



AILA National Office
Suite 300
1331 G Street, NW
Washington, DC 20005

Tel: 202.507.7600
Fax: 202.783.7853

www.aila.org

Testimony of the American Immigration Lawyers Association
Submitted to the
Subcommittee on Immigration Policy and Enforcement
of the Judiciary Committee of the U.S. House of Representatives

Hearing on H.R.1932, the “Keep Our Communities Safe Act of 2011”
May 24, 2011

The American Immigration Lawyers Association (AILA) is a private bar association with more than 11,000 active members, established to promote justice and advocate for fair and reasonable immigration law and policy. Drawing upon the experience of AILA lawyers who represent noncitizens every day in removal proceedings, thousands of whom are detained in jails and prisons nationwide, AILA offers these views with respect to immigration law and policies governing the immigration detention system.

AILA urges that Congress exercise extreme caution with respect to passing new laws that further expand the authority of the government to hold noncitizens in indefinite, prolonged, or mandatory immigration detention. Such proposals typically diminish the already limited due process rights granted to noncitizens in removal proceedings. Importantly, the Supreme Court has ruled that the government cannot hold individuals in immigration detention for indefinite periods of time without violating the Constitution.

As a matter of policy, detention is a powerful and costly tool that should be used only when absolutely necessary. Nonetheless in the past twenty years, the use of detention has skyrocketed growing by nearly ten times. Last year, the government spent nearly \$2 billion holding close to 400,000 immigrants in detention. Currently, the federal government exercises sufficiently broad powers to detain noncitizens. These powers do **not** need further expansion.

Of particular concern is H.R. 1932 (Rep. Lamar Smith, R-TX). Offered as a means to protect our communities from a few dangerous individuals, H.R. 1932 is, in fact, a sweeping bill that purports to give the government the authority to detain tens of thousands of noncitizens each year for prolonged or indefinite periods of time. Specifically, H.R. 1932 would authorize the indefinite, even permanent, detention of individuals who cannot physically be removed from the U.S. H.R. 1932 would mandate the prolonged detention during removal proceedings of individuals convicted of crimes, without regard to how long ago the crimes occurred or whether detention is warranted. Finally, H.R. 1932 would grant the government the discretion to hold broad categories of individuals in detention without a bond hearing,

including thousands of harmless persons, such as asylum seekers and lawful permanent residents returning from travel abroad. AILA opposes H.R. 1932 as an overly broad expansion of the government's detention power that abridges fundamental liberty rights in violation of the Constitution. We urge Congress to reject this bill and instead pass laws that uphold our freedoms and protect our most important values.

1. Indefinite Detention

Indefinite detention arises when an individual's home country refuses to repatriate its citizens or because the individual is stateless. In other words, the person cannot be removed for foreign policy reasons that are beyond his or her control.

H.R. 1932 would authorize the permanent detention of people who cannot be deported, including people like **Sophane Meak** who was born in 1983 in a Thai refugee camp after his parents fled the genocide in Cambodia. He immigrated to the United States as a refugee when he was 3 years old, along with his parents and two siblings. His family resettled in San Diego, California.

Sophane grew up poor and with no real caretaker. His mother suffered from severe clinical depression after seeing her family killed, and his father was always working to support the family. Even so, when Sophane grew older, he helped out around the house, took care of his mother, and worked.

Unfortunately, Sophane also started hanging out with the wrong people as a teenager. As a result of his involvement with this crowd, he was arrested and sentenced to three years in prison for receipt of a stolen vehicle. While he was in prison, his father died suddenly of brain cancer. His father's death was a turning point for Sophane. He realized because he broke the law, he could not be there for his family when they needed him. He promised himself that once he got out, he would dedicate his life to taking care of his mother, his sister, and her two children. However, instead of being released from jail when he finished his sentence, Sophane was transferred to immigration custody. He was ordered removed in February 2010 and then spent 9 more months in detention pending his removal from the U.S. Both Cambodia and Thailand refused to repatriate Sophane, and he could not be removed. Nevertheless, Sophane remained in detention until he filed a petition for writ of habeas corpus in federal district court, and ICE agreed to release him.

