

Nos. 15-35738, 15-35739

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

J.E.F.M, et al.,

Plaintiffs-Appellees,

v.

LORETTA LYNCH, et al.,

Defendants-Appellants.

**On Appeal from the United States District Court
for the Western District of Washington
No. 2:14-cv-01026-TSZ**

**BRIEF OF HUMAN RIGHTS WATCH AS *AMICUS CURIAE* IN
SUPPORT OF PLAINTIFFS-APPELLEES/CROSS-
APPELLANTS' PRINCIPAL AND RESPONSE BRIEF**

Risa E. Kaufman
HUMAN RIGHTS INSTITUTE
COLUMBIA LAW SCHOOL
435 West 116th Street, Box G-4
New York, NY 10027
(212) 854-0706

Elisa S. Solomon
COVINGTON & BURLING LLP
620 Eighth Avenue
New York, NY 10018-1405
(212) 841-1000

Counsel for Amicus Curiae Human Rights Watch

March 14, 2016

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTERESTS OF AMICUS CURIAE.....	1
SUMMARY OF ARGUMENT	1
ARGUMENT	4
I. INTERNATIONAL AND FOREIGN LAW SHOULD BE CONSIDERED IN DECIDING THIS CASE.	4
II. INTERNATIONAL HUMAN RIGHTS LAW UNDERSCORES THE IMPORTANCE OF PRESERVING A FORUM FOR ADJUDICATION OF PLAINTIFF CHILDREN’S DUE PROCESS CLAIM FOR A RIGHT TO APPOINTED COUNSEL.	5
A. The Universal Declaration Of Human Rights Recognizes Plaintiff Children’s Right To Free Legal Representation.	6
B. International Human Rights Treaties Recognize The Right Of Children To Appointed Counsel In Immigration Proceedings In Order To Ensure Due Process And Equal Justice Under The Law.	8
1. The Convention on the Rights of the Child Demonstrates Broad Consensus Concerning the Particular Vulnerabilities of Children in Immigration Proceedings, and the Importance of a Right to Appointed Counsel to Protect the Full Enjoyment of their Rights.	8
2. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Further Indicates that Plaintiff Children Have the Right to Free Legal Representation.	12
3. The International Covenant on Civil and Political Rights Supports the Right to Appointed Counsel for Migrant Children.....	14

4.	The International Convention on the Elimination of All Forms of Racial Discrimination Further Supports a Right to Appointed Counsel for Plaintiff Children, in Order to Ensure Equal Treatment in Immigration Proceedings.....	16
5.	International Independent Experts and Human Rights Officials Have Called on States to Provide Legal Representation to Children in Immigration Proceedings in Order to Ensure the Protection of Other Human Rights.	17
III.	THE INTER-AMERICAN HUMAN RIGHTS SYSTEM RECOGNIZES THE IMPORTANCE OF LEGAL COUNSEL TO PROTECT THE RIGHT TO A FAIR TRIAL AND EQUALITY UNDER THE LAW FOR CHILDREN IN IMMIGRATION PROCEEDINGS.....	20
A.	The Inter-American Court Of Human Rights Has Explicitly Articulated The Right To Free Counsel In Immigration Proceedings.	21
B.	The Inter-American Commission On Human Rights Has Called For The United States To Provide Legal Counsel For Children In Immigration Proceedings.....	23
IV.	JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS SHOWS THE WIDESPREAD RECOGNITION AND IMPORTANCE OF PLAINTIFFS’ DUE PROCESS CLAIMS.....	25
	CONCLUSION.....	27
	STATEMENT OF RELATED CASES.....	i
	CERTIFICATE OF COMPLIANCE.....	ii
	CERTIFICATE OF SERVICE.....	iii

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Application of Gault</i> , 387 U.S. 1 (1967).....	11
<i>Atkins v. Virginia</i> , 536 U.S. 304 (2002).....	4
<i>Beharry v. Reno</i> , 183 F. Supp. 2d 584 (E.D.N.Y. 2002), <i>rev'd sub nom. on other</i> <i>grounds, Beharry v. Ashcroft</i> , 329 F.3d 51 (2d Cir. 2003).....	9
<i>Bellotti v. Baird</i> , 443 U.S. 622 (1979).....	11
<i>Bockting v. Bayer</i> , 399 F.3d 1010 (9th Cir. 2005), <i>rev'd sub nom. on other grounds</i> , <i>Whorton v. Bockting</i> , 549 U.S. 406 (2007)	5
<i>Filartiga v. Peña-Irala</i> , 630 F. 2d 876 (2d. Cir. 1980)	6
<i>Graham v. Florida</i> , 560 U.S. 48 (2010).....	3, 7
<i>J.E.F.M. v. Holder</i> , 107 F. Supp. 3d 1119, 1126 (W.D. Wash. 2015)	2
<i>Lawrence v. Texas</i> , 539 U.S. 558 (2003).....	4
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	2
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005).....	4, 9
<i>Zhang v. Am. Gem Seafoods, Inc.</i> , 339 F.3d 1020 (9th Cir. 2003)	5

Other Authorities

Alkan v. Turkey, App. No. 17725/07 (Eur. Ct. H.R. 2012)26

Airey v. Ireland, 2 Eur. Ct. H.R. 305 (1979)25

Comm. against Torture, Concluding Observations on the Combined
Third to Fifth Periodic Repts. of the United States of America, U.N.
Doc. CAT/C/USA/CO/3-5 (2014)13

Comm. against Torture, Concluding Observations on the Second
Periodic Rep. of Serbia, U.N. Doc. CAT/C/SRB/CO/2 (2015)13

Comm. against Torture, Concluding Observations on the Seventh
Periodic Rep. of Switzerland, U.N. Doc. CAT/C/CHE/CO/7 (2015)13

