

Nos. 13-56706 & 13-56755

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

TIMOTHY ROBBINS, et al.,
Respondents-Appellants,
v.

ALEJANDRO RODRIGUEZ, et al.,
Petitioners-Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
CENTRAL DISTRICT OF CALIFORNIA
No. CV 07-3239-TJH (RNB)**

**AMICUS BRIEF OF 46 SOCIAL SCIENCE RESEARCHERS AND
PROFESSORS IN SUPPORT OF PETITIONERS-APPELLEES / CROSS-
APPELLANTS AND URGING AFFIRMANCE**

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IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae are 46 scholars and researchers in the fields of sociology, criminology, anthropology, psychology, geography, public health, medicine, Latin American studies, and law, whose work relates to incarceration and detention, migrant populations, and the effect of U.S. immigration detention and removal policies 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 summary judgment and ordered, *inter alia*, rigorous bond hearings for all class member immigrant detainees who have been detained by the government for longer than six months pursuant to one of the general immigration detention statutes (i.e., 8 U.S.C. §§ 1226(a), 1226(c), 1225(b), and 1231). The objective of the *amici curiae* in this brief is to provide the Court with an empirically grounded understanding of the individual, familial, and societal harms of detention for prolonged periods of time.

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. Counsel for *amici* contacted both the Government and Petitioners-Appellees and all parties consent to the filing of this brief.

SUMMARY OF ARGUMENT

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. Prolonged detention¹ exacerbates the physical, mental, societal, and economic harms of transitory detention, and presents unique harms and risks of its own. Immigrants held in prolonged detention suffer physically and psychologically from substandard medical and mental health care, inadequate recreation, severely limited visitation, isolation, and increased risk of physical and sexual assault. Detainees' financial and legal interests are also harmed as a result of long-term detention. Beyond these individualized harms, prolonged detention destabilizes families and communities. It also harms society, causing lasting harm to a generation of children impacted by their family members' prolonged detention, and costing taxpayers billions of dollars.

These harms are particularly concerning given the lack of evidence that prolonged detention without individualized consideration of release provides a countervailing societal benefit. Immigration detention serves two purposes: to prevent the release of individuals who present a public safety risk and to ensure

¹ For purposes of this brief, "prolonged" detention and "long-term" detention are defined as detention lasting longer than six months. *Accord Rodriguez v. Robbins*, 715 F.3d 1127, 1136 (9th Cir. 2013).

that individuals do not abscond during their immigration proceedings.² Recent analysis of government data suggests few immigrants subject to mandatory detention, who will face prolonged detention in the absence of the individualized bond hearings ordered by the District Court, in fact present high levels of risk with regard to either public safety or flight.³

The number of immigrant detainees subject to prolonged detention is by no means negligible. For example, in December 2012, U.S. Immigration and Customs Enforcement (“ICE”) held 4,793 individuals who had spent at least six months in immigration detention. The average detention time of these detainees was more than one year, and a dozen of these individuals had already spent between six and eight years in ICE detention.⁴

² Resp’t’s Opening Br. 10.

³ The government recently provided 475 Risk Classification Assessment records from Immigration and Customs Enforcement (“ICE”) databases to Robert Koulish, University of Maryland-College Park, and Mark Noferi, American Immigration Council through Freedom of Information Act (“FOIA”) requests. The records capture all persons upon whom the ICE Baltimore Field Office performed a risk assessment from March to June 17, 2013. ICE uses this risk assessment to evaluate its arrestees’ public safety risk and flight risk prior to determining their detention or release. The data analysis is discussed further, *infra* notes 97-98 and accompanying text. Data is currently on file with Koulish and Noferi and will be publicly available in 2014 through the Migration Policy Institute [hereinafter *FOIA Risk Classification Data*].

⁴ TRAC Immigration, *Legal Noncitizens Receive Longest ICE Detention* (June 3, 2013), <http://trac.syr.edu/immigration/reports/321/> [hereinafter *TRAC Detention Report*].

Notably, many of these individuals are not simply awaiting deportation. Rather, a significant portion of individuals subjected to prolonged detention eventually succeed in having their deportation proceedings closed. Specifically, according to data provided by the government regarding the class certified by the District Court in *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013), out of 595 individuals detained for 180 days or longer in the Central District of California, 30% had already won their immigration cases during the two and a half year study period.⁵ This percentage was even higher for detainees subject to mandatory detention (38% success rate) and asylum seekers (65% success rate).⁶

Amici urge this Court to consider the significant and irreparable harms imposed by prolonged detention, as detailed in this brief, and affirm the District Court's order prohibiting the government's prolonged detention of individuals without demonstration that continued detention is necessary and justified.

⁵ ACLU, *Prolonged Detention Fact Sheet*, https://www.aclu.org/sites/default/files/assets/prolonged_detention_fact_sheet.pdf (last visited Sept. 27, 2014); see also *TRAC Detention Report*, *supra* note 4 (summarizing data on rate of success for those subject to prolonged deportation, “in a perverse way, individuals who [are] legally entitled to remain in the United States typically experience[] the longest detention times.”).

⁶ ACLU, *supra* note 5.

ARGUMENT

I. Prolonged Detention Causes Irreparable Harms to Detainees.

While detention for any length of time harms an individual's liberty interest, prolonged detention results in additional, distinctive harms that are particularly severe, and often irreparable. In particular, individuals subject to prolonged detention suffer four types of harms – physical, psychological, economic, and legal – that differ in degree and kind from those suffered by short-term detainees.

A. The Physical Harms of Prolonged Detention

Extended detention exacerbates a number of risks to the health and safety of immigrant detainees. Long-term detainees suffer from insufficient medical care, sexual assault, severely limited recreation and visitation, the excessive use of solitary confinement, and generally poor conditions that take an increasing toll the longer one remains detained.

