

**PETITION TO:**

**UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION**

Chairman/Rapporteur: Mr. José Guevara (Mexico)  
Vice-Chair on Follow Up: Ms. Leigh Toomey (Australia)  
Vice-Chair on Communications: Ms. Elina Steinerte (Latvia)  
Mr. Sètondji Adjovi (Benin)  
Mr. Seong-Phil Hong (Republic of Korea)

**HUMAN RIGHTS COUNCIL  
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

**Serikzhan Bilash**  
Citizen of the Republic of Kazakhstan

v.

Government of the Republic of Kazakhstan

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Petition for Relief Pursuant to Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 6/4, 15/18,  
24/7<sup>1</sup>

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<sup>1</sup> Resolutions 1991/41, 1994/32, 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, March 15, 2006, at ¶ 6, later extended the mandate through Resolutions 6/4, 15/18, and 24/7.

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**ALLEGING ARBITRARY ARREST OR DETENTION**

**I. IDENTITY**

1. *Family Name:* Bilash (Бияш)
2. *First Name:* Serikzhan (Серикжана)
3. *Sex:* Male
4. *Age at the Time of Detention:* 44 years old (born December 21, 1974)
5. *Nationality:* Kazakh
6. (a) *Identity Document (if any):* Unknown  
(b) *Place of Issue:*  
(c) *On (date):*  
(d) *No.:*
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Mr. Serikzhan Bilash is the founder and director of the civil society organization Ata-Jurt Eriktileri (“Volunteers of the Fatherland”), which advocates on behalf of ethnic Kazaks detained in the Xinjiang Uyghur Autonomous Region of China.
8. *Address of usual residence:*

**II. ARREST**

1. *Date of arrest:* March 10, 2019
2. *Place of arrest (as detailed as possible):* Serikzhan Bilash was arrested at Rahat Palace Hotel, in Almaty, Kazakhstan.
3. *Did they show a warrant or other decision by a public authority?* No
4. *Authority who issued the warrant or decision:* N/A
5. *Relevant legislation applied (if known):* N/A

**III. DETENTION**

1. *Date of detention:* Arrested on March 10, 2019
2. *Duration of detention (if not known, probable duration):* From March 10, 2019, to the date of this communication.
3. *Forces holding the detainee under custody:* The Specialized Inter-District Investigation Court of Nur-Sultan ordered Mr. Bilash’s initial house arrest, which is monitored by the Kazakhstan National Security Committee (“National Security”).
4. *Places of Detention (indicate any transfer and present place of detention):* On March 10, 2019, Mr. Bilash was arrested in a hotel room at the Rahat Palace Hotel in Almaty, Kazakhstan. Later in the day on March 10, 2019, Mr. Bilash was transported to Nur-Sultan, Kazakhstan, where he was held at the Ministry of Internal Affairs. On March 11, 2019, Mr. Bilash was ordered to house arrest in the city of Nur-Sultan, which is over 1,300 kilometers from his hometown in Almaty. Mr. Bilash is currently detained on house arrest in Nur-Sultan, where he is renting an apartment

from an acquaintance to fulfill the terms of his detention order. The address of the apartment is: [REDACTED].

5. *Authorities that ordered the detention*: The Specialized Inter-District Investigation Court of Nur-Sultan ordered Mr. Bilash's initial house arrest.
6. *Reasons for the detention imputed by the authorities*: Mr. Bilash has been held on house arrest while he is under investigation for the crime of instituting social, national, generic, racial, class, or religious discord under Article 174 of the Kazakhstan Criminal Code.
7. *Relevant legislation applied (if known)*: Mr. Bilash is being investigated for violating Article 174 of the Kazakhstan Criminal Code. He is being held on house arrest under Article 146 of the Kazakhstan Criminal Procedure Code.

#### **IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY**

##### **A. Statement of Facts**

Part 1 of the Statement of Facts provides background information on the current human rights context in Kazakhstan in order to illustrate the Kazakh Government's pattern of violating the rights of activists. Part 2 of the Statement of Facts details the circumstances surrounding the arrest and continuing detention of Mr. Bilash.

##### **1. Relevant Social, Legal, and Political Context in Kazakhstan**

###### *a. Targeting of Activists in Kazakhstan*

Multiple international human rights monitors have found that critics and dissidents in Kazakhstan frequently face harassment, criminal penalties, and imprisonment for publically challenging government policies or practices.<sup>2</sup> Human rights defenders are among those most routinely targeted for their advocacy activities by the Kazakh Government.<sup>3</sup> Additionally, the Government has created a hostile environment for many non-governmental organizations ("NGOs"). NGOs working on politically sensitive issues are frequently targets of government harassment,<sup>4</sup> and these organizations have reported police surveillance of their offices, staff, and family members.<sup>5</sup>

In its most recent review of Kazakhstan, the UN Human Rights Committee expressed concern over the Government's practice of using Article 174 of the Kazakh Criminal Code to target individuals for merely exercising their right to freedom of expression.<sup>6</sup> Multiple international human rights monitors have found that the Government uses Article 174, which penalizes incitement of "social, national, generic, racial, class or religious discord," to prosecute those expressing views critical of the

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<sup>2</sup> Human Rights Watch, *World Report 2019: Kazakhstan*, <https://www.hrw.org/world-report/2019/country-chapters/kazakhstan>; Freedom House, *Freedom in the World 2019: Kazakhstan*, <https://freedomhouse.org/report/freedom-world/2019/kazakhstan>.

<sup>3</sup> Amnesty International, *Amnesty International Report 2017/18: Kazakhstan*, 47, available at <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>. For example, see the case of Kazakh human rights activist Yelena Semyonova. See Freedom House, *supra* note 2.

<sup>4</sup> See Freedom House, *supra* note 2; United States Department of State, *2018 Country Reports on Human Rights and Practices: Kazakhstan*, available at <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/kazakhstan/> [hereinafter "US State Department Report"].

<sup>5</sup> US State Department Report, *supra* note 4.

<sup>6</sup> United Nations Human Rights Committee, *Concluding Observations on Kazakhstan*, UN Doc. CCPR/C/KAZ/CO/2, para. 49 (Aug. 9, 2016), available at <https://undocs.org/ccpr/c/kaz/co/2>.

Government.<sup>7</sup> In connection with its observations on Article 174, the Human Rights Committee emphasized the need for Kazakhstan to “[r]efrain from using its criminal provisions and other regulations as tools to suppress the expression of dissenting opinions . . . .”<sup>8</sup>

b. *Fair Trial Rights in Kazakhstan*

Defendants in Kazakhstan frequently face a criminal justice system that fails to respect due process and fundamental freedoms. Early in criminal investigations, police have been found to use excessive force during arrests, and “torture is widely employed to obtain confessions.”<sup>9</sup> The U.S. Department of State, in its annual country report on Kazakhstan, found that authorities will attempt to dissuade detainees from seeing an attorney.<sup>10</sup> Human rights defenders have reported that investigators will seek to interrogate detainees before their requested lawyer has arrived, and in some instances, reports have surfaced that investigators have used defendants’ own attorneys to gather evidence against their clients.<sup>11</sup>

c. *Kazakhstan’s Muted Response to the Internment of Ethnic Kazakhs in Xinjiang*

In the Xinjiang Uyghur Autonomous Region of China (“Xinjiang”), which borders Kazakhstan to the East, the Chinese Government has engaged in widespread detention of more than a million Uyghurs, Kazakhs, and other ethnic minorities.<sup>12</sup> In its periodic review of China, the UN Committee on the Elimination of Racial Discrimination recognized “numerous reports” of the detained minorities being held *incommunicado* and in political “re-education camps.”<sup>13</sup> Despite increasing international attention, the Chinese Government officially denies the existence of mass internment camps.<sup>14</sup>

As a close trading and diplomatic partner of China, Kazakhstan has sought to minimize the issue of the ethnic Kazakhs held in Xinjiang.<sup>15</sup> The state-controlled media in Kazakhstan avoids covering the issue,<sup>16</sup> and officially, the Kazakh Foreign Ministry has only raised the issue once with their Chinese counterparts once, during a March 2019 meeting, which occurred over two years after initial reports of the camps emerged.<sup>17</sup> In this meeting, the Kazakh Foreign Minister, Beibut Atamkulov stated that Kazakhstan “understands and supports the measures taken by China’s Xinjiang region.”<sup>18</sup> Kazakhstan’s

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<sup>7</sup> Human Rights Watch, *supra* note 2; Freedom House, *supra* note 2.

