

18-1597

United States Court of Appeals For the Second Circuit

RAVIDATH LAWRENCE RAGBIR, *et al.*,

Plaintiffs-Appellants,

v.

THOMAS D. HOMAN, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of New York
Case No. 18-CV-1159 (Hon. P. Kevin Castel)

**AMICUS BRIEF OF EMILIO AND OSCAR GUTIERREZ-
SOTO ON BEHALF OF APPELLANT, RAVIDATH
LAWRENCE RAGBIR**

Penny M. Venetis
(PV 3089)

International Human Rights
Clinic
Rutgers Law School
123 Washington Street
Newark, New Jersey 07102
(973) 353-5687
venetis@law.rutgers.edu
Attorney for Amici

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF INTEREST OF *AMICI CURIAE*.....1

BACKGROUND.....2

ARGUMENT.....12

I. TARGETING MR. RAGBIR FOR HIS POLITICAL ACTIVISM OR EXPRESSION IS CONTRARY TO INTERNATIONAL LAW.....12

 A. BINDING INTERNATIONAL INSTRUMENTS PROTECT FREE SPEECH.....14

 B. THE ICCPR AND THE FIRST AMENDMENT PROTECT ALL PERSONS INCLUDING NONCITIZENS.....17

 C. THE UNITED NATIONS HAS CRITICIZED THE UNITED STATES FOR TARGETING AND ATTEMPTING TO SILENCE IMMIGRANTS FOR THE CONTENT OF THEIR POLITICAL SPEECH19

II. FREEDOM OF EXPRESSION, PARTICULARLY OF POLITICAL EXPRESSION, IS SUCH A FUNDAMENTAL RIGHT THAT THE U.S. GRANTS POLITICAL ASYLUM TO INDIVIDUALS FROM AROUND THE WORLD WHO ARE PERSECUTED FOR THEIR POLITICAL SPEECH.....20

III. THE UNITED STATES CRITICIZES AND WITHOLDS FUNDING FROM OTHER GOVERNMENTS FOR IMPRISONING AND DEPORTING INDIVIDUALS WHO ENGAGE IN POLITICAL SPEECH.....23

CONCLUSION.....27

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STATEMENT OF INTEREST OF AMICI CURIAE¹

Amici Curiae, Emilio and Oscar Gutiérrez-Soto, are political asylum seekers who were detained unlawfully by the U.S. Immigration and Customs Enforcement (“ICE”) for nine months. In July 2018, the U.S. District Court for the Western District of Texas ruled in favor of *amici* on freedom of speech and freedom of the press *habeas corpus* claims, finding sufficient “temporal proximity” between *amici*’s political speech and ICE’s arrest, detention, and attempted deportation of them. Gutierrez-Soto v. Sessions, No. EP-18-CV-00071-DCG, 2018 U.S. Dist. LEXIS 115440, *22-23 (W.D. Tex. July 10, 2018).

As such, *amici* are in a unique position to inform this Court that targeting, detaining, and deporting immigrants for exercising their freedom of speech and speaking about important policy issues are anathema to international law, including treaties ratified by the U.S.. Allowing the U.S. to deport Mr. Ragbir, when the government has so blatantly violated his rights to freedom of speech and expression, would set a dangerous precedent and signal that it is acceptable for the U.S. government to target immigrants for abuse.

¹ In accordance with Fed. R. App. P. 29(c)(5), *amici curiae* verify that: no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund this brief's preparation or submission; and no person (other than *amici curiae* or their counsel) contributed money intended to fund this brief's preparation or submission. Mr. Ragbir’s counsel has consented to the submission of this brief, and the government has stated that it does not object to its submission.

BACKGROUND

Emilio Gutiérrez-Soto, an award-winning Mexican journalist, and his son Oscar (“*amici*”) sought political asylum after receiving death threats from members of the Mexican military. Emilio had written a series of articles exposing corruption in the Mexican military, and continued to write articles even after being threatened by Mexican authorities. Emilio and Oscar fled to the U.S. in 2008 after being tipped off that they were on a “hit list” for execution. They were found to have expressed credible fear of persecution, and were granted parole. Gutierrez-Soto v. Sessions, 2018 U.S. Dist. Lexis 115440 at *3. They were issued multiple work permits by the U.S. government, and have worked lawfully in the United States for nine years. Id. at *4.

In 2009, *amici* settled in Las Cruces, New Mexico where they built strong ties. Their community engagement was so strong that an immigrants’ rights group named the “Community Friends of Emilio” was formed. *Amici* never engaged in any action or behavior to warrant criminal or detention. They attended all scheduled immigration hearings and appointments, and complied with all ICE requirements. Id.

