tremendous economic cost to U.S. taxpayers. These men and women often suffer months, or even years, of separation from their families, and face the loss of their income, homes, and careers during their detention.

A. Ronel Ramos Spent Fourteen Months Separated from His Family in Immigration Detention Before Winning His Case.

The case of Ronel Ramos illustrates the cost borne by immigrant detainees and their families as they contest their deportation. Mr. Ramos, a longtime lawful permanent resident and the father, son, and sibling of U.S. citizens, endured fourteen months in immigration detention, as well as over two years outside the United States, before he ultimately won his case.

Mr. Ramos immigrated to the United States from the Philippines at the age of seven. In 2004, at the age of twenty-two, Mr. Ramos pled guilty to

a shoplifting charge for taking three video game cartridges from Costco and was sentenced to a one year suspended sentence to be served on probation, community service, and a fine.[3] Mr. Ramos successfully completed the terms of his punishment. Two years later, Mr. Ramos became a father.

In November 2010, more than five years after Mr. Ramos had completed probation, ICE detained him and started removal proceedings against him. At the time he was detained, Mr. Ramos held a steady job as a kitchen manager at a local restaurant and provided care and support for his family, including his young U.S. citizen son.

Before the Immigration Judge and the BIA, ICE argued that Mr. Ramos's shoplifting offense made him an aggravated felon. This Court held otherwise, *see Ramos v. U.S. Att'y Gen.*, 709 F.3d 1066, 1067 (11th Cir. 2013), but not before ICE had detained Mr. Ramos for over a year and physically deported him to the Philippines. Separated from his family, Mr. Ramos was unable to provide for and be present for his family in the United States, missing key landmarks in his son's early life. He returned to the U.S.

[3] ICE also charged Mr. Ramos with deportability for having been convicted of crimes involving moral turpitude, but it dropped this charge following this Court's remand. Post-remand, an immigration judge rejected ICE's alternative charge that Mr. Ramos was deportable for marijuana possession offenses.

in November 2014, after an Immigration Judge found that ICE failed to prove the remaining charges against him.

Mr. Ramos now lives and works in Georgia. Despite his success in proving his claim, Mr. Ramos and his family endured lengthy separation during his immigration proceedings, which may have been avoided if he had been eligible for release on bond.

B. Julio Alberto Maceda-Borges Spent a Year in Immigration Detention Because of the Immigration Judge's Error.

The case of Julio Alberto Maceda-Borges further illustrates how individuals with strong claims to relief remain unnecessarily detained without the opportunity for bond, particularly where denials in immigration courts are based on an erroneous interpretation of the law. Mr. Maceda-Borges came to the United States as a child with his family on an L-2 visa. He became a lawful permanent resident two years later, in 2004. Mr. Maceda-Borges served our country as a member of the Reserve Officers' Training Corps and has extensive family ties to the United States.

In 2011, Mr. Maceda-Borges was arrested for possession of cannabis with intent to sell or deliver and for possession of drug paraphernalia. One year later, he was sentenced to eighteen months of probation. In January

2013, when Mr. Maceda-Borges was reporting to his probation officer, ICE detained him and alleged that he was removable.

Mr. Maceda-Borges applied for cancellation of removal. Although the Immigration Judge concluded that Mr. Maceda-Borges would otherwise merit relief, the Judge erroneously concluded that he had been convicted of an aggravated felony and was therefore not eligible to apply. Only after the BIA reversed the Judge's decision was Mr. Maceda-Borges released, 364 days after ICE had detained him.

C. Jean Herold Jean-Pierre, a Gravely Ill AIDS Patient, Was Needlessly Detained for Three Years Before Prevailing in His Convention Against Torture Claim.

In many cases, individuals must choose between lengthy and often indefinite detention without the opportunity for bond while litigating their cases, or certain peril upon removal from the United States. The case of Mr. Jean Herold Jean-Pierre, a native of Haiti, illustrates this weighty dilemma. Mr. Jean-Pierre, a gravely ill AIDS patient suffering from blindness and memory impairment, spent more than three years in immigration detention before this Court concluded that the Immigration Judge and the BIA improperly denied his petition for deferral of removal under the Convention Against Torture. *See Jean-Pierre v. U.S. Att'y Gen.*, 500 F.3d 1315 (11th Cir. 2007).

