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)

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

George E. Barrett
Barrett Johnston, LLC
217 Second Avenue, North
Nashville, TN 37201
(615) 244-2202
gbarrett@barrettjohnston.com

Farah C. Diaz-Tello
National Advocates for Pregnant Women
15 W. 36th St., Ste. 901
New York, NY 10018
(212) 255-9252
fdt@advocatesforpregnantwomen.org

Counsel for Proposed Amici Curiae

Pursuant to Federal Rules of Appellate Procedure 27 and 29, and Sixth Circuit Rule 27, the experts in maternity care, management of childbirth, and women's and infant's health listed below request leave to file the accompanying brief in support of Appellee Juana Villegas and in support of affirmance of the District Court's judgment. Ms. Villegas has consented to the filing of this brief.

The proposed amici are united in their concern for the issues and outcome in this case—in which a nine-months pregnant, nonviolent pretrial detainee was shackled in transportation to the hospital, during labor, and immediately postpartum—because they oppose correctional practices that pose unnecessary risks to pregnant women and infants. They include:

Amicus curiae the **National Commission on Correctional Health Care** ("NCCHC") is an independent, not-for-profit organization that represents the interests of the fields of health (medical, mental, dental), law, and corrections in improving the quality of health care in our nation's jails, prisons, and juvenile confinement facilities. NCCHC offers an array of services to help correctional systems provide effective and efficient care, and publishes standards and position statements to help guide correctional facilities in the delivery of health care services. NCCHC's standards have been used by the federal courts, the U.S. Department of Justice, and independent agencies to evaluate the adequacy and quality of care in local, state and federal

correctional systems. NCCHC has been instrumental in setting forth health care policies for the treatment of pregnant individuals in correctional settings, recognizing that significant harm can result when blanket security policies are employed that ignore the serious health needs of the expectant mother and fetus.

Amicus curiae **The Center for Prisoner Health and Human Rights** seeks to advance the health and human rights of criminal justice populations through research, education, and advocacy. The Center initiates and supports projects that respond to the epidemic of incarceration and recidivism in the criminal justice system and the associated complex public health crisis. The Center is a collaboration of doctors and health care professionals, faculty, researchers, and students from a variety of academic disciplines and institutions, lawyers, community activists, and others who are dedicated to shaping and effecting the interdisciplinary response that these overlapping criminal justice and public health crises demand. Harnessing the passion, skills, and training of these individuals, the Center strives to educate health professionals, students, policy and opinion makers, and the general public, and to translate world-class research into sound, evidence-based policies and practices that address the multiple dimensions of these crises.

Amicus curiae **National Perinatal Association** ("NPA") promotes the health and well-being of mothers and infants, enriching families, communities and our world. NPA seeks to increase access to comprehensive health care, as this has an immeasurable impact on birth outcomes. NPA opposes all policies that endanger the well-being of infants or their mothers.

Amicus curiae **American College of Nurse Midwives** ("ACNM"), with roots dating back to 1929, is the oldest women's health care organization in the United States. ACNM sets standards for the education, certification, and practice of certified nurse-midwives and certified midwives; supports research; administers and promotes continuing education programs; creates liaisons with state and federal agencies and members of Congress; and advocates for programs and policies that improve the health status of women and their families. The mission of ACNM is to

promote the health and well-being of women and newborns within their families and communities through the development and support of the profession of midwifery, practiced by certified nurse-midwives and certified midwives. The philosophy inherent in the profession states that the midwives believe every individual has the right to safe, satisfying health care with respect for human dignity and cultural variations.

Amicus curiae **American Medical Student Association** ("AMSA"), with a half-century history of medical student activism, is the oldest and largest independent association of physicians-in-training in the United States. AMSA is a student-governed, national organization committed to representing the concerns of physicians-in-training. AMSA members are medical students, premedical students, interns, residents and practicing physicians. Through its mission, AMSA is committed to improving health care and healthcare delivery to all people; promoting active improvement in medical education; involving its members in the social, moral and ethical obligations of the profession of medicine; assisting in the improvement and understanding of world health problems; contributing to the welfare of medical students, premedical students, interns, residents and post-MD/DO trainees; and advancing the profession of medicine.

Amicus curiae **American Medical Women's Association** ("AMWA") is a national non-profit organization of women physicians and physicians-in-training representing every medical specialty. Founded in 1915, AMWA is dedicated to promoting women in medicine and advocating for improved women's health policy. AMWA is opposed to the dangerous and degrading practice of shackling pregnant women who pose no safety risk.

Amicus curiae **American Nurses Association** ("ANA") is the largest nursing organization in the United States. Through its Code of Ethics for Nurses, standards for nursing practice, and public advocacy, the ANA actively promotes patient safety and the public health.

Amicus curiae **Asian & Pacific Islander American Health Forum** ("APIAHF") has influenced policy, mobilized communities, and strengthened programs and organizations to

improve the health of Asian Americans, Native Hawaiians, and Pacific Islanders since 1986. APIAHF promotes fairness, respect, equity, and health justice for all, and therefore express its concern for the health of immigrant women, and those who may be held in immigration detention. APIAHF supports this brief because it opposes the dangerous and inhumane practice of shackling pregnant women, who pose no safety risk, if they are detained during childbirth.

Amicus curiae **BirthNet, Inc.** is a non-profit organization that works to educate the public about evidence-based maternity care in order to improve care for all women. BirthNet works to improve maternity care for women of all ages, ethnic backgrounds, races, religions, sexual orientations, abilities, and socio-economic circumstances.

Amicus curiae **Childbirth Connection** is a non-profit organization working nationwide to improve the quality and value of maternity care through consumer engagement and health system transformation. Childbirth Connection promotes safe, effective and satisfying evidence-based maternity care and is a voice for the needs and interests of childbearing families. Childbirth Connection uses best research evidence and the results of periodic national surveys of mothers to inform policy, practice, education and research. Childbirth Connection joins as amicus to explain the importance of safe and humane maternity care practice, which includes freedom of movement in labor and removing impediments to diagnosing and addressing complications of pregnancy and delivery.

Amicus curiae **Citizens for Midwifery** ("CfM") is a national, consumer-based non-profit organization promoting the Midwives Model of Care. Our members are primarily parents and concerned citizens, but include doulas, childbirth educators, midwifery students, midwives, nurses, and physicians. CfM works to improve access to the evidence-based, respectful Midwives Model of Care in all settings for all women. This kind of care is based on basic human rights and also recognizes that freedom of movement during labor and delivery is essential for optimal outcomes for mothers and babies.

Amicus curiae **DONA International** is the world's oldest and largest nonprofit organization certifying doulas using an international standard. Doulas support women and their families physically and emotionally during birth and postpartum and are trained to value this support as being crucial to their clients' sense of satisfaction and accomplishment. DONA believes that the birth experience, whether positive or traumatic, has a lifelong emotional impact on a woman, her family and, ultimately, society. DONA International seeks to ensure that birthing women are afforded maximum self-determination and as respectful an experience as possible during their birth journey, whatever the circumstances. DONA International is committed to improving maternal and child health by participating in coalitions that support our mission and purpose.

Amicus curiae **Lamaze International** is a non-profit organization that promotes a natural, healthy and safe approach to pregnancy, childbirth and early parenting practices. Knowing that pregnancy and childbirth can be demanding on a woman's body and mind, Lamaze serves as a resource for information about what to expect and what choices are available during the childbearing years. Lamaze education and practices are based on the best and most current medical evidence available. Working closely with their families, health care providers and Lamaze educators, millions of pregnant women have achieved their desired childbirth outcomes using Lamaze practices. Lamaze International joins as amicus to affirm the importance of evidence-based childbirth practices, which includes: the ability to walk, move around and change positions during labor; the opportunity to avoid giving birth in a supine position and follow the body's urges to push; and keeping mother and baby together after birth—which is best for both mother and baby.

Amicus curiae **Legal Advocates for Birth Options and Rights** ("LABOR") is an organization made up of attorneys and allies dedicated to protecting women's rights and expanding women's options in childbirth. LABOR uses legal advocacy, public education, and networking among attorneys to ensure that pregnant, birthing, and postpartum women have the resources

they need to self-determine the care they receive for themselves and their families, free from discrimination, harassment, or punishment.

Amicus curiae **Maternal and Child Health Access** ("MCHA") improves the health of low-income women and families through education, training, and direct services as well as administrative and other policy advocacy on health care and related rights. MCHA provides information, support, and technical assistance to health and social service organizations, assists individual women to achieve healthy pregnancies and obtain quality health care for themselves and their children, and educates policymakers and the general public to improve the health and social services systems for all low income women and families and to benefit the entire community in which they live.

Amicus curiae **Mobile Midwife** is an organization working to ensure that all mothers and parents have the right to ensure the well-being of themselves and their families, including access to Birth Justice. Mobile Midwife advocates for access to prenatal, birth and postpartum care that is holistic, healing and humanistic. Mobile Midwife organizes for the rights of pregnant and birthing people; this includes the right to birth free from chains and access to health care during the childbearing year that is holistic, humanistic, and culturally centered. This health care is across the pregnancy spectrum including: abortion, miscarriage, prenatal, birth, and postpartum care.

Amicus curiae **National Advocates for Pregnant Women** ("NAPW") works to secure the human and civil rights, health and welfare of all women, focusing particularly on pregnant and parenting women, and those who are most vulnerable, such as low income women and women of color. NAPW seeks to ensure that women do not lose their constitutional and human rights as a result of pregnancy, that families are not needlessly separated, and that pregnant and parenting women have access to a full range of reproductive health services. By focusing on the rights of pregnant women, NAPW broadens and strengthens the reproductive justice, drug policy reform, and other interconnected social justice movements in America today.

Amicus curiae **National Asian Pacific American Women's Forum** ("NAPAWF") is dedicated to forging a grassroots progressive movement for social and economic justice and the political empowerment of Asian Pacific American (APA) women and girls. Founded in 1996, NAPAWF's vision includes strengthening communities to reflect the social, political, and economic concerns and perspectives of APA women and girls; inspiring leadership and promoting the visibility and participation of APA women and girls in the political process and within the broader national and international women's movement; and creating a vehicle for progressive APA women to connect with others across the country to share strategies and form lasting coalitions around policy initiatives and grassroots organizing campaigns. Issues related to reproductive justice, health equity, immigrant and refugee rights, and economic empowerment form the basis of NAPAWF's work.

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, DC 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 **National Women's Health Network** ("NWHN") improves the health of women by influencing public

policy and providing health information to support decision-making by individual consumers. Founded in 1975 to give women a greater voice within the health care system, the NWHN aspires to a health care system that is guided by social justice and reflects the needs of diverse women. We are committed to advancing women's health by ensuring that women have self-determination in all aspects of their reproductive and sexual health; challenging the inappropriate medicalization of women's lives; and establishing universal access to health care that meets the needs of diverse women. The core values that guide the NWHN's work include our belief that the government has an obligation to safeguard the health of all people; that we value women's descriptions of their own experiences and believe health policy should reflect the diversity of those experiences; and that we believe evidence rather than profit should determine what services and information are available to inform women's health decision-making and practices. The NWHN is a membership-based organization supported by 8,000 individuals and organizations nationwide.