Over the years, Emilio has publicly expressed his disappointment with the U.S. immigration system. In October 2017, The National Press Club awarded Emilio the prestigious John Aubuchon Press Freedom Award. During his

acceptance speech, he again criticized the U.S.'s immigration policies. See Gutierrez-Soto v. Sessions, 2018 U.S. Dist. Lexis 115440 at *3. A few weeks later, ICE suddenly and inexplicably arrested, detained, and attempted to deport *amici*. Id. at *4.

Dozens of elected officials, including members of the Las Cruces City Council and representatives from U.S. Senators Tom Udall and Martin Heinrich's offices, protested the ICE detentions and demanded *amici*'s immediate release. Carlos Lopez, Las Cruces Group Calls For Release of Detained Mexican Journalist Emilio Gutierrez Soto, Las Cruces Sun News (Dec. 12, 2017), <https://www.lcsun-news.com/story/news/local/2017/12/12/mexican-journalist-detained-immigration-facility-seeks-asylum-deportation-appeal/944568001/>. *Amici* also received unwavering support from U.S. Congressman Beto O'Rourke, who is running for Ted Cruz's U.S. Senate seat. See Julian Aguliar, O'Rourke, National Press Association Call for Mexican Reporter's Release, The Texas Tribune (Dec. 22, 2017) <https://www.texastribune.org/2017/12/22/orourke-national-press-association-call-mexican-reporters-release/>.

While in a federal detention center in El Paso, Emilio continued to critique the U.S. immigration system and the Department of Homeland Security. See Steve Carroll, After Ten Years, a Journalist Who Fled Mexico Faces Deportation, The New Yorker (May 3, 2017), <https://www.newyorker.com/news/daily->

comment/after-ten-years-a-journalist-who-fled-mexico-faces-deportation. The New Yorker, CNN, Washington Post, Houston Chronicle, and Denver Post, all editorialized in support of *amici*'s release. Id.; Opinion, A Mexican Journalists Life Hangs in the Balance, Washington Post (Dec. 11, 2017) https://www.washingtonpost.com/opinions/a-mexican-journalists-life-hangs-in-the-balance/2017/12/11/9783ab1a-deac-11e7-8679-a9728984779c_story.html?noredirect=on&utm_term=.6e5efc006a93; Editorial, Plight of Mexican Journalist is Why Trump Should Rethink Immigration Policy, Houston Chron. (Dec. 26, 2017), <https://www.houstonchronicle.com/opinion/editorials/article/Plight-of-Mexican-journalist-is-why-Trump-should-12455618.php>; Editorial, American Can Support Democracy by Helping Mexican Journalists, Denv. Post (Feb. 6, 2018), <https://www.denverpost.com/2018/02/16/america-can-support-democracy-by-helping-mexican-journalists/>; Jorgensen & Sandoval, Mexican journalist and son released from ICE custody, but questions linger about detention, CNN (July 27, 2018), <https://www.cnn.com/2018/07/27/us/mexican-journalist-released-from-ice-custody/index.html>.

The press coverage of *amici*'s detention was so extensive that ICE officials told Bill McCarren, the Executive Director of the National Press Club, to "tone it down" and stop drawing attention to *amici*'s case. Gutierrez-Soto v. Sessions, 2018

U.S. Dist. Lexis 115440 at *23. Despite the widespread community support for *amici*, and even though *amici* led exemplary lives as immigrants, ICE inexplicably kept *amici* in detention for nine months. ICE kept *amici* in detention even after the BIA reinstated their case, reversed the denial of asylum, and remanded their case for *de novo* consideration. Ice continued to fight against their release even after Emilio was awarded the University of Michigan's prestigious Knight-Wallace Journalism Fellowship.

ICE released *amici* from detention only after the U.S. District Court for the Western District of Texas issued an order to show cause finding that *amici* had provided sufficient evidence that they were being detained for unconstitutional reasons. *Id.* Among the documents that the Court relied upon in issuing its opinion were a series of emails sent by ICE officials that show that Emilio's name was on an actual “Target List” of non-detained immigrants that ICE was contemplating arresting, even before his asylum case had been decided. The emails demonstrated that the reasons that ICE gave for *amici*'s detention were pretextual, and that *amici* had indeed, literally, been targeted for arrest. *Id.* at *24; See also Jorgensen & Sandoval, Mexican journalist and son released from ICE custody, but questions linger about detention, CNN (July 27, 2018), <https://www.cnn.com/2018/07/27/us/mexican-journalist-released-from-ice-custody/index.html>.

Appellant, Ravidath Lawrence Ragbir (“Mr. Ragbir”), like Emilio Gutiérrez-Soto, is a public figure who advocates for immigration law reform. Also like Emilio, Mr. Ragbir has strong ties to the community, a stable family life, and was authorized by the U.S. government to live and work in the U.S.. Like Emilio, Mr. Ragbir poses no risk of flight or harm to the community. See Ragbir v. Sessions, No. 18-cv-236 (KBF), 2018 U.S. Dist. Lexis 13939, *2-3 (S.D.N.Y. Jan. 29, 2018).

