

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Rule 26.1-1 of the Rules of the United States Court of Appeals for the Eleventh Circuit, Counsel for Appellants hereby certifies that the following persons and entities have an interest in the outcome of this case:

1. Baez, Jose – Counsel for Defendant / Appellee
2. Barrientos Nunez, Pedro Pablo – Defendant / Appellee
3. Beckett, Mark D. – Counsel for Plaintiff / Appellants
4. Belsher, Amy – Counsel for Plaintiff / Appellants
5. Bhargava, Michael – Counsel for Plaintiff / Appellants
6. Bunster, Manuela – Plaintiff / Appellant
7. Calderon, Luis – Counsel for Defendant / Appellee
8. Dalton, Honorable Roy B. – United States District Court for the Middle District of Florida, Trial Judge
9. Dellinger, Richard – Counsel for Plaintiffs / Appellants
10. Estate of Victor Jara – Plaintiff / Appellant
11. Jara, Joan – Plaintiff / Appellant
12. Jara, Amanda – Plaintiff / Appellant
13. Landers, Sean – Counsel for Plaintiff / Appellants
14. McLaughlin, David – Counsel for Plaintiffs / Appellants
15. Roberts, L. Kathleen – Counsel for Plaintiffs / Appellants

16. Sarkarati, Nushin – Counsel for Plaintiffs / Appellants
17. Urrutia, Christian – Counsel for Plaintiffs / Appellants
18. Aldo Cabello – Amicus for Chilean Torture Survivors and Their Families
19. Zita Cabello – Amicus for Chilean Torture Survivors and Their Families
20. Luis Fernando Aguirre – Amicus for Chilean Torture Survivors and Their Families
21. Carlos Alberto Herrera – Amicus for Chilean Torture Survivors and Their Families
22. Victor A. Martinez – Amicus for Chilean Torture Survivors and Their Families
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24. Jaime Ricardo Salazar – Amicus for Chilean Torture Survivors and Their Families
25. Héctor Salgado – Amicus for Chilean Torture Survivors and Their Families

No publically traded company or corporation has an interest in the outcome of this appeal.

No. 16-15179

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JOAN JARA, in her individual capacity, and in her capacity as the Personal Representative of the ESTATE OF VÍCTOR JARA; AMANDA JARA TURNER, in her individual capacity, and; MANUELA BUNSTER, in her individual capacity,
Plaintiffs-Appellants,

v.

PEDRO BARRIENTOS NUÑEZ,

Defendant-Appellee.

On Appeal from the United States District Court
For the Middle District of Florida
The Honorable Roy B. Dalton, Jr.
Case No. 6:13-cv-1426-Orl-37GJK

**BRIEF OF CHILEAN TORTURE VICTIMS AND THEIR FAMILIES
AS *AMICI CURIAE* IN SUPPORT OF
PLAINTIFFS-APPELLANTS AND SEEKING
REVERSAL IN PART OF THE DISTRICT COURT'S DECISION**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, the *Amici* make the following disclosure:

1. Is the party a publicly held corporation or other publicly held entity?

NO.

2. Is the party a parent, subsidiary, or affiliate of, or a trade association representing, a publicly held corporation, or other publicly held entity?

NO.

3. Is there any other publicly held corporation, or other publicly held entity, that has a direct financial interest in the outcome of the litigation?

NO.

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INTEREST OF *AMICI CURIAE*

This Brief of Chilean Torture Victims and Their Families as *Amici Curiae* (hereinafter “*Amici*”) is respectfully submitted pursuant to Federal Rule of Appellate Procedure 29.¹ It is filed in support of Plaintiffs-Appellants and seeks reversal in part of the district court’s decision. Counsel for Plaintiffs-Appellants consented to the filing of this brief. Defendant-Appellee is represented by counsel but is not defending this appeal.

On September 11, 1973, the Chilean military, led by General Augusto Pinochet, overthrew the democratically elected government of Salvador Allende. Following the coup, military authorities launched a brutal and systematic repression of suspected political opponents. Thousands of individuals were detained, tortured, and executed. Several cases arising out of the Pinochet era have been litigated in U.S. courts. *See, e.g., Letelier v. Republic of Chile*, 502 F. Supp. 259 (D.D.C. 1980). Indeed, this Circuit has previously addressed human rights abuses arising out of the Pinochet coup and their affects in the United States. *Cabello v. Fernandez-Larios*, 402 F.3d 1148 (11th Cir. 2005).

¹ No party or party’s counsel authored this Brief in whole or in part. No party or party’s counsel contributed money that funded the preparation or submission of this Brief. No person other than *Amici* and their counsel contributed money that funded the preparation and submission of this Brief.

Amici are survivors of torture and other human rights abuses perpetrated during the Pinochet era and the family members of victims.² They now live in the United States. Most of the individuals identified as *Amici* are torture survivors. Others lost family and friends to the brutal campaign instigated against political opposition by the Pinochet regime. While *Amici* have built new lives for themselves and their families in the United States, they continue to suffer the consequences of their brutal treatment. Their suffering is enhanced because they know that many perpetrators, including the defendant in this case, now live in the United States.