<sup>8</sup> UN Human Rights Committee, *supra* note 6, para. 50.

<sup>9</sup> Freedom House, *supra* note 2; US State Department Report, *supra* note 4.

<sup>10</sup> US State Department Report, *supra* note 4.

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

<sup>12</sup> Agence France-Presse, *Kazakh police arrest activist who campaigned for human rights in Xinjiang*, The Guardian (Mar. 11, 2019), <https://www.theguardian.com/world/2019/mar/11/kazakh-police-arrest-activist-who-campaigned-for-human-rights-in-xinjiang>; The Associated Press, *Court Puts Kazakh Activist Under House Arrest*, Seattle Times (Mar. 11, 2019), <https://www.seattletimes.com/nation-world/nation/court-puts-kazakh-activist-under-house-arrest/>.

<sup>13</sup> United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations on China*, UN Doc. CERD/C/CHN/CO/14-17, para 14 (Aug. 30, 2018), available at <https://undocs.org/CERD/C/CHN/CO/14-17>.

<sup>14</sup> Lily Kuo, *China ‘Legalises’ Internment Camps for Million Uigurs*, The Guardian (Oct. 10, 2018),

<https://www.theguardian.com/world/2018/oct/11/china-legalises-internment-camps-for-million-ughurs>.

<sup>15</sup> See *Activist Vows to Continue Fight for Ethnic Kazakhs in Xinjiang Despite Fine*, RFE/RL (Feb. 14, 2019), <https://www.rferl.org/a/activist-vows-to-continue-fight-for-ethnic-kazakhs-in-xinjiang-despite-fine/29769529.html>; *China Thanks Kazakhstan For ‘Support’ On Muslim Crackdown In Xinjiang*, RFE/RL (Mar. 29, 2019), available at <https://www.rferl.org/a/china-thanks-kazakhstan-for-support-on-muslim-crackdown-in-xinjiang/29849405.html>.

<sup>16</sup> *Activist Vows to Continue Fight for Ethnic Kazakhs in Xinjiang Despite Fine*, RFE/RL (Feb. 14, 2019), <https://www.rferl.org/a/activist-vows-to-continue-fight-for-ethnic-kazakhs-in-xinjiang-despite-fine/29769529.html>.

<sup>17</sup> *China Thanks Kazakhstan for ‘Support’ On Muslim Crackdown in Xinjiang*, RFE/RL (Mar. 29, 2019), available at <https://www.rferl.org/a/china-thanks-kazakhstan-for-support-on-muslim-crackdown-in-xinjiang/29849405.html>.

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

refusal to engage in diplomatic action concerning the camps has become a political flashpoint in the country.

## 2. The Situation of Serikzhan Bilash

### a. Background Information

Serikzhan Bilash is a prominent Kazakh human rights activist. For several years, Mr. Bilash has advocated on behalf of ethnic Kazakhs and other minorities currently held in detention camps in Xinjiang.<sup>19</sup> To draw attention to the camps, Mr. Bilash has led a high profile awareness raising campaign, which has included social media outreach, speaking at public events, and organizing protests.<sup>20</sup>

In 2017, as part of his advocacy efforts, Mr. Bilash founded the civil society group Ata-Jurt Eriktileri (“Volunteers of the Fatherland”) in Almaty, Kazakhstan.<sup>21</sup> Ata-Jurt’s dual mission is to advocate for the release of ethnic Kazakhs held by the Chinese Government and to actively support the relatives of those detained in the camps.<sup>22</sup> Mr. Bilash currently serves as the director of Ata-Jurt, which is predominately staffed by volunteer activists and family members of those detained in Xinjiang.<sup>23</sup>

Since its founding, Ata-Jurt has provided rare insight into the wide-scale human rights violations occurring in Xinjiang. Ata-Jurt has interviewed many released detainees who have provided first-hand experience of the camps in Xinjiang.<sup>24</sup> Through these interviews, Ata-Jurt has compiled a substantial amount of information on China’s crackdown in the region.<sup>25</sup> Ata-Jurt publishes the information that it compiles by holding regular press conferences and by posting video testimonies of interviewees.<sup>26</sup> As a result of his and his colleague’s efforts since 2017, Mr. Bilash and Ata-Jurt have served as one of the largest firsthand resources for information about China’s detention program in Xinjiang.<sup>27</sup> Although Xinjiang is closed off to international journalist and organizations, Ata-Jurt has helped the rest of the world to better understand the scale of the oppression in Western China.<sup>28</sup>

Mr. Bilash’s and Ata-Jurt’s advocacy work has recently drawn the attention of Kazakh authorities. On February 13, 2019, Mr. Bilash was personally fined for running an unregistered

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<sup>19</sup> The Associated Press, *Court Puts Kazakh Activist Under House Arrest*, Seattle Times (Mar. 11, 2019), <https://www.seattletimes.com/nation-world/nation/court-puts-kazakh-activist-under-house-arrest/>.

<sup>20</sup> *Activist Vows to Continue Fight for Ethnic Kazakhs in Xinjiang Despite Fine*, RFE/RL (Feb. 14, 2019), <https://www.rferl.org/a/activist-vows-to-continue-fight-for-ethnic-kazakhs-in-xinjiang-despite-fine/29769529.html>.

<sup>21</sup> Daniel Balson, *Who Will Speak for Serikzhan Bilash? Not Washington.*, The Diplomat (May 20, 2019), <https://thediplomat.com/2019/05/who-will-speak-for-serikzhan-bilash-not-washington/>; Reid Standish, *Astana Tries to Silence China Critics*, Foreign Policy (Mar. 11, 2019), <https://foreignpolicy.com/2019/03/11/uyghur-china-kazakhstan-astana/>.

<sup>22</sup> The Associated Press, *Court Puts Kazakh Activist Under House Arrest*, Seattle Times (Mar. 11, 2019), <https://www.seattletimes.com/nation-world/nation/court-puts-kazakh-activist-under-house-arrest/>.

<sup>23</sup> Reid Standish, *Astana Tries to Silence China Critics*, Foreign Policy (Mar. 11, 2019), <https://foreignpolicy.com/2019/03/11/uyghur-china-kazakhstan-astana/>.

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

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*; For example, Amnesty International has publically stated the importance of Mr. Bilash’s research to their monitoring of the Xinjiang camps. See Daniel Balson, *Who Will Speak for Serikzhan Bilash? Not Washington.*, The Diplomat (May 20, 2019), <https://thediplomat.com/2019/05/who-will-speak-for-serikzhan-bilash-not-washington/>.

<sup>28</sup> Reid Standish, *Astana Tries to Silence China Critics*, Foreign Policy (Mar. 11, 2019), <https://foreignpolicy.com/2019/03/11/uyghur-china-kazakhstan-astana/>.

organization in connection with his work at Ata-Jurt.<sup>29</sup> A court in Almaty ordered Mr. Bilash to pay a fine in the amount 252,000 tenge (approximately \$670).<sup>30</sup> Up to this point, Mr. Bilash had repeatedly attempted to register Ata-Jurt with the proper authorities, but the Kazakh Justice Ministry refused to grant registration.<sup>31</sup>

b. *Arrest*

On March 9, 2019, six unidentified individuals arrived at Ata-Jurt's offices in Almaty, Kazakhstan where they proceeded to intimidate Ata-Jurt staff.<sup>32</sup> The individuals left only after staff called the police.<sup>33</sup> Concerned for his safety following the unsettling nature of the encounter, Mr. Bilash decided to stay at a hotel room that night rather than returning home.<sup>34</sup> He subsequently checked into the Rahat Palace Hotel in Almaty.

At approximately 2:30 AM on March 10, 2019, Kazakh National Security forces arrived at the Rahat Palace Hotel and attempted to enter Mr. Bilash's room with a key provided by hotel administrators.<sup>35</sup> However, Mr. Bilash had closed the door's chain-link security lock, which prohibited the Kazakh officers from immediately entering.<sup>36</sup> Mr. Bilash attempted to identify the officers and asked to see any documents that would show that they were legally permitted to enter.<sup>37</sup> The officers provided no explanation. Without warning and with Mr. Bilash standing on the inside of the door, the officers kicked open the door, breaking the security lock and injuring Mr. Bilash, who was left bleeding from his right foot.<sup>38</sup> Noticing his injury, the officers pressured Mr. Bilash to sign a statement testifying that no one was injured during his arrest.<sup>39</sup>

After the officers entered the room, Mr. Bilash again asked for an explanation for their visit.<sup>40</sup> However, they did not provide any form of warrant, subpoena, or formal notice of the legal grounds for his arrest or of any specific charges brought against him.<sup>41</sup> Instead, one officer stated that Mr. Bilash has committed two crimes: first, he engaged in activities harmful to the relationship between Kazakhstan and China, and second, he assisted a whistleblower from the Xinjiang camps, Sairagul Sauytbay, in obtaining private legal counsel in Kazakhstan.<sup>42</sup>

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<sup>29</sup> *Activist Vows to Continue Fight for Ethnic Kazakhs in Xinjiang Despite Fine*, RFE/RL (Feb. 14, 2019), <https://www.rferl.org/a/activist-vows-to-continue-fight-for-ethnic-kazakhs-in-xinjiang-despite-fine/29769529.html>.