Mr. Jean-Pierre's detention began in May 2005, when ICE filed removal charges and detained him on the basis of prior convictions for trafficking of cocaine. Mr. Jean-Pierre, however, petitioned for deferral of removal, based on the likelihood that he would be subject to indefinite detention in a Haitian prison and torture upon his return. Although Mr. Jean-Pierre presented a significant amount of individualized expert evidence concluding that he would likely be tortured, the Immigration Judge and the BIA denied his claim. After this Court reversed the BIA and remanded his case, the Immigration Judge granted him deferral of removal. Mr. Jean-Pierre was detained throughout the proceedings, until July 2008, over three years after he was first detained. Mr. Jean-Pierre now lives in Ft. Pierce, Florida with his fiancé and has begun the long process of recuperating from a recent stroke.

D. Mr. M-P- Was Detained for Nearly 15 Months, Despite a Valid Application for a U Visa.

The case of Mr. M-P- illustrates how detention grows prolonged in cases where relief from deportation may be available through U.S. Citizenship and Immigration Services (USCIS). Mr. M-P-, a national of Honduras, was abandoned by his parents as a young child and came alone to the United States as a teenager. In December 2011, ICE detained Mr. M-P-

and started removal proceedings against him based on a conviction for possession of cocaine. While detained, Mr. M-P- applied to the Immigration Judge for asylum and to USCIS for a nonimmigrant U visa.[4] The Immigration Judge denied Mr. M-P-'s motion to continue the case to give USCIS time to adjudicate the U visa application, instead ordering him removed.

On January 4, 2013, the BIA overturned the Judge's decision and remanded the case. On remand, the Immigration Judge terminated proceedings against Mr. M-P- and ICE released him after nearly fifteen months of detention. USCIS approved the U visa and Mr. M-P- was able to return to living with his partner and their two children, the second of whom was born while Mr. M-P- was in detention.

E. Mr. J-P-L-, a Victim of Human Trafficking, Accepted Removal Because He Could No Longer Bear His Lengthy Detention.

Individuals with meritorious cases sometimes decide to give up and accept removal because the experience of detention is unbearable. Mr. J-P-L- was both a victim of human trafficking and prolonged immigration

[4] A non-immigrant U visa is available to victims of specified violent crimes and their immediate family members if they are certified as having cooperated with law enforcement. 8 U.S.C. § 1101(a)(15)(U). Mr. M-P-'s U visa was based on his young daughter's petition, who was the victim of an armed robbery.

detention during his time in the United States. A laborer from Mexico, he worked as a migrant farmworker for an agricultural enterprise in Florida under conditions of extreme exploitation and coercion. With his cooperation as a testifying witness, federal officials successfully charged and prosecuted his employers for labor trafficking in the Central District of Florida. After Mr. J-P-L- testified in this case, however, ICE detained him in late 2010 and charged him with removability. In June 2011, over six months after the start of his detention, the Immigration Judge granted Mr. J-P-L- withholding of removal, but ICE appealed the decision. Americans for Immigrant Justice and the World Organization for Human Rights submitted an *amicus* brief in support of his case. In October 2011, the BIA remanded the case, but in January 2012, more than a year after Mr. J-P-L- was first detained, the Immigration Judge denied his case. Although Mr. J-P-L- filed a timely appeal, he later withdrew it, despite the strength of his claim. He chose to be removed from the United States because he could no longer bear to be detained. Mr. J-P-L- was later awarded a damages judgment from his separate civil labor trafficking suit, but because his counsel could not locate him after his removal to Mexico, he never received his award.

III. Immigration Proceedings Are Often Lengthy Due to Multiple Remands by the Board of Immigration Appeals.

Individuals in immigration detention routinely endure even lengthier legal proceedings because the BIA must correct errors on the part of immigration judges, sometimes on multiple occasions. Consider the facts of Maxi Sopo's case. Mr. Sopo has zealously litigated against the government's claims that he can be removed from the United States and that he is ineligible for asylum and protection pursuant to the Convention Against Torture. Detained since February 2, 2012, Mr. Sopo has twice successfully appealed his case to the BIA. At the time of the BIA's second remand, August 22, 2014, Mr. Sopo had been detained for 30 months. ICE has now detained Mr. Sopo for an additional eleven months. The timeline of Mr. Sopo's case is not unusual, as each cycle of proceedings before an Immigration Judge and the BIA typically lasts about a year.