Amicus curiae **Our Bodies Ourselves ("OBOS")** provides clear, truthful information about health, sexuality and reproduction from a feminist and consumer perspective. OBOS vigorously advocates for women's health by challenging the institutions and systems that block women from full control over their bodies and devalue their lives. OBOS is noted for its long-standing commitment to serve only in the public interest and its bridge-building capacity. OBOS is dedicated to the autonomy and well being of all women.

Amicus curiae **Physicians for Reproductive Choice and Health** ("PRCH") is a doctor-led national advocacy organization. We use evidence-based medicine to promote sound reproductive health policies. PRCH is committed to ensuring that all people have the knowledge, access to quality services, and freedom of choice to make their own reproductive health decisions.

Amicus curiae the **Prison Birth Project** is a reproductive justice organization that provides support, education, and advocacy for women and girls at the intersection of the criminal

system and motherhood. The Prison Birth Project provides full-spectrum doula care, childbirth education, and leadership programs to incarcerated and formerly incarcerated women in Massachusetts. Prison Birth Project joins as amicus to support the human rights and access to quality healthcare for all incarcerated people, as well as provide evidence-based medical care throughout the spectrum of reproductive health.

Amicus curiae the **Prison Doula Projec**t is a collective of individuals who work with pregnant, postpartum, and parenting people incarcerated in a maximum security prison in Washington State. Collective members attend births as doulas, facilitate a support group, offer prenatal and postpartum doula services, and serve as advocates and resources in matters of reproductive health care, reunification with families, and post-release support. Through direct services, the Prison Doula Project seeks to interrupt and deconstruct the pervasive and systematic sexism, racism, classism, homophobia, and transphobia that disproportionately affects the people the collective serves. Their loyalty is to their clients and incarcerated people everywhere. By challenging reproductive oppression against incarcerated individuals, the Prison Doula Project works toward Reproductive Justice.

Amicus curiae **Solace For Mothers** works to end practices that contribute to women experiencing birth as traumatic, and to help women heal from these experiences. Solace for Mothers offers multifaceted resources for women who are struggling with birth trauma, post-traumatic stress disorder (PTSD) after childbirth and anxiety caused by their birthing experiences. Through nonjudgmental connection with others who have had similar experiences and trainings for professionals, Solace for mothers provides and creates support for women who have experienced birth as traumatic.

The following individuals join this brief as amici curiae with institutional affiliations provided for identification purposes only:

Amicus curiae **Scott A. Allen, M.D.,** is an Associate Clinical Professor of Medicine at the University of California, Riverside. He is a co-founder of the Center for Prisoner Health and Prisoner Health and Human Rights and is a medical advisor to Physicians for Human Rights. He is a former medical director of the Rhode Island Department of Corrections.

Amicus curiae **Jennifer Clarke, M.D., M.P.H.** is an Associate Professor of Medicine and Obstetrics and Gynecology at Brown University's Medical School. She is a board member of the Society of Correctional Physicians and a Fellow of the American College of Physicians. Dr. Clarke has conducted years of research, supported by millions of dollars of grants, concerning the reproductive health of incarcerated women. Her February 2011 article in the Journal of the American Medical Association, "Perinatal Care for Incarcerated Patients," directly addresses this issue.

Amicus curiae **Robert L. Cohen, M.D.,** has worked for over thirty years as a physician, administrator, court expert, and Federally appointed monitor to improve the care and conditions of prisoners. Dr. Cohen was the Director of the Montefiore Rikers Island Health Services from 1981 through 1986. He represented the American Public Health Association (APHA) on the Board of the National Commission for Correctional Health Care for 17 years, through 2010. He is currently appointed by the New York City Council to represent them on the New York City Board of Correction. Dr. Cohen has served as a Federal Court Monitor overseeing efforts to improve medical care for prisoners in Florida, Ohio, New York State, and Michigan. Dr. Cohen practices internal medicine in New York City. He is a Clinical Instructor in the Department of Medicine of the New York University School of Medicine.

Amicus curiae **Joe Goldenson, M.D.,** has been the Program Director and the Medical Director for the San Francisco Public Health Department's Jail Health Services (JHS) since 1993. Dr. Goldenson serves as a medical expert appointed by Federal courts in five cases related to health care provided to prisoners, and by the California State Court in another. He has also been involved

in evaluations of the health care services in correctional facilities across the nation. Dr. Goldenson is on the Board of the National Commission on Correctional Health Care and is a member of the California Medical Association's Corrections and Detentions Health Care Committee. He has served as a consultant to the Francis J. Curry National Tuberculosis Center and served as a member of a committee that revised the Center for Disease Control's guidelines for the management of tuberculosis in correctional facilities. Dr. Goldenson is a fellow of the Society of Correctional Physicians and has served as secretary and treasurer of the Society. He has been an Assistant Clinical Professor at the University of California, San Francisco since 1980.

Josiah D. Rich, M.D., M.P.H., is Professor of Medicine and Community Health at Brown University's Medical School. Since 1994 Dr. Rich has been caring for prisoners with HIV infection at the Rhode Island Department of Corrections. Dr Rich has received millions of dollars in Federal research grants for his research with vulnerable populations in correctional settings. Currently, he is Principal Investigator of five major NIDA grants all focused on incarcerated populations. He is Director and Co-Founder of the Center for Prisoner Health and Human Rights. He is also a Co-Founder of the nationwide Centers for AIDS Research (CFAR) collaboration in HIV in corrections (CFAR/CHIC) initiative. Dr. Rich has advocated for public health policy changes to improve the health of people with addiction, including increasing drug treatment for the incarcerated and formerly incarcerated populations.

Amicus curiae **Carolyn Sufrin, M.D., F.A.C.O.G.,** is an Assistant Professor in the Department of Obstetrics, Gynecology and Reproductive Sciences at the University of California, San Francisco in the San Francisco General Hospital Division. Her focus is on expanding access to reproductive health care for incarcerated women, as well as training residents in the care of vulnerable populations. She currently serves as a Women's Health Specialist in the San Francisco Jail Health Services, conducting research, and implementing programs to increase family planning and other reproductive health services for this

vulnerable population of women. Dr. Sufrin is a member of the National Commission on Correctional Health Care, and has spoken extensively on obstetrical care for incarcerated women. She has served for the past two years as a pro bono consultant to the American Civil Liberties Union of Northern California and Legal Services for Prisoners with Children on their proposed anti-shackling legislation, and authored a 2010 op-ed against shackling of pregnant inmates, which was published by the San Francisco Chronicle.

Amicus curiae **Elizabeth Mitchell Armstrong, Ph.D., M.P.A.,** holds a joint appointment in the Department of Sociology and the Woodrow Wilson School at Princeton University and is a faculty associate at the Office of Population Research, the Program in Gender and Sexuality Studies and the Center for Health and Wellbeing. She has published articles in the scholarly literature on substance use during pregnancy, family planning, adolescent motherhood, and the sociology of pregnancy and birth. She is the author of Conceiving Risk, Bearing Responsibility: Fetal Alcohol Syndrome and the Diagnosis of Mortal Disorder (Johns Hopkins University Press, 2003), the first book to challenge conventional wisdom about drinking during pregnancy. Her current research includes a longitudinal study of agenda setting around disease in the U.S. and a study of fetal personhood and obstetrical ethics. She serves on the Board of Directors of Lamaze International. She has an M.P.A. from Princeton University and a Ph.D. from the University of Pennsylvania.

Amicus curiae **Wendy Chavkin, M.D., M.P.H.,** is a Professor of Clinical Public Health and Obstetrics and Gynecology at Columbia University, in the Heilbrunn Department of Population and Family Health and Department of Obstetrics-Gynecology at Mailman School of Public Health and College of Physicians and Surgeons at Columbia University. She has written extensively about women's reproductive health issues and done extensive programmatic and policy research related to pregnant women, punishment and barriers to care for over two decades.

Amicus curiae **Mardge Cohen, M.D.,** is Professor of Medicine at Rush University in Chicago IL and worked at Cook County Hospital for the past 36 years, and has advocated for improving women's health for decades. In 1987 she founded the Women and Children HIV Program at Cook County Hospital, an innovative approach to providing comprehensive medical and psychosocial services to vulnerable women and children with HIV. She has conducted research on pregnant women related to the prevention and treatment of HIV through large multisite studies funded by the Centers for Disease Control and the National Institute for Child Health and Development, and is the Principal Investigator on the Women's Interagency HIV Study Chicago site. Dr. Cohen has conducted years of grand scale research, supported by millions of dollars of grants, concerning the reproductive behaviors of low-income women, many with problems related to incarceration.

Amicus curiae **Susan Cu-Uvin, M.D.,** is a Professor of Obstetrics and Gynecology, Medicine, and Health Services, Policy and Practice at Brown University, Providence, RI. She is a recognized expert on HIV in women and sexually transmitted infections. She is the Director of Global Health Initiative at Brown. She is on the editorial board of the Journal of Women's Health, Infectious Diseases in Obstetrics and Gynecology and American Journal of Reproductive Immunology. She was a member of several committees of the Institute of Medicine, National Academy of Sciences on HIV Mother to Child Prevention, HIV Testing, and Women's Health Research. She has received funding from the National Institutes of Health for research related to HIV in women, is a member of NIH study section, and perinatal antiretroviral guidelines.

Amicus curiae **Nada L. Stotland, M.D., M.P.H.,** is a psychiatrist and Professor of Psychiatry at Rush Medical College in Chicago. Dr. Stotland has a longstanding interest in women's mental health, psychological aspects of women's reproductive health, medical education, and medical ethics. She is the author or editor of five books on the psychiatric aspects of women's reproductive health and health care. She served for from 2008-

2009 as the President of the American Psychiatric Association (APA), and for seven years as the Chair of the APA Committee on Women. With her encouragement, the APA adopted a policy of non-punitive treatment for pregnant women with psychiatric problems. She is also a clinician expert in the care of women with pregnancy-related issues.

Amicus curiae **Sarah E. Wakeman, M.D.,** is a chief resident in medicine at Massachusetts General Hospital, a teaching hospital of Harvard Medical School. She has authored numerous articles in issues related to corrections and addiction and is a faculty member of the Center for Prisoner health and Human Rights at Brown University. She is the founder of the Massachusetts General Hospital Ambulatory Subspecialty Rotation in Prisoner Health and the co-founder of the Charlestown Transitions Clinic, a post-release clinic providing medical care to recently released prisoners.

An amicus brief is desirable and the matters asserted therein are relevant to the disposition of this case because they bring to bear the many medical contraindications against the use of restraints on pregnant, laboring, and postpartum women and the opinions of experts in maternity care and management of childbirth against the practice. Amici seek to assist the court by providing research showing the many ways in which the use of restraints on pregnant, laboring, and postpartum women threatens the health of women and infants and subjects women to

unnecessary, cruel, and degrading treatment at a particularly vulnerable time.

