

I. IDENTITY AND INTEREST OF *AMICUS CURIAE*

CGRS is a not-for-profit organization dedicated to the study, analysis, and advancement of asylum and refugee law, with recognized expertise on the claims of women and children. CGRS has filed *amicus* briefs in dozens of cases at both the Board of Immigration Appeals (“BIA”), the federal courts, and the U.S. Supreme Court. In addition, CGRS has investigated and published extensively on human rights conditions for women and children in Mexico and Central America. In the absence of general rules of federal civil procedure governing *amicus* briefs, this motion and the proposed *amicus* brief follow the appellate rules applicable to *amicus* briefs. Pursuant to FED. R. APP. P. 29(c)(5), CGRS states that no counsel for a party authored this brief in whole or part, and no person or entity other than CGRS and its counsel made monetary contribution to its preparation or submission.

II. ARGUMENT

A. DISTRICT COURTS HAVE AUTHORITY TO ACCEPT *AMICUS* BRIEFS

Although there is no formal rule governing the filing of *amicus* briefs in the federal district courts, this Court possesses the authority to accept them. *See Martinez v. Capital Cities/ABC-WPVI*, 909 F. Supp. 283 (E.D. Pa. 1995); *Waste Management of Pa. v. City of York*, 162 F.R.D. 34 (M.D. Pa. 1995). The Third Circuit has said that “permitting persons to appear in court ... as friends of the court ... may be advisable where third parties can contribute to a court’s understanding.” *Harris v. Pernsley*, 820 F.2d 592, 603 (3d Cir. 1987). The role of *amicus* is to assist the court “in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision.” *Newark Branch, N.A.A.C.P. v. Town of Harrison, N.J.*, 940 F.2d 792, 808 (3d Cir. 1991). Additionally, this *amicus* brief is timely because it was filed within seven days of the motion being supported,

consistent generally with FED. R. APP. P. 29(a)(6). CGRS respectfully submits that this motion and proposed brief are timely filed, as the Plaintiffs' brief on the merits was filed on May 18, 2017. Accordingly, granting this motion should not delay the proceedings in any way.

B. THE PROPOSED CGRS BRIEF PROVIDES UNIQUE INSIGHT ON MATTERS CRITICAL TO THIS CASE AND NOT FULLY ADDRESSED BY THE PARTIES

CGRS has a strong interest in the issues raised in this matter and seeks leave to file the proposed *amicus* brief to assist the Court in its analysis of the likely harm faced by the Plaintiffs if removed from the United States and in its evaluation as to whether the public interest favors a stay of removal in this case. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (clarifying that the four-factor standard for issuance of a stay requires petitioners showing they have a strong likelihood of success on appeal; they will be irreparably harmed absent a stay; and the issuance of a stay will not substantially injure the government or undermine the public interest). CGRS has conducted years of research into human rights violations faced by women and children in the Northern Triangle countries of Central America, such as El Salvador and Honduras, from which the Plaintiffs originate. As *amicus curiae*, CGRS can provide the Court a more in-depth analysis of conditions and will present arguments not fully presented in either of the parties' filings. Further, the issues implicated in this matter involve the future and security of women and children who have sought humanitarian protection under our immigration laws and as such, are plainly of public interest.

III. CONCLUSION

For the foregoing reasons, CGRS respectfully requests that this motion for leave to file its proposed *amicus* brief and appendix be granted.

Respectfully submitted,

s/Arleigh P. Helfer III

ROBYN BARNARD
KAREN MUSALO
BLAINE BOOKEY
EUNICE LEE
CENTER FOR GENDER & REFUGEE STUDIES
200 McALLISTER STREET
SAN FRANCISCO, CA 94102
415-565-4877
415-581-8824 (facsimile)

NANCY WINKELMAN, PA. ID No. 48928
BRUCE P. MERENSTEIN, PA. ID No. 82609
ARLEIGH P. HELFER III, PA. ID No. 84427.
SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103
215-751-2000
215-751-2205 (facsimile)

Counsel for Amicus Curiae

May 19, 2017

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WENDY AMPARO OSORIO-MARTINEZ,
et al.,

Plaintiffs

v.