Mr. Ragbir is the Executive Director of the New Sanctuary Coalition of New York City, where he created programs to demystify immigration law for immigrants, help the most vulnerable immigrants, and promote humane immigration law reform. Opinion, ICE Detained My Husband for Being an Activist, The New York Times (Jan. 18, 2018)

<https://www.nytimes.com/2018/01/18/opinion/ravi-ragbir-immigration-ice.html>.

He also sits on the Steering Committee of the New York State Interfaith Network for Immigration Reform and served as the chair for the Board of Families for Freedom. Id. He is a vital member of the public interest advocacy community both locally and nationally, and has offered advice to elected officials on immigration-related issues. Mr. Ragbir lives in Brooklyn, New York, with his wife who is an American citizen. His daughter is also an American citizen. See Ragbir v. Sessions, 2018 U.S. Dist. Lexis 13939 at *2 n.3.

Mr. Ragbir's very public work on behalf of vulnerable communities is so critical that he was awarded the 2017 Immigration Excellence Award by the New York State Association of Black and Puerto Rican Legislators for his “deep commitment to the enhancement of their community.” Editorial, Indian-origin Activist Ravi Ragbir Held in the US, Faces Immediate Deportation, Business Standard (Jan. 12, 2018) https://www.business-standard.com/article/current-affairs/indian-origin-activist-ravi-ragbir-held-in-us-faces-immediate-deportation-118011200157_1.html. He was also awarded the 2017 ChangeMaker Award by South Asian Americans Leading Together (SAALT) for his “tremendous sacrifice, fierce advocacy, and fearless leadership” on behalf of immigrants. Id.

ICE's attempts to deport Mr. Ragbir, and his 2018 detention, sent shockwaves locally and nationally. An unprecedented number of elected officials immediately issued public statements to protest Mr. Ragbir's detention and secure his release. U.S. Congresspersons Nydia M. Velazquez, Yvette D. Clarke, and Adriano Espaillat sent a letter to ICE on January 10, 2018, asking that his removal be stayed, and stating that Mr. Ragbir “has impacted the lives of many, and his work has helped change the lives of countless immigrant families.” Press Release, Members of Congress Demand Meeting with Trump Officials after Detainment of Ravi Ragbir, Community Leaders, Congressman Nydia M. Velazquez (Jan. 27, 2018) <https://velazquez.house.gov/media-center/press-releases/velazquez-crowley->

call-ice-end-targeting-immigrant-activists. The letter further emphasized that “[d]espite the uncertainty and possibility of detention, Mr. Ragbir continue[d] to work diligently to help those who need it most[.]” Id. U.S. Congressman Joseph Crowley, the House Democratic Caucus Chair, called on ICE to release Mr. Ragbir, stating that Mr. Ragbir is an “acclaimed community leader, a loving father, and a steadfast immigrant rights activists” and that “his detention is entirely unwarranted” Id.

New York City Council Speaker Corey Johnson also made his support for Mr. Ragbir clear. Brown & Cook, ICE Detains Immigrant Rights Leader Ravi Ragbir, Prompting Manhattan Protests, AM New York (Jan. 12, 2018), <https://www.amny.com/news/ravi-ragbir-detained-ice-1.16117103>. Former New York City Council Speaker Melissa Mark-Viverito stated: “I know Ravi personally; he is a man of grace, and community building.” Id. On the day of Mr. Ragbir’s arrest, New York City Council Members Ydanis Rodriguez and Jumaane Williams, along with sixteen other people, were arrested while peacefully protesting for Mr. Ragbir’s release. Rafael Bernal, Immigrant Activist’s NYC Detention Prompts Protests, Arrests for City Council Members, Hill (Jan. 12, 2018), <http://thehill.com/latino/368742-immigrant-activists-nyc-detention-prompts-protests-arrests-for-city-council-members>. Councilman Williams described Mr. Ragbir as “an extraordinary man, beloved in his community and

dedicated to fighting for immigrant rights.” New York City Council Member Brad Lander expressed hope for Mr. Ragbir to be returned to his family. Id.

Additionally, 1,721 lawyers, academics, community organizations, public interest organizations, and faith-based organizations, sent a letter to the Department of Homeland Security “condemn[ing] the Department of Homeland Security’s recent targeting of leaders of the sanctuary and immigrant rights movement,” and calling for Mr. Ragbir’s immediate release. Press Release, Opposition Grows Against ICE's Aggressive Targeting of Immigrant Rights Activists, Justice for Ravi Ragbir (Jan. 24, 2018)

<https://istandwithravi.org/2018/01/24/press-release-opposition-grows-against-ices-aggressive-targeting-of-immigrant-rights-activists/>.