Aldo Cabello and **Zita Cabello** are the siblings of Winston Cabello, who was arrested, detained, tortured, and executed by the Pinochet regime during the infamous “Caravan of Death” in October 1973. The Cabello family filed a successful ATS lawsuit against the perpetrator, who had moved to the United States. *Estate of Cabello v. Fernandez-Larios*, 205 F. Supp. 2d 1325 (S.D. Fla. 2002). This Circuit upheld the jury verdict in *Cabello v. Fernandez-Larios*, 402 F.3d at 1148. Aldo Cabello arrived in the United States in 1976 and is now a U.S. resident. Zita Cabello arrived in the United States in 1974 and is now a U.S. citizen.

² For a description of the common experiences of torture victims in Chile, see Hugo Rojas Corral, *Torture in Chile (1973-1990): Analysis of One Hundred Survivors’ Testimonies*, 42 CAL. W. INT’L L.J. 353 (2012).

Luis Fernando Aguirre was detained and tortured in Chile for over a year. He arrived in the United States in 1977 and is now a U.S. resident.

Carlos Alberto Herrera was detained and tortured in Chile for over two years. He arrived in the United States in May 1976 and is now a U.S. citizen.

Victor A. Martinez was detained and tortured in Chile for three years. He arrived in the United States in July 1976 and is now a U.S. citizen.

Hector Jose Muñoz was detained and tortured in Chile for two years. He arrived in the United States in 1975 and is now a U.S. citizen.

Jaime Ricardo Salazar was detained and tortured in Chile for over four years. He arrived in the United States in May 1978 and is now a U.S. citizen.

Héctor Salgado was detained and tortured in Chile for three years. He arrived in the United States in 1976 and is now a U.S. citizen.

Amici have unique insights on what it means to be a survivor of torture and other serious human rights abuses. They are keenly aware of how these acts affect both body and spirit. They understand that abuse can leave physical as well as mental scars that survivors will carry for the rest of their lives. They are deeply troubled that perpetrators of abuse can find a safe haven in the United States. Accordingly, *Amici* would like to provide the Court with an additional perspective on these issues. They believe this submission will assist the Court in its deliberations.

STATEMENT OF THE ISSUES ON APPEAL

Whether the district court erred in dismissing Plaintiffs' Alien Tort Statute ("ATS") claims by concluding that the presumption against extraterritoriality was not displaced where the defendant, who was alleged to be responsible for crimes against humanity, cruel, inhuman and degrading treatment, and arbitrary detention, is a citizen of the United States who has continuously resided in the United States for over 26 years and is using the United States as a "safe harbor" to avoid prosecution in his native country.

SUMMARY OF ARGUMENT

In *Jara v. Barrientos*, the District Court dismissed the ATS claims brought by the family members of Víctor Jara, an internationally-recognized folk singer, who was tortured and executed during the initial stages of the Pinochet coup. The Plaintiffs' ATS claims included crimes against humanity, arbitrary detention, cruel, inhuman or degrading treatment as well as torture and extrajudicial killing. Applying the presumption against extraterritoriality set forth by the Supreme Court in *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013), the District Court dismissed the plaintiffs' ATS claims "because the tortious conduct took place entirely outside the United States." *Jara v. Barrientos*, No. 6:13-cv-1426-Orl-37GJK, slip op. at 8 (M.D. Fl. Apr. 14, 2015). The Court emphasized that "the wholly foreign conduct here – torture of a Chilean citizen in Chile for protesting the overthrow of the Chilean government – simply does not 'touch and concern' the United States with such force as to overcome the presumption against extraterritoriality."³ *Id.* at 8. The District Court allowed two claims – for torture

³ The District Court discounted the defendant's U.S. citizenship, relying on this Circuit's decision in *Doe v. Drummond Company Inc.*, 782 F.3d 576, 596 (11th Cir. 2015). *Jara*, slip op. at 9. The Court also found that allowing the Plaintiffs to pursue their claims for torture and extrajudicial killing under the Torture Victim Protection Act ("TVPA") would address any possible concerns that the defendant would evade justice or that the United States would become a safe haven to human rights abusers. *Id.* While the TVPA addresses claims of torture and extrajudicial killing, it does not address claims of crimes against humanity, arbitrary detention, or cruel, inhuman, or degrading treatment.

and extrajudicial killing – to proceed under the Torture Victim Protection Act (“TVPA”).