JEFFERSON B. SESSIONS III, in his official
capacity as Attorney General, *et al.*,

Defendants.

:
:
:
:
:
:
:
:
:

Civil Action No: 17-cv-01747

**BRIEF OF *AMICUS CURIAE*
CENTER FOR GENDER AND REFUGEE STUDIES
IN SUPPORT OF PLAINTIFFS' MOTION FOR EMERGENCY
INJUNCTIVE RELIEF**

TABLE OF CONTENTS

| | Page |
|---|-------------|
| I. INTEREST OF <i>AMICUS CURIAE</i> | 1 |
| II. ARGUMENT..... | 1 |
| A. PETITIONERS AND THEIR CHILDREN WOULD FACE A SERIOUS RISK OF GRAVE HARM OR DEATH IF REMOVED TO THEIR HOME COUNTRIES | 3 |
| B. THE GOVERNMENTAL INTEREST IN REMOVAL OF THE MOTHERS AND CHILDREN IS GREATLY DIMINISHED IN THE PRESENT POSTURE, AS WELL AS VASTLY OUTWEIGHED BY PLAINTIFFS’ INTERESTS IN A STAY | 8 |
| C. REMOVAL OF THE PLAINTIFFS AND THEIR CHILDREN IS NOT IN THE PUBLIC INTEREST | 10 |
| III. CONCLUSION..... | 11 |

TABLE OF AUTHORITIES

Cases

Castro v. Dep’t of Homeland Sec., 835 F.3d 422 (3d Cir. 2016)2

Matter of Garcia, 16 I&N Dec. 653 (B.I.A. 1978)..... 10-11

Nken v. Holder, 556 U.S. 418 (2009)2, 9

Soltane v. U.S. Dep’t of Justice, 381 F.3d 143 (3d Cir. 2004)10

Yeboah v. U.S. Dep’t of Justice, 345 F.3d 216 (3d Cir. 2003).....8, 9

Flores v. Lynch, 828 F.3d 898 (9th Cir. 2016)9

[Flores Stipulated Settlement Agreement](#), Case No. CV 85-4544-RJK(Px) (C.D. Cal.)2, 9

Statutes and Regulations

8 U.S.C. § 1101(a)(27)(J)8

8 U.S.C. § 1255(a)1

8 C.F.R. § 204.118

U.S. State Dep’t Country Reports and Other Authorities

Albaladejo, “[How Violence Affects Women in El Salvador](#),” Latin American Working Group (Feb. 22, 2016).....4

Sibylla Brodzinsky & Ed Pilkington, [US Government Deporting Central American Migrants to Their Deaths](#), THE GUARDIAN (Oct. 12, 2015)6

Center for Gender and Refugee Studies & National University of Lanús, [Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges](#) (Feb. 2015).....5

Guillermo Cantor & Tory Johnson, [Detained, Deceived, and Deported: Experiences of Recently Deported Central American Families](#) (American Immigration Council, May 18, 2016).....7

Center for Women’s Rights (CDM) *et al.*, “[Situación de las Violencias Contra las Mujeres en Honduras](#),” [Situation of Violence against Women in Honduras] (June 2014)4

“[Centroamérica con más de 17 Mil Homicidios en el 2016](#),” [Central America had 17,000 Homicides in 2016] La Prensa Grafica (Jan. 5, 2017).....4

[*Easy Prey: Criminal Violence and Central American Migration*](#), Int’l Crisis Group, Jul. 28, 2016.....7

Federal Bureau of Investigations, [Crime in the United States](#) (2015)4

Valeria Fernández, [These Asylum Seekers are Being Forced to Raise Their Kids in Immigration ‘Jails’](#), PRI, July 7, 201610

Geneva Declaration on Armed Violence and Development (GDAVD), [Global Burdens of Armed Violence 2015: Every Body Counts](#).....4