DHS’ effort to silence political opposition through coercive government power sadly echoes some of the most shameful periods in our nation’s history. Our Constitution holds most dear the right of the people to come together and raise their voices in dissent. The viability of our democracy depends on the most robust protections for such dissent . . . Imprisoning and expelling activist leaders is a tool of repression that is the hallmark of authoritarian regimes around the world and is incompatible with democracy. We, the undersigned individuals and organizations, call on DHS to immediately release Ravi Ragbir . . . and to cease using detention and deportation as a tool to repress dissent.

Id.

Mr. Ragbir's *habeas corpus* petition was granted on January 28, 2018. After Mr. Ragbir's release from detention, he received the Bishop's Cross from the

Episcopal Diocese of Long Island for his "exceptional service to the church and to the community it serves." Noah Manskar, Ravi Ragbir Honored By Church That Helped Fight To Free Him, New York City Patch (Feb. 4, 2018)

<https://patch.com/new-york/new-york-city/ravi-ragbir-honored-church-helped-fight-free-him>. Mr. Ragbir continues to work for the public interest, for immigrants' rights, and for immigration reform.

Mr. Ragbir, like Emilio, is among a number of immigrants' rights leaders and advocates who have recently been targeted by the Trump administration for their political activism and public speech in favor of a more just immigration policy. See Amy Goodman & Denis Moynihan, Trump's Roundup of Immigrant Leaders Has Begun, Democracy Now! (Jan. 18, 2018),

https://www.democracynow.org/2018/1/18/trumps_roundup_of_immigrant_leaders_has; Is ICE Targeting Immigration Activists? Family Members of Detained & Deported Leaders Speak Out, Democracy Now! (Jan. 17, 2018),

https://www.democracynow.org/2018/1/17/ie_ice_is_targeting_immigration_activists. In light of the recent targeting of immigrants' rights activists, Mary Smalls, director of the Detention Watch Network-an immigration organization committed to challenging the injustices of the immigration and deportation system-stated: "It seems really clear to us that this is an escalation of retaliation, not just against individual rights leaders, but against the right of the movement to exist[.]" Liz

Robbins, Activists and ICE Face OFF over Detained Immigrant Leader, N.Y.

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[deportation.html](https://www.nytimes.com/2018/01/12/nyregion/immigration-activist-deportation.html). Journalists report that the visibility that had previously shielded

immigrants' rights leaders from deportation-through public support and pressure

on elected officials-now serves to implicate them. Julianne Hing, ICE Is Going

After People Who Were Once Off-Limits, The Nation (Jan. 19, 2018),

<https://www.thenation.com/article/ice-is-going-after-people-who-were-once-off->

[limits/](https://www.thenation.com/article/ice-is-going-after-people-who-were-once-off-limits/).

ICE's targeting of immigrants advocating for law reform has drawn the attention of the United Nations. The U.N. Office of the High Commissioner for Human Rights issued statements recently harshly criticizing the detention and deportation of human rights advocates.² See Elina Steinerte, U.S. Urged to Protect Rights Defenders as Activist Maru Mora Villalpando Faces Deportation Case, Office of the High Commissioner for Human Rights (Feb. 14, 2018)

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22657>

[&LangID=E](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22657&LangID=E). "The authorities should take all necessary measures to guarantee that

no action, including detention and deportation, as means of retaliation, is taken

² "The High Commissioner's comments come months after the office had already condemned ICE's practice of separating immigrant children from their parents, calling it a serious violation of children's rights and international law." U.N. Rights Chief Tells U.S. to Stop Taking Migrant Children From Parents, New York Times (June 18, 2018) <https://www.nytimes.com/2018/06/18/world/europe/trump-migrant-children-un.html>.

against [activists] . . . ³ for reporting cases of the detention of immigrants and alleged violations of their human rights, especially in view of the reported conditions in these centers of detention.” Id. The statement further stressed that individuals working “legitimately to protect migrants’ rights must not be restricted or silenced” and emphasized that “their rights must be upheld so they can continue to exercise their vital role.” Id.

