

CASE NO. 11-6031
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JUANA VILLEGAS,
Plaintiff/Appellee,

v.

**METROPOLITAN GOVERNMENT OF DAVIDSON
COUNTY/NASHVILLE – DAVIDSON COUNTY SHERIFF’S OFFICE,**
Defendant/Appellant,

**On Appeal from the United States District Court for the
Middle District of Tennessee
(No. 09-00219)**

BRIEF OF *AMICI CURIAE*
IN SUPPORT OF APPELLEE AND
AFFIRMANCE OF THE DISTRICT COURT’S ORDER

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CORPORATE DISCLOSURE STATEMENT

Each of the *amici curiae* herein is either an individual or a not-for-profit organization. None has any parent corporation. None has any capital stock held by a publicly traded corporation.

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DESCRIPTION OF *AMICI CURIAE*

Amici curiae submit this brief because they are deeply concerned about the practice of shackling pregnant women in jails, prisons, and detention centers. They believe that the shackling of pregnant women at any point during the birthing process is a degrading and inhumane practice that endangers the health and safety of mothers and their children and constitutes a violation of U.S. evolving standards of decency and international human rights law. The following individuals and organizations join this brief as *amici curiae*:

Amicus Curiae **National Women’s Law Center** (“NWLC”) is a Washington, D.C. based nonprofit organization with a longstanding commitment to equality on the basis of sex, and the constitutionally protected freedoms of liberty, privacy and bodily integrity. NWLC advances and supports both state and federal policies that promote public health, and opposes policies that hinder access to health care, including prenatal, childbirth and postpartum care. As a result, NWLC has a long history of promoting and defending women’s reproductive rights by filing *amicus curiae* briefs in major cases at the federal and state levels.

Amicus Curiae **The National Immigration Law Center** (“NILC”) is a nonprofit national legal advocacy organization whose mission is to defend and promote the rights and opportunities of low-income immigrants and their family members. NILC has earned a national leadership reputation for its expertise in the

due process rights of immigrants, including the rights of detained noncitizens and in protecting access to health care for immigrants. Ensuring immigrants are treated fairly, have a right to due process, that they receive humane treatment while in detention, and are able to access health care are priorities for the organization. Because the outcome of this case may affect the ability of low-income immigrant women to obtain humane treatment and access to health care during immigration detention by local law enforcement, NILC has a fundamental interest in this case.

Amicus Curiae **The National Crittenton Foundation** (“NCF”) and its family of agencies support girls, young women, and their families living at the margin of the American dream overcome major obstacles rooted in circumstances not of their own making. NCF and the 26 members of the Crittenton family of agencies use a social justice approach to support young girls and women at the margin to thrive, build skills, break destructive cycles and become powerful agents of personal and social change. At the core of NCF’s work is the mandate to address the profound impact of root causes, such as sexism, racism, poverty and violence in the lives of girls and young women.

Amicus Curiae **The Yale Law School Allard K. Lowenstein International Human Rights Law Clinic** (“IHRLC”) is a legal clinic that undertakes a wide variety of projects on behalf of human rights organizations and individual victims of human rights abuse. The goals of the clinic are to provide students with

practical experience that reflects the range of activities in which lawyers engage to promote respect for human rights, to help students build the basic knowledge and skills necessary to be effective human rights lawyers and advocates, and to contribute to efforts to protect human rights through valuable, high-quality assistance to appropriate organizations and individual clients. We support the Human Rights Project for Girls' Villegas *amicus* brief and believe that shackling pregnant women during labor and delivery constitutes a violation of international human rights.

Amicus Curiae **The University of California, Hastings College of the Law Center for Gender & Refugee Studies** (“CGRS”) protects the fundamental human rights of refugee women, children, LGBT individuals and others who flee persecution in their home countries. CGRS was founded in 1999 by Professor Karen Musalo, who has litigated several of the most significant women’s refugee cases of the last 15 years. Through its scholarship, expert consultations, and litigation, CGRS has played a central role in the development of United States immigration law and policy related to the protection of women, including detained asylum seekers. CGRS has a direct interest in the worldwide protection of women and girls from human rights violations, in accordance with international law.