The District Court’s decision that the ATS claims at issue in this case do not “touch and concern” the United States was in error. When assessing whether such claims “touch and concern” the United States, the *Kiobel* decision requires a fact-based inquiry to determine whether the defendant’s conduct adversely affects important American national interests. In light of the sheer number of torture victims now living in the United States and the significant resources provided by the U.S. government to support these individuals, it is evident that an important American national interest is at stake in this case. In addition, the presence of human rights abusers in the United States has a profound effect on the victims who now live here. It re-traumatizes them by highlighting the lack of accountability. Allowing victims of torture and other human rights abuses to pursue accountability and seek redress from perpetrators living in the United States promotes an important American national interest by protecting survivors and denying perpetrators a safe haven.

ARGUMENT

I. THE “TOUCH AND CONCERN” TEST SET FORTH IN *KIOBEL V. ROYAL DUTCH PETROLEUM CO.* REQUIRES A FACT-BASED INQUIRY TO DETERMINE WHETHER THE DEFENDANT’S CONDUCT ADVERSELY AFFECTS IMPORTANT AMERICAN NATIONAL INTERESTS

In *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013), the Supreme Court considered whether lawsuits filed under the ATS were subject to the presumption against extraterritoriality, a canon of statutory construction. While the Court acknowledged that the presumption was typically used “to discern whether an Act of Congress regulating conduct applies abroad” and that the ATS was a jurisdictional statute, the Court found that “the principles underlying the canon of interpretation similarly constrain courts considering causes of action that may be brought under the ATS.” *Id.* at 1664.

While the Supreme Court concluded that the presumption against territoriality applies to the Alien Tort Statute, it acknowledged that the presumption could be displaced. Specifically, the Court indicated that lower courts must examine the conduct and relevant claims at issue in a case to determine whether the presumption has been displaced. *Id.* at 1669. In *Kiobel*, 135 S. Ct. at 1669, for example, the Court considered whether any of the relevant conduct occurred in the United States. It concluded that “all the relevant conduct took place outside the United States.” *Id.* In addition, the Court indicated that “even

where the claims touch and concern the territory of the United States, they must do so with sufficient force to displace the presumption against extraterritorial application.” *Id.* Finally, the Court noted that “mere corporate presence” of the defendant would not suffice to establish that relevant claims “touch and concern” the territory of the United States. *Id.* Based on these principles, the Court dismissed the complaint since the plaintiffs were foreign nationals and the defendants were foreign corporations whose only presence in the United States consisted of a single office in New York that was owned by a separate but affiliated company.

The concurring opinions of Justices Kennedy and Breyer provide further clarity regarding appropriate considerations for examining the conduct and relevant claims at issue. Justice Kennedy, for example, acknowledged that the presumption against extraterritoriality may require further “elaboration and explanation” in some cases involving “serious violations of international law principles protecting persons.” *Id.* at 1669 (Kennedy, J., concurring). In contrast, Justice Breyer, along with three other Justices, declined to invoke the presumption against extraterritoriality. Instead, he argued that ATS claims should be “guided in part by principles and practices of foreign relations law.” *Id.* at 1671 (Breyer, J., concurring). Specifically, Justice Breyer identified three situations that would justify the assertion of jurisdiction under the ATS:

(1) the alleged tort occurs on American soil, (2) the defendant is an American national, or (3) the defendant's conduct substantially and adversely affects an important American national interest, and that includes a distinct interest in preventing the United States from becoming a safe harbor (free of civil as well as criminal liability) for a torturer or other common enemy of mankind.

Id. at 1674. According to Justice Breyer, such an approach would be “consistent with international law and foreign practice.” *Id.* at 1675.

It is evident that the *Kiobel* approach to ATS litigation requires a cautious and fact-based inquiry into the conduct and relevant claims at issue in a particular case. It is equally evident that courts must consider whether the defendant's conduct “adversely affects an important American national interest,” which includes “preventing the United States from becoming a safe harbor” to torturers.⁴ *Id.* at 1674; see also Ursula Tracy Doyle, *The Evidence of Things Not Seen: Divining Balancing Factors from Kiobel's “Touch and Concern” Test*, 66 HASTINGS L.J. 443 (2015); Ralph G. Steinhardt, *Determining Which Human Rights Claims “Touch and Concern” the United States: Justice Kennedy's Filartiga*, 89 NOTRE DAME L. REV. 1695 (2014).

⁴ This approach is fully consistent with international law and the assertion of prescriptive jurisdiction in cases involving violations of universal norms such as the prohibition against torture. This principle of jurisdiction was acknowledged by the International Court of Justice in its seminal decision of *Barcelona Traction, Light and Power Company, Ltd. (Belg. v. Spain)*, Judgment, 1970 I.C.J. 3, 32 (Feb. 5). See also *Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.)*, Judgment, 2002 I.C.J. 3, 63 (Feb. 14) (joint separate opinion by Higgins, Kooijmans and Buergenthal, JJ.); *South West Africa Cases (Eth. v. S. Afr.; Liber. v. S. Afr.)*, Judgment, 1962 I.C.J. 319, 425 (Dec. 21) (separate opinion by Jessup, J.).