The BIA also had to rule two times in the case of Claudia Caballero, a lawful permanent resident since 1993. Ms. Caballero spent over two years in immigration detention before winning her case. ICE detained her in February 2011 because she had been convicted of drug trafficking, drug possession, and theft. As a defense to removal, Ms. Caballero filed for deferral of removal under the Convention Against Torture. She feared being tortured in her home country of Honduras both because she is a lesbian and she had witnessed a massacre in Honduras. In November 2011, the

Immigration Judge denied Ms. Caballero's case. But the BIA reversed the denial and, on remand, Ms. Caballero prevailed before the Immigration Judge. ICE then appealed the decision and denied requests that Ms. Caballero be released during the appeal. On March 4, 2013—over two years from when ICE took Ms. Caballero into custody, the BIA dismissed ICE's appeal. Ms. Caballero was released from detention and reunited with her longtime partner and their two sons in Florida. Ms. Caballero was detained during milestone events in her family, including the birth of her first grandchild.

IV. ICE Subjects Noncitizens Who Pose No Danger or Flight Risk to Prolonged Detention.

ICE regularly detains men and women for lengthy periods whom no one—including immigration judges and ICE officers and attorneys—believes to pose any flight risk or danger to the community. As the following stories demonstrate, ICE has successfully released many individuals detained under Section 1226(c), without any risk of flight or danger. The success of immigration courts in the Central District of California, where bond hearings are required after detention reaches six months in length, also underscores the benefits of this reasonable approach to detention. Since 2013, those held under 8 U.S.C. § 1226(c) in the Central District of

California have been entitled to a bond hearing after six months under an injunction upheld in *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013). Once permitted to hold bond hearings for these individuals, immigration judges have ruled that seven out of ten people warranted release on bond or other condition because they were neither a flight risk nor a danger.[5]

A. Yasmick Jeune, a Transgender Woman, Was Successfully Released on Her Own Recognizance.

Yasmick Jeune, a transgender woman from Haiti whom ICE detained for seventeen months, is an example of someone who manifestly poses no flight risk or danger. An Immigration Judge ordered her released on her own recognizance after she filed a petition for a writ of habeas corpus and the U.S. District Court for the Southern District of Florida ordered a bond hearing in her case.

Ms. Jeune came to the United States when she was sixteen years old and became a lawful permanent resident in 2006. Years later, Ms. Jeune was sentenced to six months of probation for simple drug possession and to time served for possession of a gun that she carried to protect herself from

[5] American Civil Liberties Union of Southern California, *Restoring Due Process: How Bond Hearings Under* Rodriguez v. Robbins *Have Helped End Arbitrary Immigration Detention* (2014), *available at* https://www.aclu.org/sites/default/files/assets/restoringdueprocess-aclusocal.pdf.

homophobic violence. On July 11, 2012, months after her release from criminal custody, ICE detained Ms. Jeune as she was reporting to her probation officer.

Ms. Jeune applied for withholding of removal because she had been repeatedly beaten, threatened with death, and humiliated in Haiti on account of her sexual identity. On October 30, 2012, an Immigration Judge denied her case and she filed an appeal to the BIA. The BIA denied her appeal on March 22, 2013 and Ms. Jeune filed a petition for review and a motion for a stay of deportation with this Court. This Court granted the stay on May 16, 2013. On July 1, 2013, Ms. Jeune filed a petition for writ of habeas corpus in district court challenging her prolonged detention, which at the time was just ten days under a year. The district court granted the petition on December 11, 2013.[6] At a bond hearing later that month, an Immigration Judge found that Ms. Jeune posed neither a flight risk nor a danger to the community and ordered her released on her own recognizance. ICE, acceding to the judge's decision, did not appeal. In 2014, the district court found that the government's position had not been substantially justified and ordered

[6] *Jeune v. Candemeres*, No. 13-22333 (S.D. Fla. Dec. 11, 2013) (order granting writ of habeas corpus).

attorneys' fees under the Equal Access to Justice Act.[7] The government did not appeal.