Amicus Curiae **Human Rights Advocates** (“HRA”) is a human rights organization based in Berkeley, California. They are dedicated to promoting and

protecting international human rights in the United States and abroad. HRA participates actively in the work of various United Nations human rights bodies, particularly, the United Nations Council on Human Rights, the Commission on the Status of Women, the Commission on Sustainable Development, and several treaty bodies, including the Human Rights Committee and the Committee on the Elimination of all Forms of Racial Discrimination. HRA addresses the panoply of human rights issues, including minority and bodies on the human rights aspects of such issues as: minority and peoples' rights; the rights of the child; juvenile criminal sentencing; trafficking in women and children; migrant worker rights; the right to housing; the right to food; affirmative action; corporate accountability; and human rights and the environment.

Amicus Curiae **The National Association of Women Lawyers** (“NAWL”), founded in 1899, is the nation’s oldest women’s bar association and the only national women’s bar association. NAWL is devoted to the interests of women lawyers as well as all women. Through its members, committees and the *Women’s Law Journal*, it provides a collective voice in the bar, courts, Congress and the workplace. NAWL stands committed to ensuring equality and fairness for women. Through its legislative and *amicus* work, NAWL has been a strong and clear voice for the protection of women from abuse. By signing on to this *amicus* brief, NAWL voices its opposition to the shackling of female prisoners during

labor and delivery and the deprivation of necessary treatments and devices to ensure a safe and healthy recovery from the birthing process.

Amicus Curiae **Law Students for Reproductive Justice** (“LSRJ”) trains and mobilizes law students and new lawyers across the country to foster legal expertise and support for the realization of reproductive justice. We believe that reproductive justice will exist when all people can exercise the rights and access the resources they need to thrive and to decide whether, when, and how to have and parent children with dignity, free from discrimination, coercion, or violence. As such, we believe that shackling imprisoned pregnant women at any point during the labor process is a degrading and inhumane practice that endangers the health and safety of mothers and their children and constitutes a violation of evolving standards of decency in the U.S. and international human rights laws.

Amicus Curiae **Justice Now** (“JN”) is an innovative legal and human rights organization representing people in California’s prisons. The majority of JN’s legal clientele is imprisoned in California’s women’s prisons. Annually, JN provides legal assistance, advice, and referrals to over 2,000 people imprisoned in California’s women’s prisons in an array of legal areas, including healthcare access, sentence recall and reconsideration, and defense of parental rights. In 2003, JN launched their Human Rights Documentation Program, a legal project that partners with people in women’s prisons to educate the public on how prisons

damage communities of color, and to challenge policies harming people in prison and their families. JN provides information on human rights law and documentation to people in women's prisons and collaborates with them to document human rights abuses in prison under international law, and to produce and publicize reports on prison conditions. JN is currently focusing this work on abuses impacting reproductive health and the right to family. JN supports both the legal arguments contained in this brief and an end to the shackling of people who are pregnant and in prison.

Amicus Curiae **National Latina Institute for Reproductive Health**

("NLIRH") is a reproductive justice and human rights organization based in New York City, with a policy office in Washington, D.C. and grassroots Latina Advocacy Networks (LANs) in five states. NLIRH is the only national organization working on behalf of the reproductive health and justice of the 20 million Latinas, their families, and communities in the United States through public education, community mobilization, and policy advocacy. The Latina Institute recognizes the use of shackles before, during, and after delivery as a dehumanizing attack on women that is felt particularly acutely by women of color. As such, NLIRH has been active in efforts to bring health, dignity, and justice to women who are in detention—these efforts have included work on the 2012 Performance-Based National Detention Standards, which address the use of

restraints on female immigration detainees during pregnancy, labor, delivery, and post-delivery and which NLIRH hopes will prevent another woman from suffering the pain and degradation experienced by Ms. Villegas.