II. IN LIGHT OF THE SHEER NUMBER OF TORTURE VICTIMS NOW LIVING IN THE UNITED STATES AND THE SIGNIFICANT RESOURCES PROVIDED BY THE U.S. GOVERNMENT TO SUPPORT THESE INDIVIDUALS, IT IS EVIDENT THAT AN IMPORTANT AMERICAN NATIONAL INTEREST IS AT STAKE IN THIS CASE

Thousands of torture victims now live in the United States. *See generally* Member Centers of the National Consortium of Torture Treatment Programs, *Descriptive, Inferential, Functional Outcome Data on 9,025 Torture Survivors over Six Years in the United States*, 25 TORTURE 34, 36 (2015) (“National Consortium Study”). Many of them continue to suffer significant physical and mental injuries.

The infliction of torture and other cruel, inhuman, or degrading treatment leaves victims with pain and suffering that do not fade with time. Survivors of arbitrary detention and crimes against humanity experience similar long-term injuries. There is overwhelming medical and psychological evidence that victims of human rights abuses continue to suffer for years after being subjected to such abuses. *See generally* Erika Sigvardsdotter et al., *Prevalence of Torture and Other War-Related Traumatic Events in Forced Migrants: A Systematic Review*, 26 TORTURE 41 (2016); SHANE O’MARA, *WHY TORTURE DOESN’T WORK: THE NEUROSCIENCE OF INTERROGATION* (2015); *BEYOND TRAUMA: CULTURAL AND SOCIETAL DYNAMICS* (Rolf J. Kleber et al. eds., 2d ed. 2013).

The physical injuries associated with human rights abuses vary in scope and severity.

Physicians regularly document paralysis, fractured bones, severed limbs, burned skin, organ damage, and countless other physical ailments caused by torture. Musculoskeletal injuries are common. Victims of cranial trauma suffer from impaired vision, loss of hearing, and neurological damage. Victims of sexual assault often suffer sterility and impotence. Few victims of torture escape without a permanent, physical reminder of their ordeal. Others share a different fate, however, when torture becomes murder.

AMNESTY INTERNATIONAL USA, UNITED STATES OF AMERICA: A SAFE HAVEN FOR TORTURERS 74 (2002) (citations omitted). *See also* Metin Basoglu, *Torture vs. Other Cruel, Inhumane, and Degrading Treatment*, 64 ARCH. GEN. PSYCHIATRY 277 (2007). Victims of human rights abuses may require years of physical therapy to overcome their injuries.

In addition to physical injuries, most victims of human rights abuses suffer psychological trauma, including post-traumatic stress disorder.

Victims of torture often suffer anxiety, depression, and guilt. Suicidal thoughts are common. Many survivors experience post-traumatic stress disorder, where they persistently re-experience the trauma of torture in flashbacks and nightmares. The past can break into the present at any time – a painful and disorienting phenomenon triggered by the sight of someone wearing a uniform, a small enclosed area, or numerous other reminders of torture. To avoid nightmares, many survivors avoid sleeping. For a survivor repeatedly pushed into a vat of water and nearly drowned, the sight of rain can be unbearable. For others, uncertainties involved in waiting for an appointment to begin can be traumatic. A survivor of electric shock torture may not be able to tolerate the sight of electrical equipment. Common activities, such as reading a newspaper or watching television, may appear

threatening as potential reminders of the violence suffered. In attempting to avoid painful memories or extreme stress, survivors may isolate themselves from familiar people and situations. An emotional numbing can occur. At the same time, survivors often carry out daily activities in an “emergency mode,” constantly on their guard. Hyperalertness and exaggerated responses to startling sounds or sights continue to plague many survivors. A general lack of trust and a sense of extreme vulnerability may characterize a survivor’s experience of the surrounding world in the aftermath of torture.

AMNESTY INTERNATIONAL USA, *supra*, at 74-75 (citations omitted). Psychological trauma may also require years of therapy, but some survivors will never be able to overcome their experiences. *See generally* Thomas Wenzel et al., *The DSM 5 and the Istanbul Protocol: Diagnosis of Psychological Sequels of Torture*, 25 TORTURE 51 (2015); Derrick Silove et al., *The Psychosocial Effects of Torture, Mass Human Rights Violations, and Refugee Trauma: Toward an Integrated Conceptual Framework*, 187 J. NERVOUS & MENTAL DISEASES 200 (1999); Yael Danieli, *Preliminary Reflections from a Psychological Perspective*, in TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES 572 (Neil J. Kritz ed., 1995).

