

No. 19-161

IN THE
Supreme Court of the United States

DEPARTMENT OF HOMELAND SECURITY, *et al.*,
Petitioners,
v.
VIJAYAKUMAR THURAISSIGIAM,
Respondent.

**On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

**BRIEF OF PROFESSORS OF
SRI LANKAN POLITICS AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENT**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	2
ARGUMENT.....	4
I. Mr. Thuraissigiam’s testimony at his credible fear interview about the torture he endured is consistent with the Sri Lankan government’s rampant and well-documented human rights abuses against Tamils.....	4
A. Throughout Sri Lanka’s modern history, Tamils have been subjected to state-sanctioned violence including prolonged detentions and torture.....	4
B. The abduction that Mr. Thuraissigiam recounted at his credible fear interview mirrors the notorious pattern of “white van abductions” perpetrated by the Sri Lankan government	7
II. The Sri Lankan government actively surveils the Tamil diaspora, punishing those who speak out against the regime...	11
III. Mr. Thuraissigiam will very likely be tortured again should he be returned to Sri Lanka	13
CONCLUSION	19

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Gaksakuman v. U.S. Att’y Gen.</i> , 767 F.3d 1164 (11th Cir. 2014).....	18
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INTERNATIONAL CASES	
<i>KV (Sri Lanka) v. Secretary of State for the Home Department</i> [2019] UKSC 10 (March 6, 2019), available at https:// www.supremecourt.uk/cases/docs/uksc- 2017-0124-judgment.pdf	6
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INTEREST OF *AMICI CURIAE*¹

Amici curiae are political science and legal scholars who teach, conduct research, and publish on Sri Lankan politics and comparative law. Each has undertaken significant research into the ethnic and political conflict that has plagued Sri Lanka throughout its civil war to the present day. Amici submit this brief to provide the Court with context regarding the perilous conditions—specifically, the persecution and violence—that Respondent Vijayakumar Thuraissigiam faced when he fled Sri Lanka, and would face again if forced to return.

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¹ *Amici* certify that no counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No persons other than the *amici* or their counsel made any monetary contribution to this brief's preparation or submission. All parties have provided written consent to the filing of this brief.

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SUMMARY OF ARGUMENT

Mr. Thuraissigiam fled Sri Lanka after he was tortured because of his ethnic status as a Tamil and because of his previous political activity. He sought asylum in the United States, where he recounted to an asylum officer that he feared for his life in Sri Lanka because in 2014, a group of men approached him at his farm, abducted him, pushed him into a van, blindfolded him, and repeatedly beat him with wooden rods until he lost consciousness. He said he woke the next

day in a hospital and then spent the next eleven days there, recovering from the attack.²

Through this brief, we first explain the history and scope of violence against Tamils in Sri Lanka. We then discuss how Mr. Thuraissigiam’s account of his attack is tragically and entirely consistent with rampant and well-documented human rights abuses against Sri Lankan Tamils—right down to the description of how he was abducted in a van and subsequently beaten, a ubiquitous torture practice frequently used by the Sri Lankan government. Next, we explain how those who flee Sri Lanka remain under the close watch of the Sri Lankan government. Thus, like Mr. Thuraissigiam, many are reluctant to speak out against the Sri Lankan government for fear of the dangers posed to themselves and their families for doing so. We conclude with a discussion of the current political situation in Sri Lanka and the likely harm that Mr. Thuraissigiam will suffer should he be returned there.

² *Dept. of Homeland Sec., et al. v. Thuraissigiam*, U.S. Case No. 19-161, Joint Appendix (“J.A.”) 70-71.

ARGUMENT

I. Mr. Thuraissigiam’s testimony at his credible fear interview about the torture he endured is consistent with the Sri Lankan government’s rampant and well-documented human rights abuses against Tamils.

A. Throughout Sri Lanka’s modern history, Tamils have been subjected to state-sanctioned violence including prolonged detentions and torture.

Sri Lanka has long been mired in ethnic conflict. Following the country’s independence, successive governments have pursued majoritarian policies that discriminated against ethnic and religious minorities, targeting the Tamil community in particular. Eventually, the long-simmering tensions between the island’s ethnic factions erupted into a decades-long civil war (1983-2009). Over 150,000 people are believed to have died during the war—the majority of them civilians and most of them Tamil.