Amicus Curiae **Legal Voice** (“LV,” formerly known as the Northwest Women’s Law Center) is a regional nonprofit public interest organization that works to advance the legal rights of all women through litigation, legislation, education, and the provision of legal information and referral services. Since its founding in 1978, LV has been involved in both litigation and legislation to ensure equal treatment and equal protection for women under the law, including women’s equitable access to health care. Toward that end, LV has participated as counsel and as *amicus curiae* in cases throughout the Northwest and the country involving the rights of incarcerated women, and has been a regional leader in ending the practice of shackling pregnant incarcerated women through both litigation and successful efforts to pass a law restricting the practice of shackling incarcerated women in all correctional institutions in Washington State. LV believes the shackling of pregnant women during the process of childbirth is a barbaric practice that not only risks women’s health, safety and dignity, but also violates both U.S. and international human rights laws. LV continues to serve as a regional expert and leading advocate in litigation and in legislative efforts on a variety of gender-related issues.

Amicus Curiae **The Human Rights Defense Center** (“HRDC”) is a Washington State nonprofit, charitable corporation headquartered in Vermont that publishes a nationally distributed monthly journal called *Prison Legal News* (PLN). Since 1990, PLN has reported on news, judicial decisions, and other developments relating to the civil and human rights of prisoners in the United States and abroad. Approximately sixty-five percent of PLN subscribers are state and federal prisoners and the remainder are attorneys, judges, advocates, journalists, academics and concerned citizens. In addition to publishing PLN and non-fiction reference books, HRDC regularly litigates First Amendment issues in federal courts nationwide, challenging prison and jail officials who censor PLN, seeking public records from government agencies and also providing representation in select prisoner cases. The core of HRDC’s mission is public education, advocacy and outreach on behalf of prisoners and in furtherance of their basic human rights. HRDC is particularly concerned about the violation of the human rights of pregnant prisoners when they are shackled during labor and delivery.

Amicus Curiae **The Woodhull Sexual Freedom Alliance** (“WSFA”) has a mission to affirm sexual freedom as a fundamental human right. WSFA works to eliminate shackling of incarcerated women in labor – most recently in Florida – believing that not only have the courts ruled that shackling is a violation of the

United States Constitution, but that shackling is also a violation of International Human Rights Treaties and Conventions to which the United States is committed.

Amicus Curiae **Women on the Rise Telling HerStory** (“WORTH”) is an advocacy/consultant group comprised of currently and formerly incarcerated women, who have the expertise and understanding to engage, navigate and challenge policy and perceptions concerning incarcerated women. WORTH is a visible and powerful voice for women of this population in public conversations and policy debates. WORTH members are confident and effective communicators. We are sought after as experts who speak on issues of critical importance to incarcerated women and their families. WORTH transforms the lives of women affected by incarceration and changes public perception and policy.

Amicus Curiae **Healthy Teen Network** (“HTN”) has been making a difference in the lives of teens and young families since its founding in 1979. HTN is the only national membership network that serves as a leader, a national voice, and a comprehensive educational resource to professionals working in the area of adolescent reproductive health - specifically teen pregnancy prevention, teen pregnancy, teen parenting and related issues. HTN is uniquely able to have an impact on a large number of teens and young families because of its comprehensive approach and its direct and immediate links to a grassroots network of reproductive health care professionals throughout our nation's

communities. HTN is interested in this case because of the high rate of pregnant and parenting teens in the juvenile system. HTN believes all young people should be treated with dignity and respect - especially pregnant and parenting teens. The use of shackles and restraints during the delivery process is both morally objectionable and cruel as well as completely nonsensical given the nature of a woman during birth makes it unlikely for risk of flight or harm to correctional officers.

Individual *Amici Curiae*: **Margaret B. Drew**, Visiting Prof. of Clinical Instruction, Acting Director, Domestic Violence Clinic, University of Alabama School of Law.

INTRODUCTION

The use of shackles to restrain a pregnant woman during the birthing process is a degrading and inhumane practice that inflicts both extreme pain and degradation on the mother. Moreover, the use of these restraints poses severe risks to the health and safety of mothers and children during the birthing process as well as postpartum. This barbaric practice is condemned not only by the entire medical community, but by leading public health associations, federal and state law, a multitude of state correctional departments, as well as international treaties and conventions.

