

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S274943

IN THE MATTER OF N.R.,
Minor.

Court of Appeal No. B312001

Superior Court Nos. 20CCJP06523,
20CCJP06523A

Los Angeles Department of Children
And Family Services,

Petitioner and Respondent,

v.

O.R.,

Objector and Appellant

**APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN
SUPPORT OF OBJECTOR AND APPELLANT O.R.**

and

**[PROPOSED] BRIEF OF AMICI CURIAE PROFESSOR ALAN J.
DETTLAFF AND PROFESSORS OF SOCIAL WORK AND SOCIAL
WORKERS**

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**APPLICATION TO FILE AMICI BRIEF IN SUPPORT OF
APPELLANT O.R. AND CERTIFICATE OF INTERESTED
PARTIES**

Amici Professor Alan J. Dettlaff, professors of social work and social workers, request that the attached amici brief be submitted in support of Appellant O.R. Counsel is familiar with all of the briefings filed in this action to date. This amici brief addresses the harms to children, families, and communities when the child welfare system intervenes and forcibly separates families.

In accordance with California Rules of Court, Rule 8.520(f)(4), no party to this action has provided support in any form with regard to the authorship, production, or filing of this brief. Pursuant to Rule 8.208(e), Amici certify that they know of no other person or entity that has a financial or other interest in this case. Pursuant to Rule 8.520(f), Professor Alan J. Dettlaff, and the below professors of social work and social workers, respectfully request that they be granted leave to file the accompanying amici curiae brief.

STATEMENT OF INTEREST

Alan J. Dettlaff is a professor of social work at the University of Houston Graduate College of Social Work. Alan began his career in the child welfare/family policing system, where he worked as a caseworker and administrator. Today his work focuses on ending the harm that results from the child welfare system.

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The Network to Advance Abolitionist Social Work (NAASW) - NAASW strives to amplify a practice of social work aimed at dismantling the prison industrial complex and building the life-affirming horizon to which abolition aspires - efforts include political education, research/knowledge generation around carceral and abolitionist social work and organizing and advocacy efforts to insert abolitionist ideas and practices into social work;

Arielle Reisman, LCSW, Supervising Social Worker at East Bay Family Defenders - a non-profit law office providing legal and social work advocacy to indigent parents impacted or at risk of being impacted by the

family regulation system in Alameda County;

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BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLANT

In the case before you, the juvenile court’s exercise of jurisdiction over a 17-month-old child was prompted by a single drug test showing use of an illicit substance during a time when the father was not responsible for caring for his child. The Appellee would like you to find that there is a “commonsense inference” that when a parent uses an illicit substance their child is at substantial risk of serious physical harm. Amici contend that “commonsense” and empirical evidence actually do not support this claim. Further, empirical evidence supports the conclusion that harm will come to families and children in California if Appellee’s approach vesting unchecked discretion in social workers and courts is endorsed by this Court.

The exercise of juvenile court jurisdiction is a critical and imposing step into the privacy of the family that allows a juvenile court to direct the future of a child. While removal is a separate question, a finding of parental “substance abuse” often, if not regularly, leads to an order of family separation.¹ In the present case, a child was removed from their father’s care based solely on the father’s recreational substance use that occurred on a weekend he was not responsible for caring for N.R. Removal based on parental substance use is consistent with national trends, with more than a third of family separations in 2019 due to parental drug use.² However, in

¹ See, e.g., “*If I wasn’t Poor, I wouldn’t Be Unfit*,” The Family Separation Crisis in the US Child Welfare System, Human Rights Watch, 2022, available at: <https://www.hrw.org/report/2022/11/17/if-i-wasnt-poor-i-wouldnt-be-unfit/family-separation-crisis-us-child-welfare>

² “The AFCARS Report,” U.S. Department of Health and Human Services, Children's Bureau, at 2, June 28, 2022, available at: <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-report-29.pdf>

this instance, and in many others, child welfare workers and courts are themselves harming children and families through family separation.