B. ICE Voluntarily Released Dwight Dion Donawa after He Filed a Petition with This Court.

Dwight Dion Donawa's case further illustrates ICE's ability and willingness to release individuals from detention—particularly after they have filed a federal court action. Mr. Donawa, a citizen of Antigua who has been a lawful permanent resident for just under twenty years, was detained for nine months by ICE. After he filed a petition for review with this Court, ICE voluntarily released him. This Court later ruled in his favor in a published opinion. *See Donawa v. U.S. Att'y Gen.*, 735 F.3d 1275 (11th Cir. 2013).

In 2009, Mr. Donawa was convicted in Florida of possession of cannabis with intent to sell or deliver and possession of drug paraphernalia. Two years later, ICE detained him when he reported to his probation officer. ICE argued that Mr. Donawa was an aggravated felon and therefore ineligible to apply for cancellation of removal, a form of relief from deportation. The Immigration Judge ordered Mr. Donawa removed and he

[7] *Jeune v. Candemeres*, No. 13-22333 (S.D. Fla. Jul. 9, 2014) (order granting attorneys' fees).

appealed to the BIA. After the BIA upheld the judge's decision, Mr. Donawa filed a petition for review with this Court on July 6, 2012.

On August 31, 2012, ICE, without explanation, released Dwight from detention. This Court then granted Mr. Donawa's petition for review, vacating the BIA's order, and remanding the case for a new hearing. *Donawa*, 735 F.3d at 1284. Mr. Donawa spent a total of nine months in immigration detention in county jails throughout Florida. During that time, Mr. Donawa was scheduled for family court hearings relating to his child, whom a state court judge had earlier placed in Mr. Donawa's custody because of the child's mother's inability to care for the child. Mr. Donawa now works and resides in Orlando with his child while his cancellation of removal case remains pending.

C. ICE Released Yong Sun Harvill after She Sued Due to Poor Medical Care of Her Life-Threatening Illness.

The case of Yong Sun Harvill illustrates the human cost of mandatory detention, especially in cases of critical, life-threatening illness. Ms. Harvill is a native of South Korea who spent fifteen months in immigration detention, even though she was suffering from debilitating medical conditions and no one believed she was a flight risk or a danger. Ms. Harvill came lawfully to the United States in 1975 as the nineteen-year-old wife of

an American soldier who had been stationed in Seoul. Shortly after arriving from South Korea, she gave birth to their son. During that time, Ms. Harvill was also diagnosed with cancer. Over the next few decades of her life, Ms. Harvill, who survived domestic violence in this relationship, endured cancer three times.

In 2004, Ms. Harvill came to the attention of ICE after she was convicted of simple possession of marijuana and drug paraphernalia and possession with intent to sell methamphetamine without a prescription. This criminal record triggered removal proceedings, and soon after, ICE detained Ms. Harvill.

Ms. Harvill's health deteriorated significantly while detained in ICE custody. Ms. Harvill was diagnosed with Hepatitis C, liver disease, and chronic lymphedema; she also required regular monitoring for the recurrence of a rare and aggressive cancer. During her detention, a suspicious lump began to grow under her left leg, and her abdomen began to swell and hardened. Despite Ms. Harvill's multiple, life-threatening medical conditions, ICE refused to release her, citing the mandatory detention statute. Instead, ICE transferred Ms. Harvill from Florida to Pinal County Jail in Florence, Arizona, a jail that has been named one of the worst

detention centers in the country.[8] There, Ms. Harvill's condition worsened after she failed to receive the medical attention she required. Ms. Harvill's lawyers filed a lawsuit for her in U.S. District Court in Arizona, challenging her poor medical care.[9] The legal action prompted ICE to release Ms. Harvill in July 2008, while her immigration court case was still pending. Ms. Harvill now lives in Plant City, Florida.