In this case, Juana Villegas was stopped in her car and charged with driving without a license, whereby she was transferred to a local Detention Center. After two days in the Detention Center, Ms. Villegas's water broke and she went into active labor. Ms. Villegas, a pre-trial detainee being held for a non-violent traffic offense, was thereafter shackled and handcuffed, with her wrists restrained to each other and her ankles restrained to each other. This level of restraint took place while Ms. Villegas was placed on a stretcher, as she was transported to the hospital in the ambulance, and while she was brought to a hospital bed, all during the course of her labor. Moreover, leg irons were used on Ms. Villegas including when she attempted to use the restroom or shower. Leg irons were used even after

the birth of her son. Ms. Villegas was unable to walk around to loosen her muscles, protect against blood clots, or maintain necessary post-childbirth hygiene without her restraints.

Because the practice of shackling a pregnant detainee during labor and childbirth is clearly a violation of international law, lies in stark contrast to the laws of a growing number of states who have banned the practice, and is contrary to acceptable international human rights norms, this Court should affirm the District Court's order granting partial summary judgment.

ARGUMENT

I. International Law is Relevant to the Issues Before This Court

The U.S. Supreme Court has long recognized that whenever possible, the laws of the United States should be construed in accordance with international law. *See e.g. Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804) (noting that “an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains”); *Talbot v. Seeman*, 5 U.S. (1 Cranch) 1, 43 (1801) (arguing that “the laws of the United States ought not, if it be avoidable, so to be construed as to infract the common principles and usages of nations”).¹ Moreover, the Supreme Court has often looked to international law and the laws of other nations in determining contemporary standards of decency with

¹ *See generally* Sandra Day O'Connor, *Federalism of Free Nations, reprinted in International Law Decisions in National Courts* 13, 15-16 (Thomas M. Franck & Gregory H. Fox eds., 1996)

respect to matters of human rights. *See Roper v. Simmons*, 543 U.S. 551, 554 (2005) (reasoning that it “does not lessen fidelity to the Constitution . . . to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples underscores the centrality of those same rights within our own heritage of freedom”).²

Justice Ginsburg has specifically addressed the relevance of international law in deciphering human rights matters by stating “comparative analysis emphatically is relevant to the task of interpreting constitutions and enforcing human rights. We are the losers if we neglect what others can tell us about endeavors to eradicate bias against women, minorities, and other disadvantaged groups.” Ruth Bader Ginsburg & Deborah Jones Merritt, *Fifty-First Cardozo Memorial Lecture – Affirmative Action: An International Human Rights Dialogue*, 21 *Cardozo L. Rev.* 253, 282 (1999).³ And as Justice O’Connor has noted, there is great value in looking to international law as a source of interpretation for domestic legal issues as that community has often “struggled with the same basic constitutional questions as we have: equal protection, due process, the rule of law

² *See also Thompson v. Oklahoma*, 487 U.S. 815, 830 (1988) (considering international standards with respect to execution of persons under sixteen years of age); *Enmund v. Florida*, 458 U.S. 782, 796-97 n.22 (1982) (noting the relevance of “the climate of international opinion concerning the acceptability of a particular punishment”); *Knight v. Florida*, 528 U.S. 990, 995-96 (1999) (Breyer, J. dissenting from denial of *certiorari*) (citing Universal Declaration of Human Rights and case law from several nations to support the view that long delays in administering the death penalty may be unusually and impermissibly cruel).

³ *See also* Martha F. Davis, *International Human Rights and United States Law: Predictions of a Courtwatcher*, 64 *Alb. L. Rev.* 417, 421-28 (2000) (arguing that in the twenty-first century, judicial legitimacy requires courts to address their decisions in an international context).

in constitutional democracies.” Sandra Day O’Connor, *Broadening Our Horizons: Why American Lawyers Must Learn About Foreign Law*, 45 Fed. Lawyer 20 (1998). Therefore the use of international law to help construe domestic legal issues is justified in this case.