1. Insufficient Medical Care

Studies and reports repeatedly document insufficient medical care in immigration detention facilities. In 2008, news reporting on detainee deaths caused a public outcry.⁷ A resulting government investigation led by Department

⁷ 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, Aug. 12, 2008, at A1; Nina Bernstein, *U.S. Agency Issues Scathing Report on Death of Immigrant in its Custody*, N.Y. Times, Jan. 16, 2009, at A14; Nick Miroff, *ICE Facility Detainee's Death Stirs Questions*, Wash. Post,

of Homeland Security (“DHS”) Special Advisor Dr. Dora Schriro in 2009 identified, among numerous concerns, systematic failures to provide adequate medical care in immigration detention facilities, and a wide range in the availability and quality of care between facilities.⁸ As a result, long-term detainees are at increased risk of suffering severe medical harm because of the prolonged nature of their detention.⁹

In response to the Schriro Report, in 2009 the government announced an initiative to improve accountability and safety in detention facilities.¹⁰ However, in the five years since this announcement, many of the problems highlighted by the

Jan. 30, 2009, at C01; Dana Priest et al., *Careless Detention*, Wash. Post, May 11, 2008, at A1.

⁸ Dora Schriro, U.S. Immigration & Customs Enforcement, *Immigration Detention Overview and Recommendations* 25 (2009) (describing the lack of any medical classification system “other than a limited use coding of healthy and unhealthy,” noting that there is “no policy on the maintenance, retention, and centralized storage of medical records,” and stating that “medical care services provided vary considerably by location, as does the staffing in the specialty areas.”).

⁹ See, e.g., Tanya Golash-Boza, *Immigration Nation: Raids, Detentions, and Deportations in Post-9/11 America*, 8 Soc’y Without Borders 313, 313 (2012) (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).

¹⁰ See Press Release, U.S. Immigration & Customs Enforcement, Secretary Napolitano & ICE Assistant Secretary Morton Announce New Immigration Detention Reform Initiatives (Oct. 6, 2009).

Schriro Report continue.¹¹ For example, from the time the report was issued until early December 2013, over thirty detainees died in immigration custody; nine in 2013 alone.¹² While certainly not all of these deaths reflect substandard care, media reports and at least one investigation by ICE's own Office of Detention Oversight identify inadequate medical care as a factor in several of these deaths.¹³

¹¹ See, e.g., Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review* 25 (2011) [hereinafter *Jails and Jumpsuits*]; Detention Watch Network, *Expose and Close: One Year Later* (2013). (recounting dangerous and sub-standard medical and mental health care in detention facilities around the country, based on interviews and reports from detainees around the country).

¹² U.S. Immigration & Customs Enforcement, *Detainee Deaths - October 2003 through December 2, 2013* (2013).

¹³ See, e.g., Nina Bernstein, *Officials Hid Truth of Immigrant Deaths in Jail*, N.Y. Times, Jan. 10, 2010, at A1 (describing multiple immigrant detainee deaths allegedly caused by inadequate medical care); *Family of Immigrant Detainee Sues President Obama, Government for Wrongful Death*, CBS Los Angeles (Aug. 29, 2014, 6:03 PM), <http://losangeles.cbslocal.com/2014/08/29/family-of-immigrant-detainee-sues-president-obama-government-for-wrongful-death/> (describing the death of an immigrant detainee at the age of 38 from complications of diabetes, who complained to his attorney multiple times of not receiving proper medical care); Alonso Yanez, *Living in the Shadows: Detention Centers Deaths Raise Immigrant Rights Questions*, New American Media (Feb. 19, 2014), <http://newamericamedia.org/2014/02/living-in-the-shadows-detention-centers-deaths-raise-immigrant-rights-questions.php> (describing death of Fernando Dominguez Valdivia, a 58-year-old Los Angeles resident, on March 4, 2012, after he developed bronchopneumonia in Adelanto Immigration Center and did not receive adequate medical care); see also U.S. Office of Detention Oversight, *Compliance Inspection of Adelanto Correctional Facility 2* (2012) (finding “egregious errors” by medical staff led to Dominguez Valdivia’s death).

2. Increased Risk of Sexual Abuse and Assault

Prolonged detention also increases the risk of sexual abuse and assault.

Incidents of sexual abuse in the detention system are well documented.¹⁴ In 2009, the National Prison Rape Elimination Commission found that “[a]s a group, immigrant 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.”¹⁵

After this report was issued, thirty members of Congress requested that the Government Accountability Office (“GAO”) conduct a study on sexual abuse and sexual assault in immigration detention facilities.¹⁶ The 2013 GAO study found

¹⁴ See, e.g., David Kaiser et al., *Immigrant Detainees: The New Sex Abuse Crisis*, NYR Blog (Nov. 23, 2011, 1:07 PM), <http://www.nybooks.com/blogs/nyrblog/2011/nov/23/immigrant-detainees-new-sex-abuse-crisis/>; Catherine Rentz, *Lost in Detention*, Frontline (Oct. 19, 2011, 2:03 PM), <http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/how-much-sexual-abuse-gets-lost-in-detention/>; Human Rights Watch, *Detained and At Risk* (2010); Schriro, *supra* note 8, at 22 (“The system must make better use of sound practices such as ... practices that comply with the Prison Rape Elimination Act.”).

¹⁵ Nat’l Prison Rape Elimination Comm’n, *National Prison Rape Elimination Commission Report* 176 (2009) (citations omitted).