Comm. against Torture, Consideration of Repts. Submitted by States
Parties under Art. 19 of the Convention, Concluding Observations
of the Comm. against Torture Bosnia and Herzegovina, U.N. Doc.
CAT/C/BIH/CO/2-5 (2011)13

Comm. against Torture, Consideration of Repts. Submitted by States
Parties under Art. 19 of the Convention Conclusions and
Recommendations of the Comm. against Torture: Ukraine, U.N.
Doc. CAT/C/UKR/CO/5 (2007)13

Comm. on the Elimination of Racial Discrimination, Concluding
Observations: United States of America, U.N. Doc.
CERD/C/USA/CO/7-9 (2014)17

Convention against Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment art. 3, *opened for signature* Dec. 10,
1984, S. Treaty Doc. 100-20, 1465 U.N.T.S. 8512

Convention for the Protection of Human Rights and Fundamental
Freedoms art. 6, Nov. 4, 1950, 213 U.N.T.S. 22127

Convention on the Rights of the Child, *opened for signature* Nov. 20,
1989, 1577 U.N.T.S. 38, 9, 10, 11

Comm. on the Rights of the Child, General Comment No. 6 (2005) Treatment of Unaccompanied and Separated Children Outside their Country of Origin, U.N. Doc. CRC/GC/2005/6 (2005).....	10
Comm. on the Rights of the Child, Concluding Observations on the Combined Fourth and Fifth Periodic Repts. of Mexico, U.N. Doc. CRC/C/MEX/CO/4-5 (2015).....	10
David Weissbrodt, <u>The Admin. of Just. & Human Rights</u> , 1 City U. H.K. L. Rev. 23 (2009).....	7
Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection, 2013 O.J. (L 180) 60, art. 25	26, 27
Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights), Advisory Opinion OC-11/90, Inter-Am. Ct. H.R. (ser. A) No. 11 (Aug. 10, 1990).....	22
Gates Garrity-Rokous and Raymond H. Brescia, <u>Procedural Just. & Int'l Human Rights: Towards a Procedural Jurisprudence for Human Rights Tribunals</u> , 18 Yale J. Int'l L. 559 (1993)	6
G.A. Res. 217 (III) A, art. 10, Universal Declaration of Human Rights (Dec. 10, 1948)	6, 7
Human Rights Comm., Consideration of Repts. Submitted by States Parties under Art. 40 of the Covenant, Concluding Observations of the Human Rights Comm.: Spain, U.N. Doc. CCPR/C/ESP/CO/5 (2009).....	16
Human Rights Comm., Consideration of Repts. Submitted by States Parties under Art. 40 of the Covenant, Concluding Observations of the Human Rights Comm.: Switzerland, U.N. Doc. CCPR/C/CHE/CO/3 (2009).....	16
Human Rights Comm., General Comment No. 15, The Position of Aliens under the Covenant, U.N. Doc. HRI/GEN/1/Rev.6 at 140 (1986)	15

Human Rights Comm., General Comment No. 32, art. 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, U.N. Doc. CCPR/C/GC/32 (2007)15

Inter-Am. Comm’n H.R., *Access to Justice as a Guarantee of Economic, Social and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*, OEA/Ser.L/V/II.129, doc. 4 (Sept. 7, 2007).....24

Inter-Am. Comm’n H.R., *Refugees and Migrants in the United States: Families and Unaccompanied Children*, OAS/Ser.L/V/II.155, doc. 16 (July 24, 2015).....24

Inter-Am. Comm’n H.R., *Report on Immigration in the United States: Detention and Due Process*, OEA/Ser.L/V/II, doc. 78/10 (Dec. 30, 2010)23, 24

Inter-Am. Comm’n H.R., *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, doc. 5 rev. 1 corr. (Oct. 22, 2002).....24

International Covenant on Civil and Political Rights art. 14, *opened for signature* Dec. 16, 1966, S. Treaty Doc. 95-20, 999 U.N.T.S. 171.....14, 15

International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, S. Treaty Doc. 95-18, 660 U.N.T.S. 19516, 17

Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18 (Sept. 17, 2003)23

Raven Lidman, Civil Gideon as a Human Right: Is the U.S. Going to Join Step with the Rest of the Developed World?, 15 Temp. Pol. & Civ. Rts. L. Rev. 769 (2006)21

Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A) No. 21, (Aug. 19, 2014)21

Sarah H. Cleveland, Our Int’l Constitution, 31 Yale J. Int’l L. 1(2006)5

Special Rapporteur on Extreme Poverty and Human Rights, *Rep. of the Special Rapporteur on Extreme Poverty and Human Rights*, U.N. Doc A/67/278 (Aug. 9, 2012) (by Magdalena Sepúlveda Carmona).....19

Special Rapporteur on the Human Rights of Migrants, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, U.N. Doc. A/HRC/7/12 (Feb. 25, 2008) (by Jorge Bustamante)18

Special Rapporteur on the Human Rights of Migrants, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, U.N. Doc. A/HRC/11/7 (May 14, 2009) (by Jorge Bustamante).....18

Steel & Morris v. United Kingdom, 2005-II Eur. Ct. H.R. (2005)28

U.N. Office of the High Comm’r for Human Rights, *Recommended Principles and Guidelines on Human Rights at International Borders*, Principle I(B)(10), II(C)12, U.N. Doc. A/69/CRP. 1 (2014).....19

U.N. Secretary-General, *Promotion and Protection of Human Rights, Including Ways and Means to Promote the Human Rights of Migrants*, ¶ 73, U.N. Doc. A/69/277 (Aug. 7, 2014).....20

Vienna Convention on the Law of Treaties art. 18, *opened for signature* May 23, 1969, 1155 U.N.T.S. 3319

INTERESTS OF AMICUS CURIAE¹

Human Rights Watch is a non-profit, independent organization and the largest international human rights organization based in the United States. Since 1978, Human Rights Watch has investigated and exposed human rights violations and challenged governments to protect the human rights of citizens and non-citizens alike. Human Rights Watch investigates allegations of human rights violations in more than 90 countries around the world, including in the United States, by interviewing witnesses, gathering information from a variety of sources, and issuing detailed reports. Where human rights violations have been found, Human Rights Watch advocates for the enforcement of those rights with governments and international organizations and in the court of public opinion.