II. The Practice of Shackling Pregnant Women At Any Time During the Birthing Process Violates Modern Standards of Decency and Constitutes Cruel, Inhuman, and Degrading Treatment.

A. The Shackling of Pregnant Women During the Birthing Process is a Violation of International Law and the International Human Rights Framework

Based on ample authority, the District Court properly held that “the United States’s [sic] ratification of international conventions and standards are persuasive of the contemporary standards on shackling pregnant women.” *Villegas v. Metropolitan Government of Davidson County*, 789 F. Supp. 2d 895, 919 (M.D. Tenn. 2011). Significantly, two major international human rights treaties denounce the practice of shackling pregnant prisoners as cruel, inhuman or degrading treatment and a departure from common standards of decency. The first of these treaties is the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Torture Convention”), which has been ratified by 136 nations and was ratified by the United States Senate in 1994.⁴ G.A. Res. 46, 39 U.N. GAOR Supp. (No. 51), U.N. Doc. A/39/51 (1984). The second treaty which

⁴ See Office of the United Nations High Comm’r for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties 12, available at <http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet>

denounces the practice of shackling for pregnant prisoners is the International Covenant on Civil and Political Rights (“ICCPR”), which has been ratified by 152 nations and was ratified by the United States Senate in 1992.⁵ GA res. 2200A (XXI), 21 U.N. GAOR Supp (No. 16) at art. 7, U.N.Doc. A/6316 (1966). By ratifying both treaties, the United States has committed itself to upholding the principles they enshrine. Moreover, pursuant to the Supremacy Clause of the United States Constitution, these treaties shall be deemed the “supreme Law of the Land.” *See* U.S. Constitution art VI. By ratifying these treaties, the Senate thereby acknowledged that the implementation of their principles is a responsibility of state and local government.⁶ Therefore, both the ICCPR and the Torture Convention provide relevant and legitimate guidance to this Court for evaluating the issues of this case.

Additionally, the Committee Against Torture, the body who oversees state compliance with the Torture Convention, issued observations to the United States in 2006 expressing grave concerns that the U.S. was not fulfilling its treaty obligations because the practice of shackling pregnant inmates during the

⁵ The United States ratified the ICCPR with certain reservations. U.S. Reservations, Understandings, Declarations, and Proviso, ICCPR, 138. Cong. Rec. S4781-01 (daily ed. April 2, 1992). However, any reservations made by the United States that are “incompatible with the object and purpose” of the treaty, are deemed void. *See* Vienna Convention on the Law of Treaties art. 19, Jan. 27, 1980, 1155 U.N.T.S. 331

⁶ The U.S. Senate ratified the ICCPR with the express understanding that it “shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction of the matters contained therein, and otherwise by the state and local governments,” and further, that “the Federal Government shall take measures appropriate to the Federal system to the end that competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant.” U.S. Reservations, Understandings, Declarations, and Proviso, ICCPR, 138. Cong. Rec. S4781-01 (daily ed. April 2, 1992).

childbirth process was still allowable in some of its jurisdictions. *See* U.N. Comm. Against Torture, Conclusions and Recommendations of the Committee Against Torture: United States of America ¶ 33 U.N. Doc. CAT/C/USA/CO/2 (2006). The Committee specifically voiced concern over the United States’ “treatment of detained women . . . including gender-based humiliation and incidents of shackling of women detainees during childbirth.” *See id.* at ¶ 36. Much like the Committee Against Torture, the U.N. Human Rights Committee, the body of experts who monitor implementation of the ICCPR, has also expressed serious concern over the fact that certain jurisdictions within the United States have yet to abolish the practice of shackling. *See* Concluding Observations of the Human Rights Committee: United States of America, 87th Sess., ¶ 33, U.N. Doc. CCPR/C/USA/CO/3/Rev. 1 (2006). The Human Rights Committee even recommended that the U.S. “prohibit the shackling of detained women during childbirth” so as to comply with its treaty obligations under the ICCPR. *Id.* As a state party to the ICCPR, the United States is bound to take the “necessary steps” to implement the rights guaranteed by the treaty. ICCPR, art. 2(2), 999 U.N.T.S. at 173.