¹⁶ Letter from Jared Polis et al., Members of Congress, to Gene Dodaro, Comptroller General, U.S. Gov’t Accountability Office (Jan. 4, 2011); see also Catherine Rentz, *Detained and Abused: Will the federal government provide illegal immigrants the same protections as prisoners from sexual abuse?*, Nat’l J.

that ICE did not maintain complete records regarding sexual abuse and assault incidents.¹⁷ Specifically, it found that up to forty percent of sexual abuse and assault allegations were not reported to ICE headquarters as required by agency procedures.¹⁸ The GAO also identified concerns about barriers to detainees reporting sexual abuse.¹⁹

Earlier this year, nearly a decade after the passage of the Prison Rape Elimination Act (PREA), DHS issued regulations to implement the Act's protections against sexual abuse in custody.²⁰ However, the regulations do not automatically apply to facilities operated by local sheriffs or private prison companies—which together house the vast majority of ICE's detainees. The PREA regulations will not be enforced at these facilities until the underlying detention

(Feb. 4, 2012), <http://www.nationaljournal.com/magazine/illegal-immigrants-detained-and-abused-20120202>.

¹⁷ U.S. Gov't Accountability Office, *GAO-14-38, Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse 1* (2013).

¹⁸ *Id.* at 19.

¹⁹ *Id.* at 22-23. For example, the report describes difficulty reaching the DHS Office of Inspector General ("DHS-OIG") telephone hotline, one of various means for reporting abuse. GAO found that approximately 14 percent of calls placed to the DHS-OIG hotline were not connected. *Id.*

²⁰ Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100 (Mar. 7, 2014) (codified at 6 C.F.R. pt. 115).

contracts are renegotiated.²¹ As a result, it may be years before all long-term detainees will be covered by the PREA regulations. Moreover, informal barriers to preventing and reporting sexual abuse in DHS custody may allow abuse to remain hidden. The same month the PREA regulations were published, for example, a nonprofit organization filed a complaint with DHS alleging that their visitation privileges at one facility were restricted after they reported sexual abuse at that facility.²²

3. Frequent Misuse of Solitary Confinement

Another serious risk to the health and safety of long-term detainees is the use of solitary confinement, typically referred to by ICE as “segregation.” In 2013, ICE released data showing that on average, on a daily basis, 300 immigrants are held in solitary confinement at the 50 largest detention facilities.²³ Five years earlier, the Schriro Report had raised concerns about detention facilities’ use of segregation for purposes other than discipline.²⁴ Specifically, the report found that “segregation cells are often used to detain special populations whose unique

²¹ *Id.*

²² Erika Eichelberger, *Watchdog: Feds Are Muzzling Us for Reporting Alleged Immigrant Detainee Sex Abuse*, Mother Jones (Mar. 19, 2014, 10:02 AM), <http://www.motherjones.com/politics/2014/03/ice-sexual-abuse-immigrant-detention-oversight>.

²³ Ian Urbina et al., *Immigrants Held in Solitary Cells, Often for Weeks*, N.Y. Times, Mar. 24, 2013, at A1.

²⁴ *See Schriro, supra* note 8, at 21.

medical, mental health, and protective custody requirements cannot be accommodated in general population housing.”²⁵ Similar findings were documented in a 2012 report that assessed the use of solitary in immigration facilities on a national scale.²⁶

It is well-established that this type of isolation exacerbates physical and mental health issues for detainees.²⁷ In 2013, ICE acknowledged the problem, issuing a strong directive establishing procedures for review of detainees placed in segregation and outlining stricter requirements for disciplinary segregation.²⁸ However, in recent Congressional testimony in a hearing on solitary confinement, one advocacy group noted that the directive “has yet to be fully implemented and

²⁵ *Id.*

²⁶ Nat’l Immigrant Justice Ctr. & Physicians for Human Rights, *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention* 4 (2012).

²⁷ UN Special Rapporteur on Torture & Other Cruel, Inhuman or Degrading Treatment of Punishment, *Interim Rep. of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Human Rights Council, U.N. Doc. A/68/295 (Aug. 9, 2013); Craig Haney, *Mental Health Issues in Long-Term Solitary and Supermax Confinement*, 49 *Crime & Delinquency* 124, 124-56 (2003).

²⁸ Immigration & Customs Enforcement Directive 11065.1, *Review of the Use of Segregation for ICE Detainees* (2013).

enforced. Each ICE facility has different standards for who should be held in solitary confinement, which can lead to little accountability.”²⁹

4. The Toll of Generally Poor Conditions

Finally, extended detention exacerbates a number of risks to the health and welfare of immigrant detainees, due to the generally inadequate conditions that take an increasing toll the longer one remains detained. Researchers and monitors of detention facilities have repeatedly described inadequate provision of food and water,³⁰ severely limited recreation,³¹ verbal and physical abuse by guards,³² and

²⁹ *Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights & Human Rights*, 113th Cong. (2014) (statement of Lutheran Immigration and Refugee Service); see also John Marshall Law School, *U.S. Immigration and Customs Enforcement’s New Directive on Segregation: Why We Need Further Protections* 3 (2014).

³⁰ See *Jails and Jumpsuits*, *supra* note 11, at 8, 20; Scott Phillips et al., *Brutal Borders? Examining the Treatment of Deportees During Arrest and Detention*, 85 Soc. Forces 93, 97, 101 (2006) [hereinafter *Brutal Borders*] (in a study involving 300 deported Salvadorians (36% detained longer than six months), 31% reported inadequate provision of food or water).

