

# Northwestern

PRITZKER SCHOOL OF LAW  
BLUHM LEGAL CLINIC

## Center for International Human Rights

December 14, 2023

### **Submitted to:**

UN Special Rapporteur on the Situation of Human Rights Defenders, Mary Lawlor

UN Special Rapporteur on the Rights to Freedom of Expression and Opinion, Irene Khan

UN Special Rapporteur on Peaceful Assembly and Association, Clément Nyaletsossi Voule

### **Re: Allegation Letter Concerning Urgent Circumstances of Kyrgyz Journalist and Human Rights Defender Bolot Temirov**

Dear Special Rapporteurs Lawlor, Khan, and Voule:

The Center for International Human Rights (“CIHR”) at Northwestern Pritzker School of Law along with civil society organizations Precedent Group and the Committee to Protect Journalists, respectfully submits this letter of allegation on behalf of Bolot Temirov, an independent journalist and national of Kyrgyzstan. As described in further detail below, in 2022, Mr. Temirov, an internationally renowned investigative journalist, was wrongfully convicted and arbitrarily deported from his home country of Kyrgyzstan in retaliation for critical reporting. In doing so, Kyrgyzstan expelled its own citizen as punishment for alleged criminal wrongdoing for the first time in the country’s history, in flagrant violation of international law.

We submit this joint allegation letter due to the intersecting human rights violations at issue that touch on each of your respective mandates. This allegation letter will outline the extensive violations of Mr. Temirov’s fair trial rights, his right to engage in journalistic activity and convey information to the public, the right to be free from arbitrary detention, and the right to nationality. It is based on open-source media, court records, and independent trial monitor reports as evidence of gross human rights abuses.

We are available to provide any additional information needed to proceed with this matter.

Respectfully,

**Juliet Sorensen**, Clinical Professor of Law, Northwestern University Pritzker School of Law

**Megan Osadzinski**, Schuette Clinical Fellow in Health and Human Rights, Northwestern University Pritzker School of Law

**Jason C. DeSanto**, Senior Lecturer in Law, Northwestern University Pritzker School of Law

**Edil Eraliev**, Executive Director, Precedent Group Law Firm

**Gypsy Guillén Kaiser**, Advocacy and Communications Director, Committee to Protect Journalists (CPJ)

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### **I. Summary of Facts**

Bolot Mamatkasymovich Temirov is a Kyrgyz journalist and founder of New Media, a non-profit organization, and Temirov LIVE, a digital investigative platform that reports on state corruption in Kyrgyzstan. He was previously the editor-in-chief of Factcheck.kg, a media organization. He has been called “Central Asia’s leading anti-corruption journalist.”<sup>1</sup> In 2021, the U.S. State Department awarded Mr. Temirov the International Anti-Corruption Champions Award.<sup>2</sup> He was also a finalist for the Reporters without Borders Press Freedom Award in 2022.

Mr. Temirov is a dual citizen of the Kyrgyz Republic and the Russian Federation.<sup>3</sup> He was born in the city of Osh, Kyrgyzstan, on November 25, 1979.<sup>4</sup> He acquired Kyrgyz citizenship through his parents by birth and by virtue of being born in the territory of the Kyrgyz Republic; he held a Kyrgyz passport from July 11, 2008, until May 2022, when it was invalidated as a result of the instant case. Mr. Temirov received a Russian passport due to his parents’ citizenship, and not as a choice between Russian and Kyrgyz citizenships.<sup>5</sup>

Mr. Temirov has spent most of his career as an independent journalist. Examples of Mr. Temirov’s recent work includes reporting on corrupt activities of high-ranking customs official Raimbek Matraimov, and a groundbreaking investigation into the oil dealings of the family of Kamchybek Kydyrshaevich Tashiev, the head of the State Committee for National Security (GKNB), with the Kyrgyz Petroleum Company.<sup>6</sup> The GKNB is the national security organ of the Kyrgyz Republic. Experts have described the agency as “politicized” and “loyal to the government,” noting that it frequently engages in patterns of arresting “people on trumped up or falsified charges, and even kill[ing] regime opponents.”<sup>7</sup>

Mr. Temirov published the investigation into GKNB Chairman Tashiev on Temirov LIVE. Prior to publication of that investigation, Mr. Temirov contacted Chairman Tashiev, his brother Shairbek Tashiev, and his nephew, Baigazy Matisakov, their accountant, for comment. Mr. Temirov spoke with Shairbek Tashiev and confirmed his connection with the head of the exporting company involved in the corruption scheme. He was unable to contact Matisakov but requested an interview. Mr. Temirov then published the investigation. Two days later, Mr. Temirov was arrested. The day after his arrest, Chairman Tashiev appeared in a press conference and stated: “All investigations of Temirov LIVE are lies.”<sup>8</sup>

On Saturday, January 22, 2022, at 19:36, law enforcement conducted a search —without judicial approval— on the offices of New Media.<sup>9</sup> The search was replete with egregious procedural violations.

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<sup>1</sup> Committee to Protect Journalists, *Kyrgyz authorities deport investigative journalist Bolot Temirov to Russia*, (Nov. 23, 2022), available at: <https://cpj.org/2022/11/kyrgyz-authorities-deport-investigative-journalist-bolot-temirov-to-russia/>

<sup>2</sup> Radio Free Europe, *New U.S. Award Names Kyrgyz, Ukrainian Anti-Corruption Figures Among Its 12 Recipients* (Feb. 24, 2021), available at: <https://www.rferl.org/a/united-states-anti-corruption-award-ukraine-kyrgyzstan/31118948.html>

<sup>3</sup> See Decision of the Sverdlovsk District Court, Criminal Case No. 567/22B4, p. 1 (Sep. 2022).

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Id.* at 8.

<sup>6</sup> Temirov Live, *Как заработать 37 миллионов сомов за два дня? Садыр Жапаров и схема Ташиевых*, available at: <https://www.youtube.com/watch?v=CNNUpazBJ2k> (last accessed June 28, 2023).

<sup>7</sup> OCCRP and Kloop, *Signs of Political Motivation Permeate Case Against Kyrgyz Investigative Journalist* (July 8, 2022), available at: <https://www.occrp.org/en/investigations/signs-of-political-motivation-permeate-case-against-kyrgyz-investigative-journalist>

<sup>8</sup> Central Asian Bureau for Analytical Reporting, *The Case of Bolot Temirov: The Authorities of Kyrgyzstan Seem to Lose*.

<sup>9</sup> A provision in Kyrgyz criminal procedure allows for warrantless searches by law enforcement where there is a high risk that evidence may be destroyed or concealed, provided that a judge legitimizes the search within 24 hours after it is conducted. See *Criminal Procedural Code of the Kyrgyz Republic*, Art. 212(9), available at:

<http://cbd.minjust.gov.kg/act/view/ru-ru/112308> (Статья 212. Основание и порядок производства обыска и выемки: «В исключительных случаях, когда имеется реальное опасение, что разыскиваемый и подлежащий изъятию объект

Employees and witnesses were forced to the ground in handcuffs and described the raid as a traumatic experience.<sup>10</sup> During the search, the police seized property far beyond the scope of the purported charges, including journalistic equipment, computers, laptops, memory cards, a mobile phone, and video recorders connected to the office's cameras. The GKNB, which did not carry out the search warrant, also confiscated the office's surveillance footage of the raid, which depicted the moment the drugs were allegedly found on Mr. Temirov.<sup>11</sup>

After the search of New Media, the police asserted that they found 7.6 grams of cannabis in a cellophane bag in the back left pocket of Mr. Temirov's jeans. Mr. Temirov was arrested, detained at the police headquarters, and taken to a drug testing center. Both his blood and his hands tested negative for narcotics. Although Article 45 of the Code of Criminal Procedure provides that suspects have "[t]he right to be assisted by counsel as soon as they have been notified that they are suspected of having committed an offence," Mr. Temirov was held overnight without access to counsel.<sup>12</sup> He was not informed of the charges against him until 10:00 am the next day - approximately 14 hours after his arrest.<sup>13</sup> He was charged with illegal possession of narcotics with intent to distribute, and released from custody with orders not to leave the country.

In April 2022, the government filed additional charges against Mr. Temirov just one day after Temirov LIVE released another video investigating Chairman Tashiev's family for corruption.<sup>14</sup> In addition to the drug charges, the prosecution asserted three offenses stemming from his allegedly fraudulent procurement of a Kyrgyz passport: fraudulently possessing a military ID in 2001 under a different name; forging a temporary certificate to obtain a Kyrgyz passport in 2008; and illegally crossing the border of Kyrgyzstan using the fraudulently obtained passport repeatedly between 2010 and 2021. In May 2022, his Kyrgyz passport was listed as invalid in the database of the National Registration Agency, which was based solely on the determination of an investigator in violation of domestic procedures.