The U.S Supreme Court has deemed decisions by the European Court of Human Rights and other international courts as persuasive authorities in interpreting protections afforded by U.S. laws. *Lawrence v. Texas*, 539 U.S. 558,

573 (2003). Indeed, Justice Rehnquist called on U.S. courts to evaluate international precedents when deciphering domestic law: “it is time that the United States courts begin looking to the decisions of other constitutional courts to aid in their own deliberative process.” William Rehnquist, *Constitutional Courts – Comparative Remarks (1989)*, reprinted in *Germany and its Basic Law: Past, Present and Future –A German-American Symposium* 411-12 (Paul Kirchhof & Donald P. Kommers eds., 1993). And with regard to the European Court specifically, after meeting with members of the European Court of Justice, Justice O’Connor noted that “[i]n the next century, we are going to want to draw upon judgments from other jurisdictions,” including those of the European Court. Press Release, New York University, European Court Members and Four U.S. Supreme Court Justices to Discuss Current European and U.S. Constitutional Issues, at 2 (Mar. 27, 2000), available at www.nyu.edu/publicaffairs/newsreleases/b_EUROP.shtml. Therefore, the decisions of the European Court are relevant to interpreting issues in the instant case.

The European Convention for the Protection of Human Rights and Freedoms prohibits the use of torture and other inhuman or degrading treatment or punishment in Article 3. European Convention for the Protection of Human Rights and Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221. The European Court of Human Rights has interpreted Article 3 to ban the use of shackles during the

hospitalization of prisoners except in cases where the prisoner poses a serious security threat. *See Henaf v. France*, App. No. 65436/01 (ECHR Feb. 27, 2004); *Avci and Others v. Turkey*, App. No. 77191/01 (ECHR Apr. 16, 2007). Moreover, the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment referred to the practice of shackling pregnant prisoners as “completely unacceptable.” CPT/Inf (2000), 13, 10th General Report, ¶ 27.

Other international bodies have similarly denounced the practice of shackling pregnant women during the course of childbirth and labor. One source that is frequently cited by U.S. courts in cases relating to conditions and treatment of prisoners is the U.N. Standard Minimum Rules for the Treatment of Prisoners (the “Rules”). *See e.g., Roper*, 543 U.S. at 554; *Estelle v. Gamble*, 429 U.S. 97, 103-10 (1976) (considering the Rules as evidence of “contemporary standards of decency” in case involving denial of medical services to inmates); *Atkins v. Virginia*, 536 U.S. 304, 335 (2002) (weighing opinions of the “world community” in an Eighth Amendment analysis); *Everson v. Mich. Dep't of Corr.*, 222 F. Supp. 2d 864, 885 (E.D. Mich. 2002) (citing the Rules as source for delineating rights for female inmates).⁷ The Rules prohibit the use of shackles on prisoners with

⁷ *See also, Detainees of Brooklyn House of Detention for Men v. Malcolm*, 520 F.2d 392, 396 (2nd Cir. 1975) (citing provision of the Rules in due process challenge to conditions of confinement); *Morgan v. LaVallee*, 526 F.2d 221, 226 (2nd Cir. 1975) (citing the Rules in examining prison health conditions); *Lareau v. Manson*, 507 F. Supp. 1177, 1187-89 (D. Conn. 1980) (relying on the Rules to define meaning of “adequate shelter”); *Thomas v. Baca*, 514 F.

exceptions to be made only in rare and limited circumstances. Standard Minimum Rules for the Treatment of Prisoners, U.N. Doc. A/CONF/1 Annex 1, E.S.C. res 663C, U.N. ESCOR, 24th Sess., Supp., No. 1, U.N. Doc. E/3048, Rule 33(c). Moreover, the Rules even require “special accommodations” be provided to pregnant prisoners. *Id.* at art. 23(1).