³¹ 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) [hereinafter *Holiday on ICE*] (“Many ICE facilities provide at most one hour of recreation in an enclosed area with no exposure to natural light.”); Amnesty Int’l, *Jailed without Justice: Immigration Detention in the USA* 41 (2009) [hereinafter *Jailed without Justice*] (reporting that the majority of detainees interviewed reported that they did not have the opportunity to exercise daily).

prohibitions or extreme limitations on visitation.³³ Long-term detainees suffer greater, cumulative harms from these problems.³⁴

B. The Psychological Harms of Long-Term Detention.

Immigrants in detention for prolonged periods suffer severe and lasting psychological harms. The very fact that the detention is prolonged takes a serious toll on the mental health of detainees. All detainees face uncertainty about when or whether they will be released, which frequently leads to high rates of anxiety, despair, and depression.³⁵ During prolonged detention, these feelings become more pronounced and often manifest as diagnosable mental health conditions.³⁶ One thorough study concluded that detention without a certain endpoint—the characteristic of all prolonged detention for immigrant detainees—results in

³² See *Brutal Borders*, *supra* note 30, at 101-105 (26% of interviewees reported verbal abuse and 11% reported physical abuse in detention).

³³ See *Holiday on ICE*, *supra* note 31; *Jailed without Justice*, *supra* note 31, at 38 (listing several large facilities that only provide visitation via video, and reporting “just ten ICE-authorized facilities, out of 254, ...regularly permit contact visitation...”); ACLU of Ariz., *In Their Own Words: Enduring Abuse in Arizona Immigration Detention Centers* (2011) (describing county jail in Arizona, contracted to house immigrants for extended periods, which prohibits all contact visitation).

³⁴ For example, one study found that the likelihood of force being used against detainees was 2.4 times greater for those detained longer than three months. *Brutal Borders*, *supra* note 30, at 105.

³⁵ See Physicians for Human Rights, *Punishment Before Justice: Indefinite Detention in the U.S.* 11 (2011).

³⁶ *Id.* at 16.

“physical, social and emotional problems [that] continue to plague individuals long after their release”³⁷

The mental toll of detention is exacerbated in facilities that have physical infrastructures and program offerings generally designed for inmates who are expected to remain in custody for a year or less.³⁸ Many detainees have described that being detained for prolonged periods in such conditions is difficult to bear.³⁹

While on the one hand immigration detention often has serious mental health impacts, the detention facilities themselves are ill-equipped to provide quality mental health care to long-term detainees. In fact, a 2011 report by the DHS Office of Inspector General found that the ICE Health Service Corps, which provides direct care and arranges for outside health care services to detainees, staffed “only 18 of the nearly 250 detention centers nationwide and has limited oversight and monitoring for mental health cases across immigration detention

³⁷ *Id.* at 17.

³⁸ Physicians for Human Rights & Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* 126 (2003) [hereinafter *From Persecution to Prison*], at 10-14 (immigrant detainees “reported feeling degraded and being treated like criminals” and described the negative impact this treatment had on their mental health).

³⁹ *Id.*; see also Women’s Refugee Comm’n, *Politicized Neglect: A Report from Etowah County Detention Center* 5 (2012).

centers.”⁴⁰ This government report raised serious concerns about ICE’s capacity to provide detainees with proper treatment or care.⁴¹ Three suicides of immigrant detainees in 2013 underscored the urgent nature of these concerns.⁴²

While all long-term detainees are likely to suffer lasting psychological harm,⁴³ two sub-populations of detainees face particularly severe mental health effects: (1) those with pre-existing mental illness, and (2) asylum-seekers and other survivors of recent violence and trauma.

1. The Increased Risks for Mentally Ill Detainees.

Prolonged detention almost invariably exacerbates existing mental health conditions, as detention facilities are neither equipped nor designed to provide adequate mental health care.⁴⁴ All too often, mentally ill persons either go

⁴⁰ Dep’t of Homeland Security Office of Inspector Gen., *Management of Mental Health Cases in Immigration Detention 1* (2011) [hereinafter *Mental Health Cases OIG Report*].

⁴¹ *Id.* at 1.

⁴² See Brandie Kessler, *U.S. Immigration and Customs Enforcement will review York County Prison after detainee's suicide*, York Daily Record (Nov. 14, 2013, 11:28 AM), http://www.ydr.com/ci_24487256; JJ Hensley, *ICE to probe 2 inmate suicides at Eloy detention center*, AZ Central (May 2, 2013, 10:51 PM), <http://www.azcentral.com/news/arizona/articles/20130502ice-probe-inmate-suicides-eloy.html>.

⁴³ See, e.g., Golash-Boza, *supra* note 9, at 65 (recounting how substandard medical care during prolonged detention resulted in an immigrant suffering serious health problems); Heeren, *supra* note 9, at 601, 602-03, 622 (same).

⁴⁴ See *Mental Health Cases OIG Report*, *supra* note 40.

untreated or receive “one size fits all” medication.⁴⁵ DHS’s failure to identify or track individuals with mental illness is particularly problematic for long-term detainees, who are more likely to develop disorders because of extended periods of isolation, anxiety, and substandard treatment.⁴⁶ Mentally ill detainees also face an increased risk of being placed in solitary confinement,⁴⁷ despite the fact that “[s]egregation often exacerbates mental illness and is counterproductive to the goal of stabilizing a detainee.”⁴⁸

2. The Severe Harms to Asylum-Seekers

Asylum seekers are often in a particularly vulnerable and fragile mental state, as many arrive having escaped rape, torture, or other forms of trauma, followed by the stress of leaving their home and often their families behind.⁴⁹ One

⁴⁵ *Id.* at 5 (noting that the Health Service Corps lacks a mechanism for screening and tracking mental health conditions of individual detainees).

⁴⁶ *See* Schriro, *supra* note 8, at 25; *Mental Health Cases OIG Report*, *supra* note 40, at 1.

⁴⁷ Heeren, *supra* note 8, at 26.