SUMMARY OF ARGUMENT

International human rights law recognizes that appointed counsel is essential for ensuring due process and equal justice under the law for Plaintiffs, who are children facing the possibility of deportation, and in some cases a return to a real

¹ *Amicus curiae* submits this brief in accordance with Federal Rule of Appellate Procedure 29(c) and certifies that no counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus*, or its counsel, made a monetary contribution intended to fund its preparation or submission. Although the Plaintiffs-Appellees consented to the filing of this brief, the Defendant-Appellants have taken no position. As a result, *amicus curiae* submit this brief with an accompanying motion for leave of the Court to file this brief.

risk of serious harm, yet who stand alone in complex immigration proceedings that they are ill-equipped to navigate. Foreign law in European jurisdictions also recognizes the right to appointed counsel in cases where there exists a stark inequality of legal representation between opposing parties, as is the case here, where Plaintiff children must defend themselves in adversarial hearings against trained government lawyers.

The ruling Defendants seek, that the district court lacks jurisdiction over Plaintiffs' claim for a constitutional right to representation, would effectively deny Plaintiffs' right in substance. As the district court recognized, an immigration judge has no authority to appoint an attorney, and so would have no reason to hold an evidentiary hearing or engage in a *Mathews v. Eldridge* analysis in connection with a due process right to counsel claim. *J.E.F.M. v. Holder*, 107 F. Supp. 3d 1119, 1126 (W.D. Wash. 2015) (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). Any child who reached a court of appeals would therefore arrive without the necessary record for judicial review. *Id.* The due process claim at issue is too important to be allowed to fall through a jurisdictional loophole. The principles of international and foreign law set forth in this brief underscore the importance of preserving the district court as a forum in which Plaintiffs can raise their constitutional claim for a right to appointed counsel.

International human rights law recognizes the right to appointed counsel for indigent immigrant children facing deportation proceedings. In particular, the Convention on the Rights of the Child recognizes that appointed counsel for children in immigration proceedings is essential to the fair administration of justice and equal treatment under the law, and necessary to ensure the best interests of the child. Three human rights treaties ratified by the United States—the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination—likewise underscore the importance of appointed counsel for Plaintiff children. The Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have made clear that access to justice includes the right to free legal representation for indigent children in immigration proceedings. Over the past several years, a number of United Nations (“U.N.”) and Inter-American human rights experts have made specific statements on the critical need for free legal representation for children in immigration proceedings, with some calling specifically on the United States to provide appointed counsel for immigrant children facing deportation.

Relatedly, recent decisions of the European Court of Human Rights have held that unrepresented litigants are entitled to free counsel in civil proceedings

where necessary to prevent an “inequality of arms,” as may exist when unrepresented and particularly vulnerable parties face represented litigants in court. Countries in Europe provide free legal representation in such cases, including cases involving children.

Taken together, international and foreign law underscore the importance of Plaintiffs’ due process claim. Because the administrative process is unable to address claims of this kind, and appellate review of that process would therefore lack the necessary record, the district court must be preserved as a forum for consideration of Plaintiffs’ claim.

ARGUMENT

I. INTERNATIONAL AND FOREIGN LAW SHOULD BE CONSIDERED IN DECIDING THIS CASE.

United States courts have an established tradition of looking to international and foreign law for guidance in analyzing constitutional claims. Indeed, the U.S. Supreme Court has a “longstanding practice” of considering international and foreign law to affirm and inform constitutional interpretation. *Graham v. Florida*, 560 U.S. 48, 80 (2010); *see also Roper v. Simmons*, 543 U.S. 551, 575 (2005) (characterizing international authority as “instructive for [the Court’s] interpretation” of the Constitution in a case challenging the juvenile death penalty); *Lawrence v. Texas*, 539 U.S. 558, 572–73 (2003) (citing a European Court of Human Rights decision and a special committee report to the British Parliament in

finding that Texas law criminalizing consensual same-sex sodomy was at odds with norms of Western civilization); *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002) (citing to international disapproval of the practice of executing developmentally disabled individuals, as detailed in the filing of amicus European Union); Sarah H. Cleveland, Our Int’l Constitution, 31 *Yale J. Int’l L.* 1, 88–100 (2006) (detailing the U.S. Supreme Court’s “longstanding tradition of relying on international law to inform constitutional meaning”).

The Ninth Circuit has likewise looked to foreign and international sources to inform its interpretation of constitutional claims. *See Bockting v. Bayer*, 399 F.3d 1010, 1017 n.1 (9th Cir. 2005) (noting that the right of confrontation is well-established in international practice), *rev’d sub nom. on other grounds, Whorton v. Bockting*, 549 U.S. 406 (2007); *Zhang v. Am. Gem Seafoods, Inc.*, 339 F.3d 1020, 1043 (9th Cir. 2003) (citing the International Convention on the Elimination of All Forms of Racial Discrimination as an indication that freedom from discrimination on the basis of race/ethnicity is a fundamental human right).

Thus, this Court is well within established practice in considering the overwhelming weight of international and foreign law as context for the importance of preserving the district court as a forum for consideration of Plaintiffs’ Fifth Amendment Due Process claim.