The harm to children is well-known, but seems to be ignored by the courts in the instant case. Decades of research has documented the severe harms that result to children, families, and communities from investigation by the state, family separation, and placement in foster care. In the instant case, a small child was taken from their loving father, O.R., with no evidence at all that there was any abuse or neglect, or that the child was at substantial risk of such harm. Instead, given the well-documented research on the harms of family separation, the removal itself likely caused harm to the child.

Further, the child welfare system itself is biased against people living in poverty and people of color. People living in poverty and people of color are more likely to be investigated, and more likely to have their family forcibly separated, than other demographic groups. When social workers and judges are permitted to use subjective criteria rather than objective evidence to forcibly separate families, their implicit biases lead to these biased outcomes.

I. Racism and Classism in the Child Welfare System

The Child Abuse Prevention Treatment Act (CAPTA) of 1974 introduced mandatory reporting laws, which resulted in a rapid growth of maltreatment allegations and placement of children in foster care. CAPTA also established mandatory minimum federal definitions of child maltreatment. However, CAPTA allowed states broad discretion to expand on these definitions, resulting in laws that vary widely by state and often reflect current social problems within the context of those states. Over the decades following CAPTA, these definitions were largely influenced by

racial narratives including the War on Drugs, “welfare queens,” “crack babies,” and beliefs about appropriate parenting standards that may reflect a White, middle-class lens.³

When interpreting a statute, courts may look to the “evils to be remedied.”⁴ The task force that drafted Welfare and Institutions Code section 300 explicitly recognized that “inappropriate intervention can be harmful to children and parents. Investigations and court hearings are traumatic for parents and children, particularly in cases where children are removed from their homes during the investigation process. Children can suffer real emotional damage.”⁵ In the years since, empirical evidence has only verified the dangers of “inappropriate intervention.” While Appellee advocates for broad discretion to be vested in social workers, trial courts, and reviewing courts, research shows that this type of discretion only leads to the exact type of subjective and biased reasoning the Legislature sought to avoid. Amici urge this Court to consider seriously the dangers that this discretion poses to children in California in deciding the questions posed by the present case.

a. Classism and Bias Against Poor Parents in the Child Welfare System

The leading cause of child protective services investigations and related forcible family separations, including in California, is allegations of

³ Alan J. Dettlaff & Reiko Boyd, *Racial Disproportionality and Disparities in the Child Welfare System: Why Do They Exist, and What Can Be Done to Address Them?* Annals, AAPSS 692, at 263 (November 2020) (hereinafter Dettlaff, Annals).

⁴ *Wilcox v. Birtwhistle*, 21 Cal.4th 973, 977 (1999).

⁵ JN-C, p. 46. Amici will refer to the judicial notice exhibits submitted by Appellant in the same manner as the parties have as “JN” followed by the exhibit letter and consecutive page number.

neglect.⁶ Families in poorer neighborhoods are most likely to be accused of neglect.⁷

Neglect is often defined as “the failure of a parent or other person with responsibility for the child to provide needed food, clothing, shelter, medical care, or supervision.”⁸ Neglect and poverty are often conflated.⁹ This definition obviously implicates people living in poverty, and has the effect of punishing them rather than helping them.¹⁰

In the present case, the appellate court used as reasoning for removal that: “Father lived with his mother and was an out-of-work barber who found a job working in a warehouse for 20 hours a week.” (Opinion, p. 6 fn. 1.) N.R.’s father, O.R., found the warehouse job after losing his job as a barber due to the COVID-19 pandemic. The appellate court’s reasoning exemplifies the bias against those living in poverty. The court bolstered

⁶ Lindsey Palmer, Sarah Font, Andrea Lane Eastman, Lillie Guo, and Emily Putnam-Hornstein, *What Does Child Protective Services Investigate as Neglect? A Population-Based Study*, 0 (10) *Child Maltreatment*, July 2022, at 1, available at:

<https://journals.sagepub.com/doi/full/10.1177/10775595221114144#bibr20-10775595221114144>

⁷ B. Drake & S. Pandey, “*Understanding the Relationship Between Neighborhood Poverty and Specific Types of Child Maltreatment*,” 20 (11) *Child Abuse and Neglect*, at 1003, (1999), abstract available at:

<https://www.ojp.gov/ncjrs/virtual-library/abstracts/understanding-relationship-between-neighborhood-poverty-and>

⁸ *Definitions of Child Abuse and Neglect*, Children’s Bureau, May 2022, at 3, available at: <https://www.childwelfare.gov/pubpdfs/define.pdf>

⁹ See Palmer, et al., *supra* note 6 at 1.