<sup>30</sup> *Id.*

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

<sup>32</sup> Communication E.F., on file with author.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Communication E.F., on file with author; Communication A.B., on file with author.

<sup>36</sup> Communication E.F., on file with author; Communication A.B., on file with author.

<sup>37</sup> Communication E.F., on file with author; Communication A.B., on file with author.

<sup>38</sup> Communication E.F., on file with author; Hong Kong Free Press, *Video: Kazakh Rights Defender Serikjan Bilash Arrested over Xinjiang Activism, Office 'Shut Down'*, Hong Kong Free Press (Mar. 10, 2019), <https://www.hongkongfp.com/2019/03/10/video-kazakh-rights-defender-serikjan-bilash-arrested-xinjiang-activism-office-shut/>.

<sup>39</sup> Communication E.F., on file with author.

<sup>40</sup> Communication E.F., on file with author.

<sup>41</sup> *Id.*; Communication A.B., on file with author.

<sup>42</sup> Communication E.F., on file with author; Communication A.B., on file with author. Formerly a worker at the Chinese internment camps in Xinjiang, Sairagul Sauytbay fled to Kazakhstan and provided detailed testimony about the existence and nature of the camps. Mr. Bilash was involved in assisting Ms. Sauytbay to replace her government-appointed attorney with private counsel in the case against her for illegally crossing the border into Kazakhstan. Communication E.F., on file with author; Communication A.B., on file with author; *see also* Catherine

Mr. Bilash was then detained and taken by air from Almaty to the capital, Nur-Sultan, which is approximately 1,300 kilometers away.<sup>43</sup> Once Mr. Bilash arrived in Nur-Sultan, he was transferred to the Ministry of Internal Affairs, where he was held at the order of the Ministry and was interrogated by Kazakh National Security officers.<sup>44</sup>

Because the Government did not notify Mr. Bilash's family or the press about his detention, substantial public concern began to build around his disappearance.<sup>45</sup> Mr. Bilash's friends discovered his hotel room, with a broken door, upturned furniture, and blood splattered on the floor.<sup>46</sup> On March 10, after an online video showing the bloodied hotel room gained the attention of several prominent news outlets, the National Security officers pressured Mr. Bilash to contact his family and friends to notify them they he had not been killed and that he was in Nur-Sultan.<sup>47</sup>

Subsequently, while detained at the Ministry of Internal Affairs, Mr. Bilash also notified investigators that he is legally represented by Ms. Aiman Umarova, but he was not permitted to speak with her.<sup>48</sup> Instead, the Ministry of Internal Affairs attempted to provide him with a government-appointed lawyer, which he repeatedly refused.<sup>49</sup>

Later in the day on March 10, law enforcement officers raided the Ata-Jurt offices.<sup>50</sup> The officers seized computers, cameras, and hard-drives with information about individuals detained in Xinjiang.<sup>51</sup> A volunteer at Ata-Jurt stated that many of the computers seized contained testimonies of victims from the camps.<sup>52</sup> The office was later locked and sealed by law enforcement, which temporarily ceased the operation of Ata-Jurt's headquarters.<sup>53</sup>

### c. *Investigation*

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Putz, *Xinjiang Camp Whistle-blower Sauytbay Seeks Asylum Elsewhere*, *The Diplomat* (June 3, 2019), <https://thediplomat.com/2019/06/xinjiang-camp-whistle-blower-sauytbay-seeks-asylum-elsewhere/>.

<sup>43</sup> Communication E.F., on file with author; Communication A.B., on file with author.

<sup>44</sup> Communication A.B., on file with author.

<sup>45</sup> Communication E.F., on file with author; Hong Kong Free Press, *Video: Kazakh Rights Defender Serikjan Bilash Arrested over Xinjiang Activism, Office 'Shut Down'*, Hong Kong Free Press (Mar. 10, 2019), <https://www.hongkongfp.com/2019/03/10/video-kazakh-rights-defender-serikjan-bilash-arrested-xinjiang-activism-office-shut/>.

<sup>46</sup> Matt Rivers, *Xinjiang Human Rights Activist Serikzhan Bilash Arrested by Kazakhstan Police, Lawyer Says*, CNN (Mar. 13, 2019), <https://www.cnn.com/2019/03/12/asia/serikzhan-bilash-arrest-xinjiang-intl/index.html>; Hong Kong Free Press, *Video: Kazakh Rights Defender Serikjan Bilash Arrested over Xinjiang Activism, Office 'Shut Down'*, Hong Kong Free Press (Mar. 10, 2019), <https://www.hongkongfp.com/2019/03/10/video-kazakh-rights-defender-serikjan-bilash-arrested-xinjiang-activism-office-shut/>.

<sup>47</sup> Communication E.F., on file with author.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Hong Kong Free Press, *Video: Kazakh Rights Defender Serikjan Bilash Arrested over Xinjiang Activism, Office 'Shut Down'*, Hong Kong Free Press (Mar. 10, 2019), <https://www.hongkongfp.com/2019/03/10/video-kazakh-rights-defender-serikjan-bilash-arrested-xinjiang-activism-office-shut/>; Communication E.F., on file with author.

<sup>51</sup> Agence France-Presse, *Kazakh police arrest activist who campaigned for human rights in Xinjiang*, *The Guardian* (Mar. 11, 2019), <https://www.theguardian.com/world/2019/mar/11/kazakh-police-arrest-activist-who-campaigned-for-human-rights-in-xinjiang>.

<sup>52</sup> *Id.*

<sup>53</sup> Hong Kong Free Press, *Video: Kazakh Rights Defender Serikjan Bilash Arrested over Xinjiang Activism, Office 'Shut Down'*, (Mar. 10, 2019), <https://www.hongkongfp.com/2019/03/10/video-kazakh-rights-defender-serikjan-bilash-arrested-xinjiang-activism-office-shut/>; *see also* Hong Kong Free Press, *Kazakh Releases Xinjiang Rights Activist to House Arrest Ahead of Trial* (Mar. 12, 2019), <https://www.hongkongfp.com/2019/03/12/kazakhstan-releases-xinjiang-rights-activist-house-arrest-ahead-trial/>.

On March 11, 2019, authorities notified Mr. Bilash that he was under investigation for incitement to social, national, generic, racial, class or religious discord under Article 174(2) of the Kazakh Criminal Code.<sup>54</sup> The first two paragraphs of Article 174 read:

**Article 174. Institution of social, national, generic, racial, class or religious discord**

1. Intentional actions, directed to institution of social, national, generic, racial, class or religious hatred, insult of the national honour and dignity or religious feelings of citizens, as well as propaganda of exclusivity, superiority or inferiority of citizens on grounds of their relation to religion, class, national, generic or racial assignment, if these actions are committed publicly or with the use of mass media or information and communication networks, as well as by production or distribution of literature or other information media, *promoting social, national, generic, racial, class or religious discord*, — shall be punished by restriction of liberty for the term of two to seven years or imprisonment for the same term.