ARGUMENT

I. TARGETING MR. RAGBIR FOR HIS POLITICAL ACTIVISM OR EXPRESSION IS CONTRARY TO INTERNATIONAL LAW

In Gutierrez-Soto v. Sessions, the court found that, *amici*, an immigrant and his son, who openly criticized the U.S. immigration policies and advocated for immigrants, were unlawfully detained by ICE for nearly nine months. Gutierrez-Soto v. Sessions, 2018 U.S. Dist. LEXIS 115440 at *6. The court in Gutierrez held that the conspicuous timing between *amici*’s activism and their subsequent detention, spurred on by President Trump’s anti-immigrant sentiment and policies, was sufficient to demonstrate that ICE may be targeting and detaining immigrants’ rights activists in violation of the First Amendment. Id. at *25. Courts construe the First Amendment liberally to effectuate the “profound national commitment to the

³ The U.N. refers specifically to immigrant rights activist, Maru Mora Villalpando, who like Mr. Ragbir, is a respected community leader and parent of an American citizen.

principle that debate on public issues should be uninhibited, robust, and wide-open, and [we] have consistently commented on the central importance of protecting speech on public issues." Id. at *33 (citing Boos v. Barry, 485 U.S. 312, 318, 108 S. Ct. 1157, 99 L. Ed. 2d 333 (1988) (internal quotation marks and citation omitted)). The court further noted that "pure political speech is entitled to the highest First Amendment protection" Id. at *33 (citing Tauber v. Town of Longmeadow, 695 F. Supp. 1358, 1360 (D. Mass. 1988)).

Notably, in finding against the government on free speech issues, the Court also acknowledged that immigration authorities have been "bartering away international law." Id. at *25. This is because U.S. laws should never to be construed to violate international law. See Murray v. Schooner Charming Betsy, 6 U.S. 64, 118 (1804); United States v. Thomas, 893 F.2d 1066, 1069 (9th Cir. 1990) (stating that courts adhere to the Charming Betsy rule "out of respect for other nations"). Courts have used the Charming Betsy canon to interpret Congressional intent. See, e.g., Immigration and Naturalization Serv. v. Cardoza-Fonseca, 480 U.S. 421, 436 (1987) (interpreting the Refugee Act of 1980 granting asylum to refugees).

A. BINDING INTERNATIONAL LAW INSTRUMENTS PROTECT FREE SPEECH

The U.S. spearheaded the passage of the Universal Declaration of Human Rights. See G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter “Universal Declaration”]. The language of the Universal Declaration makes it clear that U.N. member states must protect the rights of both citizens and non-citizens. Article 19 of the ICCPR states that: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." To penalize an individual for exercising his or her speech and expression would defy a fundamental canon of the international community and break the U.S.’s commitment to the U.N.

Also, the U.S. ratified the International Covenant on Civil and Political Rights (“ICCPR”) in 1992, which also protects political speech. International Convention on Civil and Political Rights art. 2, Dec. 16, 1966, S. Exec. Doc. No. E, 95-2, 999 U.N.T.S. 171 [hereinafter “ICCPR”]. ICCPR Article 19 guarantees freedom of expression and speech: “[e]veryone shall have the right to hold opinions without interference.”

As the ICCPR was being debated in the U.S., one of Congress’s major concerns was that the treaty was too weak on issues related to free expression and

speech. See U.S. Reservations, Declarations, and Understandings, International Covenant on Political and Civil Rights, 138 Cong. Rec. S4781-01 (April 2, 1992) [hereinafter “RDUs on ICCPR”]; Senate Committee on Foreign Relations Report on the International Covenant on Civil and Political Rights, 31 I.L.M. 645 (1992); see also Kristina Ash, U.S. Reservations to the International Covenant of Civil and Political Rights: Credibility Maximization and Global Research, 3 Nw. J. Int’l Hum. Rts. 1 (2005). The Senate made it clear that it expected the broadest speech protections available.⁴

III. The Senate’s advice and consent is subject to the following declarations . . . (2) That it is the view of the United States that States Party to the Covenant should wherever possible refrain from imposing any restrictions or limitations on the exercise of the rights recognized and protected by the Covenant . . . [f]or the United States, Article 5, paragraph 2, which provides that fundamental human rights existing in any State Party may not be diminished on the pretext that the Covenant recognizes them to a lesser extent, has particular relevance to Article 19, paragraph 3, which would permit certain restrictions on the freedom of expression. The United States declares that it will continue to adhere to the requirements and constraints of its Constitution in respect to all such restrictions and limitations.

Ash, RDUs on ICCPR, supra. This language makes clear that the U.S. holds

⁴ The Senate Committee concluded that Article 20 of the ICCPR directly conflicted with the First Amendment because it required the prohibition of certain forms of speech and expression which are protected by constitutional law. See 31 I.L.M. 645 (1992). In response, the Senate broadened the right to freedom of speech and expression to comport with the First Amendment. Id.

freedom of expression in the highest regard.

The government's adverse actions against Mr. Ragbir, triggered by his public advocacy for immigrants, violate the ICCPR and the Universal Declaration— international law provisions that the U.S. is obligated to follow. Although the ICCPR and Universal Declaration do not create a private right of action, they can be enforced through the common law or federal and state constitutions. See David Sloss, *The Domestication of International Human Rights: Non-Self Executing Declarations and Human Rights Treaties*, 24 Yale J. Int'l L. 129, 151 (1999).