In recognition of the countless victims of torture and other human rights abuses that enter and now live in the United States, Congress adopted the Torture Victims Relief Act of 1998, (“TVRA”). In its findings, Congress acknowledged that “[t]he effects of torture are long term” and that “[t]hose effects can last a lifetime for the survivors and affect future generations.” Torture Victims Relief

Act of 1998, § 2(2), Pub. L. 105-320 (1998). The TVRA added that “[a] significant number of refugees and asylees entering the United States have been victims of torture” and that “[m]any torture survivors now live in the United States.” *Id.* at § 2(5). Accordingly, the TVRA recognized that “[t]here is a need for a comprehensive strategy to protect and support torture victims and their treatment providers, together with overall efforts to eliminate torture.” *Id.* at § 2(7). In response, Congress authorized appropriations to support the work of domestic treatment centers for torture victims.⁵ *Id.* at § 5. The TVRA received consistent bipartisan support and was reauthorized by Congress on several occasions. *See, e.g.*, Torture Victims Relief Reauthorization Act of 2005, Pub. L. 109-165 (2006); Torture Victims Relief Reauthorization Act of 2003, Pub. L. 108-179 (2003); Torture Victims Relief Reauthorization Act of 1999, Pub. L. 106-87 (1999). In recent years, funding for torture treatment centers has been provided through annual appropriations to the Office of Refugee Resettlement (“ORR”) in the Department of Health and Human Services.

To assist victims living in the United States, ORR offers a dedicated Survivors of Torture (“SOT”) Program. The SOT Program offers two types of grants:

⁵ Under the TVRA, the President was also authorized to provide assistance to torture treatment centers in foreign countries. Torture Victims Relief Act of 1998, § 4(a), Pub. L. 105-320 (1998). In addition, Congress authorized funding to support the United Nations Voluntary Fund for Victims of Torture. *Id.* at § 6(a).

(1) Direct Services for Survivors of Torture (DS SOT) grants designed to provide holistic, strengths-based, and trauma-informed services to survivors of torture and their families to assist them in the healing and recovery process; and

(2) a Technical Assistance to Survivors of Torture organizations (TA SOT) grant designed to ensure that the direct service organizations have the training and resources needed to provide quality, integrated, and sustainable services to survivors and their families.

Survivors of Torture Program, Office of Refugee Resettlement, <http://www.acf.hhs.gov/orr/programs/survivors-of-torture>. The SOT Program distributes approximately \$10 million each year in grant funding to support torture treatment efforts in the United States.⁶ ANDORRA BRUNO, CONGRESSIONAL RESEARCH SERVICE, REFUGEE ADMISSIONS AND RESETTLEMENT POLICY 9 (2015).

In light of the sheer number of human rights victims now living in the United States and the significant resources provided by the U.S. government to support these individuals, it is evident that an important American national interest is at stake in this case.

⁶ The National Consortium of Torture Treatment Programs includes approximately 35 member centers around the United States that offer counselling and support to victims of human rights abuses. *See* National Consortium Project, *supra*, at 37. In Florida, for example, the Florida Center for Survivors of Torture provides a broad range of services, including access to medical, psychological, social, and legal professionals. In 2015, the Florida Center for Survivors of Torture received a \$429,000 grant from ORR to provide services to victims of torture. *See* Office of Refugee Resettlement, Services for Survivors of Torture Grants (Nov. 10, 2015), <http://www.acf.hhs.gov/orr/resource/services-for-survivors-of-torture-grants>.

III. ALLOWING TORTURE VICTIMS TO SEEK REDRESS FROM PERPETRATORS LIVING IN THE UNITED STATES ALSO PROMOTES AN IMPORTANT AMERICAN NATIONAL INTEREST

While countless torture victims now live in the United States, this country has also become a “safe haven” for the perpetrators who committed these atrocities. Indeed, the “safe haven” phenomenon has been documented by Congress for several years. *See, e.g., No Safe Haven: Accountability for Human Rights Violators, Part II: Hearing Before the Subcommittee on Human Rights and the Law of the Senate Judiciary Committee, 111th Cong. (Oct. 6, 2009); No Safe Haven: Accountability for Human Rights Violators in the United States, Hearing Before the Subcommittee on Human Rights and the Law of the Senate Judiciary Committee, 110th Cong. (Nov. 14, 2007).*

To promote accountability and ensure that perpetrators do not find a safe haven in the United States, Congress adopted the Human Rights Enforcement Act to establish a section within the Criminal Division of the Department of Justice with a specific mandate to investigate these cases. *See Human Rights Enforcement Act, Pub. L. No. 111-222, 123 Stat. 3480 (2009).* This section is authorized to “take appropriate legal action against individuals suspected of participating in serious human rights offenses.” *Id.* at § 2(b). In addition, the Department of Homeland Security established the Human Rights Violators and War Crimes Center in 2008 to identify human rights abusers living in the United States. This

agency has pursued hundreds of leads in the United States and initiated dozens of active investigations. *See, e.g.*, U.S. Department of Homeland Security, *Seeking Justice for Victims Around the World*, <https://www.ice.gov/features/no-safe-haven>.