Other international conventions and declarations impose similar obligations on states to protect women during pregnancy and childbirth. For instance, the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) mandates that mothers be given special protection before and after the birthing process. ICESCR, art 10(2), Dec. 16, 1966, 993 U.N.T.S. 3. Furthermore, the Universal Declaration of Human Rights declares that motherhood is “entitled to special care and assistance.” G.A. Res. 217A (III), art. 25(2), U.N. Doc. A/810 (Dec. 10, 1948). The Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) also requires that states “ensure women appropriate services in connection with pregnancy, confinement, and the post-natal period.” CEDAW, art. 12(2), Mar. 1, 1980, 1249 U.N.T.S. 13. In this

Supp. 2d 1201, 1217 (C.D. Cal. 2007) (citing the Rules as guidelines and finding that floor-sleeping was unconstitutional); *Kane v. Winn*, 319 F. Supp. 2d 162, 198-99 (D. Mass. 2004) (examining the incorporation of the Rules in 1962 Model Penal Code and influence on other penal laws); *Crain v. Bordenkircher*, 342 S.E.2d 422, 446 (W.Va. 1986) (discussing one person per cell policy under the Rules); *Jones v. Wittenberg*, 440 F. Supp. 60, 149 (N.D. Ohio 1977) (using the Rules as guidance in examining prison conditions); *Austin v. Hopper*, 15 F. Supp. 2d 1210, 1260 (M.D. Ala. 1998) (using the Rules as guidance and finding use of hitching post unconstitutional); *Jordan v. Arnold*, 408 F. Supp. 869, (M.D. Pa. 1976) (citing the Rules provision that prisoners should have at least one hour of exercise per day); *Williams v. Coughlin*, 875 F. Supp. 1004, 1013 (W.D.N.Y. 1995) (citing the Rules in Eighth Amendment analysis).

case, Ms. Villegas was not only shackled during the birthing process, but she was also prohibited from bringing a breast pump back with her into the Detention Center from the hospital, which caused her extraordinary and unnecessary discomfort as well as risk of painful breast infection. This refusal was contrary to international conventions and human rights standards that require special attention be provided to women in connection with their pregnancies and deliveries in general and particularly while in confinement.

International legal standards dictate the importance of protecting pregnant women's health. The Convention Against Torture, the ICCPR, (both binding treaties to which the United States is a party), the U.N. Standard Minimum Rules for the Treatment of Prisoners, the European Convention for the Protection of Human Rights and Freedoms, and the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment all denounce the practice of shackling pregnant women during the process of childbirth as counter to international human rights standards and norms. The U.S. should fulfill its international treaty obligations and denounce this barbaric practice as contrary to contemporary standards of decency.

B. The Practice of Shackling Pregnant Prisoners During the Birthing Process Has Been Banned in Several States Throughout the

United States Demonstrating Contemporary and Evolving Standards of Decency Among the States

Many states have upheld the rights and dignity of pregnant women and have banned the practice of shackling during the birthing process by enacting laws and regulations that forbid the practice. In fact, since 2010, there has been a growing movement of states working to adopt laws restricting the use of shackles on pregnant women. Currently, there are 16 states nationwide that ban the practice of restraining pregnant prisoners, including Arizona, California, Colorado, Florida, Hawaii, Idaho, Illinois, Nevada, New Mexico, New York, Pennsylvania, Rhode Island, Texas, Vermont, Washington and West Virginia, with several other states working to get such legislation passed.⁸ Moreover, a growing number of state correctional facilities have recognized the need for special attention to be paid to pregnant prisoners. Departments of Corrections in the following 14 states have enacted policies that restrict the use of shackles on prisoners during childbirth: Arkansas, Connecticut, Florida, Hawaii, Iowa, Kansas, Maine, Massachusetts,