CONCLUSION

For the reasons stated, proposed amici's motion for leave to file an amicus brief should be granted.

Respectfully submitted,

/s/ George E. Barrett
George E. Barrett
Barrett Johnston, LLC
217 Second Avenue, North
Nashville, TN 37201
(615) 244-2202
gbarrett@barrettjohnston.com

Farah C. Diaz-Tello
National Advocates for Pregnant Women
15 W. 36th St., Ste. 901
New York, NY 10018
(212) 255-9252
fdt@advocatesforpregnantwomen.org

Counsel for Proposed Amici Curiae

Dated: May 9, 2012

CERTIFICATE OF SERVICE

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

Kevin C. Klein
Allison L. Bussell
Metropolitan Department of Law
P.O. Box 196300
Nashville, TN 37219
Kevin.klein@nashville.gov
Alison.bussell@nashville.gov

and
William L. Harbison
Phillip F. Cramer
John L. Farringer IV
Sherrard & Roe, PLC
150 3rd Avenue South
Suite 1100
Nashville, TN 37201
(615) 742-4200
bharbison@sherrardroe.com
pcramer@sherrardroe.com
jfarringer@sherrardroe.com

/s/ George E. Barrett

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 NATIONAL COMMISSION ON CORRECTIONAL HEALTH CARE, THE CENTER FOR PRISONER HEALTH AND HUMAN RIGHTS, NATIONAL PERINATAL ASSOCIATION, ET AL. IN SUPPORT OF PLAINTIFF/APPELLEE JUANA VILLEGAS AND IN SUPPORT OF AFFIRMANCE OF THE DISTRICT COURT'S ORDER

George E. Barrett
Barrett Johnston, LLC
217 Second Avenue, North
Nashville, TN 37201
(615) 244-2202
gbarrett@barrettjohnston.com

Farah C. Diaz-Tello
National Advocates for Pregnant Women
15 W. 36th St., Ste. 901
New York, NY 10018
(212) 255-9252
fdt@advocatesforpregnantwomen.org

Counsel for Amici Curiae

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.

Dated: May 9, 2012 /s/ George E. Barrett

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

INTERESTS OF AMICI CURIAE

Amici curiae (collectively "amici") are organizations and individuals opposed to the prison practice of shackling women during labor and childbirth.[1] Amici include experts in maternal and fetal health, maternity care, and childbirth, as well as advocacy groups committed to the health and dignity of pregnant, laboring, and postpartum women and their infants. They file this brief by leave of

---

[1] No counsel of a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief and no person other than amici curiae, its members, or its counsel made a monetary contribution to its preparation or submission. Statements of interest for each amicus are included as Appendix A. Amici are: National Commission on Correctional Health Care, The Center for Prisoner Health and Human Rights, National Perinatal Association, American College of Nurse Midwives, American Medical Student Association, American Medical Women's Association, American Nurses Association, Asian & Pacific Islander American Health Forum, BirthNet, Inc., Childbirth Connection, Citizens for Midwifery, DONA International, Lamaze International, Legal Advocates for Birth Options and Rights, Maternal and Child Health Access, Mobile Midwife, National Advocates for Pregnant Women, National Asian Pacific American Women's Forum, National Latina Institute for Reproductive Health, National Women's Health Network, Our Bodies Ourselves, Physicians for Reproductive Choice and Health, Prison Birth Project, Prison Doula Project, Solace For Mothers, Scott A. Allen, M.D., Jennifer Clarke, M.D., M.P.H., Robert L. Cohen, M.D., Joe Goldenson, M.D., Josiah D. Rich, M.D., M.P.H., Carolyn Sufrin, M.D., Sarah E. Wakeman, M.D., Wendy Chavkin, M.D., Elizabeth Mitchell Armstrong, Ph.D., M.P.A., Mardge Cohen, M.D., M.P.H., Susan Cu-Uvin, M.D., and Nada L. Stotland, M.D., M.P.H.

court pursuant to Federal Rule of Appellate Procedure 29(b). Amici seek to assist the Court by bringing to bear relevant information about pregnancy and management of labor, as well as the opinions of expert groups, which all strongly oppose shackling pregnant, laboring, and postpartum inmates.

Amici are deeply concerned with the issues and the outcome of this case because the experiences of Juana Villegas, who was shackled during her labor and immediately after the delivery of her newborn child, are shared each year by numerous other imprisoned mothers and newborns in the United States. As advocates for the health, rights, and dignity of all women, including incarcerated women, and their children, amici condemn shackling as a cruel and inhumane practice. It dangerously disregards the health needs of pregnant women and their infants. It interferes with the normal birthing process and the provision of medical care. It causes unnecessary humiliation and suffering. It hampers physiological management of labor. For the reasons explained below, the health and safety of mothers and children requires that this Court uphold the ruling of the court below.

PRELIMINARY STATEMENT

Juana Villegas was nine months pregnant with her fourth child when she was arrested and placed in pretrial detention for a minor traffic offense on July 3, 2008. After two days in the Davidson County Detention Center, Ms. Villegas's water broke and she went into labor. Based on the undisputed facts, the Metropolitan Government of Nashville and Davidson County's (Metro's) restraint policies in effect in July 2008 applied regardless of the charges against a woman. As fully enforced, this policy required that Ms. Villegas be shackled during labor, while in transport, while at Metro General Hospital prior to giving birth, and at all times throughout her two-day postpartum recovery including during nursing her infant, bathing, and using the toilet. Metro's policies in effect in July 2008 also required that its officers deny Ms. Villegas the breast pump provided to her by the hospital upon her return to the Davidson County Detention Center.

In granting partial summary judgment to Ms. Villegas on her claims rooted in the Fourteenth and Eighth Amendments, the District Court correctly applied the Constitutional standards most recently articulated by the U.S. Circuit Court of Appeals for the Eighth Circuit

in *Nelson v. Corr. Med. Servs.*, 583 F.3d 522 (8th Cir. 2009) (*en banc*), a case in which many of the present amici participated as amici curiae. *See* Brief for National Perinatal Association, American College Of Nurse Midwives, American Medical Women's Association, Rebecca Project For Human Rights, et al., in Support of Appellee and Affirmance of the District Court's Judgment, *Nelson v. Corr. Med. Servs.*, 583 F.3d 522 (8th Cir. 2009). In that case, the *en banc* court of the Eighth Circuit held that shackling laboring women violates their Eighth Amendment right to be free from cruel and unusual punishment, and that a woman who was shackled in labor "was treated in a way antithetical to human dignity . . . and under circumstances that were both degrading and dangerous." *Nelson,* 583 F.3d at 534. Moreover, the Eighth Circuit Court explained that "the precise issue under consideration here was decided years ago by a federal district court in the District of Columbia" in *Women Prisoners of D.C. Dep't of Corr. v. District of Columbia*, 877 F. Supp. 634 (D.D.C. 1994)(holding that shackling of women in labor and postpartum is inhumane), *modified in part on other grounds*, 899 F. Supp. 659 (D.D.C. 1995). *Nelson*, 583 F.3d at 532.

In following *Nelson*, the court below also took into consideration the opinions of experts in the care of pregnant women and infants. *Villegas v. Metro. Gov't of Davidson County*, 789 F. Supp. 2d 895, 919 (M.D. Tenn. 2011) (concluding that "medical publications, convention rules, social studies and standards also establish that the shackling a pregnant detainee in the final stages of labor shortly before birth and during the post-partum recovery, violates the Eighth Amendment's standard of contemporary decency"). In the years since *Nelson* was decided, the number of groups opposing the use of excessive restraints during pregnancy, labor, and postpartum has only grown, with experts in maternal and fetal health and management of childbirth—many of whom directly serve incarcerated women—leading the way. These experts and groups condemn the practice of shackling as medically dangerous to mother and child, degrading, and usually unnecessary due to the nature of advanced pregnancy and labor.

For these reasons and the reasons that follow, this Court should affirm the ruling of the District Court.

STATEMENT OF THE CASE

Amici adopt and incorporate by reference the Statement of the Case set forth in the Corrected Brief of the Appellee, previously filed with the Court.

STATEMENT OF FACTS

Amici likewise adopt and incorporate by reference the Statement of Facts set forth in the Corrected Brief of the Appellee, previously filed with the Court.

ARGUMENT

I. Shackling Pregnant Incarcerated Women During Late Pregnancy, Labor, and Postpartum is a Clear Danger to Pregnant Women and Their Babies, and Has Been Condemned by Experts in Maternal and Fetal Health.

Shackling pregnant women who are incarcerated is an inhumane, unnecessary, and dangerous practice that creates major risks to the health and safety of mothers throughout their pregnancies and postpartum, as well as during the process of childbirth. Shackling a woman in labor interferes with the normal birthing process and places hazardous barriers between a woman and her health care provider that impede diagnosis and treatment of complications and support for

uncomplicated deliveries. Shackling creates significant and unnecessary risks of injury and even death to both mother and child, and causes a loss of dignity that is contrary to the treatment appropriate and necessary for pregnant women.

The population of women in prison has increased more than eightfold since 1977.[2] As of 2010, there were over 205,000 women in federal, state, and local correctional facilities.[3] An estimated 6 to 10% of incarcerated women are pregnant.[4] Recognizing this increase in the number of pregnant women in correctional custody and the health care needs of this population, maternity care experts have stressed the

---

[2] Women's Prison Ass'n, Inst. On Women & Criminal Justice, *Mothers, Infants and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives* 8 (2009) (*citing* Heather C. West & William J. Sabol, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2007* (2008)).

[3] *See* Todd D. Minton, Bureau of Justice Statistics, U.S. Dep't of Justice, *Jail Inmates at Midyear 2010*, 7 tbl.6 (2010) (showing 92,368 female jail inmates nationwide in 2010), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/jim10st.pdf; Paul Guerino et al., Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2010*, 2 (2010) tbl.1 (showing 112,822 female state and federal prison inmates nationwide in 2010), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf.

[4] Jennifer Clarke et al., *Reproductive Health Care and Family Planning Needs Among Incarcerated Women*, 96 Am. J. Pub. Health 834, 834 (2006), *available at* http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2004.060236.

urgency of ensuring that correctional policies meet the health and safety needs of pregnant. With this in mind, these experts have condemned the practice of shackling as cruel, dangerous, and degrading.