2. The same actions, committed by group of persons, group of persons on previous concert or repeatedly or connected with violence or threat of its use, as well as committed by person with the use of his (her) official position or leader of a public association—shall be punished by imprisonment for the term of five to ten years with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it. (emphasis added)<sup>55</sup>

The Office of the Prosecutor issued a press release on March 11, stating that Mr. Bilash allegedly violated the second paragraph of Article 174 by calling for “jihad” against the Chinese people on February 8, 2019 while giving a talk at a meeting with members of the Uyghur community in Almaty, Kazakhstan.<sup>56</sup>

The relevant statements that Mr. Bilash made at the February 8 meeting translate to the following sentences in English: “Jihad today is not taking up a gun and fighting in Syria. Jihad is information and propaganda.”<sup>57</sup>

d. *Detention*

On March 11, 2019, the same day that he was notified of the charges against him, Mr. Bilash was brought before a judge at the Specialized Inter-district Investigation Court of Nur-Sultan.<sup>58</sup> At this hearing, the court ordered him to remain in house arrest for two months pending an investigation into the

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<sup>54</sup> The Prosecutor’s Office of the City of Nur-Sultan, *Concerning Serikzhan Bilash, A Preventative Measure was Chosen* (Mar. 11, 2019), <http://nur-sultan.prokuror.gov.kz/rus/novosti/press-releasy/v-otnoshenii-serikzhana-biyasha-izbrana-mera-presecheniya> (in Russian); Austin Ramzy, *Critic Who Exposed China’s Muslim Camps is Detained, Even Across the Border*, New York Times (Mar. 13, 2019), <https://www.nytimes.com/2019/03/13/world/asia/china-kazakh-activist-camps-xinjiang-muslims.html>; Norwegian Helsinki Committee, *Release or Credibly Charge Kazakhstani Activist* (Mar. 14, 2019), <https://www.nhc.no/en/release-or-credibly-charge-kazakhstani-activist/>.

<sup>55</sup> For an English translation of the Kazakh Criminal Code, see LegiSLatiOnLine, *Kazakhstan Criminal Codes*, <https://www.legislationline.org/documents/section/criminal-codes/country/21/Kazakhstan/show>.

<sup>56</sup> The Prosecutor’s Office of the City of Nur-Sultan, *Concerning Serikzhan Bilash, A Preventative Measure was Chosen* (Mar. 11, 2019), <http://nur-sultan.prokuror.gov.kz/rus/novosti/press-releasy/v-otnoshenii-serikzhana-biyasha-izbrana-mera-presecheniya> (in Russian).

<sup>57</sup> Communication C.D., on file with author.; Communication I.J., on file with author.; Amnesty International, *Urgent Action: Human Rights Defender Under House Arrest (Kazakhstan: UA 46.19)* (April 12, 2019), <https://www.amnestyusa.org/urgent-actions/urgent-action-human-rights-defender-under-house-arrest-kazakhstan-ua-46-19/>.

<sup>58</sup> Communication A.B., on file with author.

accusations that he had “incited ethnic discord.”<sup>59</sup> Under the terms of the house arrest order, Mr. Bilash was not permitted to return to his home in Almaty.<sup>60</sup> Instead, he was ordered to remain on house arrest in Nur-Sultan, despite the fact that the speech for which he was being investigated occurred in Almaty.<sup>61</sup> Because his domicile is in Almaty, Mr. Bilash was compelled to rent an apartment in Nur-Sultan from an acquaintance to comply with the terms of the order.<sup>62</sup>

On March 13, 2019, Mr. Bilash was visited by plainclothes police officers at the apartment where he is serving his house arrest.<sup>63</sup> During the visit, the officers used threats of force to pressure Mr. Bilash into making several written and video-recorded statements. In one statement, police coerced Mr. Bilash to pledge to stop raising the issue of ethnic Kazakhs detained in Xinjiang.<sup>64</sup> In another statement, police coerced Mr. Bilash to state that he wants to fire his domestic counsel, Ms. Umarova.<sup>65</sup> During these interrogations, Mr. Bilash was also forced to sign several documents, some of which were blank.<sup>66</sup>

On March 15, again officers visited Mr. Bilash. On this occasion, the officers promised that they would “give [him] freedom by April” if he steps down as director of Ata-Jurt.<sup>67</sup> Officers stated that they would let another activist take over the organization, so long as Mr. Bilash was not involved.<sup>68</sup> However, Mr. Bilash declined.<sup>69</sup>

Since beginning house arrest, officers have visited Mr. Bilash over 20 times.<sup>70</sup> At each visit, the police officers always questioned Mr. Bilash, and sometimes they attempted to obtain video and written statements from him.<sup>71</sup> During the interrogations, officers often threatened Mr. Bilash and his family with physical harm.<sup>72</sup> On one occasion, officers brought along a photograph of Mr. Bilash’s aunt, who currently resides in China, to make him aware that the Government knows the identity of his family members.<sup>73</sup> Mr. Bilash understood this to be a threat.<sup>74</sup> Notably, Mr. Bilash’ lawyer has never been notified before these visits took place and has never been present during the questioning.<sup>75</sup>

On May 7, 2019 the Specialized Inter-district Examining Court of Nur-Sultan extended Mr. Bilash’s detention for an additional two months, until July 10, 2019.<sup>76</sup> The court provided no specific or

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*; RFE/RL, *Detained Kazakh Activist, Lawyer Complain of Pressure by Kazakh Authorities* (Mar. 14, 2019), <https://www.rferl.org/a/detained-kazakh-activist-lawyer-complain-of-pressure-by-kazakh-authorities/29821212.html>.

<sup>65</sup> Communication A.B., on file with author; *Detained Kazakh Activist, Lawyer Complain of Pressure by Kazakh Authorities* (Mar. 14, 2019), <https://www.rferl.org/a/detained-kazakh-activist-lawyer-complain-of-pressure-by-kazakh-authorities/29821212.html>.

<sup>66</sup> Communication A.B., on file with author; *Detained Kazakh Activist, Lawyer Complain of Pressure by Kazakh Authorities* (Mar. 14, 2019), <https://www.rferl.org/a/detained-kazakh-activist-lawyer-complain-of-pressure-by-kazakh-authorities/29821212.html>.

<sup>67</sup> Communication E.F., on file with author.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Communication E.F., on file with author; Communication A.B., on file with author.

<sup>71</sup> Communication A.B., on file with author.

<sup>72</sup> Communication E.F., on file with author; Communication A.B., on file with author.

<sup>73</sup> Communication E.F., on file with author.

<sup>74</sup> *Id.*

<sup>75</sup> Communication A.B., on file with author.

<sup>76</sup> RFE/RL, *Nur-Sultan Court Extends House Arrest for Kazakh Xinjiang Activist* (June 7, 2019), <https://www.rferl.org/a/nur-sultan-court-extends-house-arrest-for-kazakh-xinjiang-activist/29986760.html>.

individualized basis—such as his risk of flight, his danger to society, or his likelihood of destroying evidence—that would explain the need to detain Mr. Bilash further.

Subsequently, on July 8, 2019, the Examining Court extended Mr. Bilash’s detention for a fifth month, until August 10, 2019, at the request of the prosecution and police investigators.<sup>77</sup> In reaching its determination to extend the house arrest, the court did not supply any individualized reasons for keeping Mr. Bilash under pre-trial detention. In its opinion, the court only stated,

The suspect S.Biyash, according to the documents and materials submitted to the Court, has committed an intentional serious crime and he is not working officially now. If S.Biyash may escape from pre-trial investigation or a court, it interfered with the case to be decided fully and objectively. Thus, the Court believes that prolongation of the preventive measure in the form of "house arrest" against Serikzhan Biyash is needed.<sup>78</sup>

Currently, Mr. Bilash’s house arrest is not set to expire until August 10, 2019.

Moreover, throughout the course of Mr. Bilash’s pre-trial detention, the Government has repeatedly attempted to derail Ms. Umarova’s legal representation of Mr. Bilash. In addition to the aforementioned attempts by police to have Mr. Bilash fire Ms. Umarova, government authorities have followed, harassed, and intimidated Ms. Umarova.<sup>79</sup> Ms. Umarova has publically reported that she is being followed by officers from the Kazakh Committee for National Security and the Ministry of Internal Affairs.<sup>80</sup> Furthermore, she has reported that these officers are obstructing her ability to represent her clients.<sup>81</sup>

e. *Indictment and Trial*

On July 16, 2019, the prosecution released its official indictment of Mr. Bilash, charging him with a single violation of Article 174(1) of the Kazakhstan Criminal Code.<sup>82</sup> Although Mr. Bilash was initially under investigation for violating the *second* paragraph of Article 174, the prosecution only decided to indict Mr. Bilash under the *first* paragraph of Article 174. The reason for the change is that Mr. Bilash could not be considered the “leader of a public association,” as required under the second paragraph, due to the fact that the Government has repeatedly refused to register Ata-Jurt.<sup>83</sup>

On July 29, 2019, a Nur-Sultan trial court found that Nur-Sultan was an improper venue to hear the case against Mr. Bilash because the conduct at issue occurred in Almaty. The Nur-Sultan Court accordingly transferred Mr. Bilash’s case to Almaty for trial, where the pre-trial process will begin anew. Mr. Bilash has been detained since March 10, 2019, and is still awaiting the start of his trial. If convicted under Article 174(1), Mr. Bilash faces a sentence of anywhere between two and seven years in prison.