The prosecution alleged that on August 28, 2001, Mr. Temirov forged a military ID, which according to the government's version of events belonged to an individual named Adylbek Kanibekovich Kerimbekov, and that he used Kerimbekov's military ID to illegally obtain a Kyrgyz passport on July 11, 2008.<sup>15</sup> Mr. Kerimbekov was interviewed during the police investigation but not cross-examined at trial. The report of the interview with Mr. Kerimbekov conducted during the investigation that was introduced at trial revealed that he served in the Kyrgyz military, moved to Russia, served in the Russian military, and became a citizen there.<sup>16</sup>

The prosecution argued that Mr. Temirov used the forged military ID to unlawfully obtain a Kyrgyz passport, which he then allegedly used to illegally cross the border on several occasions between

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может быть из-за промедления с его обнаружением утрачен, поврежден или использован в преступных целях либо разыскиваемое лицо может скрыться, обыск и выемка могут быть произведены без решения следственного судьи, но с последующим направлением ему в течение 24 часов письменного уведомления о произведенном обыске.»)

<sup>10</sup> See Decision of the Bishkek City Court, No. UD-567/22 B4 (Nov. 23, 2022).

<sup>11</sup> Frontline Defenders, *Supreme Court Upheld the Decision to Expel Bolot Temirov* (accessed November 13, 2023), available at: <https://www.frontlinedefenders.org/en/case/supreme-court-upheld-decision-expel-bolot-temirov>

<sup>12</sup> Access to counsel during pre-trial detention and interrogation is a core fair trial right. See *Abdurakhmanov v. Uzbekistan*, CCPR/C/125/D/2295/2013, para. 195 (May 2019).

<sup>13</sup> Sverdlovsk District Court, *supra* note 3 at 15.

<sup>14</sup> *Id.* at 13; see also Committee to Protect Journalists, *Kyrgyzstan authorities file new charges against journalist Bolot Temirov* (April 21, 2022), <https://cpj.org/2022/04/kyrgyzstan-authorities-file-new-charges-against-journalist-bolot-temirov/>

<sup>15</sup> *Id.* at 31.

<sup>16</sup> *Id.*

2010 and 2021. Eight witnesses for the government were interviewed about the forgery, but none could actually show the court that Temirov himself submitted an application for the military ID with the serial number presented by the prosecution.<sup>17</sup> Neither the former head of the passport office of the Ugensk Division, nor his employee could recall signing the passport forms.<sup>18</sup>

The prosecution presented a color copy of the 2008 passport application packet, consisting of Mr. Temirov's birth certificate from Osh, the military ID, Mr. Temirov's parents' passports, and information about Mr. Temirov's residence in 2008. The prosecution never produced the original passport application, and its handwriting experts only reviewed a copy, which was not authenticated. Indeed, the trial court, the prosecutor, and the defense never saw the original passport application at all.

The prosecution also submitted that Mr. Temirov could not have obtained a military ID because he did not serve in the actual military or alternative service. However, Mr. Temirov showed that while he was never in the active army, he was in alternative service from 2003 to 2004.<sup>19</sup> At trial, Mr. Temirov emphasized the insufficiency of the evidence and argued that the prosecution was an attempt to silence his journalistic activities, pointing to the timing of his anti-corruption investigation into Chairman Tashiev and his arrest.<sup>20</sup>

On September 28, 2022, the trial court acquitted Mr. Temirov of the drug possession charge and illegal border crossing charges but found him guilty of using forged documents. The trial court found that the three-year statute of limitations on the document forgery charge had already run and did not impose a penalty.<sup>21</sup> The court also noted that the police investigation had been prejudiced against Mr. Temirov on the drug charges.<sup>22</sup> Prosecutors then appealed the entire ruling to the Bishkek City Court, and Mr. Temirov's a appealed the finding of guilty. In their request to the Bishkek City Court, prosecutors asked the court to order Mr. Temirov's expulsion from the Kyrgyz Republic.

The Bishkek City Court affirmed the decision of the trial court on the drug charges, noting that the prosecution did not establish beyond a reasonable doubt that the drugs belonged to Temirov.<sup>23</sup> The Court also held that the illegal border crossing charge was also not proven beyond a reasonable doubt.<sup>24</sup> However, despite a clearly applicable statute of limitations, the appellate court affirmed Mr. Temirov's conviction for using forged documents.<sup>25</sup>

The Bishkek City Court concluded its opinion by ordering Mr. Temirov's expulsion from the Kyrgyz Republic to the Russian Federation, stating that due to his Russian citizenship, Mr. Temirov could not hold a Kyrgyz passport despite being a lawful citizen of Kyrgyzstan. This order had no basis in law:

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<sup>17</sup> *Id.* at 11.

<sup>18</sup> *Id.* at 31.

<sup>19</sup> *Id.* at 15.

<sup>20</sup> *Id.* at 13; *see also* Exhibit C, Mr. Temirov's Complaint to the Supreme Court of Kyrgyzstan.

<sup>21</sup> *Id.* at 35.

<sup>22</sup> *See* Настоящее Время (In Current Time), В Кыргызстане суд оправдал журналиста-расследователя Болота Темирова по делу о наркотиках и незаконном пересечении границы, (trans. A Court in Kyrgyzstan Aquited Investigative Journalist Bolot Temirov on Drug Charges and Illegal Border Crossing) (Sept. 28, 2022)

<https://www.currenttime.tv/a/temirov-sud/32056511.html>

<sup>23</sup> *Id.* at 27.

<sup>24</sup> *Id.* at 29.

<sup>25</sup> *Id.* at 29. The trial court had found Mr. Temirov guilty on the document fraud charges but held that the statute of limitations precluded criminal punishment.

the 2007 version of the Criminal Code used to charge Mr. Temirov did not contain a provision for deportation.

Mr. Temirov was forcibly removed from the appellate courtroom and held incommunicado for several hours, then summarily deported.<sup>26</sup> He was not afforded a separate hearing to challenge the deportation order, nor was he provided a written deportation order outside of the appellate judgment. He was not given an opportunity to meaningfully challenge the merits of the expulsion or confer with counsel. He was expelled without any identity documents, including his Russian passport.<sup>27</sup> His family was notified of his expulsion only after he arrived in Moscow.<sup>28</sup>

Mr. Temirov appealed his case to the Supreme Court of Kyrgyzstan. On August 30, 2023, the CIHR attempted to electronically file an *amicus curiae* brief to the Supreme Court outlining the violations of international law in the case.<sup>29</sup> The CIHR urged the Supreme Court to vacate the criminal conviction against Mr. Temirov and overturn the removal order. The Court responded and directed the CIHR to “please send the brief through diplomatic channels and submit it through the Ministry of Foreign Affairs of the Kyrgyz Republic.” The Court’s response was patently incorrect as a matter of law: Kyrgyz domestic procedure expressly allows third-party expert opinions to be entered into the record. When the CIHR again requested that the brief be made part of the record as an independent expert opinion, the Court did not respond. On September 12, 2023, the day of the Supreme Court hearing, Mr. Temirov’s local defense team again sought to file the *amicus* brief both orally and in written form. In both instances, the court did not allow the brief into the record without explanation, again in violation of Kyrgyz procedural law.

The Supreme Court orally upheld the Bishkek City Court’s guilty finding and deportation order. The court hearing was open to the public and while journalists could record the proceedings, they were not allowed to record the judges’ ruling. Several independent, trained court monitors were present during the hearing, as were journalists and representatives from the United Nations High Commissioner for Human Rights, the European Commission, and the United States Agency for International Development. The presiding judges were Mr. Kachike Esenkanov, Mr. Askat Sydykov, and Mr. Sulaimankul Atakulov.

According to one of the independent trial monitors, Dinara Oshurakhunova, the judges did not allow defense counsel to file their own briefs or speak to their substance. Mr. Temirov’s defense counsel unsuccessfully sought to have Judge Esenkanov recused due to his bias against the case, stemming from the fact that Judge Esenkanov had asked a question presuming the illegality of Mr. Temirov’s conduct. The judges then orally announced the verdict upholding the Bishkek City Court’s decision, reiterated that no further appeals are permitted, and adjourned the hearing. The written judgment was provided weeks after the hearing.

Due to the expulsion order, Mr. Temirov is unable to return home. According to the Minister of the Interior, Nurbek Abdiyev, the deportation carries a five-year ban on re-entry.<sup>30</sup> He wishes to return to

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<sup>26</sup> Front Line Defenders, *Human Rights Defender and Journalist Deported to Russia*, (Nov. 24, 2022), available at: <https://www.frontlinedefenders.org/en/case/human-rights-defender-and-journalist-bolot-temirov-deported-russia>

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> The practice of submitting *amicus curiae* briefs or third-party interventions is not common in Kyrgyzstan, however, expert opinions are allowed (экспертное заключение). The CIHR filed the “amicus” brief under this mechanism.

<sup>30</sup> Frontline Defenders, *Supreme Court Upheld the Decision to Expel Bolot Temirov* (accessed November 13, 2023), available at: <https://www.frontlinedefenders.org/en/case/supreme-court-upheld-decision-expel-bolot-temirov>

Kyrgyzstan so that he can continue his work of holding corrupt actors to account and protecting democratic values.