The harm resulting from shackling is so apparent that the American College of Obstetricians and Gynecologists ("the College") Committee on Health Care for Underserved Women has called upon doctors to "[advocate] at the state and federal levels to restrict shackling of incarcerated women and adolescents during pregnancy and the postpartum period."[5] As the College committee explains, "[t]he use of restraints on pregnant incarcerated women and adolescents may not only compromise health care but is demeaning and rarely necessary."[6]

Recognizing that individual litigation is an inefficient means of ensuring pregnant inmates' right to be free from this dangerous

---

[5] Am. Coll. of Obstetricians & Gynecologists, Comm. On Health Care for Underserved Women, *Committee Opinion No. 511: Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females* 4 (2011) [hereinafter ACOG (College), *Op. 511*], *available at* http://www.acog.org/Resources_And_Publications/Committee_Opinions/Committee_on_Health_Care_for_Underserved_Women/Health_Care_for_Pregnant_and_Postpartum_Incarcerated_Women_and_Adolescent_Females.

[6] *Id.* at 1.

practice, physicians' groups have taken up the College committee's call to action, and have supported and sponsored legislation that would explicitly ban the practice of shackling pregnant inmates before, during, and after delivery. For example, in testimony supporting anti-shackling legislation in California, the American Congress of Obstetricians and Gynecologists for District IX stated:

> Physical restraints have interfered with the ability of physicians to safely practice medicine by reducing their ability to assess and evaluate the physical condition of the mother and the fetus, and have similarly made the labor and delivery process more difficult than it needs to be; thus, overall putting the health and lives of the women and unborn children at risk.[7]

In 2010, the American Medical Association (AMA) passed a resolution supporting language in a New Mexico law forbidding the use of restraints of any kind on an inmate during labor, delivery, or postpartum "unless there are compelling grounds to believe that the inmate presents [an] immediate and serious threat of harm to herself,

---

[7] Letter to Malika Saada Saar, Executive Director, The Rebecca Project from Ralph Hale, MD, Executive Vice President, ACOG, June 12, 2007, *available at* http://advocatesforpregnantwomen.org/ACOG_Letter_Shackling.pdf. *See* American Congress of Obstetricians and Gynecologists, District IX, Fact Sheet: Shackling of Pregnant Inmates (2010), [hereinafter ACOG (Congress), *Fact Sheet*] *available at* http://www.acog.org/About%20ACOG/ACOG%20Districts/District%20IX/~/media/Districts/District%20IX/AB1900.ashx.

staff or others [or a] substantial flight risk and cannot be reasonably contained by other means."[8] Even then, the adopted language requires that "only the least restrictive restraints necessary to ensure safety and security shall be used."[9] The AMA further resolved to develop model legislation prohibiting the use of shackles in the absence of clear flight or safety risks.[10]

The standards of practice promulgated by the American Nurses Association (ANA) for corrections nurses dictate that "[t]he corrections nurse [d]elivers care in a manner that preserves and protects patient autonomy, dignity and rights."[11] The ANA Code of Ethics for Nurses, which is "an expression of nursing's own understanding of its commitment to society" and "the profession's nonnegotiable ethical standard,"[12] not only emphasizes respect for patient dignity as the

---

[8] Am. Med. Ass'n, *Policy No. H-420.957: Shackling of Pregnant Women in Labor* (2010), *available at* https://ssl3.ama-assn.org/apps/ecomm/PolicyFinderForm.pl?site=www.ama-assn.org&uri=%2fresources%2fdoc%2fPolicyFinder%2fpolicyfiles%2fHnE%2fH-420.957.HTM.
[9] *Id.*
[10] *Id.*
[11] Am. Nurses Ass'n (ANA), *Corrections Nursing: Scope and Standards of Practice* 40 (2007).
[12] Am. Nurses Ass'n (ANA), *Code of Ethics for Nurses with Interpretive Statements* 9 (2001).

fundamental principle of nursing,[13] it also establishes the patient's interests as paramount.[14] It calls upon the nursing profession to advocate for the health, safety, and rights of patients[15] and to speak out against human rights abuses.[16]

In 2010, the National Commission on Correctional Health (NCCHC) also adopted an anti-shackling position, recognizing that "restraint is potentially harmful to the expectant mother and fetus, especially in the third trimester as well as during labor and delivery."[17] The Association of Women's Health, Obstetric, and Neonatal Nurses (AWHONN), too, recently released a position statement saying that

---

[13] *Id.* at 11 ("The nurse, in all professional relationships, practices with compassion and respect for the inherent dignity, worth, and uniqueness of every individual, unrestricted by considerations of social or economic status, personal attributes, or the nature of health problems.").

[14] *Id.* at 14 ("The nurse's primary commitment is to the recipient of nursing and healthcare services—the patient—whether the recipient is an individual, a family, a group, or a community.").

[15] *Id.* at 16 ("The nurse promotes, advocates for, and strives to protect the health, safety, and rights of the patient.").

[16] *Id.* at 30 ("Nurses can work individually as citizens or collectively through political action to bring about social change. . . . [H]ealth is understood as being broader than delivery and reimbursement systems, but extending to health-related sociocultural issues such as violation of human rights.").

[17] Nat'l Comm'n on Corr. Health Care (NCCHC), *Position Statement: Restraint of Pregnant Inmates* (2010), *available at* http://www.ncchc.org/resources/statements/restraint_pregnant_inmates.html.

"AWHONN values patient safety and quality health care for all women [and, as such,] opposes the practice of shackling incarcerated pregnant women."[18] The American Public Health Association explicitly states: "Women must never be shackled during labor and delivery."[19]

Once routine, the unjust and excessively punitive practice of shackling pregnant women during labor has been found to be a violation of the Eighth Amendment, and in many cases, prohibited in recognition of the significant risk of harm it poses to mother and child. Because of the clear risk of harm to pregnant and postpartum women and their infants, sixteen states currently prohibit the use of unnecessary restraints on pregnant women,[20] and the Federal Bureau

---

[18] Ass'n Women's Health, Obstetrical & Neonatal Nurses (AWHONN), *Position Statement, Shackling Incarcerated Pregnant Women*, 40 J. Obstetrical Gynecological & Neonatal Nursing 817, 817–818 (2011), *available at* http://onlinelibrary.wiley.com/doi/10.1111/j.1552-6909.2011.01300.x/pdf.

[19] Am. Pub. Health Ass'n (APHA), Task Force on Corr. Health Care Standards, *Standards for Health Services in Correctional Institutions* 108 (3d ed. 2003).

[20] Arizona, California, Colorado, Florida, Hawaii, Idaho, Illinois, Nevada, New Mexico, New York, Pennsylvania, Rhode Island, Texas, Vermont, Washington, and West Virginia currently restrict the use of restraints on pregnant inmates. Amici refer to the brief of amici curiae National Women's Law Center et al. for a more in-depth discussion of state and federal policies against shackling.

of Prisons ended the routine shackling of pregnant inmates in all federal correctional facilities.[21]

A) Shackling Threatens the Health of Women and Infants by Interfering with Normal Labor and Delivery.

Policies that allow shackling pregnant women fundamentally misunderstand the nature of pregnancy and birth. Childbirth is unlike most other conditions requiring medical attention in that movement and positioning is one of the primary techniques for the non-pharmacological management of normal labor.[22]

Labor begins "when widely spaced uterine contractions of sufficient frequency, intensity, and duration are attained to bring about effacement of the cervix."[23] In some cases, "the forceful uterine contractions that effect cervical dilatation, fetal descent, and delivery begin suddenly and without warning."[24] As a woman's labor progresses,

---

[21] *See* Fed. Bureau of Prisons, Pub. No. 5538.05, *Program Statement, Escorted Trips* (2008), available at http://www.bop.gov/policy/progstat/5538_005.pdf.

[22] *See* Terri Shilling et al., The *Six Care Practices that Support Normal Birth. Care Practice #2: Freedom of Movement Throughout Labor*, 16 J. Perinatal Educ. 21 (2007), *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1948086/pdf/JPE160021.pdf.

[23] F. Gary Cunningham et al., *Williams Obstetrics* 153 (22d ed. 2005).

[24] *Id.* at 154.

her cervix begins to open and thin to allow the fetal head out of her uterus.[25] The woman's uterus aids the process by contracting with increasing intensity and duration, pushing the baby down into the vagina where the woman can push it out.[26] It is crucial to the progress of a woman's labor that she able to move freely. The ability to move or change positions unimpeded assists in proper cervical dilation and fetal descent,[27] and may help reduce the need for interventions such as episiotomy (cutting of the woman's vagina), forceps or vacuum-assisted delivery, or cesarean surgery (cutting through the abdomen to deliver the infant).[28] Even women under epidural anesthesia should be able to change position to the greatest possible extent, allowing them to use gravity and their uterine contractions to maximal benefit, and reducing the need for delivery by forceps, vacuum, or cesarean surgery.[29]

Many of the techniques labor support personnel use to help a labor progress require that a woman be able to walk, squat, or position

---

[25] *See id.*

[26] *See id.*

[27] ACOG (College), *Op. 511*, *supra* note 5, at 3.

[28] *See* Carol Sakala & Maureen P. Corry, *Evidence-Based Maternity Care: What It Is and What It Can Achieve* 55 (2008).

[29] *See* Shilling et al., *supra* note 22 at 22; Henci Goer & Amy Romano, *Optimal Care in Childbirth: The Case for a Physiologic Approach*, 294 (2012).

her legs.[30] The use of ankle chains impedes a woman's gait, preventing her from being able to walk to assist her labor, potentially making the labor longer and more painful.[31] Even if she is able to walk, a woman shackled at the ankles is more susceptible to tripping and falling. The trauma from a fall, particularly if a woman is unable to brace herself due to wrist restraints, can cause the placenta to detach from the uterine wall (placental abruption), which can lead to hemorrhage or death.[32] Pregnant women are especially susceptible to ligament injuries because of hormonal changes that occur in preparation for childbirth.[33]

---

[30] *See* Penny Simkin, Child Birth Connection, *Comfort in Labor: How You Can Help Yourself to a Normal Satisfying Childbirth* (2007), *available at* http://www.childbirthconnection.org/pdfs/comfort-in-labor-simkin.pdf.

[31] *See* Annemarie Lawrence, et al., *Maternal Positions and Mobility During First Stage Labour*, in *The Cochrane Library 2009*, *Issue 2* 9 (2009) (finding that labor is shorter when women can walk and move, and noting that "[s]horter length of labour is an important outcome, as every contraction is potentially painful"), *available at* http://www.who.int/rhl/reviews/CD003934.pdf.

[32] ACOG (Congress), *Fact Sheet, supra* note 7 (*citing* Dina El-Kady et al., *Trauma During Pregnancy: An Analysis of Maternal and Fetal Outcomes in a Large Population,* 190 Am. J. Obstet & Gynecol. 1661 (2004)).

[33] *See* Meral Caluneri et al., *Changes in Joint Laxity Occuring in Pregnancy*, 41 Annals Rheumatic Diseases 126, 127 (1982) ("Our results demonstrate a generalised change in laxity, presumably hormone

Loosened ligaments help a woman's pelvis to spread and accommodate the fetus,[34] but can lead to severe damage to joints and ligaments in the event of a fall.