II. INTERNATIONAL HUMAN RIGHTS LAW UNDERSCORES THE IMPORTANCE OF PRESERVING A FORUM FOR ADJUDICATION

**OF PLAINTIFF CHILDREN’S DUE PROCESS CLAIM FOR A
RIGHT TO APPOINTED COUNSEL.**

**A. The Universal Declaration Of Human Rights Recognizes Plaintiff
Children’s Right To Free Legal Representation.**

International human rights law guarantees the right to the fair administration of justice and equality under the law. The Universal Declaration of Human Rights (“UDHR”), adopted by the U.N. General Assembly in 1948 as the cornerstone of the international human rights system, recognizes the right of everyone “in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations.” G.A. Res. 217 (III) A, art. 10, Universal Declaration of Human Rights (Dec. 10, 1948). The provisions of the UDHR are widely regarded as embodiments of customary international law. *See generally Filartiga v. Peña-Irala*, 630 F. 2d 876, 883 (2d. Cir. 1980) (“[I]t has been observed that the Universal Declaration of Human Rights ‘no longer fits into the dichotomy of ‘binding treaty’ against ‘nonbinding pronouncement,’ but is rather an authoritative statement of the international community.” (internal citations omitted)).

More specifically, the right to a fair trial contained in the UDHR is recognized as part of customary international law and is also reflected in international human rights treaties. *See* Gates Garrity-Rokous and Raymond H. Brescia, Procedural Just. & Int’l Human Rights: Towards a Procedural

Jurisprudence for Human Rights Tribunals, 18 Yale J. Int'l L. 559, 567 (1993) (“[T]he [UDHR], which is widely accepted as a basis of customary international law establishing genuine obligations for states[,]. . . guarantees to individuals the right to an ‘effective remedy’ through a ‘fair and public hearing’ before a ‘competent’ ‘independent and impartial tribunal.’” (footnotes omitted)); David Weissbrodt, The Admin. of Just. & Human Rights, 1 City U. H.K. L. Rev. 23, 26 (2009) (“So fundamental has the right to a fair trial become in the proper administration of justice at both national and international levels that some international law scholars consider it part of customary international law.”). The UDHR also recognizes that children require special accommodations, noting that “[m]otherhood and childhood are entitled to special care and assistance.” Universal Declaration of Human Rights art. 25(2).

In articulating the factors necessary to guarantee the right contained in Article 10 of the UDHR, and in recognizing the special vulnerabilities of children, as articulated in Article 25 of the UDHR, international law sources affirm that it is necessary for states to provide legal representation for children in immigration proceedings who cannot otherwise obtain representation.

B. International Human Rights Treaties Recognize The Right Of Children To Appointed Counsel In Immigration Proceedings In Order To Ensure Due Process And Equal Justice Under The Law.

Core international human rights treaties, including several ratified or signed by the United States, support a right to appointed counsel for children in immigration proceedings in order to ensure due process and equal justice under the law.

1. The Convention on the Rights of the Child Demonstrates Broad Consensus Concerning the Particular Vulnerabilities of Children in Immigration Proceedings, and the Importance of a Right to Appointed Counsel to Protect the Full Enjoyment of their Rights.

The particular vulnerabilities of children in immigration proceedings, and the resulting need to provide them with appointed counsel, is articulated by the Convention on the Rights of the Child (“CRC”), the most widely ratified human rights treaty in the world.² The CRC sets out the civil, political, economic, social, health, and cultural rights of all children, emphasizing that children have a special interest in procedural protections. *See generally* Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3. The Convention makes clear that the right to appointed counsel is necessary to protect Plaintiff

² U.N. Treaty Collection, Convention on the Rights of the Child Status (Mar. 14, 2016 07:34:49 EDT), https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en (showing ratification by 196 states).

children’s due process rights and, therefore, that consideration of Plaintiffs’ constitutional claim must be taken up by a court with competencies to consider such constitutional matters.

The Convention, signed by the United States in 1995,³ has been cited by the U.S. Supreme Court as a source of international norms on issues relating to the human rights of minors. *See Ropers v. Simmons*, 543 U.S. 551, 577 (2005) (citing Article 37 of the CRC as one of several indications that “the United States now stands alone in a world that has turned its face against the juvenile death penalty.”); *Graham v. Florida*, 560 U.S. 48, 81 (2010) (same). The Convention contains provisions—including fair trial guarantees—that are reflective of customary international law. Indeed, one district court has concluded, “[g]iven its widespread acceptance, to the extent that it acts to codify longstanding, widely-accepted principles of law, the CRC should be read as customary international law.” *Beharry v. Reno*, 183 F. Supp. 2d 584, 601 (E.D.N.Y. 2002), *rev’d sub nom. on other grounds, Beharry v. Ashcroft*, 329 F.3d 51, 63 (2d Cir. 2003).

³ Under international law, the United States has an obligation with respect to the rights set forth in Convention on the Rights of the Child. Vienna Convention on the Law of Treaties art. 18, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 (States must not “defeat the object and purpose” of a signed treaty). The United States is not a party to the Vienna Convention on the Law of Treaties, but the United States signed it in 1970 and has accepted that it is declarative of customary international law. *See* Vienna Convention on the Law of Treaties, U.S. Dep’t of State, <http://www.state.gov/s/l/treaty/faqs/70139.htm> (last visited Mar. 16, 2016).

Under the CRC, States are obligated to “take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee . . . shall . . . receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights.” Convention on the Rights of the Child art. 22. Essential for the exercise of all of these rights, “[e]very child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance.” *Id.* at art. 37. Particularly relevant here, the Committee on the Rights of the Child, which monitors implementation of the CRC, has found that “unaccompanied or separated children deprived of their liberty shall be provided with prompt and free access to legal and other appropriate assistance, including the assignment of a legal representative.” Comm. on the Rights of the Child, General Comment No. 6 (2005) Treatment of Unaccompanied and Separated Children Outside their Country of Origin, ¶ 63, U.N. Doc. CRC/GC/2005/6 (2005). The Committee elaborated that “[a]ppropriate measures required under article 22(1) of the Convention must take into account the particular vulnerabilities of unaccompanied and separated children and the national legal framework and conditions.” *Id.* at ¶ 68.