¹⁰ Bill Yordy, “*Poverty and Child Neglect: How Did We Get it Wrong?*” National Council of State Legislatures, Feb. 2023, available at:

<https://www.ncsl.org/resources/details/poverty-and-child-neglect-how-did-we-get-it-wrong>

their conclusion that this child was at risk of neglect because of the father's financial situation.

b. Racism in the Child Welfare System

Racial discrimination in the United States child welfare system is a human rights issue. Notoriously broad and malleable state definitions of abuse and neglect allow for significant subjectivity by the state and the courts. As a result, determinations of parental fitness are susceptible to both conscious and unconscious bias based on race, class, or other factors.¹¹

Multiple studies have examined the extent to which racial bias impacts decision-making at various decision points once families are involved in the system by using statistical controls to isolate the role of race. Some have found that even after adjusting for socioeconomic measures, race remains a significant explanatory variable, suggesting the influence of bias.¹²

As an example, Rivaux et al. (2008) used data from Texas to examine two related decision points—the decision to provide services to families, and the decision to remove a child from the home in lieu of receiving in-home services. After controlling for both income and risk as defined by CPS caseworkers, results indicated that race was a significant predictor of both decision points. After controlling for income and risk, Black children were 20 percent more likely than White children to be involved in cases in which services were provided and 77 percent more likely than White children to be removed in lieu of receiving in-home services. The inclusion of risk in this study, in addition to income, allowed for an important interpretation to be made regarding the role of race.¹³

¹¹ *"If I wasn't Poor, I wouldn't Be Unfit," supra note 1.*

¹² Dettlaff, *Annals, supra note 3* at 264.

¹³ *Id.*

Both the American Bar Association and the New York State Bar Association have recently released reports acknowledging systemic racism in child welfare and calling for change.¹⁴

The U.S. Administration for Children and Families, the federal agency responsible for overseeing national child welfare policy, has acknowledged that racial discrimination exists in our child welfare system.¹⁵ In 2021, the agency publicly acknowledged that racial minorities are disproportionately represented in the child welfare system.¹⁶ The causes, it found, included bad policies, individual racism and bias, and “structural racism.”¹⁷

This issue of racial bias in the U.S. child welfare system has even received international attention. On August 30, 2022, the UN Committee on the Elimination of Racial Discrimination (“CERD”), a group of international experts charged with monitoring state compliance with human rights obligations on racial discrimination, expressed concern at the “disproportionate number of children of racial and ethnic minorities removed from their families and placed in foster care” in the U.S.¹⁸ CERD also noted that “families of racial and ethnic minorities are subjected to

¹⁴ Shereen A. White & Stephanie Persson, “*Racial Discrimination in Child Welfare Is a Human Rights Violation—Let’s Talk About It That Way*,” A.B.A., Oct. 13, 2022, (hereinafter A.B.A. article), available at: <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2022/fall2022-racial-discrimination-in-child-welfare-is-a-human-rights-violation/>

¹⁵ *Child Welfare Practice to Address Racial Disproportionality and Disparity*, Children’s Bureau, U.S. Administration for Children and Families, Apr. 2021, available at: https://www.childwelfare.gov/pubpdfs/racial_disproportionality.pdf

¹⁶ *Id.*

¹⁷ *Id.* at 4-5.