B. Legal Analysis

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<sup>77</sup> Chris Rickleton, *Kazakhstan: Xinjiang Rights Activist Case Crawls Toward Trial* (July 11, 2019), <https://eurasianet.org/kazakhstan-xinjiang-rights-activist-case-crawls-toward-trial>.

<sup>78</sup> Nur-Sultan Specialized Inter-District Investigation Court, Case Number 7195-19-00-2-3M/4024, Court Decision of July 8, 2019, (on file with author).

<sup>79</sup> *Detained Kazakh Activist, Lawyer Complain of Pressure by Kazakh Authorities* (Mar. 14, 2019), <https://www.rferl.org/a/detained-kazakh-activist-lawyer-complain-of-pressure-by-kazakh-authorities/29821212.html>.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Communication A.B., on file with author.

<sup>83</sup> *Id.*

The arrest and continuing detention of Mr. Bilash is arbitrary under Categories I, II, and III of the Working Group's Revised Methods of Work.<sup>84</sup> The detention is arbitrary under Category I because Mr. Bilash is being detained without sufficient legal justification. The detention is arbitrary under Category II because it resulted from Mr. Bilash's peaceful and legitimate exercise of his rights to freedom of expression, assembly, and association. The detention is arbitrary under Category III because the Government's arrest and detention of Mr. Bilash failed to meet the minimum international standards of due process.

#### 1. **Arbitrary Deprivation of Liberty under Category I**

A detention is arbitrary under Category I when there is no legal basis or justification for it.<sup>85</sup> The Working Group has found lack a legal basis for the purposes of Category I when an individual is arrested without substantive evidence to justify the arrest<sup>86</sup> and when the Government uses vague and/or overbroad laws to prosecute an individual.<sup>87</sup> In the present case, Mr. Bilash's detention is arbitrary under Category I because the Government lacks any substantive evidence to justify his detention and because the Government charged Mr. Bilash under a vague and overbroad provision of the Kazakh Criminal Code.

##### a. *The Government of Kazakhstan Did Not Have Evidence to Justify Arresting and Detaining Mr. Bilash*

The Government's pre-trial detention and prosecution of Mr. Bilash is not founded on any reasonable evidence against Mr. Bilash. The Government is detaining Mr. Bilash while they investigate the criminality of comments that he made at a February 8, 2019 meeting with members of the Uyghur community in Kazakhstan. The Office of the Prosecutor General, in its public statement, suggested that his comments amount to calling for "jihad" against the Chinese. According to the prosecution, because Mr. Bilash called for jihad, he has violated Article 174 of the Kazakh Criminal Code, which criminalizes inciting discord on social, national, generic, racial, class or religious grounds.

However, when the statements are quoted in full, there is no reasonable interpretation of Mr. Bilash's comments that would suggest that he committed any criminal activity, under Article 174 or otherwise. At the meeting, Mr. Bilash stated, "Jihad today is not taking up a gun and fighting in Syria. Jihad is information and propaganda." Mr. Bilash's comments are encouraging individuals to share

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<sup>84</sup> An arbitrary deprivation of liberty is defined as any "depriv[ation] of liberty exception on such grounds and in accordance with such procedures as are established by law." *International Covenant on Civil and Political Rights*, G.A. Res 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 UNTS 171, entered into force on Mar. 23, 1976 (hereinafter "ICCPR"), at art. 9(1). An arbitrary deprivation of liberty is expressly prohibited under international law. *Id.*; *See also Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810 (hereinafter "UDHR"), at art. 9, (1948) ("No one shall be subjected to arbitrary arrest, detention or exile."); *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (hereinafter "Body of Principles"), at principle 2 ("Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law . . .").

<sup>85</sup> A Category I deprivation of liberty occurs "[w]hen it is impossible for the government to invoke any legal basis under domestic law for detaining the individual . . ." Report of the Working Group on Arbitrary Detention, 16th session, A/HRC/16/47, Annex 8(b) (Jan. 19, 2011), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/102/76/PDF/G1110276.pdf?OpenElement>.

<sup>86</sup> *Gargari v. Mexico*, UN Working Group on Arbitrary Detention, Opinion No. 58/2016, para. 21 (Nov. 25, 2016), <https://www.unwgadatabase.org/un/Document.aspx?id=3283>.

<sup>87</sup> *61 Individuals v. United Arab Emirates*, UN Working Group on Arbitrary Detention, Opinion No. 60/2013, para. 22 (Nov. 22, 2013), <http://hrlibrary.umn.edu/wgad/60-2013.html>; *Judicaël et al. v. Republic of Congo*, UN Working Group on Arbitrary Detention, Opinion No. 44/2014, paras. 26-37 (Feb. 4, 2015), <http://hrlibrary.umn.edu/wgad/44-2014.pdf>.

information about the mass internment in Xinjiang with the world. Mr. Bilash does not call for violence. Indeed, he explicitly tells his audience to forgo violence, and, instead, calls for them to pursue the non-violent action of awareness raising and exercising their own right to freedom of expression. Furthermore, there is no indication that his audience interpreted Mr. Bilash's statements to be a call to violence, as there is no indication that his statements actually led to any violent disruption. Because Mr. Bilash's speech encourages non-violence and promotes more expression, his comments cannot be considered criminal.

The context surrounding Mr. Bilash's statements demonstrates that the Office of the Prosecutor General has mischaracterized Mr. Bilash's words. Given that Mr. Bilash's February 8, 2019 comments are the only purported basis for his arrest and detention, the Government has provided no reasonable evidentiary grounds for detaining Mr. Bilash. Accordingly, Mr. Bilash's detention is arbitrary under Category 1 because there is no basis, in either evidence or fact, for the detention.

b. *Article 174 of the Kazakh Criminal Code Is Vague and Overbroad*

Article 15(1) of the International Covenant on Civil and Political Rights ("ICCPR")<sup>88</sup> and Article 11(2) of the Universal Declaration of Human Rights ("UDHR")<sup>89</sup> both guarantee individuals the right to know what the law is and what conduct violates the law. In its General Comment No. 35, the Human Rights Committee states that "[a]ny substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application."<sup>90</sup> Moreover, the Human Rights Committee finds that a law "must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly. . ."<sup>91</sup>

Article 174 of Kazakhstan's Criminal Code defines criminal activity in a manner that is overly broad and vague. Under Article 174, the prohibited activities consist of

Intentional actions, directed to institution of social, national, generic, racial, class or religious hatred, insult of the national honour and dignity or religious feelings of citizens, as well as propaganda of exclusivity, superiority or inferiority of citizens on grounds of their relation to religion, class, national, generic or racial assignment, if these actions are committed publicly or with the use of mass media or information and communication networks, as well as by production or distribution of literature or other information media, promoting social, national, generic, racial, class or religious discord . . .

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<sup>88</sup> ICCPR, *supra* note 84, art. 9(1) ("No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.").

<sup>89</sup> UDHR, *supra* note 84, art. 11(2) ("No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.").

<sup>90</sup> UN Human Rights Committee, General Comment No. 35: Article 9 (Liberty and Security of Persons), UN Doc. CCPR/C/GC/35, para. 22 (Dec. 16, 2014), *available at* <https://undocs.org/ccpr/c/gc/35> [hereinafter "General Comment No. 35"]; UN Human Rights Committee, *Concluding Observations on Mauritius*, UN Doc. CCPR/CO/83/MUS, para. 12 (Apr. 27, 2005), *available at* <https://undocs.org/CCPR/CO/83/MUS>; UN Human Rights Committee, *Concluding Observations on Russia*, UN Doc. CCPR/C/RUS/CO/6 (Nov. 24, 2009), para. 24, *available at* <https://undocs.org/CCPR/C/RUS/CO/6>.

<sup>91</sup> UN Human Rights Committee, General Comment No. 34: Article 19 (Freedom of Expression), UN Doc. CCPR/C/GC/34, para. 25 (Sep. 12, 2011), *available at* <https://undocs.org/CCPR/C/GC/34> [hereinafter "General Comment No. 34"].

The section heavily relies on indeterminate language, such as “discord” or “insult of national honour and dignity or religious feelings.” This language fails to provide a clear description of which activities are prohibited. Moreover, many actions that are seemingly criminalized under this section are otherwise protected by international human rights law. Indeed, the UN Human Rights Committee, in its review of Kazakhstan, has identified Article 174 as a “broadly formulated offence” and has recommended, with respect to Article 174, that the Government “[c]larify the vague and broad definitions of key terms . . . .”<sup>92</sup> Due to the pervasive inclusion of indeterminate and subjective terms in Article 174, there is no way for an individual to determine *ex ante* whether their actions will, for example, have the effect of insulting someone or, potentially, cause someone to engage activities that could fall within the broad category of discord.