## II. The Special Rapporteurs Should Prioritize Mr. Temirov's Case

This case has intersecting significance for the priority mandates of the United Nations Special Rapporteur on Human Rights Defenders (HRDs), the United Nations Special Rapporteur on the Rights to Freedom of Expression and Opinion (RFEO), and the United Nations Special Rapporteur on Peaceful Assembly and Association (PAA), as it deals with the arbitrary detention, criminalization, and unlawful expulsion of a journalist and human rights defender and the suppression of organized, independent journalism.<sup>31</sup>

### a. *Mr. Temirov's Case Falls Under the Mandate of Special Rapporteur on Human Rights Defenders*

As the Special Rapporteur on HRDs and her predecessors have noted, journalists can take on the role of an HRD. The United Nations Declaration on Human Rights Defenders defines HRDs as “individuals, groups and associations ... contributing to ... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.”<sup>32</sup> While the Special Rapporteur on HRDs does not regard all journalists as HRDs, she recognizes that “many journalists do act as defenders, for example when they report on human rights abuses and bear witness to acts that they have seen.”<sup>33</sup> Indeed, in her 2021 annual report, Special Rapporteur Lawlor recognized that “activists, whistle-blowers, *journalists*, academics, lawyers, medical workers and others fighting against and exposing *corruption* are human rights defenders, provided that their work is peaceful and motivated by human rights concerns” and that “[c]orruption is a human rights-related issue and those motivated by concerns for human rights who are working peacefully against corruption, for transparency and the rule of law are human rights defenders.”<sup>34</sup>

In this case, Mr. Temirov qualifies as an HRD both a result of his investigative reporting and his vocal advocacy in the aftermath of the criminal case brought against him. In publicizing the human rights violations that he experienced, he falls squarely into the working definition of an HRD.<sup>35</sup> Taking this case would allow the Special Rapporteur Lawlor to follow up on her thematic report on the issue of human rights defenders fighting corruption.<sup>36</sup> And, as Special Rapporteur Lawlor has been made aware as a result of her recent country visit to Tajikistan in December 2022, the staggering and increasing number of

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<sup>31</sup> Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor to the Human Rights Council, *At the heart of the struggle: human rights defenders working against corruption*, A/HRC/49/49, paras. 7 & 10 (Dec. 28, 2021)

<sup>32</sup> UN General Assembly, *Declaration on Human Rights Defenders*, [A/RES/53/144](#) (1998), available at: <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders#:~:text=The%20Declaration%20emphasizes%20that%20everyone,the%20human%20rights%20of%20others>.

<sup>33</sup> OHCHR, *United Nations Fact Sheet No. 29 on Human Rights Defenders: Protecting the Right to Defend Human Rights* (Apr. 2004, last accessed Nov. 13, 2023), available at: <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-29-human-rights-defenders-protecting-right-defend-human>

<sup>34</sup> Report of the Special Rapporteur, *supra* note 32.

<sup>35</sup> See Temirov LIVE, *Служка и шантаж: Как устроена кампания травли журналиста Болота Темирова (Surveillance and Blackmail: Unpacking the Organized Campaign Hounding Bolot Temirov)*: available at: <https://www.youtube.com/watch?v=X2tySsKkdfQ>

<sup>36</sup> Report of the Special Rapporteur, *supra* note 32.



wrongfully imprisoned and criminally charged human rights defenders, including journalists, in Central Asian countries poses a grave threat to human rights more broadly.<sup>37</sup>

*b. Mr. Temirov's Case Falls Under the Mandate of Special Rapporteur on the Right to Freedom of Expression and Opinion*

Mr. Temirov's case also touches closely on the mandate of the UN Special Rapporteur on RFEO. In her 2022 annual report, Special Rapporteur Khan highlighted the urgency of ending impunity for attacks on journalists in the digital age and the rising criminalization of media freedom.<sup>38</sup> Mr. Temirov's prosecution and expulsion is emblematic of a larger crackdown on journalists in Central Asia and the criminalization of media freedom worldwide. Governments across the world are waging a campaign of persecution against the free press, silencing journalists through extra-judicial killings, arbitrary criminal prosecutions, and targeted surveillance.<sup>39</sup> According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), between 2016–2021, nearly 455 journalists were killed globally in retaliation for their reporting.<sup>40</sup> The Committee to Protect Journalists (CPJ) documented the jailing of 363 journalists in 2022 *alone*.<sup>41</sup>

Kyrgyzstan is also experiencing a democratic backslide characterized by the stifling of critical dissent and the wrongful imprisonment of activists and media actors.<sup>42</sup> Over the last few years, the government has continued to impede the lawful investigation of human rights abuses. For example, in April 2023, the Kyrgyz Parliamentary Committee for Constitutional Legislation, Governance, Judicial and Legislative Affairs dismissed the Ombudsperson of Kyrgyzstan, Atyr Abdrakhmatova, before she could complete her five-year term.<sup>43</sup> The Ombudsperson is mandated by Parliament to investigate gross abuses of human rights. Abdrakhmatova was the first woman Ombudsperson in Kyrgyzstan and is a jurist and human rights defender. Human rights organizations, media, the Human Rights Committee of the Organization for Security and Cooperation in Europe (OSCE), and the European Union have issued statements linking her dismissal to her defense of human rights in the country.<sup>44</sup> Additionally, last year, the Kyrgyz government arrested 22 human rights defenders, twenty of which are still detained, because

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<sup>37</sup> Radio Free Europe/Radio Liberty, *A Talk About Tajikistan With The UN's Special Rapporteur For Human Rights Defenders*, (December 18, 2022), available at: <https://www.rferl.org/a/majlis-podcast-tajikistan-mary-lawlor-un-human-rights/32182071.html>

<sup>38</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan to the Human Rights Council, *Reinforcing media freedom and the safety of journalists in the digital age*, A/HRC/50/29, paras. 55-60 (Apr. 20, 2022)

<sup>39</sup> *Id.* at para. 28.

<sup>40</sup> *Id.*

<sup>41</sup> Committee to Protect Journalists, *Number of jailed journalists spikes to new global record*, (Dec. 14, 2022), <https://cpj.org/reports/2022/12/number-of-jailed-journalists-spikes-to-new-global-record/>

<sup>42</sup> Jasmine D. Cameron, Amb. (ret.) Eileen Malloy, Megan Osadzinski, and Juliet Sorensen, *From 'Island of Democracy' to Consolidated Authoritarian Regime': The Need to Reverse Kyrgyzstan's Slide*, Just Security (July 25, 2023), available at: <https://www.justsecurity.org/87368/from-island-of-democracy-to-consolidated-authoritarian-regime-the-need-to-reverse-kyrgyzstans-slide/>

<sup>43</sup> Human Rights Watch, *Kyrgyzstan: Parliament Threatens Ombudswoman's Early Dismissal* (Apr. 26, 2023), available at: <https://www.hrw.org/news/2023/04/26/kyrgyzstan-parliament-threatens-ombudswomans-early-dismissal>

<sup>44</sup> European Union External Action, *Statement by the Spokesperson on the human rights situation in the country*, (May 5, 2023), available at: [https://www.eeas.europa.eu/eeas/kyrgyzstan-statement-spokesperson-human-rights-situation-country\\_en](https://www.eeas.europa.eu/eeas/kyrgyzstan-statement-spokesperson-human-rights-situation-country_en); OSCE-PA, *Press Release* (Apr. 27, 2023), available at: <https://www.oscepa.org/en/news-a-media/press-releases/press-2023/osce-pa-human-rights-leaders-regret-dismissal-of-ombudsman-in-kyrgyzstan-express-concern-over-decision-to-shutter-rfe-rl-s-kyrgyz-service>



they attempted to create a citizens' informal Committee for the Protection of Kempir-Abad, a contested and critically important water reserve that the Kyrgyz government tried to transfer to Uzbekistan.<sup>45</sup>

The situation for those engaging in press freedom is particularly dire. The Kyrgyz government has sought to close the influential, U.S.-funded outlet Radio Free Europe/Radio Liberty (RFE/RL, also known in Kyrgyzstan as Radio Azattyk), freezing its bank accounts for eight months.<sup>46</sup> The government is also seeking to liquidate the independent investigative website Kloop based on a statute that allows for the shuttering of organizations that act inconsistently with their founding charters.<sup>47</sup> The suppression of media outlets and the criminalization of human rights defenders, bloggers, and journalists is also a broader trend throughout Central Asia, particularly as Russian influence continues to grow amidst the war of aggression in Ukraine.<sup>48</sup> Just two months after the raid on Temirov LIVE, authorities raided oppositional broadcaster Next TV and arrested director Taalaibek Duishenbiev on baseless charges of inciting interethnic hatred.<sup>49</sup> This is likely due to the outlet's investigation into allegations made by Kazakhstan's former head of intelligence that Kyrgyzstan secretly provided military support to Russia in its war against Ukraine.<sup>50</sup> Duishenbiev was subsequently sentenced to a five-year suspended sentence.<sup>51</sup> Other notable cases of governments criminalizing media actors defending human rights in the region, by no means exhaustive, include blogger Otabek Sattoriy from Uzbekistan,<sup>52</sup> journalist Nurgeldi Halykov from Turkmenistan,<sup>53</sup> and journalists and bloggers Daler Imomali, Abdulloh Ghurbati, Zavqibek Saidamini, Khushom Guliam, Ulfatkhonim Mamadshoeva, and Abdusattor Pirmukhammadzoda from Tajikistan.<sup>54</sup>