Despite repeated requests from medical staff and from Ms. Villegas herself that she be unshackled, Ms. Villegas was shackled for most of her labor. Even as she was being transported on a gurney, she was chained at the wrists and ankles. *Villegas*, 789 F. Supp. 2d at 897. The threat to Ms. Villegas was apparent to the officers accompanying her during transport: Davidson County Sherriff's Office (DCSO) officer Matthew Bradshaw noted his concern that "what if all of a sudden the baby started—took more time to unrestrain these restraints in the back of the ambulance." *Id.* at 898. According to the testimony of Dr. Sandra Torrente, this concern was reasonable given Ms. Villegas's history of short labors; in fact, once the restraints were removed, she progressed

---

mediated, in addition to local changes that may occur in the pelvic ligaments, where postural factors and pressure may be important.").

[34] *See* Cunningham et al., *supra* note 23, at 144 ("The bones and ligaments undergo remarkable adaptation during pregnancy. In 1934 Abramson and colleagues described the normal relaxation of the pelvic joints and particularly the symphysis pubis, that occurs during pregnancy. . . They reported that most relaxation takes place in the first half of pregnancy.").

from 3 cm. dilation to 10 cm. dilation and gave birth in a mere two hours. *Id.* at 902.

The risk to women and children's health caused by shackling pregnant women during labor is obvious, as confirmed by the opinions of numerous experts in maternity care as well as the record in this case. To ensure the health and safety of mothers and children as recommended by the nation's leading experts in maternal and child health, including the amici and experts in this case, this Court should rule in favor of Ms. Villegas and uphold the ruling of the court below.

B) Shackling Can Cause Dangerous or Even Life-Threatening Complications, and Delay Management of Medical Emergencies.

Birth is a normal physiological process undergone by approximately 4 million American[35] women each year, yet it is one that requires watchful monitoring because complications can arise quickly and unpredictably. More women die from complications of pregnancy

[35] Joyce A. Martin et al., Nat'l Ctr. for Health Stats., U.S. Dep't of Health & Human Servs., *Births: Final Data for 2009*, Nat'l Vital Stat. Rep., Nov. 3, 2011, at 3 (2011), *available at* http://www.cdc.gov/nchs/data/nvsr/nvsr60/nvsr60_01.pdf.

and childbirth in the United States than any other developed nation.[36] More still are "near misses": according to a recent report by Amnesty International, 68,433 women nearly died in childbirth in the United States in 2004 and 2005.[37] The dangers are even greater for women in the criminal justice system, whose pregnancies are often unplanned or high-risk and are compromised by systemic lack of access to prenatal care, good nutrition, and to other health supports.[38] Given these significant risk factors, safeguarding the health of pregnant inmates and their babies should be of the utmost importance to correctional authorities.

---

[36] *See* C.I.A. World Factbook, Country Comparison: Maternal Mortality Rate, https://www.cia.gov/library/publications/the-world-factbook/rankorder/2223rank.html (last visited May 7, 2012) (showing the U.S. with a maternal mortality rate of 24 deaths per 100,000 live births, compared to Ireland, with 3 per 100,000, and the U.K. with 12 per 100,000).

[37] Amnesty International, *Deadly Delivery: The Maternal Health Care Crisis in the U.S.A.* 1 (2010) (*citing* Elena V. Kuklina et al., *Severe Obstetric Morbidity in the United States, 1998–2005,* 113 Obstetrics & Gynecology 293 (2009)), *available at* http:// www.amnestyusa.org/ sites/default/files/pdfs/deadlydelivery.pdf.

[38] ACOG (College), *Op. 511*, *supra* note 5, at 1; Barbara Bloom & Barbara Owen, Nat'l Inst. of Corr. (NIC), U.S. Dep't of Justice, *Gender-Responsive Strategies: Research Practice and Guiding Principles for Women Offenders* viii (2003), *available at* http://www.nicic.org/pubs/2003/018017.pdf.

One of the deadliest risks of shackling pregnant inmates is that it makes the diagnosis of complications more difficult. Tests for a number of life-threatening conditions, including appendicitis, preterm labor, or kidney infection, may not be performed while a woman is shackled.[39] Vaginal bleeding, which must be immediately assessed because it can be a sign of placental abruption or other serious conditions, can be delayed by shackling.[40] Pregnancy-related hypertension disorders, which account for 17.6% of maternal deaths in the United States, and which arise in 12-22% of pregnancies, can cause seizures which may not be safely treated in a shackled patient.[41] As Dr. Sandra Torrente testified at trial, monitoring for umbilical cord prolapse—a complication that can mean brain injury or death to the fetus in a matter of minutes—is delayed by shackling. *Villegas*, 789 F. Supp. 2d at 901.

Shackling does more than make the diagnosis of existing complications more difficult or impossible: it also causes and

---

[39] ACOG (College), *Op. 511, supra* note 5, at 3 box 2.

[40] *Id.*

[41] *Id.* (*citing* Am. Coll. Obstetricians & Gynecologists, *Practice Bulletin No. 33: Diagnosis and Management of Preeclampsia and Eclampsia*, 99 Obstetrics & Gynecology 159 (2002)). *See* Cynthia J. Berg et al., *Pregnancy-Related Mortality in the United States, 1998 to 2005*, 117 Obstetrics & Gynecology 1230 (2011).

exacerbates complications. If a woman is forced to lie on her back, as she may be when shackled to a bed, the weight of the fetus inside her uterus can compress the vena cava, causing supine hypotension which decreases the flow of oxygenated blood to the fetus and in turn causes fetal heart rate abnormalities.[42] When fetal heart rate abnormalities arise, the woman should be immediately repositioned onto her left side to restore the supply of oxygen to the fetus.[43] Repositioning a woman in this way can be difficult or impossible if she is shackled. Pregnant and postpartum women are already susceptible to venous thrombosis, blood clots in the veins which can become dislodged and cause death or organ damage.[44] The likelihood of this complication, which can arise up to six weeks after delivery, is increased by the immobility caused by shackling.[45]

These dangers were understood by the staff at Metro General Hospital, who repeatedly requested that Ms. Villegas's restraints be

---

[42] *See* Cunningham et al., *supra* note 23, at 135.

[43] *Id.* at 462, 462 tbl.18-2.

[44] *See id.* at 1079-1084.

[45] ACOG (College), *Op. 511*, *supra* note 5, at 3, box 2. (*citing* Am. Coll. Obstetricians & Gynecologists, *Practice Bulletin No. 123: Thromboembolism in Pregnancy*, 118 Obstetrics & Gynecology 718 (2011)).

removed. *Villegas*, 789 F. Supp. 2d at 898. Nurses explained to correctional officers the risks of blood clots if the shackles were not removed. *Id.* The dangers of shackling Ms. Villegas were also made clear by a signed order from Ms. Villegas's physician, clearly directing DCSO personnel to "please remove shackles." *Id.* Despite these repeated requests, DCSO personnel continued to expose Ms. Villegas to the risks of shackling both before and after her delivery. *Id.* at 897, 898.

Shackling places barriers between the pregnant or postpartum woman and the medical personnel tasked with ensuring her health, creating serious health risks to both mother and child. The health and safety of pregnant women require that this Court affirm the ruling below, and amici therefore urge this Court to rule in favor of Ms. Villegas.

C) Shackling Pregnant, Laboring, and Postpartum Inmates is Cruel and Degrading.

Calling the practice of shackling "demeaning," the American College of Obstetricians and Gynecologists' Committee on Health Care for Underserved Women has recognized that women who are incarcerated during pregnancy "are among the most vulnerable in our

society."[46] As such, the Committee has emphasized the importance of "preserving the dignity of incarcerated pregnant women and adolescents and providing them with compassionate care." [47] The Committee notes that even shackling during early pregnancy is "cruel and inhumane," because it adds to the discomfort of women who are already suffering from early pregnancy symptoms such as nausea and vomiting.[48] According to the American Congress of Obstetricians and Gynecologists, "ACOG members have reported harrowing stories of attempting to treat pregnant women during transport who were not in labor but had life-threatening medical conditions. The restraints made it virtually impossible to provide the urgent care they required."[49]

Even in uncomplicated deliveries, the dilation of the cervix and contraction of the uterus is ordinarily excruciatingly painful. In addition to medical care, women need continuous emotional support and pain coping assistance.[50] Experts in support and non-medical

---

[46] ACOG (College), *Op. 511*, *supra* note 5, at 1.
[47] *Id.* at 3.
[48] *Id.* at 3 box 2.
[49] ACOG (Congress), *Fact Sheet*, *supra* note 7.
[50] *See* Ellen Hodnett et al., *Continuous Support For Women During Childbirth (Review)* in *The Cochrane Library 2011, Issue 2* (2011) *available at*

management of labor use movement as a primary pain coping technique.[51] Shackling not only makes labor even more painful by obstructing this pain-management technique,[52] it can cause fear and anxiety, which make a woman's perception of pain more acute and less manageable.[53] This effectively adds excess pain and health risks to a woman's sentence—and in Ms. Villegas's case, punishing a woman who had not even been sentenced— a punishment cruelly out of proportion to any crime she may have committed.

---

http://www.childbirthconnection.org/pdfs/CochraneDatabaseSystRev.pdf; Cunningham et al., *supra* note 23, at 475 ("[T]he presence of a supportive spouse or other family member, of conscientious labor attendants, and of a considerate obstetrician who instills confidence, have all been found to be of considerable benefit. In one study. . . the cesarean delivery rate was significantly lower in the continuous support group compared with the hands-off monitored group.").

[51] *See* Shilling et al., *supra* note 22 at 21.

[52] *See* Kumiko Adachi et al., *The Relationship Between the Parturient's Positions and Perceptions of Labor Pain Intensity*, 52 Nursing Res. 47 (2003) (finding significantly intensified self-reported pain in women laboring in a supine position); Lawrence et al., *Maternal Positions And Mobility During First Stage Labour*, *supra* note 31, at 9-10.

[53] *See* Cristina Maggioni, *Introduction*, 27 J. Psychosomatic Obstetrics & Gynecology 77 (2006); Cunningham et al., *supra* note 23, at 475 ("Fear and the unknown potentiate pain. A woman who is free from fear, and who has confidence in the obstetrical staff that cares for her, usually requires smaller amounts of analgesia.").

Testimonial statements from women who have experienced shackling confirm concerns raised by maternity care experts. As one woman who was subjected to shackling during childbirth recounted:

> [G]iving birth while incarcerated was one of the most horrifying experiences of my life. At the hospital I was shackled to a metal bed post by my right ankle throughout seven hours of labor, although a correctional officer was in the room with me at all times… Imagine being shackled to a metal bedpost, excruciating pains going through my body, and not being able to adjust myself to even try to feel any type of comfort, trying to move and with each turn having hard, cold metal restraining my movements.[54]

These experiences have significant mental health consequences. A growing body of research confirms what many maternity care experts already know: childbirth is an event that some women experience as traumatic.[55] The experience of birth trauma may then manifest as symptoms of post traumatic stress, or even Post Traumatic Stress

---

[54] Dana Sichel, *Giving Birth in Shackles: A Constitutional and Human Rights Violation*, 16 Am. U.J. Gender Soc. Pol'y & L. 223, 224-25 (2007).