The Committee on the Rights of the Child has made clear recommendations on the need for appointed legal representation for vulnerable children in immigration proceedings. *See* Comm. on the Rights of the Child, Concluding

Observations on the Combined Fourth and Fifth Periodic Reps. of Mexico, ¶ 58(a), U.N. Doc. CRC/C/MEX/CO/4-5 (2015) (recommending that “free legal representation . . . should be ensured” for asylum-seeking and refugee children).

The CRC recognizes children’s unique vulnerabilities in judicial and administrative hearings. Convention on the Rights of the Child art. 5. The Preamble to the Convention notes that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth” *Id.* at Preamble (citation omitted). U.S. law echoes international human rights law’s recognition that children have no meaningful capacity to represent themselves and require special assistance in navigating complex legal proceedings. *See, e.g., Application of Gault*, 387 U.S. 1, 36–37 (1967) (“The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child ‘requires the guiding hand of counsel at every step in the proceedings against him.’”) (citation omitted); *Bellotti v. Baird*, 443 U.S. 622, 633–34 (1979) (“We have recognized three reasons justifying the conclusion [that] the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing.”) (citation

omitted). To ensure children have access to fair immigration proceedings despite these vulnerabilities, the United States must appoint them with free legal representation.

2. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Further Indicates that Plaintiff Children Have the Right to Free Legal Representation.

The importance of preserving the district court as a forum for consideration of Plaintiffs' constitutional claim is also underscored by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), which the United States ratified in 1994. The CAT forbids State Parties from sending people to any country where there is reason to believe they would be in danger of being subjected to torture and requires procedural safeguards to ensure proper protection. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, *opened for signature* Dec. 10, 1984, S. Treaty Doc. 100-20, 1465 U.N.T.S. 85. Given the unique vulnerabilities of children described above, these procedural safeguards can only be protected when children who cannot afford an attorney are provided with free legal representation.

In its most recent review of the United States in November 2014, the U.N. Committee against Torture specifically recommended that the United States "provide for special consideration for minors" seeking asylum in the United States and "guarantee access to counsel." Comm. against Torture, Concluding

Observations on the Combined Third to Fifth Periodic Reps. of the United States of America, ¶ 18(d), U.N. Doc. CAT/C/USA/CO/3-5 (2014). The CAT Committee has reiterated the need for governments to provide free lawyers to asylum seekers in several of its reviews of other States' compliance with CAT. *See* Comm. against Torture, Concluding Observations on the Seventh Periodic Rep. of Switzerland, ¶ 15, U.N. Doc. CAT/C/CHE/CO/7 (2015) (recommending that asylum seekers be given “free access to a qualified, independent lawyer in all initial proceedings and ordinary and extraordinary appeal proceedings”); Comm. against Torture, Concluding Observations on the Second Periodic Rep. of Serbia, ¶ 14(c), U.N. Doc. CAT/C/SRB/CO/2 (2015) (recommending that Serbia “guarantee access to independent, qualified and free-of-charge legal assistance and interpretation services for asylum seekers throughout the asylum procedure”); Comm. against Torture, Consideration of Reps. Submitted by States Parties under Art. 19 of the Convention, Concluding Observations of the Comm. against Torture Bosnia and Herzegovina, ¶ 15, U.N. Doc. CAT/C/BIH/CO/2-5 (2011) (noting that the State Party “should guarantee key principles related to a fair and efficient asylum procedure, including . . . free legal aid”); Comm. against Torture, Consideration of Reps. Submitted by States Parties under Art. 19 of the Convention Conclusions and Recommendations of the Comm. against Torture: Ukraine, ¶ 23, U.N. Doc. CAT/C/UKR/CO/5 (2007) (noting that Ukraine “should

provide an effective free legal aid system for persons at risk or belonging to groups made vulnerable”).

3. The International Covenant on Civil and Political Rights Supports the Right to Appointed Counsel for Migrant Children.

The International Covenant on Civil and Political Rights (“ICCPR”), ratified by the United States in 1992, contains protections consistent with those found in the CRC and CAT. The ICCPR articulates the right to due process and fair trial: “All persons shall be equal before the courts and tribunals. In the determination of . . . his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing” International Covenant on Civil and Political Rights art. 14, *opened for signature* Dec. 16, 1966, S. Treaty Doc. 95-20, 999 U.N.T.S. 171. Specific to migration, an “alien lawfully in the territory of a State Party . . . may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall . . . be allowed to submit the reasons against his expulsion and to have his case reviewed . . . and be represented for the purpose” *Id.* at art. 13 (emphasis added). The U.N. Human Rights Committee (“HRC”),⁴ which monitors state compliance with the ICCPR, has interpreted the phrase “lawfully in the

⁴ The U.N. Human Rights Committee is a body of independent experts that monitors implementation of the ICCPR by State Parties. *See* Human Rights Committee, Office of the High Comm’r for Human Rights, <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIntro.aspx> (last visited Mar. 16, 2016).

territory” to include a non-citizen, such as an asylum seeker, who disputes the illegality of his or her entry or stay in the territory.⁵ Human Rights Comm., General Comment No. 15, The Position of Aliens under the Covenant, ¶ 9, U.N. Doc. HRI/GEN/1/Rev.6 at 140 (1986).