Since his release in December 2010, Sophane has been living with his mother, a U.S. citizen, his sister, a lawful permanent resident, and her two U.S. citizen children. Sophane has made good on the promise he made to himself in prison. His mother needs constant care as she continues to struggle with depression, and he is her primary caretaker. He also serves as the father figure to his sister's two children, aged 2 and 6. Initially, Sophane had difficulty finding a job. However, he recently received an offer to work as an auto mechanic and will soon be helping to support his family financially.

In clear contravention of the U.S. Supreme Court, H.R. 1932 attempts to grant the government discretion to indefinitely, even permanently, detain individuals like Sophane who cannot be removed. The Supreme Court has already considered and rejected the constitutionality of such sweeping authority. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Clark v. Martinez*, 543 U.S.

371 (2005), the Court ruled that the government cannot indefinitely hold noncitizens who have been ordered removed merely because it is unable to effectuate their removal.

Before the *Zadvydas* decision, the government interpreted existing law as permitting it to hold broad categories of noncitizens in indefinite detention. As the Court noted in *Zadvydas*, the Constitution only permits a very narrow category of persons—such as those who are specially dangerous due to mental illness or a mental defect—to be held in civil detention indefinitely, and only if there are sufficient procedural safeguards to protect individuals' rights. H.R. 1932 is both over-inclusive, permitting the detention of broad categories of individuals, including a person like Sophane, and provides none of the procedural safeguards the Constitution demands, including a hearing before a neutral court, a court-appointed attorney for indigent respondents, and psychological examinations. Instead, H.R. 1932 authorizes the Department of Homeland Security to be both jailer and judge in direct violation of Supreme Court precedent.

The government does not have and cannot be given by Congress the authority to hold people who cannot be deported in civil immigration detention indefinitely. Instead of working to pass laws that violate the Constitution, Congress should focus on real solutions to the problem of repatriation. Locking more people up is not going to resolve the foreign policy concerns that have created repatriation problems in the first instance. Rather, H.R. 1932 would simply permit the government to unnecessarily detain people like Sophane for years at taxpayer expense.

2. Prolonged Detention

Although its supporters rarely mention it, H.R. 1932 goes far beyond authorizing the indefinite detention of those who cannot be physically removed from the U.S. It would also authorize and, in some cases, require the government to hold noncitizens in detention for prolonged periods of time during the pendency of their removal proceedings without even a bond hearing. In general, removal proceedings for individuals who are detained are processed quickly, in a matter of a few weeks to a few months. However, for thousands of individuals with particularly complex cases, removal proceedings can go on for many months or even years. As the use of detention has skyrocketed over the past decade, we have seen clients languish in jail as their cases wend their way through an overworked and overburdened court system, only to ultimately be granted relief or be found not to have been removable from the U.S. A growing number of district and circuit courts around the country have held that, just like indefinite detention, prolonged detention without a bond hearing is also unconstitutional.

H.R. 1932 would authorize the kind of prolonged detention that Jaime Hernandez experienced when he was **mistakenly** charged as an aggravated felon by the government. In fact, he was not even removable from the U.S.

Jaime Hernandez fled to the United States in 1976 after the death squads in Guatemala kidnapped and presumably killed his father. He was just 18 years old. A few years later, he married his wife, a U.S. citizen, and they started a family. He and his wife have four children, all born in the U.S. His mother, brothers, and sister are all U.S. citizens or lawful permanent residents, and Mr. Hernandez has been a lawful permanent resident for twenty-five years. Since coming to this country, Mr. Hernandez has worked in various fields, including landscaping,

construction, and the restaurant industry, to help support his family. He would often care for his children during the day while his wife worked, and then work himself at night.

Regrettably, Mr. Hernandez developed a drinking problem and lived for years without receiving treatment for alcoholism. As a result, he was convicted of many low-level drinking-related offenses. Even so, Mr. Hernandez never hurt anyone or committed an act of violence. In March 2001, when Mr. Hernandez asked a woman for change to take the metro, she called the police, and he was arrested. On the advice of his public defender, he pleaded guilty to simple assault and was sentenced to 12 months imprisonment with seven months suspended.