In prioritizing Mr. Temirov's case, Special Rapporteur Khan will have the opportunity to continue to shine a light on the thematic issue of the safety of journalists in the digital age and media freedom in post-Soviet countries.<sup>55</sup>

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<sup>45</sup> Frontline Defenders, *Aggravated Charges for Representatives of the Committee to Protect Kempir Abad* (last accessed Nov. 13, 2023), available at: <https://www.frontlinedefenders.org/en/case/aggravated-charges-representatives-committee-protect-kempir-abad-1>

<sup>46</sup> Committee to Protect Journalists, *CPJ calls on Kyrgyzstan authorities to allow RFE/RL's Radio Azattyk to work freely after shutdown reversal* (July 12, 2023), available at: <https://cpj.org/2023/07/cpj-calls-on-kyrgyzstan-authorities-to-allow-rfe-rls-radio-azattyk-to-work-freely-after-shutdown-reversal/>

<sup>47</sup> Committee to Protect Journalists, *Kyrgyz Authorities Apply to Shutter Investigative Outlet Kloop* (Aug. 28, 2023), available at: <https://cpj.org/2023/08/kyrgyz-authorities-apply-to-shutter-investigative-outlet-kloop/>

<sup>48</sup> OHCHR, *Tajikistan: UN experts deplore criminal proceedings against human rights defenders*, (July 4, 2023), available at: <https://www.ohchr.org/en/press-releases/2023/07/tajikistan-un-experts-deplore-criminal-proceedings-against-human-rights>

<sup>49</sup> OCCRP and Kloop, *Signs of Political Motivation Permeate Case Against Kyrgyz Investigative Journalist* (July 8, 2022), available at: <https://www.occrp.org/en/investigations/signs-of-political-motivation-permeate-case-against-kyrgyz-investigative-journalist>

<sup>50</sup> Committee to Protect Journalists, *Kyrgyzstan authorities raid Next TV, detain director over Ukraine posts*, (Mar. 2022), <https://cpj.org/2022/03/kyrgyzstan-authorities-raid-broadcaster-next-tv-detain-director-over-ukraine-war-posts/>

<sup>51</sup> Reporters without Borders, *RSF denounces Kyrgyzstan's increasingly harsh censorship of Radio Azattyk* (July 12, 2023), <https://rsf.org/en/rsf-denounces-kyrgyzstan-s-increasingly-harsh-censorship-radio-azattyk>

<sup>52</sup> Committee to Protect Journalists, *Uzbek blogger Otabek Sattoriy sentenced to 6.5 years in prison (May 10, 2021)*, available at: <https://cpj.org/2021/05/uzbek-blogger-otabek-sattoriy-sentenced-to-6-5-years-in-prison/>

<sup>53</sup> Committee to Protect Journalists, *Journalist Nurgeldi Halykov jailed in Turkmenistan since September 2020 on fraud charges* (May 21, 2021), available at: <https://cpj.org/2021/05/journalist-nurgeldi-halykov-jailed-in-turkmenistan-since-september-2020-on-fraud-charges/>

<sup>54</sup> OHCHR, *supra* note 48.

<sup>55</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan to the Human Rights Council, *Reinforcing media freedom and the safety of journalists in the digital age*, A/HRC/50/29, paras. 55-60 (Apr. 20, 2022)

c. *Mr. Temirov's Case Falls Under the Mandate of Special Rapporteur on the Right to Peaceful Assembly and Association*

Finally, Kyrgyzstan's persecution of TEMIROV Live's operations violates the freedom of association and falls within the mandate of the UN Special Rapporteur on PAA.<sup>56</sup> While the Rapporteur's mandate clearly concerns journalists who exercise their right to peaceful assembly and association, Rapporteur Voule and his predecessors have yet to focus on the essential intersection between the associational rights of journalistic organizations and the press freedoms of individual journalists. Mr. Temirov's case can serve to clarify this important nexus and ensure there are no gaps in protection.

Furthermore, the Special Rapporteur on PAA has already expressed concern over human rights violations in Kyrgyzstan. In early October 2023, Rapporteur Voule, alongside Rapporteurs Lawlor and Khan, expressed concern over the current draft of legislation which allows the Kyrgyz government to register any non-profit organizations that receive funds from foreign donors as "foreign representatives."<sup>57</sup> Many in Central Asia have critiqued this law as a replica of Russia's law on "foreign agents," which has severely hindered the operation of non-profit organizations.<sup>58</sup> Mr. Temirov's case is an opportunity to emphasize that associational rights safeguard the freedom of expression and press in the context of Kyrgyzstan where other organizational actors, including media outlets like Kloop and RFE/RL, are facing grave existential threats.

### **III. Kyrgyzstan Violated International Human Rights Law by Wrongfully Convicting and Arbitrarily Deporting Mr. Temirov For His Anti-Corruption Advocacy and Journalistic Activities**

Kyrgyzstan has ratified eight out of the nine core human rights treaties.<sup>59</sup> Of particular relevance to the disposition of Mr. Temirov's case is the International Covenant on Civil and Political Rights (ICCPR). In signing and ratifying the ICCPR, Kyrgyzstan is bound by its terms and must comply with the treaty provisions "in good faith."<sup>60</sup> Kyrgyzstan has not entered any reservations to the ICCPR.<sup>61</sup> The Universal Declaration of Human Rights (UDHR), a form of non-binding, soft law that has risen to the status of customary international law, also informs the scope of the violations at issue.<sup>62</sup> This section outlines Kyrgyzstan's human rights obligations with respect to Mr. Temirov and explains in detail how his conviction and deportation order violate multiple areas of international human rights law, including

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<sup>56</sup> See Report of the Special Rapporteur on Peaceful Assembly and Association, *The exercise of the rights to freedom of peaceful assembly and of association in the workplace*, A/74/349 (September 2019).

<sup>57</sup> Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, OL KGZ 4/2023 (Oct 2, 2023), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28447>

<sup>58</sup> RFE/RL, *Kyrgyzstan Sets Date For Public Debate Of Controversial Bill On 'Foreign Representatives'* (Oct. 10, 2023), available at: <https://www.rferl.org/a/kyrgyzstan-public-debate-law-foreign-representatives/32631239.html#:~:text=The%20Kyrgyz%20parliament's%20committee%20on,call%20a%20%22replica%22%20of%20Russia's>

<sup>59</sup> See United Nations, *Ratification Status for Kyrgyzstan* (last accessed September 26, 2023), available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=93&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=93&Lang=EN)

<sup>60</sup> Vienna Convention on Treaty Law, *Article 26: Pacta Sunt Servanda* (1969) ("Every treaty in force is binding upon the parties to it and must be performed by them in good faith"), available at: <https://www.oas.org/legal/english/docs/Vienna%20Convention%20Treaties.htm>

<sup>61</sup> UN ICCPR Reservations (last accessed May, 30, 2022), available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en#EndDec)

<sup>62</sup> UN General Assembly, *Universal Declaration of Human Rights*, 217 A (III) (Dec. 10 1948).

the denial of fair trial rights, such as the presumption of innocence; violations of the right to be free from arbitrary detention; violations of the rights to nationality, and violations of the freedom of expression and the freedom of press.

**a. Kyrgyzstan Violated Mr. Temirov’s Fair Trial Rights, including the Right to the Presumption of Innocence**

Mr. Temirov did not receive a fair trial under international standards. The main source of fair trial rights under international law is codified in Article 14 of the ICCPR.<sup>63</sup> Article 14 provides for thirteen fundamental procedural protections, including the presumption of innocence codified in Article 14(2), which encompasses the burden of proof and sufficiency of the evidence.<sup>64</sup> In this case, the government violated Mr. Temirov’s right to the presumption of innocence and failed to meet its burden of proof by relying on insufficient evidence to sustain the document forgery charges.<sup>65</sup> Mr. Temirov’s right to be presumed innocent was also violated due to prejudicial statements made by public officials in advance of his trial.<sup>66</sup> Mr. Temirov’s conviction and deportation violate procedural fairness insofar as the court failed to apply the statute of limitations on the use of forged documents, and to grant Mr. Temirov a hearing prior to the deportation taking place. Finally, the totality of the circumstances indicates that the charges against Mr. Temirov were politically motivated, in violation of Article 14 of the ICCPR.