Article 174’s vagueness and overbreadth permit the Kazakh authorities to abuse the statute and crack down on legitimate forms of political dissent. As identified by the UN Human Rights Committee, Article 174 is applied extensively to individuals exercising their legitimate rights under international human rights law.<sup>93</sup> Here, Mr. Bilash has been charged under Article 174 for an instance of his legitimate exercise of his right to freedom of expression. The Kazakhstan Government is using the broad language of Article 174 to justify his detention, which has the effect of disrupting Mr. Bilash’s advocacy and truth-seeking efforts.

Accordingly, Mr. Bilash’s arrest and continuing detention is arbitrary under Category I because the law that provides the basis for his detention, Article 174 of the Criminal Code, is both vague and overbroad in violation of the ICCPR and UDHR.

## 2. Arbitrary Deprivation of Liberty under Category II

A detention is arbitrary under Category II of the Working Group’s Revised Methods of Work when it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of expression, assembly, and association.<sup>94</sup> The Government arrested and detained Mr. Bilash on the basis of his exercise of all three of these rights.

### a. *Kazakhstan Targeted Mr. Bilash on the Basis of His Exercise of His Right to Freedom of Expression, Association, and Assembly*

The rights to freedom of expression, association, and assembly are protected under both international and Kazakh law. Article 19(2) of the ICCPR, to which Kazakhstan is a party, provides that “[e]veryone shall have the right of 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.”<sup>95</sup> The right to freedom of expression is vital to the work of human rights defenders. In its General Comment 34, the Human Rights Committee explicitly stated that the right to freedom of expression under Article 19 of the ICCPR protects canvassing and discussion of human rights.<sup>96</sup> Moreover, the Working Group has recognized the right of human rights defenders “to investigate, gather information regarding and report on human rights violations.”<sup>97</sup>

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<sup>92</sup> UN Human Rights Committee, *supra* note 6, paras. 49-50.

<sup>93</sup> *Id.* at paras. 47, 49.

<sup>94</sup> A detention is arbitrary under Category II “when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14 and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18-19, 21-22 and 25-27 of the International Covenant on Civil and Political Rights.” *Methods of Work of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/33/66, para. 8b [hereinafter “Revised Methods of Work”].

<sup>95</sup> ICCPR, *supra* note 84, art. 19(2).

<sup>96</sup> General Comment No. 34, *supra* note 91, para. 11.

<sup>97</sup> *Hassan Ahmed Hassan Al-Diqqi v. United Arab Emirates*, UN Working Group on Arbitrary Detention, Opinion No. 8/2009, UN Doc. A/HRC/13/30/Add.1 (Sep. 1, 2019), para. 18, *available at*

Furthermore, the right to freedom of expression is also protected under Article 19 of the UDHR as well as under Article 20(1) of the Constitution of Kazakhstan.<sup>98</sup>

Article 21 of the ICCPR provides that “[t]he right of peaceful assembly shall be recognized.”<sup>99</sup> Article 22(1) of the ICCPR provides that “[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”<sup>100</sup> These rights are also protected by Article 20(1) of the UDHR.<sup>101</sup> The Human Rights Council has specifically called for states to fully respect and protect the rights of all individuals to assemble peacefully and associate freely, especially for persons espousing minority or dissenting views or beliefs and human rights defenders.<sup>102</sup> Article 23 of the Kazakhstan Constitution also guarantees the right to form associations, while Article 32 guarantees the right to peaceful assembly, which explicitly includes the right to “hold meetings, rallies and demonstrations, street processions and pickets.”<sup>103</sup>

In the present case, Mr. Bilash’s advocacy on behalf ethnic Kazakhs in Xinjiang, which included the collection and spreading of information, the creation and management of a human rights NGO Ata-Jurt, and the organization of several peaceful demonstrations, are all protected activities under his rights to freedom of expression, association, and assembly. However, despite the express protections under international and Kazakh law mentioned above, the Government arrested and detained Mr. Bilash because of these very activities.

The Kazakhstan Government has demonstrated, in both word and deed, that the arrest and detention of Mr. Bilash is a result of his advocacy activities. After breaking into Mr. Bilash’s hotel room, a National Security officer told Mr. Bilash that his arrest was due to the impact of Mr. Bilash’s work on Kazakhstan’s relationship with China. Additionally, the Government expressly revealed its motivation behind the arrest and detention of Mr. Bilash during its interrogation of him on March 14, 2019, when Government investigators pressured Mr. Bilash to make statements promising to stop raising the issue of the oppression of ethnic Kazakhs in Xinjiang. Moreover, on March 15, National Security officers promised that they would “give [him] freedom by April” if he stepped down as director of Ata-Jurt.

Furthermore, the Government’s arrest of Mr. Bilash on March 10, 2019 was closely followed by a Government raid on Ata-Jurt’s office in Almaty. During the raid, the Government seized computers and hard drives filled with interviews of former detainees of the camps in Xinjiang. However, neither the work of Ata-Jurt nor the interviews seized had any connection to the alleged statements for which the Government purportedly seized Mr. Bilash. If the Government were only concerned with the statements of Mr. Bilash in February 2019, then there would be no legitimate justification for the Government to raid Ata-Jurt’s office and seize the organization’s human rights research and advocacy materials.

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<https://undocs.org/A/HRC/13/30/Add.1>. Although the Working Group came to this conclusion by referencing the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, it noted that “in the Working Group’s view” the rights and principles of the Declaration “are based on human rights standards enshrined in the Universal Declaration of Human Rights and in the Charter of the United Nations.” *Id.*

<sup>98</sup> UDHR, *supra* note 84, at art. 19 (stating “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers”); Constitution of Kazakhstan, art. 20(1) (stating “The freedom of speech and creative activities shall be guaranteed. Censorship shall be prohibited”).

<sup>99</sup> ICCPR, *supra* note 84, art. 21.

<sup>100</sup> ICCPR, *supra* note 84, art 22(1).

<sup>101</sup> UDHR, *supra* note 84, art 20.

<sup>102</sup> UN Human Rights Council, Res. 15/21, UN Doc A/HRC/RES/15/21, para 1, (6 Oct. 2010), *available at* <https://undocs.org/A/HRC/RES/15/21>.

<sup>103</sup> Constitution of Kazakhstan, arts. 20, 23, 32, *available at* <http://mfa.gov.kz/en/hague/content-view/the-constitution-of-the-republic-of-kazakhstan>.

Lastly, the Government initially attempted to charge Mr. Bilash under a provision of the criminal code that, if Mr. Bilash were convicted, would legally prohibit him from engaging in public advocacy activity for a period of up to three years. Paragraph 2 of Article 174 is punished by “deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years.” This punishment would prevent him from serving as director of Ata-Jurt, from organizing future demonstrations, and from publicly speaking out on behalf of the wide-spread human rights violations occurring in Xinjiang. The only reason the Government declined to move forward with the charge under Paragraph 2 is because the Government could not establish Mr. Bilash as the “leader of a public association” due to the fact that the Government has repeatedly refused to register Ata-Jurt.

These events show that the Government has, as an objective of its investigation and detention of Mr. Bilash, the goal of ending his advocacy efforts. Each Government action has been a progressive step towards stopping Mr. Bilash’s and Ata-Jurt’s work on raising awareness of the Xinjiang camps. Accordingly, the Government’s detention of Mr. Bilash constitutes a violation of his rights to freedom of expression, association, and assembly.

b. *Mr. Bilash’s Comments Made to Members of the Uyghur Community Are Protected Expression under Article 19 and Cannot Justify His Continued Detention*

The speech for which the Government allegedly detained Mr. Bilash and for which he is currently under investigation is protected expression under Article 19 of the ICCPR. As mentioned above, Article 19 protects the right to “impart information and ideas of all kinds . . . .”<sup>104</sup> The Human Rights Committee has explicitly stated that this protection applies to discussion of public affairs and religious topics.<sup>105</sup>

In the present case, the Government is detaining Mr. Bilash while they investigate the criminality of comments that he made at a February 8, 2019 meeting with members of the Uyghur community in Kazakhstan. At the meeting, Mr. Bilash stated in full, “Jihad today is not taking up a gun and fighting in Syria. Jihad is information and propaganda.” When taken together, his statements amount to a discussion of religious interpretation as it applies to a matter of public concern, namely the matter of raising awareness of the mass internment of Muslims in Xinjiang. Accordingly, Mr. Bilash’s comments about adopting a non-violent interpretation of the concept of “jihad” in the Quran is an exercise of his right to freedom of expression.