⁸ See 2012 Ariz. Sess. Laws 43; Cal. Penal Code § 3423, 5007.7 (Deering 2012); Cal. Welf. & Inst. §§ 222, 1774 (Deering 2012); Colo. Rev. Stat. §§ 17-1-113.7 (2011); 17-26-104.7 (2011); 19-2-924.7 (2011); 26-1-137 (2011); 31-15-403 (2011); 2012 Fla. Sess. Law. Serv. Ch. 2012-41 (West); Haw. Rev. Stat. Ann. § 353-122 (LexisNexis 2012); Idaho Code Ann. §§ 20-901, 20-902, 20-903 (2012); 55 Ill. Comp. Stat. Ann. 5/3-15003.6 (LexisNexis 2012); 730 Ill. Comp. Stat. Ann. 125/17.5 (LexisNexis 2012); N.M. Stat. Ann. § 33-1-4.2 (LexisNexis 2012); N.Y. Correction Law § 611 (LexisNexis 2012); AB 408 (2011); 61 Pa. Cons. Stat. Ann. §§ 5905, 1758 (LexisNexis 2012); R.I. Gen. Laws § 42-56.3-1 (2012); Tex. Gov't Code Ann. § 501.066 (LexisNexis 2012); Tex. Hum. Res. Code § 244.0075 (LexisNexis 2012); Tex. Loc. Gov't Code Ann. § 361.082 (LexisNexis 2012); Vt. Stat. Ann. tit. 28, § 801a (2012); Wash. Rev. Code Ann. § 72.09.651 (LexisNexis 2012); W. Va. Code Ann. § 25-1-16 (LexisNexis 2011), W. Va. Code Ann. § 31-20-30a (LexisNexis 2011), W. Va. Code Ann. § 49-5E-6 (LexisNexis 2011).

New York, Oklahoma, Oregon, Rhode Island, Washington, Wyoming, and the District of Columbia.⁹

Furthermore, the Second Chance Act, which was passed by Congress in 2008, characterizes the practice of shackling pregnant prisoners as generally unacceptable on the federal level. Second Chance Act of 2008, Pub. L. No. 110-199, 122 Stat. 657 (2008). The Act requires that if and when federal correctional facilities use restraints on pregnant women during childbirth, that they justify the use of such restraints with documented security concerns. *Id.* Soon after the adoption of the Second Chance Act, the Federal Bureau of Prisons and the U.S. Marshals Service changed their policies to ban the use of restraints on pregnant women during the birthing process, unless it is believed that they pose an immediate threat to the safety of themselves or others. U.S. Dep't of Justice, Federal Bureau of Prisons, *Program Statement: Escorted Trips*, at § 11 (Oct. 6, 2008). Therefore, the practice of shackling a pregnant detainee arbitrarily and without any thought or consideration to the individual circumstances of the case, is clearly denounced at the federal level.

⁹ See Amnesty Int'l USA, Abuse of Women in Custody: Sexual Misconduct and Shackling of Pregnant Women (2008); Ark. Dep't of Corrections Admin. Dir. 04-08 (2008); Letter from Denise V. Lord, Assoc. Comm'r, Me. Dep't of Corrections (Feb. 20, 2007); Letter from Michelle A. Donaher, Dir. of Female Offender Services, Mass. Dep't of Corrections (Nov. 30, 2007); Okla. Dep't of Corrections, "Security Standards for Transportation of Offenders," Operation Policy No. 040111; Ore. Dep't of Corrections, Policy No. 40.1.1(H)(1)(d), available at http://www.oregon.gov/DOC/PUBSER/rules_policies/docs/40.1.1.pdf

CONCLUSION

The body of international human rights law strongly emphasizes the need to treat pregnant women with the care that their circumstances require. Moreover, the growing trend among American states and correctional facilities makes clear that the practice of shackling pregnant women during the process of childbirth runs completely counter to contemporary standards of decency. The use of restraints on such vulnerable women contravenes human rights norms worldwide and places both mother and child at unnecessary and grave risk of harm. Therefore, in order to abide by contemporary standards of human decency and fulfill its international treaty obligations, this Court should affirm the District Court’s order granting partial summary judgment.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7)(C)

1. This *Amicus Curiae* Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) as it contain 3,408 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).
2. This *Amicus Curiae* Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface using Microsoft Word 2007 in 14 point Times New Roman.

Dated: May 9, 2012

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Counsel hereby certifies that on May 9, 2012, a copy of this brief was delivered via the CM/ECF system to:

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