Although he was convicted of only a misdemeanor, on November 6, 2003, ICE took Mr. Hernandez into custody and mistakenly charged him as deportable for having been convicted of an aggravated felony. Mr. Hernandez remained in detention for nearly three years without ever receiving a bond hearing and without ever having the opportunity to show that he not was a flight risk or risk to public safety. His proceedings involved multiple appeals and remands—including a duplicate hearing after tapes from a prior hearing were lost—and an appeal to the Fourth Circuit. Ultimately, Mr. Hernandez won his argument that his conviction for misdemeanor assault was not an aggravated felony. The immigration judge granted him a \$1500 bond, the lowest bond possible. After fighting for three years to show that Mr. Hernandez should be deported and spending tens of thousands of dollars to detain him, ICE did not even bother opposing Mr. Hernandez's motion to terminate proceedings. Mr. Hernandez no longer drinks and for the past three years has been working as a cook in a restaurant. After those long years of separation, he is back at home with his wife, children, and grandchildren.

Mr. Hernandez never received a bond hearing because the immigration charges against him made him subject to INA Section 236(c), which DHS currently interprets as requiring the detention of all individuals whose case falls into certain categories of removal, rather than allowing an individualized assessment of flight risk and danger to the community. Each year tens of thousands of individuals, mostly lawful permanent residents, are detained under this provision for months or years without the benefit of a bond hearing.

Although the Supreme Court in *Demore v. Kim*, 538 U.S. 510 (2003), held that mandatory detention was constitutional for individuals who conceded removability for the *relatively brief period* needed to conduct removal proceedings, this holding was based specifically on the Court's understanding that the vast majority of detentions (85%) lasted an average of 47 days or less. A snapshot look at detention on January 25, 2009 revealed that the average amount of time spent in pre-removal detention was 81 days, while 26% of individuals spent more than ninety days behind bars, including 10% who spent up to a year and 3% who spent more than a year.¹ Since 2001, the growing consensus among circuit courts is that mandatory detention is unconstitutional when an individual contests removability, or when the detention is not brief.

¹ Donald Kerwin and Serena Yi-Ying Lin, *Immigrant Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities*, Migration Policy Institute, September 2009 at 1.

However, H.R. 1932 would not only purport to authorize this type of unconstitutional, prolonged detention, it would also expand the number of noncitizens subject to it. The bill would amend the statute in a manner requiring lawful permanent residents and other noncitizens who committed crimes years or even decades before and have had no further run-ins with the law to be detained without even a bond hearing. In other words, H.R. 1932 would require the government to waste millions of taxpayer dollars to detain thousands of additional people who have proven that they are rehabilitated, taxpaying, and contributing members of our communities.

H.R. 1932 does not just impact lawful permanent residents. The bill would also permit the prolonged detention of asylum seekers who arrive at our borders seeking safety and protection. Although the government has the discretion to release asylum seekers from detention, they also have broad discretion to keep them detained. Just as with prolonged, mandatory detention under Section 236(c), courts have held that arriving asylum seekers cannot be detained for a prolonged period without a bond hearing. Yet H.R. 1932 would authorize this type of continued detention, even for individuals who have been granted asylum by the immigration judge if the government chooses to appeal that decision. H.R. 1932 is not about public safety; it is about locking up tens of thousands of additional immigrants and targeting even the most vulnerable immigrants who arrive at our borders.

3. Public Policy Implications

Finally, H.R. 1932 is not only constitutionally infirm but also bad public policy. Detention is extremely expensive and a waste of resources for someone who is neither a flight risk nor risk to public safety. For FY2012, DHS has requested over \$2 billion to detain 33,400 immigrants every day. The government already has ample authority to detain immigrants who are a flight risk or pose a danger to our communities. Moreover, administrations of both political parties have robustly exercised that authority. Since the mid-1990s, detention rates have steadily increased and the number of detainees for the current fiscal year will exceed 400,000. There is no indication that detention rates will decline or remain stable. At a time when Congress is seeking to reduce the federal budget, passing a law that would expand mandatory detention is not only a costly and unnecessary burden on taxpayers but is also fiscally irresponsible.