⁴⁸ *Mental Health Cases OIG Report*, *supra* note 40, at 15. Research from the criminal field also supports this finding. *See* Jeffrey L. Metzner et al., *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 *J. Am. Acad. Psychiatry L.* 104, 104 (2010); *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).

⁴⁹ One study found that 74% of detained asylum seekers had been tortured before arriving to the U.S., 67% had been imprisoned in their country of origin, 59% reported a murder of a family member or friend, and 26% reported having been

recent report estimated that in less than three years, from October 2010 to February 2013, the United States detained approximately 6,000 survivors of torture as they were seeking asylum protection.⁵⁰ The mental health issues associated with this population are striking. In one study of detained asylum-seekers, 77% had clinically significant symptoms of anxiety, 86% had symptoms of depression, and 50% had symptoms of Post-Traumatic Stress Disorder (“PTSD”).⁵¹ Of these detainees, 26% reported thoughts of suicide while in detention, and just under 3% reported attempting suicide.⁵² In turn, PTSD symptoms render individuals more susceptible to sexual victimization and less likely to report it.⁵³ Thus, asylum-seekers are both more susceptible to the harms of prolonged detention and more likely to be severely impacted by them.

sexually assaulted prior to arrival. Allen Keller et al., *Mental Health of Detained Asylum Seekers*, 362 *Lancet* 1721, 1722 (2003); see also Ctr. for Victims of Torture et al., *Tortured & Detained: Survivor Stories of U.S. Immigration Detention* 5 (2013) [hereinafter *Tortured & Detained*]; see also Nina Rabin, *At the Border Between Public and Private: U.S. Immigration Policy for Victims of Domestic Violence*, 7 *Law & Ethics Hum. Rts.* 109, 139 (2013) (documenting 34 women with domestic violence-based asylum claims held in Eloy Detention Center in 2010-2011 for 6-22 months).

⁵⁰ *Tortured & Detained*, *supra* note 49, at 5.

⁵¹ Keller et al., *supra* note 49.

⁵² *Id.* Conversely, detainees who exhibited symptoms of anxiety, depression, and PTSD while detained showed significant improvement after release from detention. *Id.*; see also *Tortured & Detained*, *supra* note 49, at 12.

⁵³ See Nat’l Prison Rape Elimination Comm’n, *supra* note 15, at 178 (citations omitted).

C. The Economic Harms of Prolonged Detention

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.⁵⁴ The economic hardship imposed from being unable to work for long periods of time is clear,⁵⁵ and is especially pronounced for immigrants, who often are in a precarious financial state even before detention.⁵⁶ Immigrants in extended detention almost invariably lose their jobs, and thus income for necessities, including food and shelter for their families.⁵⁷ Some are forced to foreclose on their homes as a direct result of prolonged detention.⁵⁸ For the few

⁵⁴ See 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 & 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).

⁵⁵ 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 Permanent Resident Status* 36 (2009) (noting that the detention of refugees “results in loss of jobs”).

⁵⁶ See Randy Capps et al., The Urban Inst., *A Profile of the Low-Wage Immigrant Workforce* 6 (2003).

⁵⁷ See *infra* Part II for a discussion of the economic impact of prolonged detention on families.

⁵⁸ See Heeren, *supra* note 9, at 622 (immigrant lost his home as a result of three-year long detention); see also Chaudry et al., *supra* note 55, at ix, 30-31.

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.⁵⁹

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 months or years, and employers may avoid hiring formerly detained immigrants because they are "afraid of having problems with ICE."⁶⁰

D. The Legal Harms of Prolonged Detention.

Individuals subjected to prolonged detention face significant obstacles to asserting their legal rights, both in immigration court and in other legal proceedings. The vast majority of detainees—nearly 80%—lack counsel in immigration proceedings.⁶¹ From 2007 to 2011, over 700,000 immigrants faced

⁵⁹ 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").

⁶⁰ See Chaudry et al., *supra* note 55, at 28.

⁶¹ Separate Representation for Custody and Bond Proceedings, 79 Fed. Reg. 55659 (proposed Sept. 17, 2014) (to be codified at 8 C.F.R. pt. 1003) ("Of the 265,708 initial case completions for detained aliens from FY 2011 to FY 2013, 210,633 aliens, or 79 percent, were unrepresented. By contrast, of the 214,506 initial case completions during the same timeframe for aliens who were never detained, only 50,075 aliens, or 23 percent, were unrepresented.").

the possibility of removal without the benefit of legal counsel.⁶² Having a lawyer in these proceedings is critical.⁶³ The results in a recent study of case outcome data between 2005 and 2010 in New York City immigration courts documented the dramatic difference a lawyer makes: non-detained immigrants with lawyers had successful outcomes 74 percent of the time, while detained immigrants without counsel prevailed 3 percent of the time.⁶⁴ A nationwide study focused specifically on asylum adjudication concluded that whether an asylum seeker is represented in court is the single most important factor affecting the outcome of her case.⁶⁵

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

⁶² See U.S. Dep’t. of Justice, Exec. Office for Immigration Review, *FY 2011 Statistical Year Book G1* (2012) [hereinafter *FY 2011 Year Book*].

⁶³ Peter L. Markowitz et al., *Accessing Justice: The Availability And Adequacy of Counsel In Removal Proceedings*, 33 *Cardozo L. Rev.* 357, 383 (2011) (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* 5-8 (2010) [hereinafter *Reforming the Immigration System*] (“[T]he disparity in outcomes of immigration proceedings depending on whether noncitizens are unrepresented or represented is striking.”).

⁶⁴ N.Y. Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings* 3 (2011).