¹⁸ A.B.A. article, *supra* note 14.

disproportionately high levels of surveillance and investigation and are less likely to be reunified with their children.”¹⁹

CERD then called on the United States to “take all appropriate measures to eliminate racial discrimination in the child welfare system, including by amending or repealing laws, policies and practices that have a disparate impact on families of racial and ethnic minorities.”²⁰

c. Latinx and Other Children of Color in California, including Los Angeles, are Disproportionately Forcibly Separated by the State

Perhaps no system has struggled more with the confusion between poverty and neglect than the child welfare system. A low-income parent of color is more likely to be reported for abuse or neglect, that report is more likely to be substantiated, and that child of color is more likely to enter the foster care system than his or her white counterpart.²¹

Reports of abuse and neglect are relatively proportionate between Latinx and White non-Latinx children, yet, substantiated cases are more likely to occur with Latinx children.²² Latinx children are also more likely to be placed in out-of-home care more quickly and for longer periods of time than their White non-Latinx counterparts.²³

¹⁹ *Id.*

²⁰ *Id.*

²¹ Jody Levison-Johnson, *Poverty and Neglect Are Not the Same — It’s Time to Realign Our Response*, American Public Human Services Association, May 21, 2021, available at: <https://aphsa.org/APHSABlog/mhhspp/poverty-and-neglect-are-not-the-same.aspx>

²² “Latino Children in Child Welfare: Fact Sheet,” (citing Wesley T. Church II, Emma R. Gross, Joshua Baldwin *Maybe ignorance is not always bliss: The disparate treatment of Hispanics within the child welfare system*. Children & Youth Services Review, 27(12), 1279-1292 (2005).)

²³ “Latino Children in Child Welfare: Fact Sheet,” *supra* note 22, (citing Church et al., (2005).)

California exemplifies the racial disproportionality of forced separation of children of color.²⁴ In California, 57% of children in foster care are children of color.²⁵ Children who are Black, Latinx, and Native American children are, on average, 262% more likely to be in foster care in California than White children.²⁶ As an example of how this disparity occurs, in 2019, Latinx children aged 0-5 in California were 43% more likely than White children to be removed from their families by the state (Table 1).²⁷

Age	Total Children in CA	CA Children in Foster Care	Foster Care Share
Under 1 year	452,221	5,842	
1-2 years	935,762	3,817	
3-5 years	1,483,132	4,806	

²⁴ See Dettlaff, *Annals*, *supra* note 3 at 254.

²⁵ All Things Considered, *States Send Kids to Foster Care and Their Parents the Bill*, NPR, Joseph Shapiro, et al., at 4:35 (December 27, 2021), <https://www.npr.org/2021/12/27/1049811327/states-send-kids-to-foster-care-and-their-parents-the-bill-often-one-too-big-to->

²⁶ As of July 2018, the most recent year data were available, in California there were 5.3 Hispanic/Latinx children per 1,000 in foster care, 21.8 African American/Black children per 1,000 in foster care, and 20.7 Native American/Alaska Native children per 1,000 in foster care, versus 4.4 White children per 1,000 in foster care. $[(21.8+20.7+5.3)/3]-4.4/4.4 = 262\%$. Kids Data, “Children in Foster Care, by Race/Ethnicity,” <https://www.kidsdata.org/topic/22/foster-in-care-race/table#fmt=2495&loc=2,127,347,1763,331,348,336,171,321,345,357,332,324,369,358,362,360,337,327,364,356,217,353,328,354,323,352,320,339,334,365,343,330,367,344,355,366,368,265,349,361,4,273,59,370,326,333,322,341,338,350,342,329,325,359,351,363,340,335&tf=108&ch=7,11,8,10,9,44>

²⁷ Based on data from California Department of Social Services, <https://cdss.ca.gov/inforesources/cdss-programs/child-welfare-early-childhood/data>

0-5 Total	2,871,115	14,465	
White (%)	32.68%	25.61%	
White (#)	938,280	3,704	0.395%
Latinx (%)	46.83%	52.60%	
Latinx (#)	1,344,543	7,608	0.566%
Relative Share (Latinx over White)			1.43
% Racial Disparity Latinx Children in Foster Care			43.33%

TABLE 1

In Los Angeles County specifically, the county at issue in the instant case:

- Latinx children were 57% more likely to be in foster care than White children;²⁸
- Native American children were 345% more likely to be in foster care than White children; and,²⁹
- African American children were 536% more likely to be in foster care than White children.³⁰

Amici again urge this Court to consider the “evils to be remedied.”³¹

Here, Appellee advocates for several layers of discretionary determinations

²⁸ As of July 2018, in Los Angeles there were 6.9 Hispanic/Latinx children per 1,000 in foster care versus 4.4 White children per 1,000 in foster care. $(6.9-4.4)/4.4 = 57\%$. Kids Data, *supra* note 26.