In September 2016, for example, several U.S. government agencies implemented Operation No Safe Haven III to arrest individuals who were living in the United States and were suspected of having committed human rights violations abroad. *See* U.S. Immigration and Customs Enforcement, *ICE Arrests 36 Fugitives Across US During Operation Safe Nation and Operation No Safe Haven III* (Sept. 23, 2016), <https://www.ice.gov/news/releases/ice-arrests-36-fugitives-across-us-during-operation-safe-nation-and-operation-no-safe#wcm-survey-target-id>. Similar operations have been conducted on several occasions. *See, e.g.*, U.S. Immigration and Customs Enforcement, *ICE Arrests 50 Fugitives Across the US During Operation No Safe Haven II*, (Aug. 14, 2015), <https://www.ice.gov/homepage-flashbox-slide/ice-arrests-50-fugitives-across-us-during-operation-no-safe-haven-ii#wcm-survey-target-id>; U.S. Immigration and Customs Enforcement, *ICE Arrests 19 Fugitives Across US During "Operation No Safe Haven,"* (Sep. 23, 2014), <https://www.ice.gov/news/releases/operation-no-safe-haven>.

The presence of human rights abusers in the United States has a profound effect on victims. It re-traumatizes them by highlighting the lack of accountability.

It often exacerbates their psychological harm, including post-traumatic stress disorder. *See, e.g.,* Metin Basoglu et al., *Psychiatric and Cognitive Effects of War in Former Yugoslavia: Association of Lack of Redress for Trauma and Posttraumatic Stress Reactions*, 294 J. AM. MED. ASS'N 580 (2005). Allowing victims of torture and other human rights abuses to initiate legal proceedings against perpetrators can empower victims and facilitate their recovery. *See generally* INTERNATIONAL REHABILITATION COUNCIL FOR TORTURE VICTIMS, IN PURSUIT OF JUSTICE 8 (2014) (“For many victims, seeing the perpetrator brought to justice or receiving compensation for the harm suffered is an essential step in their rehabilitation.”); Jamie O’Connell, *Gambling with the Psyche: Does Prosecuting Human Rights Violators Console Their Victims?*, 46 HARV. INT’L L.J. 295 (2005). Legal proceedings can provide victims with an opportunity to tell their stories in public, and a full and fair hearing can help restore their sense of justice.⁷ “Telling one’s story as a witness at trial or through a deposition, or having it told by one’s attorney or a prosecutor may confer a variety of psychological benefits.” *Id.* at 328. Zita Cabello, whose brother Winston Cabello was detained, tortured, and executed

⁷ In contrast, the failure to pursue accountability can undermine the healing process for victims of serious human rights abuses. *See, e.g.,* Refik Hodzic, *Living the Legacy of Mass Atrocities: Victims’ Perspectives on War Crimes Trials*, 8 J. INT’L CRIM. J. 113 (2010); O’Connell, *supra*, at 327. Similar concerns arise when prosecutions are half-hearted or result in light penalties for perpetrators. O’Connell, *supra*, at 327.

by the Pinochet regime, described the importance of pursuing accountability against the perpetrators in U.S. courts.

I brought this lawsuit to honor the men and women who have had the moral courage to challenge the inevitability of injustice; all of those who have come to the realization that peace based on accommodation rather than on accountability necessarily leads to the repetition of past tragedies; to those who have chosen to work in favor of human dignity, peace, solidarity and justice.

Sandra Coliver et al., *Holding Human Rights Violators Accountable by Using International Law in U.S. Courts: Advocacy Efforts and Complementary Strategies*, 19 EMORY INT'L L. REV. 169, 182 (2005) (statement of Zita Cabello).

Medical professionals have recognized the benefits to victims of promoting accountability in U.S. courts.

This legal recourse presents the opportunity for torture survivors living in the United States to seek justice and confront impunity. The few who are able to take their cases to court create a collective voice for all torture victims, bringing the issue of human rights atrocities into the public eye. This opportunity also presents a means for psychological healing of torture's wounds by breaking the silence, confronting perpetrators and refuting impunity.

Mary Fabri, *Torture and Impunity: Legal Recourse May Lead to Healing*, 16 StressPoints (Spring 2003), <http://www.istss.org/education-research/traumatic-stresspoints/2002-02.aspx>; see also JUDITH HERMAN, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE FROM DOMESTIC ABUSE TO POLITICAL TERROR (2d ed. 2015).

Legal professionals share a similar view about the benefits of litigation to victims.

[C]ivil suits, controlled by plaintiff/victims and their chosen attorneys, and not prosecutors responsive to other agendas, may also be more effective in preserving a collective memory that is more sensitive to victims than some judicial accounts rendered in the course of criminal trials. Indeed, if studies about litigants' relative satisfactions with adversarial versus inquisitorial methods of criminal procedure are an accurate guide, it may be that having greater control of the process, including the selection of attorneys and the ability to discover and present one's own evidence and develop one's own strategy, is itself a value for victims, and one that is better met through civil suits such as those now occurring in United States courts.

Jose Alvarez, *Rush to Closure: Lessons of the Tadic Case*, 96 MICH. L. REV. 2031, 2102 (1998); see also Laurel E. Fletcher & Harvey M. Weinstein, *Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation*, 24 HUM. RTS. Q. 573 (2002).