[55] *See, e.g.,* C.G. Ballard et al., *Post-Traumatic Stress Disorder (PTSD) After Childbirth,* 166 Brit. J. Psychiatry 525, 525 (1995) ("Childbirth, even with modern obstetric care, can sometimes be an excruciating and terrifying experience."); J. Laurence Reynolds, *Post-Traumatic Stress Disorder After Childbirth: the Phenomenon of Traumatic Birth*, 156 Can. Med. Ass'n. J. 831, 831 (1997) ("Most health care professionals tend to think of birth trauma in terms of physical injury. However, childbirth can be psychologically traumatic as well. This should not be entirely surprising.").

Disorder (PTSD).[56] According to one researcher, "even a 'normal' pregnancy from a medical point of view, that is an uncomplicated delivery of a healthy newborn in the presence of a partner, could represent such a dreadful event that could lead to PTSD."[57] Women's experiences of extreme fear, helplessness, or horror around an event as significant as childbirth can precipitate PTSD.[58] Studies of women who have experienced post traumatic stress after childbirth have shown that loss of control, such as lack of control over bodily movements, is associated with adverse psychological outcomes, including PTSD.[59] Degrading treatment and loss of dignity are also associated with

---

[56] *See, e.g.,* Dawn Bailham & Stephen Joseph, *Post Traumatic Stress Following Childbirth: A Review of the Emerging Literature and Directions for Research and Practice,* 8 Psychol. Health & Med. 159, 166 (2003) ("Following on from case study reports of women who experienced difficult childbirth there is now evidence of women presenting with clinical symptoms consistent with DSM-IV criteria of avoidance, re-experiencing and increased arousal, with implications for maternal wellbeing, relationships with significant others, and disruption in early mother-infant relationships.").

[57] *See* Maggioni, *Introduction*, *supra* note 53, at 77.

[58] *See* Cheryl Tatano Beck, *Post-Traumatic Stress Due to Childbirth: the Aftermath*, 53 Nursing Res. 216, 223-224 (July 2004); Susan Ayers, *Thoughts and Emotions During Traumatic Birth: A Qualitative Study*, 34 Birth 253 (2007).

[59] *See* Cristina Maggioni et al., *PTSD, Risk Factors, and Expectations Among Women Having a Baby: A Two-Wave Longitudinal Study*, 27 J. Psychosomatic Obstetrics & Gynecology 77, 82 (2006).

PTSD.[60] While birth trauma may not be entirely preventable, one researcher notes two critical preventative strategies in avoiding psychological trauma for birthing women: "good communication, which allows the woman to feel as much in control of the situation as possible, and excellent pain relief [. . .] since pain is such a large factor in trauma."[61] Both of these are undermined by the practice of shackling women in labor.

The practice of shackling postpartum women unnecessarily harms the mother-child bond and interferes with breastfeeding, the method of feeding recommended by the American College of Obstetricians and Gynecologists.[62] The College's Committee on Health Care for Underserved Women warns, "it is important to avoid separating the mother from the infant," and suggests that prison nurseries or community-based alternatives to incarceration be considered for postpartum women.[63] The College committee points to lower rates of

---

[60] *See* Cheryl Tatano Beck, *Birth Trauma: In the Eye of the Beholder*, 53 J. Nursing Res. 28, 31-32 (2004).
[61] Reynolds, *supra* note 55, at 834.
[62] ACOG (College), *Op. 511*, *supra* note 5, at 2.
[63] *Id.*

recidivism and better formation of a maternal-child bond during this "critical period of infant development."[64]

Although Ms. Villegas was only being held in the Davidson County jail because of a traffic violation, the conditions under which she labored, gave birth, and recovered from delivery were humiliating and terrifying. She was restrained at the ankles and wrists during transport, and was chained to a hospital bed once she arrived at the hospital. *Villegas*, 789 F. Supp. 2d at 898. She was accompanied by male guards while she changed into a hospital gown and while she was examined by a doctor. *Id.* While Ms. Villegas rode in an ambulance with her legs shackled together by chains, she was terrified for her baby's life, thinking that nobody was available to loosen her shackles and allow her to open her legs and give birth. *Id.* at 902. Unbeknownst to

[64] *Id.* ("Prison nurseries or alternative sentencing of women to community-based noninstitutional settings should be considered for women during the postpartum period. Correctional facilities should have provisions for visiting infants for women in facilities without prison nurseries. When adequate resources are available for prison nursery programs, women who participate show lower rates of recidivism, and their children show no adverse effects as a result of their participation. In fact, by keeping mothers and infants together, prison nursery programs have been shown to prevent foster care placement and allow for the formation of maternal–child bonds during a critical period of infant development.").

her, the officer accompanying her in the ambulance had the same concerns, but did nothing to help Ms. Villegas. *Id.* at 898. The staff of Metro General Hospital tried at every opportunity to get the shackles removed, and their frustration with DCSO's treatment of Ms. Villegas is evident in the officers' complaints that hospital staff were "rude." *Id.* All told, Ms. Villegas spent thirty-six hours in shackles because of a minor traffic violation. *Id.* at 903.

After she was transferred back to the Davidson County jail, Ms. Villegas was denied the breast pump that she had been given by the hospital. *Id.* at 899. Predictably, because she was unable to express her milk, she developed painful engorgement so excruciating that she was unable to move. *Id.* at 903. In a desperate last resort, Ms. Villegas asked another inmate to help her express her milk. Corrected Brief of Plaintiff/Appellee Juana Villegas, *Villegas v. Metro. Gov't of Davidson County*, No. 11-6031, at 10 (2012). Her efforts were in vain, and she developed mastitis, an infection of the breasts which can follow prolonged engorgement. *Villegas*, 789 F. Supp. 2d at 903. Adding to the fear and humiliation Ms. Villegas experienced, she was not permitted to speak to her husband and confirm that he had picked up the newborn.

Id. at 904. She feared that her child had been taken and that she would never see him again. *Id.*

As experts in maternity care and advocates for women's health and dignity, amici are united in their belief that women should be provided with compassionate and respectful care during labor, delivery, and the postpartum period. Shackling women during this time is cruel, degrading, and often unnecessary. Amici urge this Court to rule in favor of Ms. Villegas and uphold the ruling of the court below.

II. Routine Use Of Shackles is Not Justified Because Incarcerated Women Pose a Low Security Risk Generally and Particularly During Childbirth.

Prisons that shackle pregnant women in labor engage in this practice ostensibly to prevent escape or ensure the safety of prison and medical staff. Amici recognize that the safety of hospital and correctional personnel is a critical and legitimate concern. This concern, however, is addressed by the presence of armed correctional staff, who are normally present in or around the delivery room to monitor the woman giving birth, both during her transportation to the hospital and during her time in the hospital. The presence of the armed guard is a sufficient safeguard and permits quality medical care to

pregnant women, to ensure the safety and well-being of mothers and their newborn children, while also protecting the safety of medical staff and the state's interest in maintaining custody of the prisoner.

The current justification for shackling pregnant inmates ignores two important realities. First, the majority of incarcerated women are non-violent offenders who pose minimal safety risks.[65] Even among women serving sentences of over a year, nearly two thirds are being held for nonviolent offenses.[66] No escape attempts have been reported among pregnant incarcerated women who were not shackled during childbirth.[67]

Second, the very nature of advanced pregnancy, labor, and birth reduces the flight risk posed by pregnant inmates.[68] A woman in advanced stages of pregnancy may have difficulty even walking because

---

[65] *See* Rebecca Project for Human Rights & Nat'l Women's Law Ctr., *Mothers Behind Bars: A State-By-State Report Card and Analysis of Federal Policies on Conditions of Confinement for Pregnant and Parenting Women and the Effect On Their Children* 9 (2010), *available at* www.nwlc.org/sites/default/files/pdfs/mothersbehindbars2010.pdf.
[66] *See* Paul Guerino et al., Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2010*, 2 (2010), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf
[67] Women's Prison Ass'n, *Laws Banning Shackling During Childbirth Gaining Momentum Nationwide* 1 (2011), *available at* http://www.wpaonline.org/pdf/Shackling%20Brief_final.pdf.
[68] Bloom & Owen, *Gender-Responsive Strategies, supra* note 38, at 132.

of weight gain, an altered center of balance, and changes in the pelvis due to the engagement of the fetal head in preparation for labor. Some women experience Symphysis Pubis Dysfunction, instability of the pelvic girdle that makes walking painful and difficult.[69] The forceful uterine contractions that accompany labor are ordinarily painful enough to render a woman vulnerable and largely physically incapacitated. In the later stages of labor, the pain is often so severe that a woman can do little else but cope with the pain. In this state, escape attempts are virtually impossible.

Ms. Villegas was not being held for a crime of violence, nor indeed had she been convicted of any crime. *Villegas*, 789 F. Supp. 2d at 916. This nine-months-pregnant mother of three other children was being held because of a traffic stop. *Id.* at 896. During her labor and postpartum recovery, Ms. Villegas was never individually assessed for flight risk or risk of harm to others, and was identified as "a medium security inmate with a 'hold,' 'detainer' or something to that effect." *Id.* at 898. Ms. Villegas was accompanied by an officer at all times, even

---

[69] *See* Smita Jain et al., *Symphysis Pubis Dysfunction: A Practical Approach to Management*, 8 Obstetrician & Gynaecologist 153 (2006), *available at* http://onlinelibrary.wiley.com/doi/10.1576/toag.8.3.153.27250/pdf.

while she was changing into a hospital gown. *Id.* During the few times that she was unshackled during her labor, she made no escape attempts or attempts to harm anyone. Rather, on the basis of protocol requiring all pregnant inmates to be shackled regardless of risk, she was subjected to the cruel practice of shackling and her doctor's medical orders were ignored. *Id.* And even though Ms. Villegas gave birth without threat of escape or harm to anyone, she remained shackled for the duration of her recovery—thirty six hours in total—including while she showered and used the toilet. *Id.*

Amici recognize the importance of preventing escape attempts, and keeping medical and correctional staff safe. Even so, the inhumane practice of shackling is not necessary to achieve these goals, and is in fact counterproductive. Amici ask this Court to rule in favor of Ms. Villegas and affirm the ruling of the court below.

CONCLUSION

The nation's leading experts in maternal and fetal health have criticized the practice of shackling pregnant women during labor and delivery because of its obvious risk to the health of mother and child. The record in this case includes medical and other evidence of the

manifest risk of shackling pregnant women during labor and postpartum. Corrections officials, medical professionals, other states, and courts have recognized the obvious risks of shackling pregnant women. Despite the obvious nature of the risk, Appellants were deliberately indifferent to those risks, shackling Ms. Villegas during her labor and postpartum.

Every woman who is forced to endure shackling during pregnancy and childbirth faces a loss of basic human dignity that all women deserve to retain. The health, safety, and dignity of pregnant women, mothers, and children require that this Court uphold the ruling of the court below.