²⁹ As of July 2018, in Los Angeles there were 19.6 Native American/Alaska Native children per 1,000 in foster care versus 4.4 White children per 1,000 in foster care. $(19.6-4.4)/4.4 = 345\%$. *Id.* Kids Data.

³⁰ As of July 2018, in Los Angeles there were 28 African American/Black children per 1,000 in foster care versus 4.4 White children per 1,000 in foster care. $(28-4.4)/4.4 = 536\%$. *Id.* Kids Data.

³¹ *Wilcox v. Birtwhistle*, 21 Cal.4th 973, 977 (1999).

by the social worker, juvenile court, and reviewing court.³² Empirical evidence shows that the more discretion provided to those vested with the state power to intervene into the privacy of the family, the more likely these monumental decisions will be informed by biased and subjective reasoning opposed to actual evidence of risk. A decision from this Court requiring objective criteria be met and actual evidence of risk would be an important step toward avoiding further harm to families and children from “inappropriate intervention.”³³

II. Investigation by the State Harms Children and Families

As early as the 1980s and 1990s, researchers and academicians published papers and books discussing the harms to children and families of state investigations. A few examples follow.

In 1985, D.J. Besharov noted that child protective investigations may be experienced by the families as being an invasion of privacy, harassment, defamation of character (suggesting that the parents or guardians are abusive or neglectful), a form of trespassing, and an interruption of their interactions and relationships.³⁴ He also reported that families may see child protective workers as having created “intentional infliction of mental suffering” through their investigations of child abuse

³² *E.g.*, Answer Brief, pp. 27, 59-60.

³³ JN-C, p. 46.

³⁴ Tara Elizabeth Agajanian, *The effects of child protective investigations on families, children, and workers in unsubstantiated cases* (2001) (M.S.W., California State University, San Bernardino, at 7-9, <https://scholarworks.lib.csusb.edu/cgi/viewcontent.cgi?article=2928&context=etd-project>, (citing Douglas.J. Besharov, “The vulnerable social worker: Liability for serving children and families,” (1985), Maryland: National Association of Social Workers.)

allegations,³⁵ and that such investigations may be "a deeply traumatic experience for all members of the family."³⁶

In 1990, R. Wexler stated that "there is no such thing as a 'harmless' child-abuse investigation."³⁷ Wexler cites numerous case examples of child abuse investigations being extremely traumatic and unfair to the families involved, only to later be unsubstantiated.³⁸

In 1993, E.D. Hutchison stated that child abuse investigations can be harmful intrusions into families' lives, that families often experience anxiety, embarrassment, and the negative effects of having people in their support system know they were investigated, and that children can also experience social stigmatization and/or trauma.³⁹

Investigations are often "highly stressful, and even traumatizing, for children and their families, involving unannounced home and school visits and body checks."⁴⁰ Many parents who are investigated, especially parents of color, report feeling "disrespected, fearful of family disruption, shamed and judged based on implicit biases."⁴¹ And because only 16% of child

³⁵ *Id.*

³⁶ Agajanian, *supra* note 34, at 7, (citing Douglas J. Besharov, *Gaining control over child abuse reports*, 48 (2) *The American Public Welfare Association*, 34-40 (1990).)

³⁷ Agajanian, *supra* note 34, at 15, (citing Richard Wexler, "Wounded Innocents: The real victims of the war against child abuse: (1990), Buffalo, NY, Prometheus Books.)

³⁸ Agajanian, *supra* note 34, at 14, (citing Richard Wexler, "Wounded Innocents: The real victims of the war against child abuse: (1990), Buffalo, NY, Prometheus Books.)