Detention also has a human toll. Detention represents a severe deprivation of liberty, and individuals are often detained in remote facilities far from their families, communities, and attorneys. Conditions in detention facilities continue to be marked by severe deficiencies that have been well chronicled in numerous media stories,² reports by independent non-governmental organizations³ and government oversight agencies,⁴ and Congressional hearings.⁵ The shared

² Dana Priest and Amy Goldstein, "Careless Detention," *Washington Post*, May 11-14, 2008, available at www.washingtonpost.com/wp-srv/nation/specials/immigration/index.html; Nina Bernstein, "Officials Hid Truth of Immigrant Deaths in Jail," *New York Times*, January 9, 2010, available at www.nytimes.com/2010/01/10/us/10detain.html.

³ National Immigration Forum, "Summaries of Recent Reports on Immigration Detention," June 2010, available at www.immigrationforum.org/images/uploads/2010/DetentionReportSummaries.pdf.

⁴ DHS Office of Inspector General Report OIG-09-52, "Immigration and Custom Enforcement: Detention Bedspace Management," (Apr. 2009); DHS Office of Inspector General Report OIG-09-41, "Immigration

conclusion of these reports and hearings is that DHS has not maintained safe or humane conditions in detention facilities. Increasing detention will only exacerbate these problems.

Immigration detention serves an important but limited purpose; it is one of many tools that DHS has to mitigate flight risk and risk to public safety during the pendency of removal proceedings and the execution of removal orders. It is not and cannot be a proxy to protect the public from any and all harm perpetuated by noncitizens, and it cannot be used in a way that compromises our most fundamental and cherished values. When discussing proposals such as H.R. 1932, supporters cite the need to protect the public from a small handful of noncitizen recidivists. These cases are tragic examples that would compel anyone to demand responsive action. However, H.R. 1932 is not the narrow, constitutional answer its supporters suggest. Rather, it is a sweeping piece of legislation that grants the government expansive authority to detain countless individuals for prolonged, even indefinite periods of time, with diminished oversight.

and Custom Enforcement's Tracking and Transfer of Detainees," (Mar. 2009); U.S. Gov't Accountability Office, GOA-09-308R, "DHS: Organizational Structure and Resources for Providing Health Care to Immigration Detainees," (Feb. 23, 2009).

⁵ See *Moving Toward More Effective Immigration Detention Management: Hearing Before the Subcommittee On Border, Maritime and Global Counterterrorism of the House Homeland Security Committee*, 111th Cong. (Dec. 10, 2009), <http://homeland.house.gov/hearings/index.asp?ID=228>.
Detention and Removal: Immigration Detainee Medical Care: Hearing before the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law (Oct. 4, 2007) http://judiciary.house.gov/hearings/hear_100407_2.html.

Appendix – Case examples

Examples of Indefinite Detention:

1. **Sophane Meak** was held for nine months in immigration detention after being ordered removed by an immigration judge, even though the government could not deport him. His case exemplifies the problem with a law that explicitly permits the government to detain individuals indefinitely who cannot be physically deported from the U.S.

Sophane was born in a Thai refugee camp in 1983, after his parents fled the killing fields of Cambodia. He immigrated to the United States as a refugee when he was 3 years old, along with his parents and two siblings. His family resettled in San Diego, California. Sophane grew up poor and with no real caretaker. His mother suffered from severe clinical depression after seeing her family killed, and his father was always working to support the family. Even so, when Sophane grew older, he helped out around the house, took care of his mother, and worked.

Unfortunately, Sophane also started hanging out with the wrong people as a teenager. As a result of his involvement with this crowd, he was arrested and sentenced to three years in prison for receipt of a stolen vehicle. While he was in prison, his father died suddenly of brain cancer. His father's death was a turning point for Sophane. He realized because he broke the law, he could not be there for his family when they needed him. He promised himself that once he got out, he would dedicate his life to taking care of his mother, his sister, and her two children.

When Sophane was released from jail, he was transferred to federal immigration custody. He was ordered removed in February 2010 and then spent 9 more months in detention pending his removal from the U.S. Both Cambodia and Thailand refused to repatriate Sophane, and he could not be removed. Nevertheless, Sophane remained in detention, until he filed a petition for writ of habeas corpus in federal district court, and ICE agreed to release him.