⁶⁵ Jaya Ramji-Nogales et al., *Refugee Roulette: Disparities in Asylum Adjudication*, 60 *Stan. L. Rev.* 295, 340 (2007) (represented asylum seekers were granted asylum at a rate of 45.6%, almost three times as high as the 16.3% grant rate for those without legal counsel); see also *Reforming the System*, *supra* note 63, at 5-8.

grounds for relief that may be available to them.”⁶⁶ 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.⁶⁷

Irrespective of whether a detainee has legal counsel, the circumstances of long-term detention render effective representation nearly impossible. One major obstacle is the limited access to telephones in most detention facilities.⁶⁸ Phone calls are a crucial means of communication necessary for any attempt by detainees to gather evidence in support of their legal cases. Routine confiscation of personal items and cellular telephones limits detainees’ access to contact information for

⁶⁶ See Appleseed, *Assembly Line Injustice: Blueprint to Reform America’s Immigration Courts* 29 (2009); *Reforming The Immigration System*, *supra* note 63, at 5-10.

⁶⁷ See *Jails and Jumpsuits*, *supra* note 11, at 31 (almost 40 percent of ICE detention bed space is located more than 60 miles from an urban center); Markowitz et al., *supra* note 63, 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 63, 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”).

⁶⁸ See 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) [hereinafter *Isolated in Detention*] (reporting widespread problems with phone access); see also 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).

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.⁶⁹ One broad national survey of detention facilities found large numbers of facilities that prohibited private calls between lawyers and their detained clients, and in several cases, even leaving messages was impossible.⁷⁰

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.⁷¹ The likelihood of multiple transfers is higher the longer one was detained.⁷² With no mail forwarding, mail intended for the detainee is often returned or lost.

⁶⁹ See, e.g., Ruben Loyo et al., 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).

⁷⁰ *Isolated in Detention*, supra note 68, at 4.

⁷¹ See Human Rights Watch, *A Costly Move: Far and Frequent Transfers Impede Hearings for Immigrant Detainees in the United States* 1, 17 (2011).

⁷² 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 (2011).

Long-term detention facilities are also often located far 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.⁷³ 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.⁷⁴ Furthermore, despite standards requiring access to legal resources, detention facilities often have inadequate resources available, and limited materials in languages other than English.⁷⁵

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.

⁷³ See Schriro, *supra* note 8, at 23-24.

⁷⁴ See *FY 2011 Year Book*, *supra* note 62, at F-1, Figure 8 (showing percentage of immigration proceedings completed in English was less than 18%); Capps, *supra* note 56, at 3-4.

⁷⁵ See Schriro, *supra* note 8, 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, *Unseen Prisoners: Women in Immigration Detention Facilities in Arizona*, 23 *Geo. Immigr. L.J.* 695, 728 (2009) (finding multiple Arizona detention facilities fail to comply with detention standards providing for access to legal resources like law libraries).

In other cases, immigrants subject to prolonged detention simply give up on their immigration cases, rather than facing the prospect of continued detention.⁷⁶ Such decisions have far-reaching consequences for detainees and their families. For those with potential asylum claims, deportation can mean a return to the possibility of persecution or torture in their home country. For those who have lived here for many years, deportation often results in long bars to returning to the United States.⁷⁷

Prolonged detention not only harms detainees' immigration cases, but causes harm in other legal proceedings as well. Extended detention often makes it impossible for detainees to comply with legal obligations or court orders. Most notably, this problem raises serious concerns for parents involved in custody

⁷⁶ See *Jailed Without Justice*, *supra* note 31, at 20; see also Susan Coutin, *Confined Within: National territories as zones of confinement*, 29 *Pol. Geography* 200, 204 (2010) (recounting the story of one deportee who gave up his appeal rather than remain in detention any longer); *Gomez-Zuluaga v. Attorney Gen.*, 527 F.3d 330, 339 n. 4 (3d Cir. 2008) (describing asylum seeker who acquiesced in her removal after seventeen and a half months in detention. The court noted that the asylum seeker “averred that despite the fact that her ‘fear of persecution is as strong as ever[,]’ the detention was, in her words, ‘affecting me physically and destroying me mentally’ and suggested that her detention in the United States served as a daily and unwelcome reminder of the indignity of detention” she had suffered in her home country.).

⁷⁷ 8 U.S.C. § 1182(a)(9)(B).

proceedings, who face the possibility of termination of parental rights as a result of their prolonged detention.⁷⁸

II. Prolonged Detention Harms the Families of Detainees, Including U.S. Citizen Children.

Prolonged detention adversely affects detainees' families, especially children, many of whom are U.S. citizens.⁷⁹ In fact, data collected of the class certified by the District Court in *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013) reveals that 63% of class members had a U.S. citizen child.⁸⁰ Immigrant detainees have minimal contact with their families. Detained immigrants are transported an average of 370 miles, making regular contact with their children and families virtually impossible for many.⁸¹ Even if relatives are nearby, many long-term facilities have restrictive visitation policies that severely limit the extent to

⁷⁸ See *infra* Part II, notes 88-93 and accompanying text. See also Nina Rabin, *Victims or Criminals? Discretion, Sorting, and Bureaucratic Culture in the U.S. Immigration System*, 23 S. Cal. Rev. L. & Soc. Just. 195, 205 (2014) (recounting the story of a parent in prolonged detention who lost custody of her children due to a default judgment entered in family court because she could not be located while detained).

⁷⁹ Between July 2010 and September 2012, 205,000 deportees reported having at least one U.S. citizen child. Seth F. Wessler, *Nearly 250,000 Deportations of Parents of U.S. Citizens in Just over Two Years*, Colorlines (Dec. 17, 2012), http://colorlines.com/archives/2012/12/us_deports_more_than_200k_parents.html.

⁸⁰ ACLU, *supra* note 5.