*i. Presumption of Innocence and Sufficiency of the Evidence*

Kyrgyzstan violated Mr. Temirov’s right to the presumption of innocence and the burden of proof beyond a reasonable doubt was not satisfied. The presumption of innocence is the cornerstone of a fair trial, stemming from the need to protect accused persons from the unchecked power of the State. At its core, the presumption of innocence requires that prosecutors meet a high standard of proof, usually beyond a reasonable doubt, which was the standard contemplated by the framers of the ICCPR. Under Article 14(5) of the ICCPR, an appellate court has a “duty to review substantively, both on the basis of sufficiency of evidence and of law, the conviction and sentence such that the procedure allows for due consideration.”<sup>67</sup>

The United Nations Human Rights Committee (HRC) has found the sufficiency of the evidence standard to be violated where police seize journalistic materials outside the scope of the charges at issue, procedural violations bely the search, and exculpatory evidence points to the fact that the charges are politically motivated.<sup>68</sup> First, the original grounds for the search on Temirov LIVE were tainted, invalidating the initial arrest and drug charges. The offices of New Media were raided on a dubious tip without judicial approval and the charges themselves appear to be fabricated and pretextual. According to the police complaint and video footage, the tip alleging drug possession was provided by Aiperi Adyl kyzy, a woman who alleged that an “unknown person by the name of ‘Bolot’” pressured her to use hashish. Her veracity and reliability are paper-thin. She was interviewed as a victim of a crime but gave her testimony in support of the tip as part of a larger entrapment scheme against Kyrgyz folk singer Bolot

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<sup>63</sup> ICCPR, Art. 14.

<sup>64</sup> ICCPR, Arts. 14(2) and 14(3) (“everyone shall be entitled to ... minimum guarantees [of a fair trial], in full equality”).

<sup>65</sup> *Vella v. Malta*, Eur. Ct. H.R. App. No. 69122/10, para. 38 (Feb. 11, 2014).

<sup>66</sup> 24.kg, *Садыр Жапаров прокомментировал уголовные дела против Болота Темирова* (April 25, 2022), available at: [https://24.kg/vlast/232004\\_sadyir\\_japarov\\_prokommentiroval\\_ugolovnyie\\_dela\\_protiv\\_bolota\\_temirova/](https://24.kg/vlast/232004_sadyir_japarov_prokommentiroval_ugolovnyie_dela_protiv_bolota_temirova/); *Что сказал Камчыбек Ташиев по поводу задержание Болота Темирова*, YouTube, available at: <https://www.youtube.com/watch?v=jnfkdX2qGd8>

<sup>67</sup> Human Rights Committee, *Dávila v. Colombia*, CCPR/C/122/D/2490/2014 para. 3.4 (2018).

<sup>68</sup> *Abdurakhmanov*, *supra* note 12 at para. 7.4.

Nazarov, who was arrested alongside Mr. Temirov, remaining steadfast that Nazarov was the man who pressured her to use drugs.<sup>69</sup>

Further, although Mr. Temirov was initially charged with possession of marijuana, police seized journalistic materials, including multiple laptops and computers, flash drives, a mobile phone, and a video recorder that was connected to the video-surveillance system in the office. The appellate court noted that the police failed to videotape the search, as was required by law. The GKNB then confiscated Temirov LIVE's own surveillance footage of the search.

Given the weak evidence presented in support of the forgery and use of forged documents charges, the standard of proof beyond a reasonable doubt was not met in Mr. Temirov's case. The evidence presented at Mr. Temirov's trial casts his guilt into serious doubt, as there were reasons to question the authenticity and reliability of the physical evidence used in the prosecution's case-in-chief. The courts' failure to address Mr. Temirov's objections regarding the authenticity and probative value of the evidence violates principles of procedural fairness and the right to a fair trial under Article 14 of the ICCPR.

*ii. Statute of Limitations*

The trial court found that more than fourteen years had passed since the commission of the alleged document fraud and held that the three-year statute of limitations barred the imposition of criminal punishment.<sup>70</sup> In a brief and insufficiently reasoned decision, the appellate court reversed the lower court's decision without a legal basis.<sup>71</sup> The only exception under Kyrgyz law for suspension of a statute of limitations is if the defendant actively impedes a police investigation.<sup>72</sup> As the appellate court noted, there is no evidence that Mr. Temirov did so. Therefore, there was no basis in law to override such an important provision as the statute of limitations. Despite this, the appellate court found Mr. Temirov guilty and ordered his deportation as an additional form of punishment in violation of Kyrgyzstan's obligations under the ICCPR.

*iii. Public Comments by Officials*

The presumption of innocence may also be violated when public officials comment on the guilt of the defendant before a verdict has been rendered. It is "a duty for all public authorities to refrain from prejudging the outcome of a trial."<sup>73</sup> For example, the HRC has found that public statements by high-ranking officials such as the head of police or head of state that comment prematurely on the guilt of a defendant before trial may violate the presumption of innocence.<sup>74</sup>

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<sup>69</sup> RFE/RL, *Inside Kyrgyzstan's Campaign to Silence Journalist Bolot Temirov* (Jan. 2022), available at: <https://www.rferl.org/a/kyrgyzstan-temirov-journalist-special-investigation/31677591.html>; see also, OCCRP and Kloop, *Signs of Political Motivation Permeate Case Against Kyrgyz Investigative Journalist* (July 8, 2022), available at: <https://www.occrp.org/en/investigations/signs-of-political-motivation-permeate-case-against-kyrgyz-investigative-journalist>

<sup>70</sup> *Supra* note 3 at 16.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Human Rights Committee, *General Comment No. 13 on Article 14*, U.N. Doc. HRI/GEN/1/Rev.1, para. 7 (1994).

<sup>74</sup> See Human Rights Committee, *Gridin v. Russia*, CCPR/C/69/D/770/1997, paras. 3.5 and 8.3 (2000) (finding a violation of the presumption of innocence where the head of police announced that he was sure the defendant was the murderer); see also Human Rights Committee, *Khadzhiyev v. Turkmenistan*, CCPR/C/122/D/2252/2013, para. 5.4 (2018) (finding that the presumption of innocence was violated when President Niyazov of Turkmenistan commented on a criminal trial of two journalists and human rights defenders, calling them "traitors" during a televised meeting the day after they were arrested).

Both President Sadyr Japarov GKNB Chairman Tashiev made inappropriate and prejudicial comments that painted Mr. Temirov as guilty prior to the trial. Mr. Temirov had reported extensively on President Japarov's actions and relatives prior to 2022.<sup>75</sup> President Japarov and Chairman Tashiev are known to be close friends and political allies.<sup>76</sup> In April 2022, before the trial had begun, President Japarov spoke in no uncertain terms to Mr. Temirov's guilt, explaining that "he showed up here, acquired a passport of a citizen of Kyrgyzstan using a falsified military ID. He stole the military ID, pasted his photo into it, and changed the surname. He is himself a citizen of Russia. Now, we found that owner of the military ID. The Ministry of Defense also confirmed that Mr. Temirov never served in the Kyrgyz army."<sup>77</sup> Chairman Tashiev, the subject of Mr. Temirov's investigation, also made two separate public comments to the media about Mr. Temirov's case in April 2022. First, he commented on the arrest and stated that "Bolot Nazarov routinely visited Temirov LIVE office and from there Bolot got the drugs."<sup>78</sup> Next, Chairman Tashiev stated Mr. Temirov "stole the military ID from an ordinary person, pasted his picture onto it, and used this military ID to get a Kyrgyz passport. He should answer for this under the law."<sup>79</sup> Public officials, especially those like Chairman Tashiev who have a clear conflict of interest and personal stake in the outcome of the trial, must refrain from commenting on the guilt of a defendant, otherwise there can be no fair trial.

#### *iv. Politically Motivated Charges*

Circumstantial evidence may be used to prove that charges were politically motivated where the reasoning of the authorities lacks facial credibility.<sup>80</sup> The bundle of fair trial rights in Article 14 of the ICCPR includes the right to be free from politically motivated prosecution.<sup>81</sup> The European Court of Human Rights (ECtHR) looks to the presence or absence of an ulterior purpose, which denotes the abuse of state power.<sup>82</sup> Several factors can support the presence of an ulterior purpose, including specific and personal targeting, public comments by authorities, timing and manner of the arrest, and contextualizing the charges within the ongoing crackdown on free press in Kyrgyzstan.<sup>83</sup> Many consider the raid on Temirov LIVE to be the government's first of many attempts to suppress media freedom over the last few years. After the raid, the government continued to target independent outlets and journalists, launching a criminal investigation into Kaktus.Media in February 2022, investigating and raiding Next TV offices in March 2022 and arresting its Director Taalaibek Duishenbiev, *see infra* Section II(b), implementing the law on "false information" in April 2022, seeking to shutter Kloop. Pro-government media outlet

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<sup>75</sup> See e.g., Temirov Live, [https://www.youtube.com/channel/UCpZtteaL03\\_LrVORzSfxwZg](https://www.youtube.com/channel/UCpZtteaL03_LrVORzSfxwZg)