Since his release in December 2010, Sophane has been living with his mother, a U.S. citizen, his sister, a lawful permanent resident, and her two U.S. citizen children. Sophane has made good on the promise he made to himself in prison. His mother needs constant care as she continues to struggle with depression, and he is her primary caretaker. He also serves as the father figure to his sister's two children, aged 2 and 6. Initially, Sophane had difficulty finding a job. However, he recently received an offer to work as an auto mechanic and will soon be helping to support his family financially.

2. **Ahmed Yahya Al-Sheikh** was held in immigration detention for sixteen months while the government tried, unsuccessfully, to deport him. This is another example of the problem with a law that explicitly permits the government to detain individuals indefinitely who cannot be physically deported from the U.S.

Mr. Al-Sheikh lived a comfortable life in Yemen. He was a renowned athlete, representing Yemen at the Barcelona Olympic Games and competing in other international competitions. By June 1997, he was married and was awaiting the birth of his first child. But all that changed in the middle of the night of June 14, when a group of armed soldiers and Yemeni secret police stormed the family home and whisked Mr. Al-Sheikh away. The Yemeni secret police held Mr. Al-Sheikh incommunicado for forty days and subjected him to brutal methods of torture. During interrogation sessions, Mr. Al-Sheikh was accused of being part of the opposition party in Yemen and a threat to the ruling elite. Even after his release, the Yemeni police continued to harass and threaten him and his family. In March 1998, he fled Yemen for the United States and was granted asylum in 2000. His wife and son followed several years later.

Although grateful to finally be safe, Mr. Al-Sheikh longed to see his family. In May 2002, he flew to Egypt with plans to meet his family there. However, his mother could not travel because of her failing health. Mr. Al-Sheikh's father had passed away while he was in the United States, and he did not want to lose his mother, too, without seeing her again. Still fearful of being persecuted, Mr. Al-Sheikh snuck into Yemen, entering and leaving the country through a deserted stretch of the coast and remained in hiding his entire visit there.

In 2003, Mr. Al-Sheikh applied for lawful permanent residence and later for a travel permit. Because he was afraid that he would lose his asylum status if he disclosed his visit to Yemen in 2002, Mr. Al-Sheikh failed to mention the trip on either application form. On May 15, 2007, Mr. Al-Sheikh pleaded guilty to making false statements on an application and was sentenced to 6 months in prison with credit for time served. As part of his plea, Mr. Al-Sheikh agreed to be deported to any country except for Yemen.

Upon completing his sentence, Mr. Al-Sheikh was transferred to ICE custody at the end of July 2007. While detained, he fully cooperated with the U.S. government's attempts to deport him to Saudi Arabia, the United Arab Emirates, Syria and other countries. He even renewed his passport, made arrangements for his wife and son to join him, and bought a plane ticket to Syria, believing his deportation was imminent. However, no country agreed to take him. Despite these refusals, DHS would not release him, even though Mr. Al-Sheikh's only crime was failing to disclose his trip to Yemen. He remained in detention, separated from his wife and son, for fifteen months while DHS attempted unsuccessfully to effectuate his removal. Mr. Al-Sheikh filed a habeas petition, arguing that his continued detention was unconstitutional, and he was finally released on bond and reunited with his family.

3. Majed Talat Hajbeh spent fifteen months in detention after the immigration judge ordered him removed, even though the government was not able to effectuate his removal. His case exemplifies the problem with a law that explicitly permits the government to detain individuals indefinitely who cannot be physically deported.

Mr. Hajbeh, originally from Jordan, entered the U.S. as a lawful permanent resident in January 1993 on a family visa petition. Unfortunately, he failed to disclose on his application that he had married and then divorced during the ten years between the time that his parents first petitioned for him and when they resubmitted the application. In 2003, he was arrested and charged in

federal court with falsifying his application for residency by checking “single” instead of “divorced.” Mr. Hajbeh eventually reconciled with his wife, and they remarried. Although acquitted of the criminal charges by a jury, Mr. Hajbeh was nevertheless taken into immigration custody, where he remained for four years, separated from his wife and seven children, all lawful permanent residents or U.S. citizens.