V. ICE Detains Men and Women in Jails and Detention Centers Where Detainees Are Subjected to Abuse and Poor Conditions.

ICE detains men and women in over twenty county and private jails and detention centers throughout Alabama, Florida, and Georgia. Three of the facilities, including the Stewart Detention Center where ICE has held Mr. Sopo, have been included in a list of the ten worst detention centers in the United States.[10] These facilities are designed for short-term detainees, not prolonged detention. Individuals detained for extended periods are more

[8] Detention Watch Network, *Expose and Close: Pinal County Jail, Arizona* (2012), *available at* http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/expose-pinalnov12.pdf.
[9] Steptoe and Johnson, LLP, *Steptoe Wins Immigration Pro Bono Case* (2008), *available at* http://www.steptoe.com/about-success-57.html.
[10] Detention Watch Network, *Expose and Close* (2012), *available at* http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/ExposeClose/Expose-Executive11-15.pdf.

susceptible to abuse, dehumanizing treatment, and substandard conditions, which further compels individuals to abandon meritorious claims.

For example, ICE detained Ms. Jeune for seventeen months before a U.S. District Court Judge ordered a bond hearing in her case. During that period of time, ICE transferred her between five different jails and detention centers in Florida. Each time that ICE moved her, jailers shackled her in leg irons and handcuffs, an experience she described as being treated "like a slave." Ms. Jeune had no visitors while she was in immigration custody because of the frequency of the transfers and the remoteness of the jails where she was held. ICE detained Ms. Jeune with men because she is a biological man with a female gender identity. Jail guards and detainees humiliated her by calling her "faggot" and "homo." On one occasion, a detainee threatened her and tried to touch her body. When she tried to get help, jail staff told her that they could not help her and the only option was for her to be held in solitary confinement, the same cells used to isolate people found to have committed disciplinary infractions.

At another jail, the guards confined Ms. Jeune in isolation and made her scrub the floor, telling her that she belonged there because she is "gay." Ms. Jeune witnessed guards pepper spray detainees and beat and kick detainees while they were on the ground. She reports that detainees were

scared of complaining because they were afraid of being beaten. The conditions were so bad that Ms. Jeuene often thought about abandoning her legal claim. Although Ms. Jeune was released over a year and half ago, she still feels traumatized from her time in detention. She has tried to heal by working hard at her job and attending church.

Stewart Detention Center, where ICE previously detained Maxi Sopo, is a 1,725-bed medium security private prison located in Lumpkin, Georgia, three hours from Atlanta. Conditions in Stewart have been the subject of widespread criticism. In June 2014, detainees mounted a hunger strike to protest conditions. Stewart is well-known to have substandard detention conditions, including overcrowded and unclean cells, inadequate medical care, abusive use of solitary confinement by guards, and instances of physical abuse, and rancid or expired food. [11]

Etowah County Jail, in the remote town of Gadsden, Alabama has also been labeled one of the nation's worst immigration detention centers.

[11] Detention Watch Network, *Expose and Close: Stewart Detention Center, Georgia* (2012), *available at* http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/ExposeClose/Expose-Stewart11-15.pdf; American Civil Liberties Union, *Prisoners of Profit: Immigrants and Detention in Georgia* (2012), *available at* http://www.acluga.org/files/2713/3788/2900/Prisoners_of_Profit.pdf. In one incident, a detainee said that a guard called him and two others "Niggas." When he filed a grievance, guards harassed and retaliated against him. In other cases, guards have reportedly shoved detainees and twisted their arms.

Although the facility is a county jail designed for short-term stays, it holds male immigrants expected to be in detention for an extended period of time. Detainees are particularly vulnerable because of the remote location of the facility, inadequate medical and mental health care, lack of any outdoor recreation or access to fresh air or sunlight, poor phone and visitation access, barely edible food, and minimal programming.[12] Detainees have recently filed civil rights complaints against the facility, alleging that ICE agents have forcibly coerced shackled detainees to sign travel documents, including by beating them.[13]

Even at detention centers currently deemed to be model facilities, individuals may be subjects of abuse.[14] ICE detained Ike Francis, a gay man from Jamaica, at the Krome Service Processing Center in Miami for over a

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[12] Detention Watch Network, *Expose and Close: Etowah County Jail* (2012), *available at* http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/expose-etowahnov12.pdf.

[13] Kate Linthicum, *Lawsuit Claims Detainees Abused at Alabama Detention Center*, LA Times, Jul. 14, 2015, *available at* http://www.latimes.com/local/lanow/la-na-etowah-immigrant-detention-20150714-story.html.