<sup>76</sup> Клооп, Эки дос: Жапаров и Ташиев сделали фотосессию на джайлоо (Eki Dos: Japarov and Tashiev Have a Photoshoot in the Kyrgyz Dzailu), July 24, 2022, <https://kloop.kg/blog/2022/07/24/eki-dos-zhaparov-i-tashiev-sdelali-fotosessiyu-na-dzhajloo/>

<sup>77</sup> 24.kg, Садыр Жапаров прокомментировал уголовные дела против Болота Темирова (April 25, 2022), available at: [https://24.kg/vlast/232004\\_sadyir\\_japarov\\_prokomentiroval\\_ugolovnyie\\_dela\\_protiv\\_bolota\\_temirova/](https://24.kg/vlast/232004_sadyir_japarov_prokomentiroval_ugolovnyie_dela_protiv_bolota_temirova/)

<sup>78</sup> Что сказал Камчыбек Ташиев по поводу задержание Болота Темирова, YouTube, available at: <https://www.youtube.com/watch?v=jnfkdX2qGd8>

<sup>79</sup> Клооп, Ташиев: Болот Темиров украл военный билет (Apr. 25, 2022), available at: <https://kloop.kg/blog/2022/04/25/tashiev-bolot-temirov-ukral-voennyj-bilet/>

<sup>80</sup> *Lutsenko v. Ukraine*, Eur. Ct. H.R. App. No. 6492/11, para. 107 (2012); *Tymoshenko v. Ukraine*, Eur. Ct. H.R. App. No. 49872/11, para. 295 (2013).

<sup>81</sup> Article 9 of the ICCPR, an accompaniment to Article 14, provides that "no one shall be subjected to arbitrary arrest or detention."

<sup>82</sup> See *Merabishvili v. Georgia*, Eur. Ct. H.R., App. No. 72508/13, paras. 312–17 (2017); *Navalnyy v. Russia*, Eur. Ct. H.R., App. No. 29580/12, paras. 168–170 (2018).

<sup>83</sup> *Selahattin Demirtaş v. Turkey*, Eur. Ct. H.R. Application No. 14305/17, paras. 426–431 (2020); *Ilgar Mammadov v. Azerbaijan*, Eur. Ct. H.R. Application No. 15172/13, para. 142 (2014).

Vecherniy Bishkek CJSC also sued journalists at Kaktus.Media<sup>84</sup> and state media company EITR similarly targeted PolitKlinika.<sup>85</sup>

The totality of the circumstances shows that the actual purpose of Mr. Temirov’s prosecution and deportation was to punish and suppress his political and press activities. The charges themselves reflect the selective targeting of an individual. The tacking of multiple charges to the drug possession charge relating to fraudulently obtaining domestic and foreign passports, as well as the related illegal border crossing charge, followed by the unilateral annulment of Mr. Temirov’s passport by an Interior Ministry investigator, point toward politically motivated prosecution. The timing of the arrest is also illuminating, as it was carried out just two days after the publication of a major anti-corruption investigation into Chairman Tashiev and after Mr. Temirov sought comments from Chairman Tashiev’s nephew. Notably, there was a significant length of time between the trial and the alleged criminal events, the bulk of which were said to have transpired between 2001 and 2008. The decision to prosecute despite the lapse of the statute of limitations on the document forgery charges is also probative of ulterior motive by the state.

There is also evidence that officers of the GKNB, the national security agency headed by Chairman Tashiev, were involved before and during the investigation stage. According to the 2022 Report by the U.S. Department of State, this included

... months-long government efforts to monitor Temirov and his employees, including by installing hidden cameras in offices and covert surveillance of employees... one of Temirov’s female employees was subject to sexual blackmail when an individual with whom she was romantically involved was revealed to be a GKNB agent; the agent pressured her for information on Bolot Temirov and threatened to release covertly recorded sexually explicit material from their relationship if she did not comply. The video was later released by an alleged GKNB proxy social media account, but quickly taken down after a public outcry over the violation of privacy.<sup>86</sup>

Moreover, an investigation by Kloop and the Organized Crime and Corruption Reporting Project (OCCRP) revealed the GKNB had been monitoring Mr. Temirov’s movements in and out of the country. For example, documents reveal that border control officers notified the GKNB when Mr. Temirov flew to Istanbul on May 27, 2021.<sup>87</sup> The GKNB had also requested information from the Ministry of Interior on the status of Mr. Temirov’s domestic passport just two months before Adyl kyzy provided the tip to the police. As the investigation aptly notes, “with no active investigation against Temirov at that time, there was no legal rationale for Kyrgyz law enforcement — let alone the GKNB, an agency officially focused on protecting national security — to investigate the journalist’s passport.”<sup>88</sup> The politically motivated and

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<sup>84</sup> 24kg, Vecherniy Bishkek Lawsuit Against Kaktus Supreme Court Makes Decision, (Nov. 10, 2023),

[https://24.kg/english/279364\\_Vecherniy\\_Bishkek\\_lawsuit\\_against\\_Kaktus\\_Supreme\\_Court\\_makes\\_decision/](https://24.kg/english/279364_Vecherniy_Bishkek_lawsuit_against_Kaktus_Supreme_Court_makes_decision/)

<sup>85</sup> 24kg, Иск «ЭлТР» к «ПолитКлинике». Суд частично удовлетворил заявление гостелеканала, (Sep. 26, 2023),

[https://24.kg/obschestvo/275925\\_isk\\_eltr\\_kpolitklinike\\_sud\\_chastichno\\_udovletvoril\\_zayavlenie\\_gostelekanala/](https://24.kg/obschestvo/275925_isk_eltr_kpolitklinike_sud_chastichno_udovletvoril_zayavlenie_gostelekanala/);

<sup>86</sup> U.S. Department of State, *2022 Country Reports on Human Rights Practices: Kyrgyz Republic*, available at:

<https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/kyrgyz-republic/#:~:text=According%20to%20the%20investigation%2C%20one,covertly%20recorded%20sexually%20explicit%20material>

<sup>87</sup> OCCRP and Kloop, *Signs of Political Motivation Permeate Case Against Kyrgyz Investigative Journalist* (July 8, 2022) , available at; <https://www.occrp.org/en/investigations/signs-of-political-motivation-permeate-case-against-kyrgyz-investigative-journalist>

<sup>88</sup> *Id.*

wrongful prosecution of Mr. Temirov categorically violate his right to a fair trial and will have lasting consequences for democracy and rule of law in Kyrgyzstan.

### **i. Kyrgyzstan Violated Mr. Temirov’s Right to Freedom of Expression and Press**

Mr. Temirov’s reporting —the product of exhaustive investigative work, critical of some within the government, and undoubtedly of public interest—spurred his arrest, prosecution, and removal. Indeed, in convicting and deporting Mr. Temirov for using forged documents, the appellate court validated the retaliation against him, violated his right to engage in newsgathering activities and impart information to the public, and contributed to an environment where future journalists have reason to be afraid of engaging in critical reporting.

The use of criminal prosecution to disrupt a journalistic investigation may constitute “a kind of censorship” that is “likely to deter journalists from contributing to public discussion of issues affecting the life of the community and might thus hamper the press in its role as information provider...”<sup>89</sup> Such actions engender a broad chilling effect on independent journalism and violate the right to freedom of expression.<sup>90</sup> Because the press functions as a “public watchdog” –integral to protecting democracy and the rule of law– international law affords media actors explicit human rights protections.<sup>91</sup> In fact, the HRC has noted that

[t]he societal relevance of independent, free and pluralistic news media – as a pillar of democracy, a tool to support accountability and transparency, and a means to sustain open deliberation and encourage the exchange of diverse views – underscores the importance of journalism as a public good. Journalists are not above the law, but by virtue of their function and the public interest in disclosure, they are entitled to specific legal protection.<sup>92</sup>

The freedom of expression is a unique human right, as it is both “a fundamental right as well as an enabler of other human rights and a guardian of democratic values.”<sup>93</sup> Article 19 of the ICCPR provides an expansive international legal framework for media activities and journalism.<sup>94</sup> The UDHR also enshrines the freedom of expression in Article 19.<sup>95</sup> Just as journalists have a right to impart information, the public has a complementary right to seek and access press information, and the right to information is

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<sup>89</sup> *Dammann v. Switzerland*, Eur. Ct. H.R. App. No. 77551/01, para. 57 (2006).

<sup>90</sup> *Id.*

<sup>91</sup> *Bedat v. Switzerland*, Eur.Ct.H.R. App. No. 56925/08, para. 79 (2016).

<sup>92</sup> *Id.* at para. 13.

<sup>93</sup> See *United Nations and Organization for Security and Cooperation in Europe*, Joint Declaration on Media Freedom and Democracy, 2 (2023), available at: <https://www.ohchr.org/sites/default/files/documents/issues/expression/activities/2023-JD-Media-Freedom-and-Democracy.pdf>

<sup>94</sup> See ICCPR, Art. 19(2) (“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”); see Human Rights Committee, *General Comment No. 34 on Article 19: Freedoms of opinion and expression*, U.N. Doc. CCPR/C/GC/34, para. 15 (September 12, 2011) (explaining that “[t]here is now a global network for exchanging ideas and opinions that does not necessarily rely on the traditional mass media intermediaries...” and that “States parties should take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto.”).