The immigration judge ordered Mr. Hajbeh deported but ruled that the government could not deport him to Jordan because of the likelihood that he would be tortured there. Instead of releasing him to his family, the government kept Mr. Hajbeh in detention, as it appealed the immigration court’s decision not to deport him to Jordan and searched, without success, for another country to take him. The government kept him locked up for an additional fifteen months, arguing that he was too dangerous to be released because Mr. Hajbeh had been convicted in absentia in Jordan in 1999 of terrorist activities.

But the conviction from Jordan was not valid or credible: Mr. Hajbeh’s codefendants were acquitted on appeal after the court found that they had only confessed after being tortured, and another man was later hanged for the crime. Even the government attorney who fought to keep Mr. Hajbeh in immigration detention admitted that he could not vouch for the validity of the conviction in Jordan.

Eventually, Mr. Hajbeh filed a habeas petition, and a federal court ordered his release, finding that the government was violating his constitutional rights by keeping him in detention. After four years, Mr. Hajbeh was released from detention on an electronic ankle monitor, a 10PM curfew, and restrictions limiting his travel to a 50-mile radius. For the nearly four years since his release in June 2007, Mr. Hajbeh has lived without incident, working to support his family and is contributing to his community.

4. Eddy Zheng was held in immigration detention for two years while the government tried, unsuccessfully, to deport him to China. Mr. Zheng’s case is another example of the problem with a law that explicitly permits the government to detain individuals indefinitely who cannot be physically deported from the U.S.

Mr. Zheng was born in China and immigrated to the U.S. as a lawful permanent resident at the age of 12. He shared a one-bedroom apartment in San Francisco with his parents and two older siblings. He struggled in school because of his limited English proficiency. He rarely saw his parents, because they worked long hours – his father at Burger King and his mother as a babysitter. When Eddy was 16 years old, he was involved in an armed robbery and kidnapping, and was sentenced as an adult to seven years to life in prison. During his 19 years in prison, he re-dedicated his life to preventing other immigrant youth from engaging in criminal activity. While incarcerated, Eddy learned English, earned his GED, earned an Associate of Arts Degree in Liberal Arts, co-facilitated a course entitled “Alternatives to Violence,” and developed a curriculum targeting at-risk immigrant teenagers that is currently being used by community service providers in Northern California.

Eddy was granted parole and released from prison in 2005. But his single conviction from two decades ago made him deportable from the U.S., so ICE detained him immediately. He spent an additional 2 years in immigration detention, and was released because ICE was unable to obtain travel documents for his removal to China.

Upon his release from immigration detention, Eddy has continued his violence-prevention work with immigrant and youth communities. He currently works as a Project Manager for the Community Youth Center of San Francisco. He is a Mayor Appointee of the San Francisco Reentry Council, serves on the Board of Directors for San Francisco's Neighborhood Vision Project, is a national advisory board member of the Asian American Law Journal, and co-chairs the Asian Prisoners Support Committee based in Oakland. Eddy also appealed his removal order, and the U.S. Court of Appeals for the Ninth Circuit recently ruled that the Board of Immigration Appeals erred when it denied him relief without considering his value and service to the community.

Examples of Prolonged Detention:

5. Jaime Hernandez spent three years in immigration detention without ever receiving a bond hearing. The immigration judge ultimately terminated removal proceedings, finding that he was not removable as ICE had charged. His case exemplifies the fundamental problem with a law authorizing prolonged detention during the pendency of removal proceedings without the opportunity for any custody review to see if that detention is actually warranted.

Mr. Hernandez fled to the United States in 1976 after the death squads in Guatemala kidnapped and presumably killed his father. He was just 18 years old. A few years later, he married his wife, a U.S. citizen, and they started a family. He and his wife have four children, all born in the U.S. His mother, brothers, and sister are all U.S. citizens or lawful permanent residents, and Mr. Hernandez has been a lawful permanent resident for twenty-five years. Since coming to this country, Mr. Hernandez has worked in various fields, including landscaping, construction, and the restaurant industry, to help support his family. He would often care for his children during the day while his wife worked, and then work himself at night.