Although the civil war in Sri Lanka officially ended in 2009, the government has continued to wage a campaign of violence against Tamils. The regime in place at the end of the war and through 2015—President Mahinda Rajapaksa and his brother, Secretary to the Ministry of Defense Gotabaya Rajapaksa—was notoriously brutal. The Rajapaksas are believed to have assassinated many prominent Tamil politicians, tortured and abducted many Tamil civilians, and exiled and killed journalists who reported on the Rajapaksas’ vicious activities.³

³ See Alan Keenan, *Sri Lanka Election Sparks Fear of Return to Violent Past*, International Crisis Group (Nov. 13, 2019), <https://>

Reports from human rights organizations confirm that subsequent governments continued these practices, including baselessly detaining and torturing Tamils,⁴ and that such abuses continue to this day.⁵ Indeed, after his 2017 visit to Sri Lanka, eight years after the war had ended, the United Nations Special Rapporteur on Human Rights and Counter-Terrorism, Ben Emmerson, described the situation for Tamils as follows: “[e]ntire communities have been stigmatised and targeted for harassment and arbitrary arrest and detention.”⁶ He reported that “the use of torture[] has

www.crisisgroup.org/asia/south-asia/sri-lanka/sri-lanka-election-sparks-fear-return-violent-past; see also Bharatha Mallawarachi, *Sri Lanka Journalists Remember Killed, Abducted Colleagues*, Associated Press, Jan. 30, 2018, <https://apnews.com/e10083d446264bdf87e60b33abfd78d9/Sri-Lanka-journalists-remember-killed,-abducted-colleagues>.

⁴ See Freedom House, *Freedom in the World 2017 Sri Lanka*, <https://freedomhouse.org/report/freedom-world/2017/sri-lanka> (last visited Jan. 20, 2020) (observing that Sri Lankan security forces continue to engage in “arbitrary arrest, extrajudicial execution, forced disappearance, custodial rape, torture, and prolonged detention without trial, all of which disproportionately affect Tamils”); Human Rights Watch, *Locked Up Without Evidence – Abuses under Sri Lanka’s Prevention of Terrorism Act* (Jan. 29, 2018), <https://www.hrw.org/report/2018/01/29/locked-without-evidence/abuses-under-sri-lankas-prevention-terrorism-act>; Human Rights Watch, *Sri Lanka – Events of 2016* (2017), <https://www.hrw.org/world-report/2017/country-chapters/sri-lanka>.

⁵ See Human Rights Watch, *Sri Lanka: Repeal Abusive Counterterrorism Law* (Jan. 10, 2020), <https://www.hrw.org/news/2020/01/10/sri-lanka-repeal-abusive-counterterrorism-law>.

⁶ *Full Statement by Ben Emmerson, UN Special Rapporteur on Human Rights and Counter-Terrorism, At the Conclusion of His Official Visit*, United Nations Sri Lanka (July 14, 2017) (“Emmerson”), <https://lk.one.un.org/news/full-statement-by-ben-emmerson-un-special-rapporteur-on-human-rights-and-counterterrorism-at-the-conclusion-of-his-official-visit/> (concluding that

been, and remains today, endemic and routine.”⁷ Further, he noted that 80% of the Tamils arrested in late 2016 “complained of torture and physical ill-treatment following their arrest.”⁸

The Sri Lankan government’s post-war brutality has been severe and inhumane. Victims describe “asphyxiation using plastic bags, [being] drenched in kerosene, the pulling out of fingernails, the insertion of needles beneath the fingernails, the use of various forms of water torture, the suspension of individuals for several hours by their thumbs, and the mutilation of genitals.”⁹ The British Supreme Court recently detailed one Tamil man’s experience of state-sponsored torture as follows: his “captors had [] applied hot metal rods to his arm while he was conscious; that the pain had rendered him unconscious; that, while he remained unconscious, they had applied the rods to his back; that, when he regained consciousness, they had further increased the severity of the pain by pouring petrol on him and threatening to set him alight.”¹⁰

the Tamil community has “borne the brunt of the State’s well-oiled torture apparatus”).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* See also Human Rights Watch, *Locked Up, supra*, at 15-29 (describing various accounts of individuals who had been tortured); *Report of Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka*, U.N. Doc. A/HRC/34/54/Add.2 (Dec. 22, 2016) (“Report of the Special Rapporteur on Torture”) ¶26, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/440/12/PDF/G1644012.pdf?OpenElement>.