Respectfully submitted,

/s/ George E. Barrett
George E. Barrett
Barrett Johnston, LLC
217 Second Avenue, North
Nashville, TN 37201
(615) 244-2202
gbarrett@barrettjohnston.com

Farah C. Diaz-Tello
National Advocates for Pregnant Women
15 W. 36th St Ste. 901
New York, NY 10018
(212) 255-9252
fdt@advocatesforpregnantwomen.org

Counsel for Amici Curiae

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 contains 6,873 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 2008 in 14 point Century Schoolbook.

Dated: May 9, 2012 /s/ George E. Barrett

CERTIFICATE OF SERVICE

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

Kevin C. Klein
Allison L. Bussell
Metropolitan Department of Law
P.O. Box 196300
Nashville, TN 37219
Kevin.klein@nashville.gov
Alison.bussell@nashville.gov

and
William L. Harbison
Phillip F. Cramer
John L. Farringer IV
Sherrard & Roe, PLC
150 3rd Avenue South
Suite 1100
Nashville, TN 37201
(615) 742-4200
bharbison@sherrardroe.com
pcramer@sherrardroe.com
jfarringer@sherrardroe.com

/s/ George E. Barrett

APPENDIX A: DESCRIPTION OF AMICI CURIAE

Amicus curiae the **National Commission on Correctional Health Care** ("NCCHC") is an independent, not-for-profit organization that represents the interests of the fields of health (medical, mental, dental), law, and corrections in improving the quality of health care in our nation's jails, prisons, and juvenile confinement facilities. NCCHC offers an array of services to help correctional systems provide effective and efficient care, and publishes standards and position statements to help guide correctional facilities in the delivery of health care services. NCCHC's standards have been used by the federal courts, the U.S. Department of Justice, and independent agencies to evaluate the adequacy and quality of care in local, state and federal correctional systems. NCCHC has been instrumental in setting forth health care policies for the treatment of pregnant individuals in correctional settings, recognizing that significant harm can result when blanket security policies are employed that ignore the serious health needs of the expectant mother and fetus.

Amicus curiae **The Center for Prisoner Health and Human Rights** seeks to advance the health and human rights of criminal justice populations through research, education, and advocacy. The Center initiates and supports projects that respond to the epidemic of incarceration and recidivism in the criminal justice system and the associated complex public health crisis. The Center is a collaboration of doctors and health care professionals, faculty, researchers, and students from a variety of academic disciplines and institutions, lawyers, community activists, and others who are dedicated to shaping and effecting the interdisciplinary response that these overlapping criminal justice and public health crises demand. Harnessing the passion, skills, and training of these individuals, the Center strives to educate health professionals, students, policy and opinion makers, and the general public, and to translate world-class research into sound, evidence-based policies and practices that address the multiple dimensions of these crises.

Amicus curiae **National Perinatal Association** ("NPA") promotes the health and well-being of mothers and infants, enriching families, communities and our world. NPA seeks to increase access to

comprehensive health care, as this has an immeasurable impact on birth outcomes. NPA opposes all policies that endanger the well-being of infants or their mothers.

Amicus curiae **American College of Nurse Midwives** ("ACNM"), with roots dating back to 1929, is the oldest women's health care organization in the United States. ACNM sets standards for the education, certification, and practice of certified nurse-midwives and certified midwives; supports research; administers and promotes continuing education programs; creates liaisons with state and federal agencies and members of Congress; and advocates for programs and policies that improve the health status of women and their families. The mission of ACNM is to promote the health and well-being of women and newborns within their families and communities through the development and support of the profession of midwifery, practiced by certified nurse-midwives and certified midwives. The philosophy inherent in the profession states that the midwives believe every individual has the right to safe, satisfying health care with respect for human dignity and cultural variations.

Amicus curiae **American Medical Student Association** ("AMSA"), with a half-century history of medical student activism, is the oldest and largest independent association of physicians-in-training in the United States. AMSA is a student-governed, national organization committed to representing the concerns of physicians-in-training. AMSA members are medical students, premedical students, interns, residents and practicing physicians. Through its mission, AMSA is committed to improving health care and healthcare delivery to all people; promoting active improvement in medical education; involving its members in the social, moral and ethical obligations of the profession of medicine; assisting in the improvement and understanding of world health problems; contributing to the welfare of medical students, premedical students, interns, residents and post-MD/DO trainees; and advancing the profession of medicine.

Amicus curiae **American Medical Women's Association** ("AMWA") is a national non-profit organization of women physicians and physicians-in-training representing every medical specialty. Founded in 1915, AMWA is dedicated to promoting women in medicine and advocating for improved women's health policy. AMWA is opposed

to the dangerous and degrading practice of shackling pregnant women who pose no safety risk.

Amicus curiae **American Nurses Association** ("ANA") is the largest nursing organization in the United States. Through its Code of Ethics for Nurses, standards for nursing practice, and public advocacy, the ANA actively promotes patient safety and the public health.

Amicus curiae **Asian & Pacific Islander American Health Forum** ("APIAHF") has influenced policy, mobilized communities, and strengthened programs and organizations to improve the health of Asian Americans, Native Hawaiians, and Pacific Islanders since 1986. APIAHF promotes fairness, respect, equity, and health justice for all, and therefore express its concern for the health of immigrant women, and those who may be held in immigration detention. APIAHF supports this brief because it opposes the dangerous and inhumane practice of shackling pregnant women, who pose no safety risk, if they are detained during childbirth.

Amicus curiae **BirthNet, Inc.** is a non-profit organization that works to educate the public about evidence-based maternity care in order to improve care for all women. BirthNet works to improve maternity care for women of all ages, ethnic backgrounds, races, religions, sexual orientations, abilities, and socio-economic circumstances.

Amicus curiae **Childbirth Connection** is a non-profit organization working nationwide to improve the quality and value of maternity care through consumer engagement and health system transformation. Childbirth Connection promotes safe, effective and satisfying evidence-based maternity care and is a voice for the needs and interests of childbearing families. Childbirth Connection uses best research evidence and the results of periodic national surveys of mothers to inform policy, practice, education and research. Childbirth Connection joins as amicus to explain the importance of safe and humane maternity care practice, which includes freedom of movement in labor and removing impediments to diagnosing and addressing complications of pregnancy and delivery.

Amicus curiae **Citizens for Midwifery** ("CfM") is a national, consumer-based non-profit organization promoting the Midwives Model

of Care. Our members are primarily parents and concerned citizens, but include doulas, childbirth educators, midwifery students, midwives, nurses, and physicians. CfM works to improve access to the evidence-based, respectful Midwives Model of Care in all settings for all women. This kind of care is based on basic human rights and also recognizes that freedom of movement during labor and delivery is essential for optimal outcomes for mothers and babies.

Amicus curiae **DONA International** is the world's oldest and largest nonprofit organization certifying doulas using an international standard. Doulas support women and their families physically and emotionally during birth and postpartum and are trained to value this support as being crucial to their clients' sense of satisfaction and accomplishment. DONA believes that the birth experience, whether positive or traumatic, has a lifelong emotional impact on a woman, her family and, ultimately, society. DONA International seeks to ensure that birthing women are afforded maximum self-determination and as respectful an experience as possible during their birth journey, whatever the circumstances. DONA International is committed to improving maternal and child health by participating in coalitions that support our mission and purpose.

Amicus curiae **Lamaze International** is a non-profit organization that promotes a natural, healthy and safe approach to pregnancy, childbirth and early parenting practices. Knowing that pregnancy and childbirth can be demanding on a woman's body and mind, Lamaze serves as a resource for information about what to expect and what choices are available during the childbearing years. Lamaze education and practices are based on the best and most current medical evidence available. Working closely with their families, health care providers and Lamaze educators, millions of pregnant women have achieved their desired childbirth outcomes using Lamaze practices. Lamaze International joins as amicus to affirm the importance of evidence-based childbirth practices, which includes: the ability to walk, move around and change positions during labor; the opportunity to avoid giving birth in a supine position and follow the body's urges to push; and keeping mother and baby together after birth—which is best for both mother and baby.

Amicus curiae **Legal Advocates for Birth Options and**

Rights ("LABOR") is an organization made up of attorneys and allies dedicated to protecting women's rights and expanding women's options in childbirth. LABOR uses legal advocacy, public education, and networking among attorneys to ensure that pregnant, birthing, and postpartum women have the resources they need to self-determine the care they receive for themselves and their families, free from discrimination, harassment, or punishment.

Amicus curiae **Maternal and Child Health Access** ("MCHA") improves the health of low-income women and families through education, training, and direct services as well as administrative and other policy advocacy on health care and related rights. MCHA provides information, support, and technical assistance to health and social service organizations, assists individual women to achieve healthy pregnancies and obtain quality health care for themselves and their children, and educates policymakers and the general public to improve the health and social services systems for all low income women and families and to benefit the entire community in which they live.

Amicus curiae **Mobile Midwife** is an organization working to ensure that all mothers and parents have the right to ensure the well-being of themselves and their families, including access to Birth Justice. Mobile Midwife advocates for access to prenatal, birth and postpartum care that is holistic, healing and humanistic. Mobile Midwife organizes for the rights of pregnant and birthing people; this includes the right to birth free from chains and access to health care during the childbearing year that is holistic, humanistic, and culturally centered. This health care is across the pregnancy spectrum including: abortion, miscarriage, prenatal, birth, and postpartum care.

Amicus curiae **National Advocates for Pregnant Women** ("NAPW") works to secure the human and civil rights, health and welfare of all women, focusing particularly on pregnant and parenting women, and those who are most vulnerable, such as low income women and women of color. NAPW seeks to ensure that women do not lose their constitutional and human rights as a result of pregnancy, that families are not needlessly separated, and that pregnant and parenting women have access to a full range of reproductive health services. By focusing on the rights of pregnant

women, NAPW broadens and strengthens the reproductive justice, drug policy reform, and other interconnected social justice movements in America today.

Amicus curiae **National Asian Pacific American Women's Forum** ("NAPAWF") is dedicated to forging a grassroots progressive movement for social and economic justice and the political empowerment of Asian Pacific American (APA) women and girls. Founded in 1996, NAPAWF's vision includes strengthening communities to reflect the social, political, and economic concerns and perspectives of APA women and girls; inspiring leadership and promoting the visibility and participation of APA women and girls in the political process and within the broader national and international women's movement; and creating a vehicle for progressive APA women to connect with others across the country to share strategies and form lasting coalitions around policy initiatives and grassroots organizing campaigns. Issues related to reproductive justice, health equity, immigrant and refugee rights, and economic empowerment form the basis of NAPAWF's work.