For these reasons, allowing victims of torture and other human rights abuses to seek accountability and redress through litigation from perpetrators living in the United States supports human rights and, thereby, promotes an important American national interest. The benefits of promoting accountability are particularly relevant in the United States, where thousands of torture survivors live and search for a renewed life.⁸

⁸ The pursuit of accountability is also consistent with the long-standing U.S. commitment to combat impunity for serious human rights abuses. See, e.g., Gwynne Skinner, *Nuremberg's Legacy Continues: The Nuremberg Trials'*

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court reverse the District Court's dismissal of the ATS claims.

Dated: November 30, 2016

Respectfully submitted,

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Influence on Human Rights Litigation in U.S. Courts Under the Alien Tort Statute, 71 ALB. L. REV. 321 (2008); Sandra Coliver, *Bringing Human Rights Abusers to Justice in U.S. Courts: Carrying Forward the Legacy of the Nuremberg Trials*, 27 CARDOZO L. REV. 1689 (2006).

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

I hereby certify that:

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(C) because the brief (as indicated by word processing program Microsoft Word) contains 4,535 words, excluding the portions of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and 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 in 14-point Times New Roman.

Dated: November 30, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November, 2016, I caused to be electronically filed a copy of the foregoing with the Clerk of the Court using the CM/ECF system which will send a notice of the electronic filing to the following:

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No. 16-15179

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

JOAN JARA, in her individual capacity, and in her capacity as the Personal Representative of the ESTATE OF VÍCTOR JARA; AMANDA JARA TURNER, in her individual capacity, and; MANUELA BUNSTER, in her individual capacity,
Plaintiffs-Appellants,

v.

PEDRO BARRIENTOS NUÑEZ,

Defendant-Appellee.

On Appeal from the United States District Court
For the Middle District of Florida
The Honorable Roy B. Dalton, Jr.
Case No. 6:13-cv-1426-Orl-37GJK

**Motion of Chilean Torture Victims and Their Families
FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* IN SUPPORT OF
PLAINTIFFS-APPELLANTS AND SEEKING
REVERSAL IN PART OF THE DISTRICT COURT'S DECISION**

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Rule 26.1-1 of the Rules of the United States Court of Appeals for the Eleventh Circuit, Counsel for Appellants hereby certifies that the following persons and entities have an interest in the outcome of this case:

1. Baez, Jose – Counsel for Defendant / Appellee
2. Barrientos Nunez, Pedro Pablo – Defendant / Appellee
3. Beckett, Mark D. – Counsel for Plaintiff / Appellants
4. Belsher, Amy – Counsel for Plaintiff / Appellants
5. Bhargava, Michael – Counsel for Plaintiff / Appellants
6. Bunster, Manuela – Plaintiff / Appellant
7. Calderon, Luis – Counsel for Defendant / Appellee
8. Dalton, Honorable Roy B. – United States District Court for the Middle District of Florida, Trial Judge
9. Dellinger, Richard – Counsel for Plaintiffs / Appellants
10. Estate of Victor Jara – Plaintiff / Appellant
11. Jara, Joan – Plaintiff / Appellant
12. Jara, Amanda – Plaintiff / Appellant
13. Landers, Sean – Counsel for Plaintiff / Appellants
14. McLaughlin, David – Counsel for Plaintiffs / Appellants
15. Roberts, L. Kathleen – Counsel for Plaintiffs / Appellants

16. Sarkarati, Nushin – Counsel for Plaintiffs / Appellants
 17. Urrutia, Christian – Counsel for Plaintiffs / Appellants
 18. Aldo Cabello – Amicus for Chilean Torture Survivors and Their Families
 19. Zita Cabello – Amicus for Chilean Torture Survivors and Their Families
 20. Luis Fernando Aguirre – Amicus for Chilean Torture Survivors and Their Families
 21. Carlos Alberto Herrera – Amicus for Chilean Torture Survivors and Their Families
 22. Victor A. Martinez – Amicus for Chilean Torture Survivors and Their Families
 23. Hector Jose Muñoz – Amicus for Chilean Torture Survivors and Their Families
 24. Jaime Ricardo Salazar – Amicus for Chilean Torture Survivors and Their Families
 25. Héctor Salgado – Amicus for Chilean Torture Survivors and Their Families
- No publically traded company or corporation has an interest in the outcome of this appeal.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, the *Amici* make the following disclosure:

1. Is the party a publicly held corporation or other publicly held entity?
NO.
2. Is the party a parent, subsidiary, or affiliate of, or a trade association representing, a publicly held corporation, or other publicly held entity?
NO.
3. Is there any other publicly held corporation, or other publicly held entity, that has a direct financial interest in the outcome of the litigation?
NO.