¹⁰ Judgment in *KV (Sri Lanka) v. Secretary of State for the Home Department* ¶3 [2019] UKSC 10 (March 6, 2019), available at <https://www.supremecourt.uk/cases/docs/uksc-2017-0124-judgment.pdf>.

Accordingly, amici's use of the word "torture" to describe the Sri Lankan government's practices is no overstatement.

B. The abduction that Mr. Thuraissigiam recounted at his credible fear interview mirrors the notorious pattern of "white van abductions" perpetrated by the Sri Lankan government.

One particularly notorious torture method that the Sri Lankan government has consistently employed is the kidnapping and brutalization of individuals using unmarked white vans ("white van abductions").¹¹ Though individual accounts vary, the non-profit International Truth & Justice Project Sri Lanka ("ITJPSL") describes the general practice of "white van abductions" as follows: several plainclothes officers approach the victim and ask for an identity card; when the victim comes forward, they grab him and bundle him into a white van, and then blindfold and handcuff him.¹² Victims are subsequently transported elsewhere and tortured and sometimes interrogated.¹³ After-

¹¹ See Human Rights Watch, *Legal Limbo – The Uncertain Fate of Detained LTTE Suspects in Sri Lanka* (Feb. 2, 2010), <https://www.hrw.org/report/2010/02/02/legal-limbo/uncertain-fate-detained-ltte-suspects-sri-lanka>.

¹² See International Truth & Justice Project Sri Lanka, *Silenced: Survivors of Torture and Sexual Violence in 2015* 11 (Jan. 2016), <http://www.itjpsl.com/assets/Silenced-jan-2016.pdf>.

¹³ See Amnesty International, *Only Justice Can Heal Our Wounds – Listening to the Demands of Families of the Disappeared in Sri Lanka* (Nov. 2016), <https://www.amnesty.org/download/Documents/ASA3758532017ENGLISH.PDF>.

wards, they are either released or forcibly “disappeared.”¹⁴

Hundreds of survivors have reported being subject to these abductions.¹⁵ But because many victims do not survive and because the practice is likely highly underreported by those who do, amici suspect that these abductions are even more prevalent in reality. And while the rate of white van abductions peaked towards the end of the civil war, these abductions continued after the war ended, including when Mr. Thuraissigiam himself was abducted and tortured in 2014.¹⁶ For example, a 2016 report by the ITJPSL, found that “white van abductions” continued well into 2015, and detailed at least 100 reported post-war instances of the practice.¹⁷ Likewise, in December 2016, United Nations Special Rapporteur on Torture, Juan Méndez, reported after his visit that year to Sri Lanka that although government authorities claimed

¹⁴ *Id.*

¹⁵ See Human Rights Watch, *Recurring Nightmare – State Responsibility for ‘Disappearances’ and Abductions in Sri Lanka* 4 (March 2008), <https://www.hrw.org/reports/2008/srilanka0308/srilanka0308web.pdf>.

¹⁶ See International Truth & Justice Project Sri Lanka, *A Still Unfinished War: Sri Lanka’s Survivors of Torture and Sexual Violence 2009-2015* 5-6 (July 2015), http://www.itjpsl.com/assets/stoptorture_report_v4_online.pdf (recounting how hundreds of white van abductions took place from 2009-2015 alone).

¹⁷ *Id.* at 7. White van abductions were so rampant in the years following the war, they have been described as a “hallmark” of the Rajapaksa regime. See Qadijah Irshad, *Swiss Embassy Employee in Sri Lanka Arrested After Claiming She Was Abducted, Sexually Assaulted and Interrogated*, The Telegraph, Dec. 17, 2019 2:36PM, available at <https://www.telegraph.co.uk/news/2019/12/17/swiss-embassy-employee-sri-lanka-arrest-ed-claiming-abducted/>.

all arrests were made by uniformed officers in marked vehicles, he received credible reports that “white van abductions” by plainclothes police officers were still occurring and had occurred as recently as April 2016.¹⁸ Lawyers and relatives of abductees told Human Rights Watch in 2016 that police arrests “were still being made in the notorious white vans used by the previous government, creating fear of a return to a culture of enforced disappearances.”¹⁹ And in 2016, The Guardian reported that white van abductions “have continued as recent as May this year.”²⁰ In sum, post-war white van abductions were consistently recounted by various non-profit organizations and the media throughout the time leading up to Mr. Thuraissigiam’s own credible fear interview (“CFI”) in 2017.