Emily Gogolak, [Meet the Central American Women the United States is Detaining and Deporting](#), PULITZER CENTER, Dec. 26, 2016.....10

Elizabeth Kennedy, [No Childhood Here: Why Central American Children are Fleeing Their Homes](#) (American Immigration Council, July 1, 2014)6

Kids In Need of Defense, [Neither Security nor Justice](#) (May 2017)4, 6

Nicholas Kristof, [We’re Helping Deport Kids to Die](#), N.Y. TIMES, July 16, 20167

Rashida Manjoo, [Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences](#) (2015) A/HRC/29/276

Samantha Schmidt, [A Senator Pleaded with President Trump to Stop a Deportation](#), May 4, 2017, BOSTON GLOBE10

U.N. High Commissioner for Refugees, [Children on the Run](#) (July 2014)4, 5

U.N. High Commissioner for Refugees, [Women on the Run](#) (Oct. 2015)4, 5

U.S. Dep’t of State, [El Salvador 2016 Human Rights Report](#) (Apr. 12, 2017)5

U.S. Dep’t of State, [Honduras 2016 Human Rights Report](#) (2017)5-6

Ruth Ellen Wasem, CONG. RESEARCH SERV., R43703, [Special Immigrant Juveniles: In Brief](#) (2014).....9

Note: Hyperlinks are provided to all country reports and other secondary authorities.

I. INTEREST OF *AMICUS CURIAE*

The Center for Gender and Refugee Studies (“CGRS”) of the University of California Hastings College of the Law, respectfully submits this brief as *amicus curiae* in support of the Plaintiffs to provide the Court with an analysis of the conditions that the Plaintiffs face if returned to their countries-of-origin and the public interest at issue in the case.

CGRS is a not-for-profit organization dedicated to the study, analysis, and advancement of asylum and refugee law, with recognized expertise on the claims of women and children. As part of this work, CGRS has provided technical assistance in thousands of cases of women and children seeking asylum from Central America and has conducted investigative research into conditions in each of the Northern Triangle countries of El Salvador, Honduras, and Guatemala. CGRS has filed numerous *amicus* briefs before the Board of Immigration Appeals (“BIA”), federal Courts of Appeals, including the Third Circuit, and the U.S. Supreme Court on important questions of law.

II. ARGUMENT

This case concerns the fate of four mothers and their minor children currently detained at the Berks County Residential Center (“Berks”). It also concerns more broadly the ability of the Department of Homeland Security (“DHS”) to remove, back to their countries-of-origin, children who have been determined by both the state courts and the immigration agency to be in need of special protection.

Specifically, each of the minors in question has an approved immigration application for Special Immigrant Juvenile (“SIJ”) status and a pending application to adjust status to become permanent residents. As a result of their approved SIJ status, each child has filed I-485 Applications to Adjust to Permanent Residence pursuant to 8 U.S.C. § 1255(a). *See* ECF 2, at 101-106. Their mothers have been adjudicated by the state courts to be the children’s lawful

guardians or custodians, and, under a settlement governing treatment of all children in DHS custody, DHS is obligated to ensure reunification of the children with their parent or lawful guardian wherever possible. [Flores Stipulated Settlement Agreement](#), ¶ 18. Nevertheless, the government seeks to remove the mothers along with their children based on their prior orders of expedited removal, without due consideration of the children's SIJ status approvals, the interests of safe family unity, or the risks the Plaintiffs will face if returned.

The Plaintiffs seek a temporary stay of their removal. Although the Plaintiffs have expedited removal orders that the Third Circuit has determined this Court does not have jurisdiction to review, the Plaintiffs here challenge removal based on the children's SIJ status, independent of the expedited removal process. *See Castro v. Dep't of Homeland Sec.*, 835 F.3d 422 (3d Cir. 2016), *cert. denied*, No. 16-812, 2017 WL 1366739 (U.S. Apr. 17, 2017). Applying traditional stay factors, this Court should order a stay of removal while adjudicating the merits of this challenge.