<sup>95</sup> UDHR, *supra* note 62.



a fundamental human right.<sup>96</sup> “Freedom of speech is not merely freedom to speak; it is also freedom to read.”<sup>97</sup>

Restrictions to press freedom are lawful only in the extremely limited circumstances outlined in Article 19(3) of the ICCPR. According to that three-part test, a government must demonstrate all three elements of this test: (i) a clear prescription in law for the restriction (legality); (ii) a link to upholding the rights of others under the ICCPR (legitimacy); (iii) a restriction that is both necessary and proportional.<sup>98</sup> The third prong of this Article 19(c) analysis, the HRC has held that “the principle of necessity and proportionality deems that journalists should not be prosecuted for disseminating information that is of legitimate public interest.”<sup>99</sup> Moreover, the HRC has emphasized that “arrests and prosecutions of journalists leading to heavy fines and harsh prison sentences serve not only to intimidate and punish the individuals charged but also to create a climate of fear, chilling critical reporting by other journalists.”<sup>100</sup>

The politically motivated prosecution and harassment of journalists, “irrespective of th[e] legal qualification” of the authorities’ actions, amounts to a restriction on the right to impart information and ideas to the public under Article 19(2) of the ICCPR.<sup>101</sup> In attempting to silence Mr. Temirov’s journalism by physically expelling him from the country, the government of Kyrgyzstan has employed a textbook anti-democracy tactic that is condemned by human rights mechanisms around the world. Across a myriad of locations, jurisdictions, and governing charters, courts repeatedly have ruled that deporting journalists or speakers, in retaliation for reporting on or criticism of government, is a brazen violation of guaranteed free expression rights.<sup>102</sup> The pretextual nature of Mr. Temirov’s deportation placed a thin veil over the government’s true designs: retaliation for his prior publications and prevention of his future work. This anti-expression strategy constitutes a violation of longstanding international human rights standards and should be addressed by the Special Rapporteurs.

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<sup>96</sup> UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Reinforcing media freedom and the safety of journalists in the digital age*, A/HRC/50/29, para. 11 (Apr. 22, 2022); *see also* UN General Assembly Resolution 59(I) (1946).

<sup>97</sup> *King v. Federal Bureau of Prisons*, 415 F. 3d 634, 638 (7th Cir. 2005).

<sup>98</sup> Human Rights Committee, *Tae-Hoon Park v. Republic of Korea*, Communication No. CCPR/C/64/D/628/1995, at para. 10.3 (Nov. 3, 1998) (holding that the general national security threat of North Korean communists in South Korea was neither necessary nor proportionate to prosecution of the petitioner under the National Security Law for praising an anti-State organization).

<sup>99</sup> UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Reinforcing media freedom and the safety of journalists in the digital age*, A/HRC/50/29, para. 20 (Apr. 22, 2022).

<sup>100</sup> *Id.* at para. 53.

<sup>101</sup> *Abdurakhmanov*, *supra* note 12 at para. 7.6.

<sup>102</sup> *See e.g., Zimbabwe Lawyers for Human Rights v. Zimbabwe*, Afr. Cm. H. P. R., Case No. 294/04 (2009), available at: <https://ihrda.uwazi.io/en/document/bp0zq3asfq8ahxhthkvqp8pvi?page=1> (denouncing violation of free expression rights under African Charter on Human and People’s Rights, where foreign journalist was wrongly accused of publishing a “false” article allegedly dangerous to the security of Zimbabwe, forced into a car, and deported from the country “in order to silence him”); *Cox v. Turkey*, Eur. Ct. H.R. App. No. 2933/03, paras. 348-353 (2012) (finding deprivation of non-citizen speaker’s European Convention art. 10 free expression rights where she was twice deported for criticizing Turkey and was “precluded from re-entering [Turkey] on grounds of her past opinions and, as a result, is no longer able to impart information and ideas within that country”); *Attorney General v. Clarke*, Supreme Court of Zambia, Appeal No. 96A/2004 (2008), available at: [https://www.cehurd.org/wp-content/uploads/2012/04/right%20to%20health%20data%20base/CASES/ZAMBIA/Attorney-General%20v%20Clarke%20\(2008\)%20AHLR%20259%20\(ZaSC%202008\).pdf](https://www.cehurd.org/wp-content/uploads/2012/04/right%20to%20health%20data%20base/CASES/ZAMBIA/Attorney-General%20v%20Clarke%20(2008)%20AHLR%20259%20(ZaSC%202008).pdf) (ruling that deportation of alien author contravened free expression rights under Zambian Constitution, and suggesting that citizen would have even greater rights against deportation); *Piermont v. France*, Eur. Ct. H.R. App. Nos. 15773/89 and 15774/89, paras. 317-321 (1995) (concluding that expulsion of German member of European Parliament from French Polynesia, where deportation was based on her criticism of French government, constituted deprivation of European Convention art. 10 free expression rights).

## **ii. Kyrgyzstan Violated Mr. Temirov’s Right to be Free from Arbitrary Detention**

The violations of Mr. Temirov’s fair trial rights and right to freedom of expression were of such gravity as to render his detention arbitrary. While Mr. Temirov was not detained throughout his trial or given a custodial sentence, he was arbitrarily detained both when he was falsely arrested at the Temirov LIVE offices on fabricated charges, and again when he was held incommunicado in the hours leading up to his summary deportation.

Article 9(1) of the ICCPR states that “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”<sup>103</sup> In accordance with the long-standing jurisprudence of the HRC, “arbitrariness’ is not to be equated with ‘against the law,’ but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability and due process of law.”<sup>104</sup> The United Nations Working Group on Arbitrary Detention has recognized that detention is arbitrary where it is deployed “as punishment for the legitimate exercise of the rights as guaranteed by the Covenant, including freedom of opinion and expression.”<sup>105</sup> As outlined in further detail above, the extensive procedural violations during the search and seizure of Temirov LIVE’s offices, the violation of the presumption of innocence and the insufficiency of the evidence, as well as the politically motivated nature of the charges, are illuminating in this regard. More narrowly, a key component of the right to liberty and security of person is the right to be informed of the precise nature of criminal charges during the arrest stage. Article 9(2) of the ICCPR states that “[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”<sup>106</sup> The officers who arrested Temirov did not read him his rights or specify the article under which he was arrested, protections that are required under domestic law and the ICCPR to protect against arbitrary detention. Access to counsel is critical to protect against prolonged false arrest and arbitrary detention. The ECtHR has held that in order to uphold fair trial rights, “access to a lawyer should be provided as from the first interrogation of a suspect by the police...”<sup>107</sup> The fact that Mr. Temirov was not provided with any opportunity to confer with a lawyer during his January 2022 arrest or November 2022 detention prior to being deported contributed to his arbitrary detention.<sup>108</sup> All three of the Special Rapporteurs have an interest in addressing the intersection between their mandates and the arbitrary detention of a journalist and human rights defender.

## **iii. Kyrgyzstan Violated Mr. Temirov’s Right to Nationality**

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<sup>103</sup> ICCPR, Art. 9(1).

<sup>104</sup> Human Rights Committee, *Zelaya Blanco v. Nicaragua*, CCPR/C/51/D/328/1988, para. 10.3 (1994).

<sup>105</sup> *Abdurakhmanov*, *supra* note 12 at para. 7.2.

<sup>106</sup> ICCPR, Art. 9(2).

<sup>107</sup> *Sakhnovskiy v. Russia*, Eur. Ct. H.R., No. 21272/03, paras. 63, 103 (Nov. 2, 2010).

<sup>108</sup> *See also* Committee Against Torture, *Ali Aarrass v. Morocco*, No. 477/2011, para 10.3 (May 19, 2014) (noting that prompt access to a lawyer is critical to prevent torture while detained).

This case has far-reaching implications for human rights defenders and journalists working both in post-Soviet countries with similar nationality laws and countries that do not confer *jus soli* citizenship, allowing for governments to weaponize immigration and naturalization laws to expel virtually anyone voicing dissent under vague criminal laws. Kyrgyzstan’s expulsion of Mr. Temirov has constructively deprived him of his Kyrgyz citizenship and violated universal standards of due process.