The Committee has made clear that due process and fair trial rights apply to both criminal and civil cases and that legal representation must be appointed and paid for by the state in cases “where the interest of justice so require.” International Covenant on Civil and Political Rights art. 14, *opened for signature* Dec. 16, 1966, S. Treaty Doc. 95-20, 999 U.N.T.S. 171. In interpreting Article 14 of the Covenant, the HRC has noted that:

The availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way. . . . States are encouraged to provide free legal aid in [non-criminal cases], for individuals who do not have sufficient means to pay for it. *In some cases, they may even be obliged to do so.*

Human Rights Comm., General Comment No. 32, art. 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, ¶ 10, U.N. Doc. CCPR/C/GC/32 (2007) (emphasis added). The Committee has made recommendations on the need for State Parties to provide free legal assistance to undocumented immigrants and

⁵ It is not illegal to seek asylum. Article 14(1) of the Universal Declaration of Human Rights provides that “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution.”

asylum seekers, including children, so that these migrants can better understand and exercise their rights.⁶

4. The International Convention on the Elimination of All Forms of Racial Discrimination Further Supports a Right to Appointed Counsel for Plaintiff Children, in Order to Ensure Equal Treatment in Immigration Proceedings.

The International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”) provides further context for understanding the importance of preserving a forum for consideration of Plaintiffs’ right to appointed counsel. The United States ratified the CERD in 1994, committing itself to the elimination of discrimination based on race, ethnicity, and national origin. International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, S. Treaty Doc. 95-18, 660 U.N.T.S. 195. The CERD specifically requires State Parties to prohibit racial discrimination in the enjoyment of “[t]he right to equal treatment before the tribunals and all other organs administering justice,” *id.* at art. 5(a), and to

⁶ See, e.g., Human Rights Comm., Consideration of Reps. Submitted by States Parties under Art. 40 of the Covenant, Concluding Observations of the Human Rights Comm.: Spain, ¶ 21, U.N. Doc. CCPR/C/ESP/CO/5 (2009) (recommending that Spain “ensure that the rights of unaccompanied children who enter Spanish territory are respected” including by ensuring “that every unaccompanied child receives free legal assistance for the duration of the administrative proceedings, and, more generally, the expulsion proceedings”); Human Rights Comm., Consideration of Reps. Submitted by States Parties under Art. 40 of the Covenant, Concluding Observations of the Human Rights Comm.: Switzerland, ¶ 18, U.N. Doc. CCPR/C/CHE/CO/3 (2009) (recommending that Switzerland “review its legislation in order to grant free legal assistance to asylum-seekers during all asylum procedures”).

“assure . . . effective protection and remedies . . . against any acts of racial discrimination,” *id.* at art. 6.

The CERD Committee recently noted specific concerns about the lack of legal representation for immigrants in the United States facing deportation. In its 2014 review of U.S. compliance with the Convention, the CERD Committee recommended that the United States “ensure that the rights of non-citizens are fully guaranteed in law and in practice, by . . . guaranteeing access to legal representation in all immigration-related matters.” Comm. on the Elimination of Racial Discrimination, Concluding Observations: United States of America, ¶ 18, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014). In order to give effect to this recommendation in situations where children will not have access to legal representation because of an inability to pay, the government must provide appointed counsel.

5. International Independent Experts and Human Rights Officials Have Called on States to Provide Legal Representation to Children in Immigration Proceedings in Order to Ensure the Protection of Other Human Rights.

In addition to the Committee members overseeing implementation of the human rights treaties, experts and international human rights officials have recognized the right to appointed counsel for children in immigration proceedings as vital to the protection of other human rights such as the right to due process of law.

Independent human rights experts, known as U.N. Special Rapporteurs, have noted the importance of providing free legal counsel for people in immigration proceedings, including children, further supporting the importance of preserving the district court as a forum for Plaintiffs' Fifth Amendment Due Process claim. The U.N. Special Rapporteur on the Human Rights of Migrants has observed that "lack of access to free legal counsel . . . can prevent migrants from exercising their rights in practice." Special Rapporteur on the Human Rights of Migrants, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶ 46, U.N. Doc. A/HRC/7/12 (Feb. 25, 2008) (by Jorge Bustamante). In a 2009 report focused on the rights of migrant children, the Special Rapporteur noted that unaccompanied children seeking asylum are "often at risk of deportation without access to the protection measures to which they are entitled" and that children should only be repatriated after due process of law "including their right to be heard and their right to a guardian and a *legal representative*." Special Rapporteur on the Human Rights of Migrants, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶¶ 23, 43, U.N. Doc. A/HRC/11/7 (May 14, 2009) (by Jorge Bustamante) (emphasis added).

The U.N. Special Rapporteur on Extreme Poverty and Human Rights has also urged the importance of free legal counsel for individuals in immigration proceedings. In her 2012 report on access to justice for individuals living in poverty, the Special Rapporteur noted that the right to legal assistance is “essential for ensuring due process and equality before the courts” both in the criminal and civil context. Special Rapporteur on Extreme Poverty and Human Rights, *Rep. of the Special Rapporteur on Extreme Poverty and Human Rights*, ¶ 60, U.N. Doc A/67/278 (Aug. 9, 2012) (by Magdalena Sepúlveda Carmona). She added that “[t]he provision of free and competent legal advice and assistance to those who are otherwise unable to afford it is a fundamental prerequisite for ensuring that all individuals have fair and equal access” to the justice system. *Id.* Ensuring due process for children requires “additional protections,” especially “when they are particularly deprived or marginalized.” *Id.* at ¶ 18. The report specifically notes that immigration and asylum proceedings are contexts in which the lack of appointed counsel prejudices the rights of persons living in poverty. *Id.* at ¶ 62.