Regrettably, Mr. Hernandez developed a drinking problem and lived for years without receiving treatment for alcoholism. As a result, he was convicted of many low-level drinking-related offenses. Even so, Mr. Hernandez never hurt anyone or committed an act of violence. In March 2001, when Mr. Hernandez asked a woman for change to take the metro, she called the police, and he was arrested. On the advice of his public defender, he pleaded guilty to simple assault and was sentenced to 12 months imprisonment with seven months suspended.

Although he was convicted of only a misdemeanor, on November 6, 2003, ICE took Mr. Hernandez into custody and mistakenly charged him as deportable, arguing that his misdemeanor offense could be categorized as an "aggravated felony" under immigration law. Before 1996, the term aggravated felony included an extremely limited number of crimes, such as murder and firearm trafficking. However, in 1996, Congress passed a law that greatly expanded the

definition of “aggravated felonies” to include a broad range of crimes. Individuals that ICE alleges have committed an aggravated felony are held in detention without a bond hearing.

Mr. Hernandez remained in detention for nearly three years without ever having the opportunity to show that he not was a flight risk or risk to public safety. His proceedings involved multiple appeals and remands—including a duplicate hearing after the tapes from a prior hearing were lost—and an appeal to the Fourth Circuit. Ultimately, Mr. Hernandez won his argument that his conviction for misdemeanor assault could not be classified as an aggravated felony under immigration law. The immigration judge granted him a \$1500 bond, the lowest bond possible. After fighting for three years to show that Mr. Hernandez should be deported and spending tens of thousands of dollars to detain him, ICE did not even bother opposing Mr. Hernandez’s motion to end removal proceedings. Mr. Hernandez no longer drinks and for the past three years has been working as a cook in a restaurant. After those long years of separation, he is back at home with his wife, children, and grandchildren.

6. Mr. L spent nearly five years in immigration detention without ever receiving a bond hearing. Ultimately, the court decided that he was not removable from the United States, as ICE had charged. His case is another example of the fundamental problem with a law authorizing prolonged detention during the pendency of removal proceedings without the opportunity for any custody review to see if detention is actually warranted.

Mr. L, originally from El Salvador, has lived in the U.S. for thirty years and has been a lawful permanent resident since 1989. His wife and his three children are all U.S. citizens, and they have lived in Wichita, Kansas for many years. In 1999, Mr. L was charged with aggravated battery. Some young vandals came to his house, and Mr. L chased them away with his gun, which he legally owned. To do so, he shot at the ground, but the bullet ricocheted and struck one of the youths in the leg. Mr. L pleaded guilty to battery, and was sentenced to twelve months imprisonment; however, he was allowed to serve two years probation in lieu of going to jail. Right before Mr. L was set to finish his probation, ICE took him into custody and charged him as deportable for having committed an aggravated felony. He was quickly transferred hundreds of miles from his family in Kansas to Los Fresnos, TX. He has no other criminal record.

Because of the way ICE categorized his crime, Mr. L was not eligible for a bond hearing. He languished in detention for almost five years while he fought his deportation, without the opportunity to show that he was neither a flight risk nor a danger to society. He took his case to the Fifth Circuit, which ruled that his conviction was not an aggravated felony. At that point, the immigration judge granted him bond, and he was finally released. Proceedings against Mr. L eventually ended.

Mr. L spent almost five years of his life in immigration detention, separated from his wife and his four children, even though he had every right to remain in the U.S. Before being detained, Mr. L owned his own business, which he lost while in detention. Without his income, his wife was forced to take a job making uniforms to support herself and their youngest daughter, who lived at home. Earning \$200 a week, his wife was barely able to make ends meet. Both she and her daughter suffer from asthma, but they were unable to afford their medication. Mr. L’s health

suffered as well. He could not sleep while separated from his family, knowing how much they were struggling without him. He had to receive medical treatment and medication for his condition. Now, even though his business is gone, Mr. L has found other work and is slowly rebuilding his life with the help and support of his family.

7. Dzevad Keco has been in detention for sixteen months without a bond hearing. His case exemplifies the fundamental problem with a law authorizing prolonged detention during the pendency of removal proceedings without the opportunity for any custody review to see if detention is actually warranted.