As discussed in section IV.B.1 above, the Office of the Prosecutor General’s characterization of Mr. Bilash’s statements as calling for “jihad” against the Chinese is a blatant mischaracterization of Mr. Bilash’s words. Because speech that encourages non-violence and promotes more expression is protected under Article 19, the Government violated Mr. Bilash’s right to freedom of expression to detain him on the basis of his February 8, 2019 statements.

c. *None of the Exceptions under Articles 19, 20, or 22 Apply in This Case*

Although the rights to freedom of expression, association, and assembly are not absolute, none of the exceptions to these rights apply to Kazakhstan’s restriction of Mr. Bilash’s case. Under international law, the rights to freedom of expression,<sup>106</sup> association,<sup>107</sup> and assembly<sup>108</sup> may only be restricted in

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<sup>104</sup> ICCPR, *supra* note 84, art. 19(2).

<sup>105</sup> General Comment No. 34, *supra* note 91, para. 11.

<sup>106</sup> Article 19(3) of the ICCPR provides that “The exercise of the [right to freedom of expression] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For the respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health and morals.” See ICCPR, *supra* note 84, art. 19(3).

limited circumstances, and the Human Rights Committee has established a three-part “strict test of justification” in analyzing limitations on such fundamental rights.<sup>109</sup> For a given limitation to be permissible, the limitation must (1) be provided for by law, (2) serve an enumerated purpose, and (3) be necessary to achieve that purpose.<sup>110</sup> The enumerated purposes for which a Government may restrict these fundamental rights are to protect national security, public safety and public order, public health, and the fundamental rights and freedoms of others.

The Human Rights Committee has emphasized that such restrictions must not “put in jeopardy the right itself.”<sup>111</sup> It is not sufficient for a government to merely invoke one of the enumerated exceptions, but must “specify the precise nature of the threat” posed by the protected activity,<sup>112</sup> establish a “direct and immediate connection between the expression and the threat,” and demonstrate why the limitation was necessary.<sup>113</sup> Furthermore, in the case of the right to freedom of expression, the Human Rights Committee has been clear that paragraph 3 never be used to justify “the muzzling of any advocacy of . . . human rights.”<sup>114</sup>

The arrest and detention of Mr. Bilash fall well outside any possible legitimate restriction on the right to freedom of expression. As discussed above, the Government targeted Mr. Bilash on the basis of his persistent and influential advocacy work raising awareness about the internment camps in Xinjiang. For this reason, the Government’s actions would qualify as an attempt to muzzle Mr. Bilash’s advocacy of human rights, and thus cannot be justified as a legitimate restriction on his rights to freedom of expression, assembly, and association.

Additionally, none of the Article 19(3) exceptions would justify the Kazakh Government’s arrest or detention of Mr. Bilash because his statements neither place national security, public order, public health or morals at risk, nor violate the rights or reputations of others. As noted above, the Human Rights Committee has emphasized that the restrictions on the right to freedom of expression must not “put in jeopardy the right itself.”<sup>115</sup> Here, Mr. Bilash in his February 8 statements was encouraging his audience to engage in their own expressive activity to raise awareness of the Xinjiang internment camps. To allow the Government to detain Mr. Bilash on the basis of statements that promote free expression would jeopardize the very core of his right to freedom of expression.

Furthermore, the law that that the Government has accused Mr. Bilash of violating with his February 8 statements is too vague and overbroad to satisfy the “provided for by law” condition under

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<sup>107</sup> Article 22(2) of the ICCPR provides that “No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.” See ICCPR, *supra* note 84, art. 22(2).

<sup>108</sup> Article 21 of the ICCPR provides that “No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” See ICCPR, *supra* note 84, art. 21.

<sup>109</sup> *Park v. Republic of Korea*, UN Human Rights Committee, Communication No. 628/1995, UN Doc. CCPR/C/64/D/628/1995, para. 10.3, (3 Nov. 1998).

<sup>110</sup> *Shin v. Republic of Korea*, UN Human Rights Committee, Communication No. 926/2000, UN Doc. CCPR/C/80/D/926/2000, para 7.2 (16 March 2004).

<sup>111</sup> General Comment No. 34, *supra* note 91, para. 21.

<sup>112</sup> *Sohn v. Republic of Korea*, UN Human Rights Committee, Communication No. 518/1992, UN Doc. CCPR/C/54/518/1992, para. 10.4 (July 19, 1992).

<sup>113</sup> General Comment No. 34, *supra* note 91, para. 35.

<sup>114</sup> *Id.*, at para. 33.

<sup>115</sup> *Id.*, at para. 21.

paragraph 3 of Article 19. The Human Rights Committee has clarified that legal restrictions on expression “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly. . .”<sup>116</sup> As discussed in detail above in section IV.B.1.b, Article 174 of the Kazakh Criminal Code’s heavy reliance on indeterminate language renders the section both overbroad and vague. In light of Article 174’s criminalization of actions that leads to “social discord” or “insult of . . . religious feelings,” the standards for punishment rely on highly subjective factors. Additionally, a significant amount of protected expression under Article 19, such as offensive, artistic, or political expression, could be prosecuted under this statute as these forms of expression may give rise to discord or insult. This interpretation is consistent with the findings of the UN Human Rights Committee, which has stated that Article 174 is impermissibly vague.<sup>117</sup> As a result, Article 174 is too vague to satisfy the “provided for by law” condition, and accordingly detaining Mr. Bilash on the basis of an application of this article is a violation of Mr. Bilash’s right to freedom of expression.

### 3. Arbitration Deprivation of Liberty under Category III

According to Category III of the Working Group’s Revised Methods of Work, a deprivation of liberty is arbitrary “[w]hen the total or partial non-observance of international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”<sup>118</sup>

Due process is at the core of the right to a fair trial. The minimum international standards of due process are established in the ICCPR, the UDHR, and the Body of Principles for the Protection of All persons under Any Form of Detention or Imprisonment (the “Body of Principles”), and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”).<sup>119</sup>

#### a. *Kazakhstan Violated Mr. Bilash’s Right Not to Be Subjected to Arbitrary Arrest*

Article 9(1) of the ICCPR, which confirms the right to liberty and freedom from arbitrary detention, guarantees that “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”<sup>120</sup> This right is reiterated by Article 9 of the UDHR and Principles 2 and 36(2) of the Body of Principles.<sup>121</sup> The Human Rights Committee has interpreted this right to mean that “procedures for carrying out legally authorized deprivation of liberty should also be established by law and States parties should ensure compliance with their legally prescribed procedures.”<sup>122</sup> Under Article 131(1) of the Kazakh Criminal Procedure Code, notice of the grounds for arrest are a precondition for any arrest.<sup>123</sup> Moreover, both the ICCPR and the Body of Principles require that arrestees be notified of the grounds for their arrest at the moment they are arrested.<sup>124</sup>

In the present case, Mr. Bilash was not informed of the legal grounds for his arrest at the time he was seized and detained on March 10, 2019, which is a direct violation of both Kazakh law and international law under the ICCPR and the Body of Principles. In connection with the arresting officers’

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<sup>116</sup> *Id.* at para. 25.

<sup>117</sup> UN Human Rights Committee, *supra* note 6, para. 49.

<sup>118</sup> Revised Methods of Work, *supra* note 94, Category III, para. c.

<sup>119</sup> *Id.* at Category III, paras. 7(a)-(b).

<sup>120</sup> ICCPR, *supra* note 84, art. 9(1).

<sup>121</sup> UDHR, *supra* note 84, art. 9; Body of Principles, *supra* note 84, prin. 2, 36(2).

<sup>122</sup> General Comment No. 35, *supra* note 90, para. 23.

<sup>123</sup> Criminal Procedure Code of the Republic of Kazakhstan, art. 131(1) (stating “When detaining a person on suspicion of committing a criminal offence, and official of the criminal prosecution body verbally announces to the person on suspicion of committing what criminal offence she (she) is detained, . . .”).