The U.S. Supreme Court in *Nken v. Holder*, 556 U.S. 418, 434 (2009), held that in order to be granted a stay of removal, a petitioner must satisfy a four-factor standard that considers: first, whether petitioner has a strong likelihood of success on the merits of their underlying claims for relief; second, whether irreparable harm to petitioner will result absent a stay; third, whether the issuance of a stay in this matter will not substantially injure the government; and finally, whether a stay furthers the public interest. As Plaintiffs' filings provide in-depth discussion of the first factor, *amicus curiae* herein focuses its discussion on the latter three stay factors: Plaintiffs' interests, the governmental interest, and the public interest. *Amicus curiae* focuses in particular on the likely irreparable injuries faced by the Plaintiffs if the Court denies a stay, while also addressing the government's diminished interests in removal and the public's interest in a stay.

A. PETITIONERS AND THEIR CHILDREN WOULD FACE A SERIOUS RISK OF GRAVE HARM OR DEATH IF REMOVED TO THEIR HOME COUNTRIES

Petitioners are mothers and their children from the Northern Triangle countries of Honduras and El Salvador. As mentioned above, a state court has already determined—and DHS has accepted—that it would not be in the children’s best interests to return to those countries. The consequences of DHS acting against the children’s adjudicated best interests and deporting the children with their mothers would be dire.

Each adult Plaintiff fled her country of origin with her minor child due to past traumatic experiences of sexual and gang-related violence, and on-going fear of such violence, death threats, or sexual assault. *See* ECF No. 1 at 11-28; No. 2 at 6-9. In the case of lead Plaintiff, Ms. Osorio-Martinez fled Honduras with her then-one year old son to escape sexual violence as well as death threats against her from a relative of her son’s father who was a member of a transnational criminal organization active in her country. *Id.* Each of the additional petitioning women and their children faced death threats and violence at the hands of gang members in their communities. *See* ECF No. 1, at 11-28. Although the government placed Plaintiffs in expedited removal and ultimately denied them the opportunity to apply for asylum, it nevertheless found each of the women credible in their testimony regarding the violence and threats they and their children had faced. *See Castro v. Dep’t of Homeland Sec.*, Civ. No. 16-1339 (3d Cir. 2016), Petitioners’-Appellants’ Motion for an Emergency Stay of Removal (Feb. 19, 2016) at 5.

The ubiquitous levels of violence in the Northern Triangle underscore the credibility of Plaintiffs’ prior testimony of serious past harm and threats, as well as the very real risk of death, torture, and other grave harms that Plaintiffs would face if returned. As numerous human rights organizations and intergovernmental agencies have documented, the Northern Triangle is one of

the most violent regions in the world, with women and children especially being particularly impacted. *See, e.g.*, Kids in Need of Defense (“KIND”), [Neither Security nor Justice](#) (May 2017) (“[a]long with staggering homicide rates, all three countries have extremely high rates of sexual and gender-based violence”) at 3; UNHCR, [Women on the Run](#), at 2 (Oct. 2015); UNHCR, [Children on the Run](#) at 6 (Jul. 2014). Of relevance to this Court, Honduras and El Salvador have among the highest homicide rates of in the world. In 2016, El Salvador registered 80.9 homicides per 100,000 people and Honduras 57.9. *See* [Centroamérica con más de 17 Mil Homicidios en el 2016](#), [Central America had 17,000 Homicides in 2016] La Prensa Grafica (Jan. 5, 2017). In contrast, the United States reported a rate of 4.9 per 100,000 murders in 2015. *See* Federal Bureau of Investigations, [Crime in the United States](#) (2015).

This widespread violence—including its most extreme expression of murder—disproportionately impacts women and their children, who are the most vulnerable in society to the increase in gang and other violence in Honduras and El Salvador. In El Salvador, a woman was murdered every 16 hours in 2015. *See* Albaladejo, “[How Violence Affects Women in El Salvador](#),” Latin American Working Group (Feb. 22, 2016). In Honduras, the murder rate of women increased by 263.4% between 2005 and 2013. *See* Center for Women’s Rights (CDM) *et al.*, [Situación de las Violencias Contra las Mujeres en Honduras](#) [Situation of Violence against Women in Honduras] at 1 (Jun. 2014). In a 2015 report, El Salvador ranked number one, Honduras number two, and Guatemala number four in the world for global homicides of women. Geneva Declaration on Armed Violence and Development (GDAVD), [Global Burdens of Armed Violence 2015: Every Body Counts](#) 94 (noting rates from 2007-2012).