In 2014, the U.N. Office of the High Commissioner for Human Rights (“OHCHR”) and the U.N. Secretary-General together articulated the importance of legal counsel for individuals facing deportation, and identified children among “migrants who may be at particular risk at international borders” and who therefore should be “entitled to specific protection and individualized assistance which takes

into account their rights and needs.” U.N. Office of the High Comm’r for Human Rights, *Recommended Principles and Guidelines on Human Rights at International Borders*, Principle I(B)(10), II(C)12, ¶ 14, U.N. Doc. A/69/CRP. 1 (2014). The U.N. Secretary-General has noted that these principles and guidelines “establish the primacy of human rights in migration governance, which includes . . . the right to due process and the principle of the best interests of the child.” U.N. Secretary-General, *Promotion and Protection of Human Rights, Including Ways and Means to Promote the Human Rights of Migrants*, ¶ 73, U.N. Doc. A/69/277 (Aug. 7, 2014).

**III. THE INTER-AMERICAN HUMAN RIGHTS SYSTEM
RECOGNIZES THE IMPORTANCE OF LEGAL COUNSEL TO
PROTECT THE RIGHT TO A FAIR TRIAL AND EQUALITY
UNDER THE LAW FOR CHILDREN IN IMMIGRATION
PROCEEDINGS.**

The importance of preserving the district court as a forum for Plaintiffs’ Fifth Amendment Due Process claim is further supported by the jurisprudence and recommendations issued by organs of the Inter-American human rights system, the regional human rights system of the Organization of American States (“OAS”), of which the United States is a member.⁷ Both the Inter-American Court of Human

⁷ The United States is a member of the OAS, having signed and ratified the OAS Charter. The Inter-American human rights system is comprised of the Inter-American Court of Human Rights (“Inter-American Court”), which was established by the American Convention, and the Inter-American Commission of Human Rights (“Inter-American Commission”). The United States is subject to (continued . . .)

Rights and the Inter-American Commission on Human Rights have urged the importance of appointed counsel, particularly in immigration proceedings, in securing the right to fair trial and equal treatment under the law.

A. The Inter-American Court Of Human Rights Has Explicitly Articulated The Right To Free Counsel In Immigration Proceedings.

Recent jurisprudence by the Inter-American Court of Human Rights (“Inter-American Court”) makes clear that the right to appointed counsel for children in immigration proceedings is a key component of due process. Although the Inter-American Court does not exercise jurisdiction over the United States,⁸ its jurisprudence is nevertheless instructive of the growing consensus in international law concerning the right of children to free legal representation in immigration proceedings. The Inter-American Court is also instructive in the interpretation of the American Declaration, which applies to all OAS states, including the United States.

In a recent Advisory Opinion, the Inter-American Court made explicit the need to provide counsel to children involved in immigration proceedings: “States have the obligation to ensure to any child involved in immigration proceedings the

(continued . . .)

the jurisdiction of the Inter-American Commission through the American Declaration, which applies to all OAS member states.

⁸ The United States is not subject to the jurisdiction of the Inter-American Court of Human Rights because it has not yet ratified the American Convention.

right of legal counsel by the offer of free State legal representation services.” Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A) No. 21, ¶ 130 (Aug. 19, 2014). The court further noted that the right to be heard is particularly important to migrant children, and that statements made by such individuals must be subject to certain procedural safeguards, including the assistance of legal counsel. *Id.* at ¶ 123.

In previous Advisory Opinions, the Inter-American Court made clear that the right to the provision of counsel is grounded in the principles of equality before the law and fairness in courts. *See, e.g.*, Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights), Advisory Opinion OC-11/90, Inter-Am. Ct. H.R. (ser. A) No. 11, ¶ 22 (Aug. 10, 1990). A country’s refusal to provide free public legal aid service to an indigent person in immigration proceedings violates that individual’s right to effective judicial protection and judicial guarantees, particularly in light of the risk a person runs of being deported or deprived of his freedom. Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶ 126 (Sept. 17, 2003).

B. The Inter-American Commission On Human Rights Has Called For The United States To Provide Legal Counsel For Children In Immigration Proceedings.

The Inter-American Commission on Human Rights (“IACHR”) has likewise articulated the importance of appointed legal counsel in immigration proceedings, including for children, and has remarked in particular on the need for the United States to provide such protections. Recently, the Inter-American Commission visited the southern border of the United States to monitor the human rights situation of unaccompanied minors and families. Following this visit, the Commission issued a report specifically calling for the provision of free legal aid in immigration proceedings and appointed legal representation for children. *See Inter-Am. Comm’n H.R., Refugees and Migrants in the United States: Families and Unaccompanied Children*, ¶ 85 & n.95, OAS/Ser.L/V/II.155, doc. 16 (July 24, 2015).

The IACHR report defines the right to due process and access to justice to include “the right of the accused to be assisted by legal counsel of his own choosing” as well as “the right to provision of free legal representation to indigent persons in immigration proceedings.” *Id.* at ¶ 85. The Commission notes, in particular, that “States have the obligation to ensure that any child involved in immigration proceedings has the right to the provision of free legal counsel,” *id.* at ¶ 85 & n.95, and recommends that the United States “[p]rovide legal assistance at

no cost to children for the gathering of documents and evidence, preparation of a defense and representation at hearings before the immigrant court.” *Id.* at ¶ 237. These recommendations are consistent with previous concerns expressed by the Commission regarding the lack of government-provided legal representation for immigrants in the United States, especially unaccompanied children. *See Inter-Am. Comm’n H.R., Report on Immigration in the United States: Detention and Due Process*, ¶¶ 20, 409 (“Considering the complexity of immigration proceedings, the Inter-American Commission is deeply concerned that State-funded legal representation is not provided to unaccompanied children.”), ¶¶ 441, 452 (“With respect to unaccompanied children’s due process rights, the Inter-American Commission urges the State to appoint an attorney, at the State’s expense, to represent unaccompanied children in immigration proceedings.”), OEA/Ser.L/V/II, doc. 78/10 (Dec. 30, 2010); *Inter-Am. Comm’n H.R., Access to Justice as a Guarantee of Economic, Social and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*, ¶¶ 90–91, OEA/Ser.L/V/II.129, doc. 4 (Sept. 7, 2007); *Inter-Am. Comm’n H.R., Report on Terrorism and Human Rights*, ¶ 341, OEA/Ser.L/V/II.116, doc. 5 rev. 1 corr. (Oct. 22, 2002).