Citizenship and nationality are a core “element of a person’s social identity.”<sup>109</sup> Because the right to nationality underpins the enjoyment of all other human rights, international tribunals and UN Special Procedures have held that the right to hold a nationality is a non-derogable right that has entered the realm of customary international law.<sup>110</sup> Consequently, no State may expel their own citizens. Article 15 of the UDHR states that “[e]veryone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”<sup>111</sup> Article 13 of the UDHR further provides that “everyone has the right to leave any country, including his own, and to return to his country.”<sup>112</sup> Article 12(2) of the ICCPR contains a similar provision, while article 12(4) guarantees that “no one shall be arbitrarily deprived of the right to enter his own country.”<sup>113</sup>

To be sure, states have the right under international law to regulate nationality laws and, in very limited instances, revoke citizenship or nationality.<sup>114</sup> In a 2009 report, the UN Secretary General on Arbitrary Deprivation of Nationality reiterated the standard for lawful revocation of nationality:

While international law allows for the deprivation of nationality in certain circumstances, it must be in conformity with domestic law and comply with specific procedural and substantive standards, in particular the principle of proportionality. Measures leading to the deprivation of nationality must serve a legitimate purpose that is consistent with international law and, in particular, the objectives of international human rights law. Such measures must be the least intrusive instrument of those that might achieve the desired result, and they must be proportional to the interest to be protected... the notion of arbitrariness could be interpreted to include not only acts that are against the law but, more broadly, elements of inappropriateness, injustice and lack of predictability also.<sup>115</sup>

However, the procedures used to revoke Mr. Temirov’s Kyrgyz nationality did not comply with international or domestic law and rendered his loss of citizenship arbitrary and unlawful.

First, Mr. Temirov has always been and remains a Kyrgyz citizen by virtue of the principles of *jus solis* due to his birth in the country and *jus sanguinis* as his parents were Kyrgyz nationals.<sup>116</sup> According

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<sup>109</sup> *Mennesson v France*, Eur. Ct. H.R. App. No. 65192/11, para. 97 (2014).

<sup>110</sup> *Case of the Girls Yean and Bosico v Dominican Republic*, InterAm. Ct. H.R. (Ser. C) No. 130, para. 136 (2005); Independent Expert on Minority Issues, *Report on the Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, UN Doc. A/HRC/7/ 23 para. 35 (2008).

<sup>111</sup> UDHR, *supra* note 62 at Art. 13.

<sup>112</sup> *Id.*

<sup>113</sup> ICCPR, *supra* note 63 at Art. 12.

<sup>114</sup> Barbara von Rütte, “Defining the Right to Nationality” in *The Human Right to Citizenship*, 225 (2022); *Liechtenstein v. Guatemala (Nottenbohm Case)*, ICJ 1 [1955].

<sup>115</sup> Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality*, A/HRC/13/34 para. 25 (Dec. 14, 2009); *see also K2 v United Kingdom*, Eur. Ct. H.R. App. No. 42387/13, para. 50 (2017).

<sup>116</sup> *See* Law On Citizenship of the Kyrgyz Republic, Article 12(1): “A child whose parents or sole parent are citizens of the Kyrgyz Republic at the time of his birth is a citizen of the Kyrgyz Republic regardless of the place of birth;” and Article 12(4): “A child born on the territory of the Kyrgyz Republic, whose parents or sole parent are stateless persons, is a citizen of

to Article 4 of the 2007 Citizenship Law, “no citizen of the Kyrgyz Republic can be deprived of his citizenship. Under Article 10, a citizen may not be expelled from the Kyrgyz Republic.” However, the loss of citizenship is provided for in Article 26. This includes the acquisition of citizenship as a result of knowingly submitting false information or forged documents, one of the provisions relied on by the government to constructively de-nationalize Mr. Temirov.<sup>117</sup> As described extensively above, Mr. Temirov’s conviction for fraud and use of forged documents rests upon insufficient evidence and violates the presumption of innocence.

Second, the argument that Mr. Temirov forfeited his Kyrgyz citizenship by becoming a Russian citizen is false. In May 2022, a Ministry of Interior investigator unilaterally listed Mr. Temirov’s Kyrgyz passport as invalid in the national passport registry without a judicial decision, resulting in a *de facto* loss of citizenship. The stated reason was that Mr. Temirov is a citizen of the Russian Federation and did not notify the Kyrgyz authorities of his dual citizenship, thereby committing fraud. However, pursuant to the Citizenship Act of Kyrgyzstan, the lawful acquisition of dual citizenship is permitted for any country except Kazakhstan, Uzbekistan, Tajikistan and the People’s Republic of China, and does not automatically result in the revocation of Kyrgyz citizenship. Kyrgyz citizenship law states that dual citizens are first and foremost only recognized by the Kyrgyz government as citizens of Kyrgyzstan.<sup>118</sup> Accordingly, the acquisition of Russian dual citizenship does not entail an automatic revocation of Kyrgyz citizenship unless it is accompanied by notarized renunciation of Kyrgyz citizenship.<sup>119</sup>

Finally, while Kyrgyz criminal procedure allows for expulsion in limited circumstances, Kyrgyz citizens cannot be deported as criminal punishment. A criminal court may only order expulsion or deportation for foreign citizens or stateless persons as “supplemental” punishment on top of an underlying sentence for serious crimes.<sup>120</sup> While Mr. Temirov’s expulsion was unlawful because he is a lawful citizen of Kyrgyzstan, even if the government had followed its own procedures for revocation of nationality, the expulsion would still violate domestic law. Mr. Temirov did not receive a base sentence as the statute of limitations had run on the charges. The expulsion was the first and only form of punishment and thus violated domestic sentencing laws.

Mr. Temirov’s deportation was also arbitrary and unlawful under international fair trial standards because it bypassed due process norms that require notice and an opportunity to be heard.<sup>121</sup> Mr. Temirov was summarily deported and did not receive notice in the form of a written sentencing memorandum ordering expulsion. Further, there was no sentencing hearing allowing for Mr. Temirov to challenge the expulsion itself or provide mitigating evidence.<sup>122</sup> The brazen criminalization and expulsion of a journalist and human rights defender for speaking truth to power violates core principles of international human rights law and should be condemned by the Special Rapporteurs. This will send a powerful message to

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the Kyrgyz Republic,” available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/202103> (amended in February 2023, see <http://cbd.minjust.gov.kg/act/view/ru-ru/112529?cl=ru-ru>)

<sup>117</sup> *Id.*

<sup>118</sup> Bishkek City Court, *supra* note 10 at 23.

<sup>119</sup> *Id.*

<sup>120</sup> See KaktusMedia, *Феликс Кулов объяснил, почему решение о выдворении Болота Темирова незаконно* (Nov. 2022), available at:

[https://kaktus.media/doc/471223\\_feliks\\_kylov\\_obiasnil\\_pochemy\\_reshenie\\_o\\_vydvorenii\\_bolota\\_temirova\\_nezakonno.html](https://kaktus.media/doc/471223_feliks_kylov_obiasnil_pochemy_reshenie_o_vydvorenii_bolota_temirova_nezakonno.html)

<sup>121</sup> ICCPR, arts. 9(2) & 14(1).

<sup>122</sup> See Adilet, *Правовая позиция ОФ «Правовая клиника «Адilet» по факту выдворения Б.Темирова за пределы КР* (Nov. 11, 2022), available at: <https://adilet.kg/ky/tpost/aozbr0hms1-pravovaya-pozitsiya-of-pravovaya-klinika>

the government of Kyrgyzstan and all governments that the persecution of those who speak out and strive to hold their officials accountable will not be tolerated.

#### **IV. Conclusion**

For the foregoing reasons and on behalf of Mr. Temirov, Precedent Group and the Center for International Human Rights at Northwestern University Pritzker School of Law respectfully ask that Special Rapporteurs Lawlor, Khan, and Voule:

**Condemn** in the strongest terms the unlawful actions of the Kyrgyz government with respect to Mr. Temirov's prosecution, conviction, and deportation;

**Declare** that the wrongful criminalization of human rights defender-journalists like Mr. Temirov violates State Parties obligations under international human rights law; and **declare** that the Kyrgyz government has violated its international human rights obligations, including Article 9 of the ICCPR (right to be free from arbitrary detention); Article 12 of the ICCPR (right to nationality and right to enter one's own country); and Article 14 of the ICCPR (right to a fair trial); Article 19 of the ICCPR (right to freedom of expression).

**Urge** the government of Kyrgyzstan to allow Mr. Temirov to return to Kyrgyzstan and vacate his criminal conviction.

**Call** on Kyrgyzstan to comply with its obligations under international human rights law to provide other adequate remedies for the violations that have occurred and to create an environment to prevent such human rights violations in the future.

**Request** the government of Kyrgyzstan for additional information about the investigation, surveillance, harassment, detention, trial, and deportation of Mr. Temirov.

**Urge** the government of Kyrgyzstan to immediately desist the wrongful portrayal of human rights defenders and journalists as criminals and/or extremists.

**Ask** that the Kyrgyz State desist from future persecution of human rights defenders, specifically anti-corruption advocates and journalists.

**Conduct** a country visit to Kyrgyzstan and request any information relating to Mr. Temirov's prosecution and deportation.

Respectfully,

**Juliet Sorensen**, Clinical Professor of Law, Northwestern University Pritzker School of Law

**Megan Osadzinski**, Schuette Clinical Fellow in Health and Human Rights, Northwestern University Pritzker School of Law

**Jason C. DeSanto**, Senior Lecturer in Law, Northwestern University Pritzker School of Law

**Edil Eraliev**, Executive Director, Precedent Group Law Firm

**Gypsy Guillén Kaiser**, Advocacy and Communications Director, Committee to Protect Journalists (CPJ)