This Court should consider international law in evaluating this appeal, as the United States Supreme Court has looked to international law and norms when deciding constitutional cases concerning our nation's most critical social issues. See, e.g., *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (recognizing the immense weight of international opinion opposing the juvenile death penalty and referring to international law in interpreting constitutional law); *Lawrence v. Texas*, 539 U.S. 558, 573, 576 (2003) (finding statutes banning gay sexual activity invalid by invoking the European Court of Human Rights' opinion *Dudgeon v. United Kingdom*, 45 Eur. Ct. H.R. (1981)); *Grutter v. Bollinger*, 539 U.S. 306, 344 (2003) (Ginsburg and Breyer, JJ., concurring) (affirming affirmative action in universities by citing the International Convention on the Elimination of All Forms of Racial

Discrimination, G.A. Res. 2106, Annex, UN GAOR, 20th Sess., Supp. No. 21, UN Doe. A/6014 (Dec. 21, 1965)), and the Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, UN GAOR, 34th Sess., Supp. No. 46, UN Doc A/34/46 (Sept. 3, 1981)); Atkins v. Virginia, 536 U.S. 304, 315-16 n.21 (2002) (noting that implementing the death penalty for mentally challenged individuals was “overwhelmingly disapproved” within the world community).

Given the Supreme Court’s reliance on international law, it would be appropriate for this Court to weigh heavily the ICCPR and the Universal Declaration in deciding this appeal, as they reinforce rights guaranteed by the Constitution’s First Amendment.

B. THE ICCPR AND THE FIRST AMENDMENT PROTECT ALL PERSONS INCLUDING NONCITIZENS

The ICCPR recognizes that “[a]ll persons [are] equal before the law” and entitled to equal protection of the laws, including protection “against discrimination . . . political or other opinion, national or social origin, property, birth or other status.” ICCPR, supra, art. 26. It also states that, “each State Party . . . undertakes . . . to ensure to all individuals within its territory . . . without distinction of any kind, such as . . . political or other opinion, national or social origin . . . or other status.” ICCPR, supra, art. 2, § 1. Article 19 of the Universal

Declaration states that “[e]veryone has the right to *freedom of opinion and expression*; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Universal Declaration, supra, art. 19 (emphasis added).

Similarly, the First Amendment prevents the government from abridging the freedom of speech of non-citizens. Bridges v. Wixon, 326 U.S. 135, 148 (1945) (“Freedom of speech and of press is accorded to aliens residing in this country.”); see also Citizens United v. Fed. Election Comm’n, 558 U.S. 310, 340–41 (2010) (“[T]he Government may commit a constitutional wrong when by law it identifies certain preferred speakers . . . The First Amendment protects speech and speaker, and the ideas that flow from each.”); Zadvydas v. Davis, 533 U.S. 678, 693 (2001) (“It is well established that certain constitutional protections available to persons inside the U.S. are unavailable to aliens outside of our geographic borders. But once an alien enters the country, the legal circumstance changes[.]”); Wong Wing v. United States, 163 U.S. 228, 238 (1896) (“[I]t must be concluded that all persons within the territory of the United States are entitled to the protection guaranteed by those amendments[.]”).

C. THE UNITED NATIONS HAS CRITICIZED THE UNITED STATES FOR TARGETING AND ATTEMPTING TO SILENCE IMMIGRANTS FOR THE CONTENT OF THEIR POLITICAL SPEECH

ICE's targeting and detention of pro-immigrant activists has been criticized by the United Nations Special Rapporteur on the Human Rights of Migrants, Special Rapporteur on the Situation of Human Rights Defenders, and Vice-chair on Communications of the United Nations Working Group on Arbitrary Detention. Elina Steinerte, Felipe González Morales, Michel Forst, Dante Pesce, US urged to protect rights defenders as activist Maru Mora Villalpando faces deportation case, United Nations Human Rights Office of the High Commissioner (Feb. 14, 2018) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22657&LangID=E> [hereinafter "Villalpando UN Statement"] (United Nations experts calling for the U.S. to not take any adverse actions against pro-immigrant activist Maru Mora Villalpando). The main functions of the Special Rapporteur and Working Group are to investigate conditions within countries in order to make recommendations and practical solutions to effectuate the protection of the "human rights of migrants" and "prevent and guard against the practice of arbitrary deprivation of liberty." Special Rapporteur on the human rights of migrants, United Nations Human Rights Office of the High Commissioner (Sep. 4, 2018), <https://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/SRMigrantsIndex.aspx>; Special Rapporteur on the situation of human rights defenders, United

Nations Human Rights Office of the High Commissioner (Sep. 4, 2018), <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx>; Working Group on Arbitrary Detention, United Nations Human Rights Office of the High Commissioner (Sep. 4, 2018), <https://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx>.