A comprehensive regional study, conducted by *amicus curiae*, found that childhood in these countries “has become synonymous with witnessing or suffering violence; experiencing

human rights violations and discrimination on various grounds; suffering from social exclusion; and being deprived of education, employment opportunities, medical services, and even food.”

[Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges](#) (CGRS and National University of Lanús eds., Feb. 2015).

The U.N. High Commissioner for Refugees (“UNHCR”) conducted in-depth studies into the situation for women and children in Central America and why they were fleeing the Northern Triangle countries and Mexico at historic rates. The UNHCR found that the majority of children from these countries were in need of international protection and that the women interviewed described “extreme levels of violence on a near-daily basis.” UNHCR, [Women on the Run](#), at 4 (October 2015); UNHCR, [Children on the Run](#) at 6 (July 2014). Its studies highlighted that “women face a startling degree of violence that has a devastating impact on their daily lives” and that they “flee to protect themselves and their children from murder, extortion, and rape.” [Women on the Run](#), at 2. These disturbing increases in violence against women and children have been exacerbated by the inability or unwillingness of the governments in Central America to provide real protection to the victims and survivors of the violence. *Id.* at 6.

The U.S. State Department has made similar findings about the dire human rights situation in Central America. The most recent State Department report on El Salvador found that the country’s principal human rights abuses included “widespread corruption,” “high levels of impunity and government abuse,” and “violence ... (including by gangs)” and “sexual exploitation” against women and children. U.S. Dep’t of State, [El Salvador 2016 Human Rights Report](#) at 1 (Apr. 12, 2017). The State Department also found “pervasive societal violence persisted” in Honduras, and described the problem:

Organized criminal elements, including local and transnational gangs and narcotics traffickers, were significant perpetrators of violent crimes and

committed acts of murder, extortion, kidnapping, torture, human trafficking, and intimidation of ... women ... serious human rights problems were widespread impunity due to corruption and institutional weaknesses; threats and violence directed against vulnerable populations; violence against and harassment of women; child abuse [etc.]

U.S. Dep't of State, [Honduras 2016 Human Rights Report](#) at 1 (2017).

Deeply rooted notions of *machismo* coupled with pervasive gang-related violence in these countries has led to situations where sexual and gender-based violence infiltrates all areas of life for women and children. Victims of such violence often fear retaliation from their abusers if they report their experiences to the authorities. See Rashida Manjoo, [Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences](#) (2015) A/HRC/29/27. For those who do take steps to report their experiences of harm, evidence points to the abject failure of state authorities to investigate reports of violence against women or other vulnerable groups, or to ultimately hold perpetrators accountable. See KIND, [Neither Security nor Justice](#) at 7-8. The result is generalized impunity in these countries for violence against women and children.

The dangers for individuals—particularly youth—deported by the United States government to the Northern Triangle are especially dire. New reports and a forthcoming academic study have found that as many as 83 deportees returned to the Northern Triangle since 2014 have been killed. See Sibylla Brodzinsky & Ed Pilkington, [US Government Deporting Central American Migrants to Their Deaths](#), THE GUARDIAN (Oct. 12, 2015) (citing academic study and recounting several individual cases of youth fleeing gang violence who were killed shortly after being deported). In El Salvador, “[a]t least once a month, local news report the homicide of a recent deportee from the U.S.” Elizabeth Kennedy, [No Childhood Here: Why Central American Children are Fleeing Their Homes](#), at 6 (American Immigration Council, July

1, 2014); *see also* Nicholas Kristof, [We're Helping Deport Kids to Die](#), N.Y. TIMES, July 16, 2016 (relaying account of a girl from Honduras who was forced to become a gang member's "girlfriend" at age 11 after the gang raped and shot her friend, and that of a 15-year-old boy who was stabbed in the stomach for refusing to join a gang); *see also* [Easy Prey: Criminal Violence and Central American Migration](#), Int'l Crisis Group, Jul. 28, 2016, 19-20 ("Not even those most vulnerable – such as families and unaccompanied children – are monitored after repatriation. None of the NT[] 'governments have...capacity to reintegrate children in a safe manner'. Some studies have also documented the killing of deported migrants.").