Not only were white van abductions widespread and well-known, but after the war, the government specifically targeted for abduction Tamils like Mr. Thuraissigiam who participated in political opposition activity.²¹ For example, multiple victims who were

¹⁸ *Report of the Special Rapporteur on Torture, supra*, at ¶26.

¹⁹ Immigration and Refugee Board of Canada, *Responses to Information Requests*, (Mar. 17, 2017), <https://www.justice.gov/eoir/page/file/1047356/download>.

²⁰ Nirmanusan Balasundaram, *Sri Lanka Wants the World to Forget About Justice for War Victims. Please Don't*, The Guardian, June 27, 2016 01.25 EDT, <https://www.theguardian.com/commentisfree/2016/jun/27/sri-lanka-wants-the-world-to-forget-about-justice-for-war-victims-please-dont>.

²¹ See International Truth & Justice Project Sri Lanka, *Silenced, supra*, at 15-17. See also Shihar Aneez, *Sri Lankan Polls Monitor, Party Workers, Attacked in North*, Reuters, Sept. 20, 2013, <https://www.reuters.com/news/picture/sri-lankan-polls-monitor-party-workers-a-idUSBRE98J06W20130920> (discussing

interviewed by the ITJPSL said they were involved in electioneering efforts for the same political party as Mr. Thuraissigiam (the Tamil National Alliance, a key nonviolent political opposition group that has become the dominant party of Sri Lankan Tamils) and were abducted during the same post-war time period.²² They too were interrogated about their political activities during their abduction, just as Mr. Thuraissigiam described in his habeas petition.²³

Indeed, the specifics of Mr. Thuraissigiam's abduction and torture, as recounted during his CFI, precisely mirror the infamous "white van abduction" practice. As Mr. Thuraissigiam explained to the asylum officer, he "was working on his farm" when "[t]wo men came and called [him]."²⁴ This parallels the practice of several plainclothes officers showing up unannounced and abducting victims from their homes.²⁵ He further explained that when he approached the two men who called for him, they "arrested him," implying official or quasi-official action, as is the case with white van abductions. He then described seeing "a van with 5 men in it" and explained how the men "took off [his]

a 2013 attack on a TNA party office by armed men clad in military uniforms); J.A. 23.

²² See International Truth & Justice Project Sri Lanka, *Silenced, supra*, at 15-17. See also Press Release, International Truth & Justice Project Sri Lanka, Sri Lankan Security Agencies Assaulting Families of Asylum Seekers in UK 2 (Oct. 24, 2019), <http://www.itjpsl.com/assets/press/Threats-to-families-in-Sri-Lanka-final.pdf> (recounting recent reports of two TNA supporters who were also threatened by police for their political activity).

²³ J.A. 23.

²⁴ J.A. 70-71.

²⁵ See International Truth & Justice Project Sri Lanka, *Silenced, supra*, at 11.

shirt and covered [his] face with it and removed [his] underwear . . . and tied [him] up with it and started beating [him with] wooden rods.”²⁶ Again, Mr. Thuraissigiam’s account coincides exactly with how the United Nations and the media report that plainclothes government officers abduct victims into vans, blindfold them, bind them, and take them to be tortured.²⁷

Against the backdrop of the widespread and well-documented white van abductions, Mr. Thuraissigiam’s own account of abduction and torture is sadly and alarmingly commonplace. Indeed, it presents a textbook example of the Sri Lankan government’s hallmark “white van abduction” practice.

II. The Sri Lankan government actively surveils the Tamil diaspora, punishing those who speak out against the regime.

Because the Sri Lankan government monitors its Tamil diaspora all over the world, those who flee Sri Lanka continue to fear the regime, even while abroad. By design, this continued surveillance of the diaspora, punctuated with threats of violence, silences victims who have fled from speaking out about the abuses they suffered at the hands of their government. Accordingly, it is wholly unsurprising that Mr. Thuraissigiam did not explicitly name and accuse the Sri Lankan government during his CFI.

Sri Lankan authorities are known to actively surveil the country’s Tamil diaspora, clamping down on political expression even from afar by monitoring

²⁶ J.A. 71.