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, and Rule 29-1 of the 11th Circuit Rules, the Chilean Torture Victims and Their Families as *Amici Curiae* hereby move this Court for an order allowing it to file the attached *Amici Curiae* brief in support of Plaintiffs-Appellants, Joan Jara, an individual, and in her capacity as the Personal Representative of the Estate of Victor Jara, Amanda Jara Turner, in her individual capacity, and Manuela Bunster. Counsel for Plaintiffs-Appellants consented to the filing of this motion. Defendant-Appellee is represented by counsel but is not defending this appeal.¹

INTEREST OF *AMICI CURIAE*

On September 11, 1973, the Chilean military, led by General Augusto Pinochet, overthrew the democratically elected government of Salvador Allende. Following the coup, military authorities launched a brutal and systematic repression of suspected political opponents. Thousands of individuals were detained, tortured, and executed. Several cases arising out of the Pinochet era have been litigated in U.S. courts. *See, e.g., Letelier v. Republic of Chile*, 502 F. Supp. 259 (D.D.C. 1980). Indeed, this Circuit has previously addressed human rights

¹ No party or party's counsel authored this Brief in whole or in part. No party or party's counsel contributed money that funded the preparation or submission of this Brief. No person other than *Amici* and their counsel contributed money that funded the preparation and submission of this Brief.

abuses arising out of the Pinochet coup and their effects in the United States. *Cabello v. Fernandez-Larios*, 402 F.3d 1148 (11th Cir. 2005).

Amici are survivors of torture and other human rights abuses perpetrated during the Pinochet era and family members of torture victims. They now live in the United States. Most of the *Amici* were tortured. Some lost family and friends to the brutal campaign instigated against political opposition by the Pinochet regime. While *Amici* have built new lives for themselves and their families in the United States, they continue to suffer the consequences of their brutal treatment. Their suffering is enhanced because they know that many perpetrators, including the defendant in this case, now live in the United States.

Aldo Cabello and **Zita Cabello** are the siblings of Winston Cabello, who was arrested, detained, tortured, and executed by the Pinochet regime during the infamous “Caravan of Death” in October 1973. The Cabello family filed a successful ATS lawsuit against the perpetrator, who had moved to the United States. *Estate of Cabello v. Fernandez-Larios*, 205 F. Supp. 2d 1325 (SD. Fla. 2002). This Circuit upheld the jury verdict in *Cabello v. Fernandez-Larios*, 402 F.3d at 1148. Aldo Cabello arrived in the United States in 1976 and is now a U.S. resident. Zita Cabello arrived in the United States in 1974 and is now a U.S. citizen.

Luis Fernando Aguirre was detained and tortured in Chile for over a year. He arrived in the United States in 1977 and is now a U.S. resident.

Carlos Alberto Herrera was detained and tortured in Chile for over two years. He arrived in the United States in May 1976 and is now a U.S. citizen.

Victor A. Martinez was detained and tortured in Chile for three years. He arrived in the United States in July 1976 and is now a U.S. citizen.

Hector Jose Muñoz was detained and tortured in Chile for two years. He arrived in the United States in 1975 and is now a U.S. citizen.

Jaime Ricardo Salazar was detained and tortured in Chile for over four years. He arrived in the United States in May 1978 and is now a U.S. citizen.

Héctor Salgado was detained and tortured in Chile for three years. He arrived in the United States in 1976 and is now a U.S. citizen.

Amici have unique insights on what it means to be a survivor of torture and other serious human rights abuses. They are keenly aware of how these acts affect both body and spirit. They understand that abuse can leave physical as well as mental scars that survivors will carry for the rest of their lives. They are deeply troubled that perpetrators of abuse can find a safe haven in the United States. Accordingly, *Amici* would like to provide the Court with an additional perspective on these issues. They believe this submission will assist the Court in its deliberations.

**REASONS FOR AND RELEVANCE OF CHILEAN TORTURE VICTIMS
AND THEIR FAMILIES' *AMICI CURIAE* BRIEF**

As individuals personally affected by atrocities committed by the Pinochet regime, the Chilean Torture Victims and Their Families request leave to file the *Amici Curiae* brief attached hereto as Exhibit A out of concern for the adverse psychological and physical effect of allowing a perpetrator of human rights violations to live with impunity in the United States, and for the chilling effect that the lower court's decision, if permitted to stand, would have on the rights of future torture survivors.

Amici have unique insights on what it means to be a survivor of torture and other serious human rights abuses. They are keenly aware of how these acts affect both body and spirit. They understand that abuse can leave physical as well as mental scars that survivors will carry for the rest of their lives. They are deeply troubled that perpetrators of abuse can find a safe haven in the United States. Accordingly, *Amici* would like to provide the Court with an additional perspective on these issues. They believe this submission will assist the Court in its deliberations.

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court grant leave allowing the Chilean Torture Victims and Their Families to file its *Amici Curiae* brief in support of Plaintiffs-Appellants in their appeal of the lower court's dismissal of Plaintiffs' Alien Tort Statute claims.

Dated: November 30, 2016

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