Moreover, women and children in similar circumstances as petitioners—individuals held in family detention facilities and removed pursuant to expedited removal orders—report lives of debilitating fear and danger following removal. Deported mothers recount living in constant hiding and terror due to ongoing death threats, having their children targeted by gangs, and taking extreme measures such as isolation to avoid harms. *See* Guillermo Cantor and Tory Johnson, [Detained, Deceived, and Deported: Experiences of Recently Deported Central American Families](#) (American Immigration Council, May 18, 2016). The same report concludes that these mothers and children "have no access to any protections or assistance from state institutions." *Id.* at 4.

//
//
//

B. THE GOVERNMENTAL INTEREST IN REMOVAL OF THE MOTHERS AND CHILDREN IS GREATLY DIMINISHED IN THE PRESENT POSTURE, AS WELL AS VASTLY OUTWEIGHED BY PLAINTIFFS' INTERESTS IN A STAY

In light of the aforementioned risks and the posture of Plaintiff children's SIJ status approvals, the governmental interest does not outweigh the Plaintiffs' weighty interests against removal. *Amicus curiae* acknowledges that DHS has a general interest in executing removal orders where the subject of the removal order has no prospects for relief from removal and no further review is available. *See Nken*, 556 U.S. at 3. The government's interest in deporting Plaintiffs based on the expedited removal orders alone, however, is significantly diminished in light of the children's SIJ status approvals and the interests of the children's safety and family unity pending adjustment. All four of the minor children Plaintiffs have DHS-approved I-360 SIJ status based on applications made pursuant to 8 U.S.C. § 1101(a)(27)(J).¹ ECF 17. In order to make such an application, the children had to obtain predicate orders from state family courts determining, *inter alia*, that it was not in the children's best interests² to be returned to their respective countries-of-origin. 8 U.S.C. § 1101(a)(27)(J); *see also Yeboah v. U.S. Dep't of Justice*, 345 F.3d 216 (3d Cir. 2003). Deporting the children would thus directly contradict their

¹ *See* Immigration and Nationality Act, Pub. L. No. 101-649, § 153, 104 Stat. 4978, 5005-06 (1990) (codified at 8 U.S.C. § 1101(a)(27)(J) (2006)) (establishing Special Immigrant Juvenile Status).

² When conducting a "best interest determination" in this context, the state court looks to the "best interest" standard under the laws of the applicable state. The court will generally contrast the advantages of the child's present situation with the mistreatment she suffered in the past or would face in the future in the child's or parent's previous country of nationality or residence. 8 U.S.C. § 1101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c).

best interests as accepted by DHS, and undermine the protective purposes of SIJ,³ which DHS is charged with executing.

Additionally, DHS cannot demonstrate a significant governmental interest in deporting the mothers simply because the mothers do not have SIJ status or pending adjustment applications—as such action would significantly undermine the children’s wellbeing, safety, and family unity. Under the 1997 [Flores Stipulated Settlement Agreement](#), which applies to all children in DHS custody, DHS has an obligation to make every effort toward family reunification with a parent or legal guardian. [Flores Stipulated Settlement Agreement](#), ¶ 18; *see also Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016). Notably, in approving the children’s SIJ applications, DHS accepted the state court’s findings that the Plaintiff mothers were the legal custodians, or guardians, of the Plaintiff children. *See* ECF No. 2.