⁸¹ Seth Wessler, Applied Research Ctr., *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* 38 (2011); see also Loyo et al., *supra* note 69, at 1, 9.

which detainees can have contact with families.⁸² Further, legitimate fears over being detained themselves may result in non-citizen family members being unable to visit detainees.

The many detainees subject to transfers during their proceedings face even more significant hurdles to keeping in touch with family. ICE does not consistently inform family members when transfers occur, so relatives often experience stress and anxiety trying to locate detained family members.⁸³ 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.”⁸⁴

Increased anxiety, stress, and depression have been documented in children who have had one or both parents detained. A report by the Urban Institute of 85 families impacted by immigration enforcement in six locations across the U.S. 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

⁸² See text and citations *supra* note 31; Schriro, *supra* note 8, at 23-24; Loyo et al., *supra* note 69, at 12; *Jails and Jumpsuits*, *supra* note 11, at 7.

⁸³ Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States* 79-80 (2009).

⁸⁴ *Id.* at 80.

who were reunited with their parents within a month of arrest.⁸⁵ Beyond the emotional toll, the harm imposed by prolonged detention of a parent also translates to quantifiable harms to children's well-being in other areas, such as development and academic performance.⁸⁶ Furthermore, recent research emphasizes that immigration detention is often one of multiple factors that combine to make children of undocumented immigrants more prone to behavioral and emotional problems throughout their lives.⁸⁷

For some parents in detention, prolonged detention has resulted in children being removed from the family entirely and placed in foster care. In 2011, a national research study estimated that at least 5,100 children were living in foster

⁸⁵ Chaudry et al., *supra* note 55, 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.

⁸⁶ Kalina Brabeck et al., *The Impact of Detention and Deportation on Latino Immigrant Children and Families: A Quantitative Exploration*, 32 *Hispanic J. of Behav. Sci.* 341 (2010). Studies in the context of children of incarcerated parents confirm the negative impacts of parental detention. Todd R. Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse* 97 (2007) (citing John Hagan et al., *Collateral Consequences of Imprisonment for Children, Communities and Prisoners*, in *Prisons* 121-162 (Michael Tonry & Joan Petersilia, eds. 1999); see also Laura Rico, *Kids' health suffers when parents go to jail* (Sept. 2, 2014), <http://news.uci.edu/features/parental-incarceration-linked-to-health-behavioral-issues-in-children/> (finding that "parental incarceration can be more detrimental to a child's well-being than divorce or the death of a parent.")

⁸⁷ Kalina Brabeck et. al, *The Psychosocial Impact of Detention and Deportation on U.S. Migrant Children and Families* 2-3 (2013) (summarizing this research); Human Impact Partners, *Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families* (2013).

care whose parents had been either detained or deported.⁸⁸ In these cases, in addition to being separated from their children, detained parents also struggle to access resources needed to meet court mandates set by the child welfare system, such as parenting classes or visits with their child.⁸⁹ This places them at risk of termination of parental rights.⁹⁰ Due to state and federal timelines established to ensure a permanent home for children in state custody, immigrant parents in detention face the real possibility of losing their parental rights if their detention becomes prolonged.⁹¹

In 2013, ICE recognized this concern and issued a Parental Rights Interests Directive, which establishes procedures for parents in detention with child welfare cases.⁹² However, until the number of parents subject to prolonged detention drops significantly, the directive cannot fully address the scope of challenges facing these

⁸⁸ Wessler, *supra* note 81, at 6.

⁸⁹ Nina Rabin, *Disappearing Parents: Immigration Enforcement and the Child Welfare System*, 44 Conn. L. Rev. 99, 140 (2011).

⁹⁰ *Id.*; see also Sarah Rogerson, *Lack of Detained Parents' Access to the Family Justice System and the Unjust Severance of the Parent-Child Relationship*, 47 Family L. 141, 141-72 (2013).

⁹¹ *Id.*; see also Wessler, *supra* note 81, at 8; Women's Refugee Comm'n, *Torn Apart by Immigration Enforcement: Parental Rights & Immigration Detention* 10 (2010); Wendy Cervantes et al., *The Impact of Immigration Enforcement on Child Welfare* 6 (2010).

⁹² Immigration & Customs Enforcement, *Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities Directive* (Aug. 23, 2013), <https://www.ice.gov/about/offices/enforcement-removal-operations/parental-directive.htm>.

families. A social service provider for separated families in Mexico recently confirmed that the implementation of the directive remains unclear.⁹³

In addition to these social and legal harms to families, prolonged detention also significantly affects the economic wellbeing of family members of detained individuals, many of whom may be U.S. citizens. Nearly two-thirds of families in the Urban Institute study reported difficulty paying household bills, two of every five families reported missing at least one payment for basic utilities, and many reported difficulty paying for food.⁹⁴ 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.⁹⁵

III. Prolonged Detention Harms Society

The cost to society of a “one-size-fits-all” approach to detention, without individualized consideration of release, results in wasteful and harmful over-use of detention resources. Many immigrant detainees subject to prolonged detention in fact go on to win their deportation cases.⁹⁶ Furthermore, a sample of the government’s own risk assessments of 188 immigrants in removal proceedings

⁹³ Victoria Kline, Instituto para las Mujeres en la Migración, *Where Do We Go From Here? Challenges facing transnational migrant families between the US and Mexico* 32 (2013).

⁹⁴ Chaudry et al., *supra* note 55, at 29.