<sup>124</sup> ICCPR, *supra* note 84, art. 9(2); Body of Principles, *supra* note 84, prin. 10.

failure to notify Mr. Bilash of the legal reasons for his arrest, the officers did not show Mr. Bilash a warrant for his arrest, and there is no indication that such a warrant exists. Accordingly, the pre-trial detention of Mr. Bilash is unfounded, and the denial of his pre-trial release is a violation of Article 9(1) of the ICCPR, Article 9 of the UDHR, and principles 2 and 36(2) of the Body of Principles.

b. *Kazakhstan Violated Mr. Bilash's Right to Release Pending Trial*

Article 9(3) of the ICCPR guarantees an individual's right to release pending trial, establishing that "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody . . . ." <sup>125</sup> The Human Rights Committee has clarified that "[d]etention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. . . ." <sup>126</sup> Moreover, principles 38 and 39 of the Body of Principles further confirm that, except in special cases, a criminal detainee is entitled to release pending trial. <sup>127</sup>

In the present case, Mr. Bilash was brought before a judge and ordered to stay on house arrest for two months in Nur-Sultan, which is over 1,300 kilometers away from Almaty where the February 8 speech occurred and where Mr. Bilash is domiciled. The judge did not provide any individualized reasons about Mr. Bilash to justify detaining him in Nur-Sultan. Moreover, the court also failed to provide individualized reasons for extending Mr. Bilash's house arrest for two months on May 7, 2019 and for an additional month on July 8, 2019.

Even if the court had attempted to provide a justification for placing Mr. Bilash on house arrest, the court would not find any legitimate reasons for detention. Mr. Bilash has no history of violence and thus is not a threat to society. His home and family is in Almaty and thus does not pose a flight risk. And there is no evidence that the Government could point to that Mr. Bilash might destroy if he is released. Accordingly, the pre-trial detention of Mr. Bilash is unfounded, and the denial of his pre-trial release is a violation of Article 9(3) of the ICCPR and principles 38 and 39 of the Body of Principles.

c. *Kazakhstan Violated Mr. Bilash's Right to Counsel of His Own Choosing and to Communicate with Counsel*

Article 14(3)(d) of the ICCPR guarantees the right to defense, by stating that a criminal defendant has the right to "be tried in his presence, and to defend himself in person or through legal assistance of his own choosing." In addition, Article 14(3)(b) of the ICCPR guarantees a criminal accused the right "to communicate with counsel of his own choosing." <sup>128</sup> The Human Rights Committee has clarified that such guarantee "requires that the accused is granted prompt access to counsel," <sup>129</sup> and that "State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention." <sup>130</sup> Principles 18(1) and (3) of the Body of Principles further provide for the right of a detainee to "communicate and consult with his legal counsel," and that such right "may not be suspended or restricted save in exceptional circumstances." <sup>131</sup> Rule 119 of the Mandela Rules also provides for the right

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<sup>125</sup> ICCPR, *supra* note 84, art. 9(3).

<sup>126</sup> General Comment No. 35, *supra* note 90, para. 38.

<sup>127</sup> Body of Principles, *supra* note 84, prin. 38, 39.

<sup>128</sup> ICCPR, *supra* note 84, art. 14(3)(b).

<sup>129</sup> UN Human Rights Committee, *General Comment No. 32: Article 14 (Right to Equality Before Courts and Tribunals and to a Fair Trial)*, UN Doc. CCPR/C/GC/32, para. 32 (Aug. 23, 2007), available at <https://undocs.org/CCPR/C/GC/32>.

<sup>130</sup> General Comment No. 35, *supra* note 90, para. 35.

<sup>131</sup> Body of Principles, *supra* note 84, prin. 18(1), (3).

to access legal advice,<sup>132</sup> and the Constitution of Kazakhstan states that “[e]very person detained, arrested and accused of committee crime shall have the right to the assistance of defense lawyer (defender) from the moment of detention, arrest or accusation.”<sup>133</sup>

On multiple occasions, Mr. Bilash notified authorities, in no uncertain terms, that his chosen legal representative in the domestic charges against him is Ms. Umarova. Despite this notice, the Government has repeatedly interfered with Ms. Umarova’s ability to represent Mr. Bilash.

Government investigators repeatedly interrogated Mr. Bilash without his lawyer present. When Mr. Bilash was held at the Ministry of Internal Affairs, he notified the Kazakh National Security agents that were interrogating him that Ms. Umarova was his lawyer. However, the agents continued to interrogate him. Moreover, when investigators questioned Mr. Bilash while he was on house arrest, Ms. Umarova was not notified prior to these meetings and was not afforded the opportunity to attend. Refusing to allow Ms. Umarova to attend questioning of her client and failing to notify her that her client was being questioned impedes her ability to adequately represent Mr. Bilash.

Additionally, the Government has attempted to cut off Ms. Umarova’s representation of Mr. Bilash. While Mr. Bilash was held at the Ministry of Internal Affairs, the Government repeatedly pressured Mr. Bilash accept a government lawyer despite his instance that he wanted to be represented by Ms. Umarova. Again, while Mr. Bilash was on house arrest, Government investigators attempted to coerce Mr. Bilash to fire Ms. Umarova and to accept a State-appointed lawyer in her place. Given Kazakhstan’s history of influencing State-appointed lawyers, there are sufficient grounds to believe that this move was an attempt to ensure that Mr. Bilash did not have adequate, competent, and unbiased legal counsel. The Government’s attempt to compel Mr. Bilash to fire Ms. Umarova violates Mr. Bilash’s right to be defended by a counsel of his choice.

Lastly, the Government has followed and harassed Ms. Umarova in an attempt to disrupt her representation of Mr. Bilash. Ms. Umarova has reported that Kazakhstan National Security officers have been following her movements and attempting to intimidate her and obstruct her professional work. The Government’s attempts to impede Ms. Umarova’s work directly interfere with her ability to represent Mr. Bilash and accordingly interfere with his right to counsel.

Accordingly, Kazakhstan has violated Articles 14(3)(b) and 14(3)(d) of the ICCPR, principles 18(1) and (3) of the Body of Principles, Rule 119 of the Mandela Rules, and Article 16(3) of the Constitution of the Republic of Kazakhstan.

d. *Kazakhstan Violated the Prohibition on Coerced Testimony*

Article 14(3)(g) of the ICCPR specifically prohibits State coercion of testimony.<sup>134</sup> Furthermore, Principle 21(2) the Body of Principles guarantees that “no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.”<sup>135</sup>

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<sup>132</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, G.A. Res. 70/175, at 21, U.N. Doc. A/RES/70/175, rule 119, available at <https://undocs.org/A/RES/70/175> [hereinafter “Mandela Rules”] (stating “If an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay”).

<sup>133</sup> Constitution of Kazakhstan, art. 16(3).

<sup>134</sup> ICCPR, *supra* note 84, art. 14(3)(g).

<sup>135</sup> Body of Principles, *supra* note 84, prin. 21(2). Also, “it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess...” *Id.* at prin. 21(1).

On multiple occasions, the Government subjected Mr. Bilash to threats of harm to him and to his family in order to obtain both written and video testimony from him. During Mr. Bilash's house arrest, he has been repeatedly coerced by National Security officers, threats both to him and his family. Officers used this coercion to get Mr. Bilash to promise to stop his advocacy on behalf of ethnic Kazakhs in China's detention camps, to refuse representation by his current domestic lawyer Ms. Umarova, and to sign several documents, some of which were blank. Due to the use of threats of violence, Kazakhstan violated 14(3)(g) of the ICCPR and 21(2) of the Body of Principles.

### 3. Conclusion

Kazakhstan targeted, arrested, and detained Mr. Bilash for his advocacy work on behalf of ethnic Kazakhs in Xinjiang. Since the arrest, the Kazakh Government has repeatedly violated Mr. Bilash's right to a fair trial, including by failing to provide him with the reasons for his arrest, denying his release pending investigation and trial, harassing and frustrating his chosen legal counsel, and threatening physical harm to him and his family. For the forgoing reasons, the continuing detention of Mr. Bilash is a violation of international law and is thus illegal.

## V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHROITIES, PARTICULARLY FOR THE PURPOSE O F ESTABLISHING TH EDETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN

Mr. Bilash has challenged his detention at three hearings before a court in Nur-Sultan. The first hearing, on March 11, 2019, Mr. Bilash was ordered to house arrest for two months. At the end of the two-month detention period on May 7, 2019, Mr. Bilash was brought before a court again. During this second hearing, Mr. Bilash requested release again; however his house arrest was extended an additional two months. Mr. Bilash is currently ordered to be held on house arrest at least until August 10, 2019. His trial is scheduled to begin on July 29, 2019.

## VI. FULL NAME AND ADDRESS OF THE PERSONS SUBMITTING THE INFORMATION

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