The concern expressed by the Inter-American Commission on Human Rights and the jurisprudence of the Inter-American Court further demonstrate the

widespread recognition of the rights that Plaintiffs seek to vindicate—rights that must be heard in the district court if they are to be heard at all. Defendants should not be able to erect a jurisdictional barrier that consigns this important issue to an administrative judge who lacks the authority to address the issue adequately.

IV. JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS SHOWS THE WIDESPREAD RECOGNITION AND IMPORTANCE OF PLAINTIFFS’ DUE PROCESS CLAIMS.

The European Court of Human Rights has recognized a right to appointed counsel when necessary to ensure that litigants’ right of access to courts is “practical and effective,” and to ensure “equality of arms” in judicial proceedings. This jurisprudence underscores the importance of preserving a forum that is able to address the imbalance of power that Plaintiff children face when they appear unrepresented in immigration proceedings against the government.

The European Court of Human Rights first established the right to free legal counsel for some civil litigants in *Airey v. Ireland*, 2 Eur. Ct. H.R. 305 (1979). The plaintiff in that case sought a “decree of judicial separation” from her abusive husband but could not afford a solicitor to help her, and Ireland did not provide her with free legal assistance. *Id.* at ¶ 11. The court held that the state’s failure to provide the plaintiff with a solicitor violated her rights under Article 6, paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, *id.* at ¶ 26, which states that “everyone is entitled to a fair and public hearing,”

Convention for the Protection of Human Rights and Fundamental Freedoms art. 6, Nov. 4, 1950, 213 U.N.T.S. 221. The court rejected the state's position that the Article 6 obligation was satisfied because the plaintiff was free to pursue judicial separation without the assistance of a lawyer, holding that appointed counsel in civil cases may be required when necessary for "effective access" to the courts or "by reason of the complexity of the procedure or of the case." Airey, 2 Eur. Ct. H.R. 305, at ¶ 26.

Subsequent jurisprudence by the European Court of Human Rights further developed the contours of the right to counsel, with the court emphasizing the importance of counsel in maintaining "equality of arms," such that every litigant must have a reasonable opportunity of presenting his or her case to the court under conditions that do not place the litigant at a substantial disadvantage vis-à-vis his or her opponent. *See, e.g., Steel & Morris v. United Kingdom*, 2005-II Eur. Ct. H.R., ¶ 59 (2005) ("It is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the court and that he or she is able to enjoy equality of arms with the opposing side."). A fair balance must be struck between litigants in judicial proceedings. *See Alkan v. Turkey*, App. No. 17725/07, ¶¶ 23, 27–29 (Eur. Ct. H.R. 2012); *see also See Raven Lidman, Civil Gideon as a Human Right: Is the U.S. Going to Join Step with the Rest of the Developed World?*, 15 Temp. Pol. &

Civ. Rts. L. Rev. 769, 790–800 (2006) (describing various European countries’ provision of free legal assistance to individuals in immigration proceedings).

Legislative actions in Europe have specifically addressed children’s need for free legal representation in immigration proceedings. The European Parliament has called for member states to provide a free representative capable of exercising “legal capacity where necessary” to unaccompanied minors in immigration proceedings and free legal assistance in appeals. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection, 2013 O.J. (L 180) 60, art. 25. The European Parliament also calls for member states to provide free legal assistance in immigration appeal proceedings for all foreigners. *Id.* at art. 20.

The European court’s concern with equality of arms should inform this Court’s understanding of the serious concern at stake in Plaintiffs’ constitutional claim. The district court must be preserved as a forum to adjudicate these claims; Defendants’ jurisdictional position would have the practical effect of denying the right in substance.

CONCLUSION

Core international human rights treaties, including several ratified or signed by the United States, and the jurisprudence of the Inter-American human rights system, recognize the critical need for free legal counsel to protect due process and

equal justice for immigrant children facing deportation proceedings. European law recognizes the right to counsel in cases where litigants suffer such a stark inequality of arms. Together, international and foreign law provide important context and persuasive support for understanding what is at stake for Plaintiff children in this case, and the critical need to preserve the district court as a forum for their constitutional claim, which would otherwise go unheard.

Dated: March 14, 2016

Respectfully submitted,

/s/ Elisa S. Solomon
Elisa S. Solomon
COVINGTON & BURLING LLP
620 Eighth Avenue
New York, NY 10018-1405
(212) 841-1000
esolomon@cov.com

Risa E. Kaufman
HUMAN RIGHTS INSTITUTE
COLUMBIA LAW SCHOOL
435 West 116th Street, Box G-4
New York, NY 10027
(212) 854-0706
risa.kaufman@law.columbia.edu

STATEMENT OF RELATED CASES

The following Ninth Circuit cases are associated with this appeal: Case No. 15-80113 and Case No. 15-80116. Case No. 15-80113 includes all of the filings leading up to and including this Court's September 16, 2015 order granting permission to appeal. ECF No. 15-80113, Dkt. 15. Plaintiffs' request for voluntary withdrawal of Case No. 15-80116 was granted by this Court on September 15, 2015. ECF No. 15-80116, Dkt. 7.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(C) of the Federal Rules of Appellate Procedure, I hereby attest that this brief contains 6,927 words, excluding the portions of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), and complies with the type-volume limitations stated in Rule 32.

Dated: March 14, 2016

By: /s/ Elisa S. Solomon
Elisa Solomon
Counsel for Amicus Curiae
Human Rights Watch

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be electronically filed 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 March 14, 2016. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: March 14, 2016

By: /s/ Elisa S. Solomon
Elisa Solomon
Counsel for Amicus Curiae
Human Rights Watch