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, DC 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 **National Women's Health Network** ("NWHN") improves the health of women by influencing public policy and

providing health information to support decision-making by individual consumers. Founded in 1975 to give women a greater voice within the health care system, the NWHN aspires to a health care system that is guided by social justice and reflects the needs of diverse women. We are committed to advancing women's health by ensuring that women have self-determination in all aspects of their reproductive and sexual health; challenging the inappropriate medicalization of women's lives; and establishing universal access to health care that meets the needs of diverse women. The core values that guide the NWHN's work include our belief that the government has an obligation to safeguard the health of all people; that we value women's descriptions of their own experiences and believe health policy should reflect the diversity of those experiences; and that we believe evidence rather than profit should determine what services and information are available to inform women's health decision-making and practices. The NWHN is a membership-based organization supported by 8,000 individuals and organizations nationwide.

Amicus curiae **Our Bodies Ourselves ("OBOS")** provides clear, truthful information about health, sexuality and reproduction from a feminist and consumer perspective. OBOS vigorously advocates for women's health by challenging the institutions and systems that block women from full control over their bodies and devalue their lives. OBOS is noted for its long-standing commitment to serve only in the public interest and its bridge-building capacity. OBOS is dedicated to the autonomy and well being of all women.

Amicus curiae **Physicians for Reproductive Choice and Health** ("PRCH") is a doctor-led national advocacy organization. We use evidence-based medicine to promote sound reproductive health policies. PRCH is committed to ensuring that all people have the knowledge, access to quality services, and freedom of choice to make their own reproductive health decisions.

Amicus curiae the **Prison Birth Project** is a reproductive justice organization that provides support, education, and advocacy for women and girls at the intersection of the criminal system and motherhood. The Prison Birth Project provides full-spectrum doula care, childbirth education, and leadership programs to incarcerated and formerly incarcerated women in Massachusetts. Prison Birth Project joins as

amicus to support the human rights and access to quality healthcare for all incarcerated people, as well as provide evidence-based medical care throughout the spectrum of reproductive health.

Amicus curiae the **Prison Doula Projec**t is a collective of individuals who work with pregnant, postpartum, and parenting people incarcerated in a maximum security prison in Washington State. Collective members attend births as doulas, facilitate a support group, offer prenatal and postpartum doula services, and serve as advocates and resources in matters of reproductive health care, reunification with families, and post-release support. Through direct services, the Prison Doula Project seeks to interrupt and deconstruct the pervasive and systematic sexism, racism, classism, homophobia, and transphobia that disproportionately affects the people the collective serves. Their loyalty is to their clients and incarcerated people everywhere. By challenging reproductive oppression against incarcerated individuals, the Prison Doula Project works toward Reproductive Justice.

Amicus curiae **Solace For Mothers** works to end practices that contribute to women experiencing birth as traumatic, and to help women heal from these experiences. Solace for Mothers offers multifaceted resources for women who are struggling with birth trauma, post-traumatic stress disorder (PTSD) after childbirth and anxiety caused by their birthing experiences. Through nonjudgmental connection with others who have had similar experiences and trainings for professionals, Solace for mothers provides and creates support for women who have experienced birth as traumatic.

The following individuals join this brief as amici curiae with institutional affiliations provided for identification purposes only:

Amicus curiae **Scott A. Allen, M.D.,** is an Associate Clinical Professor of Medicine at the University of California, Riverside. He is a co-founder of the Center for Prisoner Health and Prisoner Health and Human Rights and is a medical advisor to Physicians for Human Rights. He is a former medical director of the Rhode Island Department of Corrections.

Amicus curiae **Jennifer Clarke, M.D., M.P.H.** is an Associate Professor of Medicine and Obstetrics and Gynecology at Brown University's Medical School. She is a board member of the Society of

Correctional Physicians and a Fellow of the American College of Physicians. Dr. Clarke has conducted years of research, supported by millions of dollars of grants, concerning the reproductive health of incarcerated women. Her February 2011 article in the Journal of the American Medical Association, "Perinatal Care for Incarcerated Patients," directly addresses this issue.

Amicus curiae **Robert L. Cohen, M.D.,** has worked for over thirty years as a physician, administrator, court expert, and Federally appointed monitor to improve the care and conditions of prisoners. Dr. Cohen was the Director of the Montefiore Rikers Island Health Services from 1981 through 1986. He represented the American Public Health Association (APHA) on the Board of the National Commission for Correctional Health Care for 17 years, through 2010. He is currently appointed by the New York City Council to represent them on the New York City Board of Correction. Dr. Cohen has served as a Federal Court Monitor overseeing efforts to improve medical care for prisoners in Florida, Ohio, New York State, and Michigan. Dr. Cohen practices internal medicine in New York City. He is a Clinical Instructor in the Department of Medicine of the New York University School of Medicine.

Amicus curiae **Joe Goldenson, M.D.,** has been the Program Director and the Medical Director for the San Francisco Public Health Department's Jail Health Services (JHS) since 1993. Dr. Goldenson serves as a medical expert appointed by Federal courts in five cases related to health care provided to prisoners, and by the California State Court in another. He has also been involved in evaluations of the health care services in correctional facilities across the nation. Dr. Goldenson is on the Board of the National Commission on Correctional Health Care and is a member of the California Medical Association's Corrections and Detentions Health Care Committee. He has served as a consultant to the Francis J. Curry National Tuberculosis Center and served as a member of a committee that revised the Center for Disease Control's guidelines for the management of tuberculosis in correctional facilities. Dr. Goldenson is a fellow of the Society of Correctional Physicians and has served as secretary and treasurer of the Society. He has been an Assistant Clinical Professor at the University of California, San Francisco since 1980.

Josiah D. Rich, M.D., M.P.H., is Professor of Medicine and Community Health at Brown University's Medical School. Since 1994 Dr. Rich has been caring for prisoners with HIV infection at the Rhode Island Department of Corrections. Dr Rich has received millions of dollars in Federal research grants for his research with vulnerable populations in correctional settings. Currently, he is Principal Investigator of five major NIDA grants all focused on incarcerated populations. He is Director and Co-Founder of the Center for Prisoner Health and Human Rights. He is also a Co-Founder of the nationwide Centers for AIDS Research (CFAR) collaboration in HIV in corrections (CFAR/CHIC) initiative. Dr. Rich has advocated for public health policy changes to improve the health of people with addiction, including increasing drug treatment for the incarcerated and formerly incarcerated populations.

Amicus curiae **Carolyn Sufrin, M.D., F.A.C.O.G.,** is an Assistant Professor in the Department of Obstetrics, Gynecology and Reproductive Sciences at the University of California, San Francisco in the San Francisco General Hospital Division. Her focus is on expanding access to reproductive health care for incarcerated women, as well as training residents in the care of vulnerable populations. She currently serves as a Women's Health Specialist in the San Francisco Jail Health Services, conducting research, and implementing programs to increase family planning and other reproductive health services for this vulnerable population of women. Dr. Sufrin is a member of the National Commission on Correctional Health Care, and has spoken extensively on obstetrical care for incarcerated women. She has served for the past two years as a pro bono consultant to the American Civil Liberties Union of Northern California and Legal Services for Prisoners with Children on their proposed anti-shackling legislation, and authored a 2010 op-ed against shackling of pregnant inmates, which was published by the San Francisco Chronicle.

Amicus curiae **Elizabeth Mitchell Armstrong, Ph.D., M.P.A.,** holds a joint appointment in the Department of Sociology and the Woodrow Wilson School at Princeton University and is a faculty associate at the Office of Population Research, the Program in Gender and Sexuality Studies and the Center for Health and Wellbeing. She has published articles in the scholarly literature on substance

use during pregnancy, family planning, adolescent motherhood, and the sociology of pregnancy and birth. She is the author of Conceiving Risk, Bearing Responsibility: Fetal Alcohol Syndrome and the Diagnosis of Mortal Disorder (Johns Hopkins University Press, 2003), the first book to challenge conventional wisdom about drinking during pregnancy. Her current research includes a longitudinal study of agenda setting around disease in the U.S. and a study of fetal personhood and obstetrical ethics. She serves on the Board of Directors of Lamaze International. She has an M.P.A. from Princeton University and a Ph.D. from the University of Pennsylvania.

Amicus curiae **Wendy Chavkin, M.D., M.P.H.,** is a Professor of Clinical Public Health and Obstetrics and Gynecology at Columbia University, in the Heilbrunn Department of Population and Family Health and Department of Obstetrics-Gynecology at Mailman School of Public Health and College of Physicians and Surgeons at Columbia University. She has written extensively about women's reproductive health issues and done extensive programmatic and policy research related to pregnant women, punishment and barriers to care for over two decades.

Amicus curiae **Mardge Cohen, M.D.,** is Professor of Medicine at Rush University in Chicago IL and worked at Cook County Hospital for the past 36 years, and has advocated for improving women's health for decades. In 1987 she founded the Women and Children HIV Program at Cook County Hospital, an innovative approach to providing comprehensive medical and psychosocial services to vulnerable women and children with HIV. She has conducted research on pregnant women related to the prevention and treatment of HIV through large multisite studies funded by the Centers for Disease Control and the National Institute for Child Health and Development, and is the Principal Investigator on the Women's Interagency HIV Study Chicago site. Dr. Cohen has conducted years of grand scale research, supported by millions of dollars of grants, concerning the reproductive behaviors of low-income women, many with problems related to incarceration.

Amicus curiae **Susan Cu-Uvin, M.D.,** is a Professor of Obstetrics and Gynecology, Medicine, and Health Services, Policy and Practice at Brown University, Providence, RI. She is a recognized expert on HIV in women and sexually transmitted infections. She is the Director of

Global Health Initiative at Brown. She is on the editorial board of the Journal of Women's Health, Infectious Diseases in Obstetrics and Gynecology and American Journal of Reproductive Immunology. She was a member of several committees of the Institute of Medicine, National Academy of Sciences on HIV Mother to Child Prevention, HIV Testing, and Women's Health Research. She has received funding from the National Institutes of Health for research related to HIV in women, is a member of NIH study section, and perinatal antiretroviral guidelines.

Amicus curiae **Nada L. Stotland, M.D., M.P.H.,** is a psychiatrist and Professor of Psychiatry at Rush Medical College in Chicago. Dr. Stotland has a longstanding interest in women's mental health, psychological aspects of women's reproductive health, medical education, and medical ethics. She is the author or editor of five books on the psychiatric aspects of women's reproductive health and health care. She served for from 2008-2009 as the President of the American Psychiatric Association (APA), and for seven years as the Chair of the APA Committee on Women. With her encouragement, the APA adopted a policy of non-punitive treatment for pregnant women with psychiatric problems. She is also a clinician expert in the care of women with pregnancy-related issues.

Amicus curiae **Sarah E. Wakeman, M.D.,** is a chief resident in medicine at Massachusetts General Hospital, a teaching hospital of Harvard Medical School. She has authored numerous articles in issues related to corrections and addiction and is a faculty member of the Center for Prisoner health and Human Rights at Brown University. She is the founder of the Massachusetts General Hospital Ambulatory Subspecialty Rotation in Prisoner Health and the co-founder of the Charlestown Transitions Clinic, a post-release clinic providing medical care to recently released prisoners.