The U.N. urges for the U.S. government to respect the rights of human rights defenders by guaranteeing that “no action, including detention and deportation, as means of retaliation is taken” against activists for work on behalf of migrants. Villalpando UN Statement, supra. The statement emphasizes that “people working legitimately to protect migrants’ rights must not be . . . silenced. Their rights must be upheld so they can continue to exercise their vital role.” Id. The U.N. recognizes ICE tactics used towards *amici* and Mr. Ragbir, stating that “giving people notice of deportation proceedings appears to be a part of an increasing pattern of intimidation and retaliation against people defending migrants’ rights in the US.” Id.

II. FREEDOM OF EXPRESSION, PARTICULARLY OF POLITICAL EXPRESSION, IS SUCH A FUNDAMENTAL RIGHT THAT THE U.S. GRANTS POLITICAL ASYLUM TO INDIVIDUALS FROM AROUND THE WORLD WHO ARE PERSECUTED FOR THEIR POLITICAL SPEECH

Since the enactment of the Immigration and Nationality Act of 1965 (“INA”), the U.S. has offered asylum to refugees who can prove that they face

imminent danger for exercising their freedom of speech by expressing their political beliefs. 8 U.S.C. §1158 (b)(1)(A). In a process standardized by the Refugee Act of 1980, the INA provides that the Secretary of Homeland Security or the Attorney General may grant asylum to:

Any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, *political opinion*.

8 U.S.C. § 1158(b)(1)(A); 8 U.S.C. § 1101(42)(A) (emphasis added).

Our federal courts have a history of granting asylum protection to those facing persecution based solely on the expression of political opinions. See e.g., Meza-Manay v. Immigration and Naturalization Serv., 139 F.3d 759, 765 (9th Cir. 1998) (reversing BIA opinion and granting review of asylum petition for espousing political beliefs); Vongsakdy v. Immigration and Naturalization Serv., 171 F.3d 1203, 1207 (9th Cir. 1999) (granting review in case where BIA failed to give appropriate weight to petitioner's past persecution for expression of strong support for democracy); Bassene v. Holder, 723 F.3d 1036, 1043 (9th Cir. 2013) (vacating BIA's denial of asylum eligibility and finding that BIA failed to evaluate petitioner's fear of persecution on account of political beliefs).

In Osorio v. INS, the Second Circuit ruled in favor of a persecuted union leader from Guatemala, who was a leader of Sindicato Central de Trabajadores Municipal (“SCTM”), an independent labor union. Osorio v. I.N.S., 18 F.3d 1017, 1023 (2d Cir. 1994). Osorio led a strike of SCTM members because the “rights of the workers were being trampled upon.” Osorio, 18 F.3d at 1023. As a result, Osorio received threats warning him to stop his “outspokenness.” Id. at 1024. In 1989 he fled to the U.S. seeking asylum protections. Id. at 1024. Although his initial petition and his appeal to the BIA were denied, the Second Circuit reversed the decision because Osorio’s “life or freedom would be threatened in Guatemala on account of his political opinion.” Id. at 1033; See also Castro v. Holder, 597 F.3d 93, 106 (2d Cir. 2010) (finding that Guatemalan petitioner’s act as whistleblower could be considered political expression); Acharya v. Holder, 761 F.3d 289, 303 (2d Cir. 2014) (granting review for Nepalese petitioner facing persecution for membership in a political party); Kunwar v. Holder, 577 Fed. Appx. 54, 55 (2d Cir. 2014) (finding that there could be a nexus between the Nepalese petitioner’s persecution and his rebuke of Maoist political beliefs); Ruqiang Yu v. Holder, 693 F.3d 294, 299 (2d Cir. 2012) (granting review of a case where the Chinese petitioner was targeted after protesting on behalf of factory workers).

The type of targeting to which Mr. Ragbir is being subjected would be

grounds for him to be granted asylum in the United States. It thus defies logic for Mr. Ragbir's deportation to proceed.

III. THE UNITED STATES CRITICIZES AND WITHHOLDS FUNDING FROM OTHER GOVERNMENTS FOR IMPRISONING AND DEPORTING INDIVIDUALS WHO ENGAGE IN POLITICAL SPEECH

For the past 42 years, the U.S. Department of State has compiled and published annual Country Reports on Human Rights Practices for all United Nations member states, as well as for countries receiving aid from the U.S. These Reports make clear that the United States will “lead other nations by example in promoting just and effective governance based on the rule of law and respect for human rights.” John J. Sullivan, Preface to U.S. Dept. of State, Country Reports on Human Rights Practices (2017) [hereinafter “2017 Preface to Reports”]. One of the most essential human rights that the U.S. seeks to protect is freedom of expression. Sullivan, 2017 Preface to Reports, supra (“[s]tates that restrict freedoms of expression . . . are morally reprehensible and undermine our interests”). Further, the U.S. uses the Reports “as a resource for shaping policy and guiding decisions, informing diplomatic engagements, and determining the allocation of foreign aid and security sector assistance.” Id. Countries whose Reports exhibit continued human rights abuses are at risk of economic and diplomatic reprisals from the U.S. Id.