Mr. Keco was just nine years old when he became a refugee from the war in Bosnia. The atrocities he witnessed while in Bosnia and the very real possibility that he, too, could have been killed because of his ethnicity left indelible mental scars. In 1996, Mr. Keco came to the United States as a refugee with his father and two sisters and settled in Kentucky. Soon after, he became a lawful permanent resident.

In the United States, he continued to suffer. His mother had died when he was two, and his father was an abusive alcoholic who did not work but instead demanded money from his children. Mr. Keco dropped out of school to begin working on a tobacco farm at the age of sixteen. When he was twenty-two, he obtained a commercial license and became a truck driver. Mr. Keco also started self-medicating as a way of escaping his difficult life and painful memories.

One day, a friend asked him to deliver drugs. Mr. Keco was caught, but he was not prosecuted until years later. By that time, he had married a U.S. citizen, turned his life around, and was awaiting the birth of his first child. In 2008, he pleaded guilty to a drug trafficking crime in Kentucky for the incident that had happened many years before. He was to three years probation. Neither his criminal defense attorney nor the criminal court ever explained to him that he might lose his lawful permanent resident status if he pleaded guilty. He has no other convictions.

Mr. Keco believed that he had put his past behind him. In early 2009, he bought his own truck and became self-employed. Things were going well for Mr. Keco, his wife, and their young son. All of that changed in February 2010, when ICE detained Mr. Keco and placed him into removal proceedings because of the 2008 conviction.

Just a month after being detained, the Kentucky criminal court issued an order vacating the plea agreement from the 2008 case, and Mr. Keco was never re-prosecuted. Because his conviction was vacated, Mr. Keco asked the court to terminate the removal proceedings against him. He also supplied evidence that his constitutional rights had been violated when he agreed to the 2008 plea deal. Unfortunately, the immigration judge denied Mr. Keco's request. In June 2010, Mr. Keco appealed the immigration judge's decision. Although nearly a year has passed, no decision has been made on his appeal, and Mr. Keco continues to languish in detention.

Mr. Keco made a mistake many years ago. But by the time he was detained by ICE, he had turned his life around and had become a hardworking husband, a dedicated father, and a contributing member of his community. Mr. Keco has now been in immigration detention for sixteen months, without ever having the opportunity to show that he is not a flight risk or a danger to the community. Mr. Keco's detention has taken a huge toll on his family. Without his income, Mr. Keco's wife was forced to give up their apartment, sell their car, and move back in with her parents. The savings they worked so hard to build is gone, and it will take thousands of dollars to get Mr. Keco's business up and running again. Even more, Mr. Keco's wife and son have lost the companionship of a hardworking and loving father and husband. In the words of his wife: "My son, my family, and I are all American citizens and should not have to suffer like this. My husband is simply a very good man who has had a very rough life and with the hand of cards he was dealt did the best he could. He stumbled along the way but eventually made a very nice life for himself and family."

8. Mr. P was held in immigration detention for over fourteen months without a bond hearing, until the immigration judge determined that he was not removable from the United States. Mr. P's case is another example of the problem with a law authorizing prolonged detention during the pendency of removal proceedings without the opportunity for any custody review to see if that detention is actually warranted.

Mr. P is a lawful permanent resident, originally from Pakistan. His parents and siblings are all lawful permanent residents. In March 2009, Mr. P was detained by ICE and charged as being removable from the United States for having been convicted of petty theft and fleeing and attempting to elude a police officer.

Because of the government's charges, Mr. P was subject to mandatory detention without the possibility of a bond hearing to determine whether his detention was warranted. On April 24, 2009, the immigration judge ruled that Mr. P was not removable from the U.S. and ended his immigration proceedings. However, the government appealed the immigration judge's decision and refused to release Mr. P while the appeal was pending. Mr. P was still in detention six months later when, on October 30, 2009, the Board of Immigration Appeals remanded the case back to the immigration judge for further proceedings. Finally on May 17, 2010, after five additional months of detention, the immigration judge ruled a second time that Mr. P's convictions did not make him removable from the U.S. This time, DHS did not appeal the decision. After being detained for over fourteen months without a bond hearing, Mr. P was finally released from detention and was able to return to his family.