²⁷ See International Truth & Justice Project Sri Lanka, *Silenced, supra*, at 15-17.

Tamil TV broadcasts outside of Sri Lanka as well as social media sites used by the diaspora.²⁸ For example, multiple asylum seekers have reported that after they appeared in media interviews while they were abroad, the Sri Lankan police threatened, physically assaulted, sexually assaulted, and even killed their family members back in Sri Lanka.²⁹ In another reported case, Sri Lankan government officials threatened the wife of a man who had fled Sri Lanka and had given an interview in London describing his torture. Specifically, they warned her: “Your husband is doing unnecessary things abroad. If he goes there, he should be silent. We are saying this to you in a polite way but if other people come, they won’t be so polite.”³⁰

In addition, Sri Lanka’s intelligence service operates outside of Sri Lanka and monitors diaspora activities abroad. For example, in an interview with the Canadian Immigration and Refugee Board, an adjunct professor of Asian studies and political science at Temple University stated that the Sri Lankan government has agents in “key countries” including Canada, who monitor diaspora activities outside Sri Lanka.³¹ In June 2014, the Sri Lankan Daily Mirror newspaper reported on a raid and arrest of three Tamils in Malaysia, stating that Sri Lankan intelli-

²⁸ See Press Release, International Truth & Justice Project Sri Lanka, *supra*.

²⁹ *Id.*; International Truth & Justice Project Sri Lanka, *Silenced, supra*, at 30.

³⁰ Press Release, International Truth & Justice Project Sri Lanka, *supra* at 1.

³¹ Immigration and Refugee Board of Canada, *Sri Lanka: Treatment of Tamil Returnees to Sri Lanka, Including Failed Refugee Applicants*, Document #1043566 ¶3 (Feb. 12, 2013), <https://www.ecoi.net/en/document/1043566.html>.

gence officers played a crucial and collaborative role in organizing the raid in Malaysia, alongside their Malaysian counterparts.³²

Based on these reports, Tamils who have fled Sri Lanka continue to fear that the Sri Lankan government can and will harm them for speaking out against it, even if they no longer live in Sri Lanka. Many asylum seekers thus face a dilemma when asked to recount their past victimization for purposes of establishing asylum: if they disclose that they have been persecuted by their government, they risk further victimization should they return to Sri Lanka, and also risk inviting violence upon family members who remain in the country. On the other hand, not disclosing the government's role in their own persecution risks their asylum status. Confronted with this difficult choice, many asylum seekers choose the seemingly safer option and do not identify the Sri Lankan government's role in their torture.³³

III. Mr. Thuraissigiam will very likely be tortured again should he be returned to Sri Lanka.

The 2019 presidential elections in Sri Lanka have further endangered individuals like Mr. Thuraissigiam. If he is returned to Sri Lanka, it is highly likely that Mr. Thuraissigiam will be arrested upon re-entry and subjected to torture or worse because of his ethnic

³² DBS Jeyaraj, *Lankan Defence Officials Elated*, The Daily Mirror, June 2, 2014 06:30 pm, <http://www.dailymirror.lk/dbs-jeyaraj-column/lankan-defence-officials-elated/192-47922>.

³³ Professor Xavier, who has represented Sri Lankan Tamils in Canadian asylum proceedings, recalls several clients who feared disclosing the details of their past abuses to immigration officials.

status as a Tamil, his prior political activity, and his status as a failed asylum-seeker.

The recent elections returned to power the very regime under which Mr. Thuraissigiam was abducted and tortured, and which so violently persecuted Tamils and political opposition of any sort. In November 2019, Gotabaya Rajapaksa (the previous Secretary to the Ministry of Defense), who is believed to have masterminded the “white van abduction” practice,³⁴ won the presidential election in a landslide victory and appointed his brother, (former president) Mahinda, Prime Minister. The Rajapaksas’ return to power marks a likely continuation, if not increase, in state-sponsored violence against Tamils.³⁵ Indeed, Gotabaya Rajapaksa has publicly promised to free anyone previously held for perpetrating abductions and forced disappearances,³⁶ and to revive and re-

³⁴ See Irshad, *supra* (describing how two men who claimed to have been white van drivers accused Gotabaya Rajapaksa of ordering the abductions and were arrested after Gotabaya Rajapaksa won the election).