The Human Rights Reports document the human rights abuses of nearly 200

countries. Frequently highlighted abuses in these Reports include the improper and irregular detention and deportation of immigrants for expressing their political beliefs. By targeting Mr. Ragbir, the U.S. is violating the very principles that it criticizes other countries for violating. In the 2017 Report on Algeria, the State Department noted that “authorities used [federal laws] detain political activists and outspoken critics of the government.” U.S. Dept. of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2017, Algeria (2017). Likewise, in its 2017 Report on Ethiopia, the U.S. related with concern the “regulations contain[ing] several prohibitions that restricted freedom of speech and expression [...] result[ing] in the detention or disappearance of numerous independent voices.” U.S. Dept. of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2017, Ethiopia (2017). Additionally, “the [Ethiopian] government attempted to impede criticism through intimidation, including continued detention of journalists, those who express critical opinions online, and opposition figures.” Country Reports on Human Rights Practices for 2017, Ethiopia (2017).

Notably, our State Department admonished France for sentencing radical militant Jean-Marc Rouillan to eight months in prison for his political speech supporting terrorists who attacked the French satirical newspaper Charlie Hebdo. U.S. Dept. of State, Bureau of Democracy, Human Rights and Labor, Country

Reports on Human Rights Practices for 2016, France (2016); see also Tony Cross, Former Far-Left Armed Group Leader in Court for ‘Condoning’ Paris Attacks, Radio France Internationale (January 1, 2016), <http://en.rfi.fr/france/20160601-former-far-left-armed-group-leader-court-condoning-paris-attacks>. Rouillan stated in an interview that he believed that the terrorists “fought bravely” against the French police. The 2016 U.S. Report further criticized the French government for using speech-based violations as a viable stand-alone ground for deportation, noting that “[a]uthorities may deport a noncitizen for publicly using ‘hate speech’ or speech constituting a threat of terrorism.” Id.

In the 2017 Report on China, the U.S. government criticized politically motivated detention and deportation. U.S. Dept. of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2017, China (2017). In January 2016, Chinese authorities detained a Swedish NGO worker, Peter Dahlin, on charges of endangering state security. Id. He had worked for an organization that trained and supported activists and lawyers seeking to “promote the development of the rule of law.” U.S. Dept. of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2016, China (2016). After being paraded on state television in what his friends and colleagues characterized as a forced confession, which included an apology for “hurting the Chinese government and the Chinese people,” authorities

deported Dahlin from the country. Country Reports on Human Rights Practices for 2016, China (2016).

A comparable example of abusive state power wielded against an activist is also noted in the 2017 Report on Argentina. U.S. Dept. of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2017, Argentina (2017). On May 18, 2017, the UN Working Group on Arbitrary Detention reaffirmed its original condemnation of the “preventative detention” of social activist Milagro Sala. U.S. Dept. of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2017, Argentina (2017). On January 16, 2016 authorities arrested Sala as she led a protest against the Jujuy provincial government’s reforms to social spending. U.S. Dept. of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2016, Argentina (2016).

Similarly, the State Department criticized the Bahamas after “the foreign minister threatened to revoke the permanent residency status of a critic of the government” who had spoken out against new, strict immigration policies which resulted in the large-scale deportation of Haitian immigrants. U.S. Dept. of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2016, Bahamas (2016). The U.S. stated that this behavior has contributed to the “widespread perception of impunity for police and immigration

authorities and fear of reprisal among minority communities.” U.S. Dept. of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2017, Bahamas (2017).

On the world stage, the United States touts itself as a haven for free speech. In retaliating against *amici* and Mr. Ragbir, the U.S. falls short of realizing this legal mandate. It is hypocritical for the United States to condemn other nations for the abuse, detention, and deportation of those who engage in political speech, while at the same time trying to deport advocates like Mr. Ragbir for engaging in peaceful advocacy related to immigration reform in the U.S. Allowing the U.S. to violate the free speech rights of immigrants so blatantly would embolden ICE and other governmental agencies to violate immigrant rights, and quash free speech without fear of repercussion.

CONCLUSION

For the reasons discussed in this memorandum of law, *amici curiae* respectfully request that this Court reverse the denial of the Appellants’ motion for a preliminary injunction and remand this matter for further consideration by the district court.

/s/ Penny M. Venetis

PENNY M. VENETIS (PV3089)

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Newark, New Jersey

International Human Rights Clinic
Rutgers Law School
Center for Law and Justice
123 Washington Street
Newark, NJ 07102-3026

Attorney for *amici*