[14] Detainees have also been found to be subject to sexual abuse and other harm at Krome Service Proceeding Center. *See, e.g.* Jay Weaver, *Ex-ICE Agent: I Had Sex with Immigration Detainee*, Miami Herald (Apr. 4, 2008), *available at* http://www.detentionwatchnetwork.org/node/808; Jody A. Benjamin, *Ex-INS Guard Guilty in Sex Case: Female Detainee Abused at Krome*, Sun Sentinel (Oct. 25, 2001), *available at* http://articles.sun-sentinel.com/2001-10-25/news/0110241240_1_krome-ins-guards.

year and a half while his case was pending. While Mr. Francis was detained, a guard contracted by ICE brought him to an empty elevator room that had no camera surveillance, and beat him until he lost consciousness. Mr. Francis suffered severe abrasions and contusions to his face, arms, and knees, a sprained left knee, and a left patella injury. Krome medical staff treated him with prescription pain medication, after which he was transported to a hospital by ambulance, where he was hospitalized for three days. Mr. Francis won his case for relief before the Immigration Judge and he was released after the government did not appeal. He later filed a successful damages suit in U.S. District Court.[15] Mr. Francis now runs a successful business as an auto mechanic in Broward County, Florida.

These stories of abuse, dehumanizing treatment, and substandard conditions in immigration facilities located in the Eleventh Circuit raise significant concerns that individuals, particularly those without access to the opportunity for a bond hearing, may abandon otherwise meritorious claims. The human and social costs of mandatory, prolonged detention thus merit careful consideration by this Court.

[15] *Francis v. Silva, et al.* No. 11-24070 (S.D. Fla. Jun. 14, 2013) (stipulation of dismissal pursuant to settlement); *see also Francis v. Silva,* No. 11-24070 (S.D. Fla. Jan. 24, 2012) (first amended complaint).

CONCLUSION

For the aforementioned reasons, *Amici* urge this Court to REVERSE the district court's denial of Mr. Sopo's petition for habeas corpus.

Respectfully submitted,

/s/ Rebecca Sharpless
Rebecca Sharpless
Immigration Clinic
University of Miami School of Law
1311 Miller Drive
Coral Gables, FL 33146
Tel: (305) 284-3576
Fax: (305) 284-6093
rsharpless@law.miami.edu

Eunice Hyunhye Cho
Southern Poverty Law Center
1989 College Ave. NE
Atlanta, GA 30317
Tel: (404) 521-6700
Fax: (404) 221-5857
Eunice.cho@splcenter.org

Michael Vastine
St. Thomas University School of Law
16401 NW 37th Avenue
Miami Gardens, Florida 33054
Tel: (305) 623-2340
Fax: (305) 474-2412
mvastine@stu.edu

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B), (C), I hereby certify that this brief contains 6,180 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii), as established by the word count of the computer program used for preparation of this brief. This brief complies with the typeface requirements of the Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of the Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word 14-point size Times New Roman font.

/s/ Rebecca Sharpless Dated: July 17, 2015

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 17, 2015, true and correct copies of the foregoing Amicus Brief were served on counsel of record for each of the following parties, by causing same to be deposited in the United States mail properly addressed and with adequate postage affixed, and that the original and six copies of the same were filed by Federal Express to the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit, 56 Forsyth St. N.W., Atlanta, Georgia, 30303.

Joshua D. Branson
David Charles Frederick
Kellogg Huber Hansen Todd
Evans & Figel, PLLC
1615 M St. NW Suite 400
Washington, DC 20036
Counsel for Petitioner

Jeffrey S. Robins
U.S. Department of Justice
OIL-District Court Section
450 5th St. NW, Room 6040
Washington, DC 20001
Counsel for Respondent

J. Max Weintraub
U.S. Department of Justice
Office of Immigration Litigation
PO Box 878 Ben Franklin Station
Washington, DC 20004
Counsel for Respondent

Michael J. Moore
Sheetul S. Wall
U.S. Attorney's Office
PO Box 2568
Columbus, GA 31902-2568
Counsel for Respondent

/s/ Rebecca Sharpless
Counsel for Amici Curiae