³⁵ See Sanjeev Miglani and Shihar Aneez, *Exclusive: Sri Lankan Ex-Defense Chief Gotabaya Says He Will Run for President, Tackle Radical Islam*, Reuters, Apr. 26, 2019 12:33 PM, <https://www.reuters.com/article/us-sri-lanka-blasts-gotabaya-a-exclusive/exclusive-sri-lankan-ex-defense-chief-gotabaya-says-he-will-run-for-president-tackle-radical-islam-idUSKCN1S21UF> (recounting how during his campaign, Gotabaya Rajapaksa promised to revive and renew the same secret intelligence cells that had previously been accused of torture and extra-judicial killings).

³⁶ Krishan Francis, *Sri Lanka Presidential Hopeful Says Won't Honor Deal with UN*, The Diplomat, Oct. 15, 2019, available at <https://thediplomat.com/2019/10/sri-lanka-presidential-hopeful-says-wont-honor-deal-with-un/>.

invest in the use of secret intelligence cells known for torture and extra-judicial killings.³⁷

One example in particular illustrates the current, authoritarian political landscape. Just three days after the election, a police detective fled Sri Lanka with his family and sought asylum in Switzerland.³⁸ The detective had been leading an investigation on Gotabaya Rajapaksa's involvement in the murder, abduction, and torture of journalists and civilians who spoke out against the government when Gotabaya Rajapaksa served as Secretary to the Ministry of Defense.³⁹ Upon learning of the detective's escape, the Sri Lankan government imposed a blanket travel ban, preventing over seven hundred police officers from leaving the country for any reason.⁴⁰

The situation escalated when a Sri Lankan woman employed at the Swiss embassy in Sri Lanka was abducted in a white van and interrogated about the detective specifically, as well as about Sri Lankan asylum seekers in Switzerland generally. The woman was forced to unlock her cellphone, which contained information about Sri Lankans who recently sought asylum in Switzerland because they feared for their

³⁷ Miglani and Aneez, *supra*.

³⁸ See *Top Detective Who Investigated High-Profile Cases Flees Sri Lanka*, Al Jazeera, Nov. 26, 2019, <https://www.aljazeera.com/news/2019/11/top-detective-investigated-high-profile-cases-flees-sri-lanka-191126115850448.html>.

³⁹ See Irshad, *supra*.

⁴⁰ See Maria Abi-Habib and Sameer Yasir, *Sri Lankan Critics Fear a Crackdown Is Underway, and Some Flee*, N.Y. Times, Nov. 27, 2019, available at <https://www.nytimes.com/2019/11/27/world/asia/sri-lanka-rajapaksa-crackdown.html>. Notably, these officers were those who had also been investigating the Rajapaksa family.

safety after Gotabaya Rajapaksa won the presidency, as well as the names of Sri Lankans who aided them.⁴¹ After hours of interrogation and torture, including sexual assault, she was finally released.⁴² Her abductors threatened to kill her if she told anyone what had transpired. After vehemently denying the woman’s “claims” of abduction, the government later officially detained and arrested her, and criminally charged her with “stoking anti-government sentiments and fabricating evidence to be used in a court proceedings [sic].”⁴³

Given this climate—one where dissent and opposition is swiftly crushed and viciously punished—a return to Sri Lanka would portend certain doom for Mr. Thuraissigiam. Significantly, Mr. Thuraissigiam campaigned for the very candidate who previously publicly requested that the Rajapaksas be tried for crimes against humanity⁴⁴—an anti-government stance that is surely not lost on this ruthless regime. Previously targeted and tortured for his political opposition

⁴¹ *Id.*

⁴² See Bharatha Mallawarachi, *Swiss Embassy Worker Detained in Sri Lanka Gets Bail*, Associated Press, Dec. 30, 2019, <https://apnews.com/a5636a29063cf577f01ff870bfdfcf909>.

⁴³ Irshad, *supra*.

⁴⁴ See J.A. 23 (In 2004, Mr. Thuraissigiam worked on behalf of M. K. Shivajilingam, a TNA candidate for parliament). In 2015, Shivajilingam openly called on the United Nations High Commissioner for Refugees for an international probe into Mahinda Rajapaksa’s war crimes during the civil war. *Tamil Leader M K Shivajilingam Asks UNHCR for International Probe into Lanka War Crimes*, The Economic Times, Aug. 8, 2015, <https://economictimes.indiatimes.com/news/international/world-news/tamil-leader-m-k-shivajilingam-asks-unhcr-for-international-probe-into-lanka-warcrimes/articleshow/48406047.cms?from=mdr>.

activity under the prior Rajapaksa regime,⁴⁵ Mr. Thuraissigiam's life is likely once again at risk.