Finally, the governmental interest in removal of all Plaintiffs is greatly diminished given that they are women and children who are not at all “dangerous.” *Nken*, 556 U.S. at 4. What little, if any, governmental interest remains in removal is vastly outweighed by the interests of Plaintiffs, who would face serious risk of death and grave harm if deported to the Northern Triangle. *See* Section A, *supra*.

³ Congress enacted the SIJ provisions of the Immigration and Nationality Act in 1990 to “protect abused, neglected, or abandoned children who, with their families, illegally entered the United States.” *Yeboah v. U.S. Dep’t of Justice*, 345 F.3d 216, 221 (3d Cir. 2003); *see also* Ruth Ellen Wasem, CONG. RESEARCH SERV., R43703, [Special Immigrant Juveniles: In Brief](#) (2014).

C. REMOVAL OF THE PLAINTIFFS AND THEIR CHILDREN IS NOT IN THE PUBLIC INTEREST

The public interest also leans heavily towards allowing the Plaintiffs to remain safely in the United States, maintaining unity between the children and their mothers pending this action. The plight of women and children arriving from the Northern Triangle and of the families detained at Berks in particular has generated significant public interest. Samantha Schmidt, [A Senator Pleaded with President Trump to Stop a Deportation](#), May 4, 2017, BOSTON GLOBE, (“Senator Casey [and 22 members of congress] sent a letter to [Secretary] Kelly, calling for the release of four mothers and children in the facility, saying they had “fled unspeakable violence in their home countries”); Valeria Fernández, [These Asylum Seekers are Being Forced to Raise Their Kids in Immigration ‘Jails’](#), PRI, July 7, 2016 (reporting on the detention of Central American mothers and children at Berks who “came seeking help, looking for shelter for our children”); Emily Gogolak, [Meet the Central American Women the United States is Detaining and Deporting](#), PULITZER CENTER, Dec. 26, 2016 (reporting on the lack of support and the danger faced by women and children deported from the United States after being detained at Berks and the other family detention centers). So, too, have the murders of children deported from the United States and killed in their home countries. *See* pp. 6-7, *supra* (citing articles).

Moreover, the public’s interest in providing protection to society’s most vulnerable, such as these women and children, was clear in the enactment of SIJ status to stop the deportation of children who are in need of special protection. Removing these children would deny them the statutory and due process rights guaranteed to them by virtue of their approved SIJ status. *See Soltane v. U.S. Dep’t of Justice*, 381 F.3d 143, 147 (3d Cir. 2004). Immigration courts across this country routinely grant continuances in removal proceedings for respondents with pending SIJ applications to afford adequate time for consideration by the agency. In *Matter of Garcia*, the

BIA held “that discretion should, as a general rule, be favorably exercised where a *prima facie* approvable visa petition and adjustment application have been submitted” and in that case allowed the respondent to await the outcome of the visa petition decision before his removal proceedings were concluded. 16 I&N Dec. 653, 657 (B.I.A. 1978). This Court should grant the requested emergency injunctive relief to ensure that the Plaintiffs’ statutory rights are protected by allowing their applications to be fully adjudicated.

The special protections afforded children by Congress through enacting SIJ status were created for exactly the profile of children presented by the Plaintiffs. The risk of significant harm to the Plaintiffs and the associated public interest in not removing a child with a pending application for relief should compel this Court to stay removal of these mothers and their children until their applications have been decided upon.

III. CONCLUSION

The Court should grant the Plaintiffs’ motion for temporary injunctive relief until their applications for relief are finalized.

Respectfully submitted,

s/Arleigh P. Helfer III

ROBYN BARNARD
KAREN MUSALO
BLAINE BOOKEY
EUNICE LEE
CENTER FOR GENDER & REFUGEE STUDIES
200 McALLISTER STREET
SAN FRANCISCO, CA 94102
415-565-4877
415-581-8824 (facsimile)

NANCY WINKELMAN, PA. ID No. 48928
BRUCE P. MERENSTEIN, PA. ID No. 82609
ARLEIGH P. HELFER III, PA. ID No. 84427.
SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103
215-751-2000
215-751-2205 (facsimile)

Counsel for Amicus Curiae