⁹⁵ *Id.*

⁹⁶ *See* ACLU, *supra* note 5.

processed through the ICE Baltimore Field Office in spring 2013 found the average public safety risk was statistically indistinguishable between those subject to mandatory detention, those subject to discretionary detention, and those released.⁹⁷ Even more striking, those subject to mandatory detention on average presented an even lower flight risk than those released.⁹⁸

The costs of this one-size-fits-all approach are staggering. In 2012, the United States detained 477,523 immigrants, an “all-time high,”⁹⁹ and an exponential increase from the 108,454 immigrants detained in 1996.¹⁰⁰ In its most recent budget proposal, DHS requested \$1.8 billion to fund detention.¹⁰¹ This

⁹⁷ *FOIA Risk Classification Data*, *supra* note 3. Of the 188 immigrants in removal proceedings in the data set, the government classified 70 as subject to mandatory detention under INA § 236(c), 52 as released, and 66 as subject to discretionary detention. For a discussion of ICE’s risk assessment tool, see *Jails and Jumpsuits*, *supra* note 11, at 29.

⁹⁸ *FOIA Risk Classification Data*, *supra* note 3.

⁹⁹ U.S. Dep’t of Homeland Security, Office of Immigration Statistics, *Immigration Enforcement Actions: 2012 5* (2013), available at www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2012_1.pdf.

¹⁰⁰ *Jails and Jumpsuits*, *supra* note 11, at iii.

¹⁰¹ Dep’t of Homeland Security, *The President’s FY 2015 Budget* 13 (2014) (requesting \$1.8 billion for detention to support 30,539 beds).

amounts to approximately \$5.05 million per day to detain immigrants,¹⁰² at an estimated daily cost of \$161 per detainee.¹⁰³

Conversely, alternatives to detention, such as those identified by the District Court in this case, have costs ranging from 17 cents to \$17 dollars a day per individual.¹⁰⁴ Such programs have exceptionally high compliance rates, achieving 96% appearance rates in 2011.¹⁰⁵ In 2012, the average cost per participant in alternatives to detention programs was \$5.94.¹⁰⁶

¹⁰² Nat'l Immigration Forum, *The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies 2* (2013) [hereinafter *Math of Immigration Detention*].

¹⁰³ Mario Moreno, *Detention Costs Still Don't Add Up to Good Policy*, Nat'l Immigration Forum (Sept. 24, 2014), <http://immigrationforum.org/blog/display/detention-costs-still-dont-add-up-to-good-policy>. DHS as provided the average daily rate per detainees as \$119. *President's FY 2015 Budget*, *supra* note 101, at 66. However, ICE itself has conceded that this number does not square with DHS's own reports and fails to incorporate operating costs. Garance Burke et al., *Immigrants prove big business for prison companies*, Yahoo News (Aug. 2, 2012, 6:41 AM), <http://news.yahoo.com/immigrants-prove-big-business-prison-companies-084353195.html>. The most recent estimate by the National Immigration Forum takes operating costs into account to arrive at \$161 per day.

¹⁰⁴ U.S. Dep't of Homeland Security, *Congressional Budget Justification: FY 2012, U.S. Immigration and Customs Enforcement Salaries and Expenses 925* (2012); *see also Math of Immigration Detention*, *supra* note 102, at 11.

¹⁰⁵ *See* Julie Myers Wood et al., *Smart alternatives to immigrant detention*, Wash. Times (Mar. 28, 2013), <http://www.washingtontimes.com/news/2013/mar/28/smart-alternatives-to-immigrant-detention/>.

¹⁰⁶ *Math of Immigration Detention*, *supra* note 102, at 11.

On the other side of the equation, detaining productive, contributing members of society presents an opportunity cost for society. All immigrants, both documented and undocumented, pay property and sales taxes, and many pay income taxes.¹⁰⁷ 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.¹⁰⁸ This study did not address the contributions of immigrants authorized to be in the U.S. All this amounts to billions in revenue that are compromised by prolonged detention.¹⁰⁹

In addition, prolonged detention takes a societal toll by reinforcing the erroneous yet pervasive public perception of immigrants as criminals, which in turn negatively affects communities perceived as being home to immigrant populations.¹¹⁰

¹⁰⁷ See Golash-Boza, *supra* note 9, at 148; Immigration Policy Ctr., *Unauthorized Immigrants Pay Taxes, Too* 1 (2011) [hereinafter *Immigrants Pay Taxes*].

¹⁰⁸ *Id.* at 3 (considering personal income taxes, property taxes, and sales taxes).

¹⁰⁹ *Id.*

¹¹⁰ See David Hernandez, *Pursuant to Deportation: Latinos and Immigrant Detention*, 6 *Latino Stud.* 35, 38-39 (2008) (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); Ruben G. Rumbaut et al., Immigration Policy Ctr., *The Myth of Immigrant Criminality and the Paradox*

Finally, prolonged detention destabilizes family and community structures and requires significant reorganization in order to cope with prolonged absences.¹¹¹ 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.¹¹²

CONCLUSION

The social science research is clear: prolonged detention of immigrants, without any individualized consideration of its need or justification, causes physical, psychological, economic, and legal harms that are severe and in some cases irreparable. Its harms are not limited to individuals, but extend to families, communities, and U.S. society at large. For the foregoing reasons, this Court should affirm the District Court’s Order and Permanent Injunction.

of Assimilation: Incarceration Rates Among Native and Foreign-born Men (2007) (debunking the myth of immigrant criminality).

¹¹¹ See *supra* Part II; see also Hernandez, *supra* note 110 (“family and community structures . . . are reorganized due to the absence of detained family members.”); Clear, *supra* note 86, at 73 (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”); see Chaudry et al., *supra* note 55, at 55-68 (documenting the massive community upheaval and reorganization in the wake of immigration raids resulting in widespread detention of community members).

¹¹² See Hernandez, *supra* note 111, at 38; Golash-Boza, *supra* note 9, at 113, 147-157.

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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 8,201 words.

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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 September 29, 2014.

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.

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