Moreover, if Mr. Thuraissigiam were forced to return to Sri Lanka now, he faces a credible and grave risk of torture for the simple fact that he left in the first place. Sri Lanka criminalizes the very act of leaving the country by allegedly illegal means and monitors returnees for arrest and detention.⁴⁶ Official penalties for leaving Sri Lanka illegally include up to five years of imprisonment and a fine of 200,000 Sri Lankan rupees.⁴⁷ In practice though, returnees are typically detained upon arrival and remain in prison for up to six months before any formal adjudication or sentencing.⁴⁸ And once detained, returnees are often subject to torture or killed.⁴⁹ Indeed, this pattern of

⁴⁵ J.A. 23-24.

⁴⁶ See Immigration and Refugee Board of Canada, *Responses to Information Requests*, *supra*.

⁴⁷ *Id.* To monitor returnees, the Sri Lankan government maintains a "stop list." Equipped with these stop lists, airport personnel directly transfer those on the list to law enforcement upon arrival in Sri Lanka. Those who are not directed to law enforcement from the airport are later arrested in their homes. See Immigration and Refugee Board of Canada, *Sri Lanka: Entry and Exit Procedures* (Nov. 10, 2017), <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5aa92d344&skip=0&query=%20returnees%20Sri%20Lanka&coi=LKA&searchin=fulltext&sort=date#hit52>.

⁴⁸ See Jill Alpes, et al. *Post-Deportation Risks for Failed Asylum Seekers*, 54 *Forced Migration Rev.* 76, 77 (Feb. 2017), available at <https://www.fmreview.org/resettlement/alpes-blond-el-preiss-sayosmonras>.

⁴⁹ See Ben Doherty, *UN Condemns Australia's Forced Return of Asylum Seeker to Sri Lanka*, *The Guardian*, Dec. 22, 2017 00.29 EST, <https://www.theguardian.com/world/2017/dec/22/un-condemns-australias-forced-return-of-asylum-seeker-to-sri-lanka> ("Asylum seekers returned to Sri Lanka are routinely arrested at the

cruel retribution had been expressly acknowledged by U.S. courts, including two United States Courts of Appeal, at the time that Mr. Thuraissigiam gave his own account of abduction and torture at his CFI.⁵⁰

Especially given the current regime, Mr. Thuraissigiam faces grave danger in Sri Lanka as a Tamil who has worked on behalf of an opposition political candidate, and—if he is sent back—also as a failed asylum seeker. If Mr. Thuraissigiam is forced to return to Sri Lanka, it is highly likely that he will be arrested upon re-entry and subjected to torture or worse.

airport”); Ben Doherty, *Tamil Asylum Seeker Deported by Australia ‘Harassed by Sri Lankan Security Forces,’* The Guardian, Feb. 28, 2018 12:00 EST, <https://www.theguardian.com/world/2018/mar/01/tamil-asylum-seeker-deported-by-australia-harassed-by-sri-lankan-security-forces>; Alpes, et al., *supra*.

⁵⁰ See *Gaksakuman v. U.S. Att’y Gen.*, 767 F.3d 1164, 1170 (11th Cir. 2014) (recounting evidence that “failed asylum seekers returning to Sri Lanka are subject to torture”); *Thayaparan v. Sessions*, 688 F. App’x 359, 371 (6th Cir. 2017) (unpublished) (explaining that “failed asylum seekers were at the risk of being detained and tortured”). Amici are personally aware of at least one instance in which a failed asylum seeker was surveilled upon returning to Sri Lanka and subsequently killed by government forces.

CONCLUSION

Mr. Thuraissigiam credibly testified that he was abducted and tortured, and his account was entirely consistent with—if not a textbook example of—the well-known white van torture practices used by the Sri Lankan government. Further, his failure to describe the government’s role in his torture is typical of Sri Lankan asylees who worry about the harm they or their families could face for speaking out. Mr. Thuraissigiam fled Sri Lanka, fearing for his life. To return him there today would likely subject him to the very fate he sought to escape.

Respectfully submitted,

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