³⁹ Agajanian, *supra* note 34, at 10, (citing E.D. Hutchinson, *Mandatory reporting laws: Child protective case finding gone awry?* 38 (1), *Social Work*, 56-63 (1993).)

⁴⁰ "If I wasn't Poor, I wouldn't Be Unfit," *supra* note 1.

⁴¹ Darcey Merritt, *Lived Experiences of Racism Among Child Welfare-Involved Parents*, 13(1) *Race and Social Problems*, at 1, (2021), available

abuse allegations are found to be “substantiated,”⁴² there are many, many innocent families who are traumatized by an investigation, to no purpose.

In the instant case, despite seeing *no evidence* of abuse or neglect in the father’s home, a child protective services worker asked O.R. to take a drug test. O.R. felt so embarrassed and afraid of what the child protective worker would do, that he did not disclose his recreational use of an illicit substance the prior weekend while celebrating his birthday, at a time he did not have responsibility for his child. He was right to be afraid, because the social worker later requested a “removal order from him as a result of the positive drug test.” (Opening Brief, p. 25.)

III. Forced Separation by the State Harms Children and Families

a. Forced Separation of Families Harms Children

In recent years, many prominent and respected mental health and medical professionals and organizations have spoken out publicly about the damage forced family separation does to children. The present case exemplifies how easily the decision to remove a child can be informed by subjective and biased reasoning. The President of the American Association of Pediatricians stated to Congress in 2018:

“Separating children from their parents contradicts everything we stand for as pediatricians - protecting and promoting children's health....This type of prolonged exposure to serious stress - known as toxic stress - can carry lifelong consequences for children.”⁴³

at:

https://www.researchgate.net/publication/349068309_Lived_Experiences_of_Racism_Among_Child_Welfare-Involved_Parents

⁴² “Child Maltreatment 2019: Summary of Key Findings,” (2021), at 2, <https://www.childwelfare.gov/pubpdfs/canstats.pdf>

⁴³ Press Release, Colleen Kraft, President, American Academy of Pediatrics, AAP Statement Opposing Separation of Children and Parents at the Border, (June 28, 2018), available at:

Dr. Erin Dunn, a social and psychiatric epidemiologist at Massachusetts General Hospital’s Center for Genomic Medicine, has stated:

“The scientific evidence against separating children from families is crystal clear. No one in the scientific community would dispute it—it’s not like other topics where there is more debate among scientists. We all know it is bad for children to be separated from caregivers. Given the scientific evidence, it is malicious and amounts to child abuse.”⁴⁴

A 2018 petition signed by 7,700 mental health professionals and 142 organizations stated,

“To pretend that separated children do not grow up with the shrapnel of this traumatic experience embedded in their minds is to disregard everything we know about child development, the brain, and trauma.”⁴⁵

The evidence documenting the harm of forcible family separation is so clear, Dr. Charles Nelson, a pediatrics professor at Harvard Medical School, concluded,

“There’s so much research on this that if people paid attention at all to the science, they would never do this.”⁴⁶

<https://docs.house.gov/meetings/IF/IF14/20180627/108510/HMKP-115-IF14-20180627-SD011.pdf>

⁴⁴ Allison Eck, *Psychological Damage Inflicted by Parent-Child Separation is Deep, Long-Lasting*, NOVA Next, June 20, 2018, available at: <https://www.pbs.org/wgbh/nova/article/psychological-damage-inflicted-by-parent-child-separation-is-deep-long-lasting/>

⁴⁵ William Wan, *What Separation from Parents Does to Children: “The Effect Is Catastrophic,”* *The Washington Post*, June 18, 2018, available at: https://www.washingtonpost.com/national/health-science/what-separation-from-parents-does-to-children-the-effect-is-catastrophic/2018/06/18/c00c30ec-732c-11e8-805c-4b67019fcfe4_story.html.

⁴⁶ *Id.*

In fact, research consistently demonstrates that the act of forcibly separating children from their parents is a source of significant and lifelong trauma, regardless of how long the separation lasts.⁴⁷ Studies with children who have been forcibly separated from their parents by the state confirm the pain and trauma they endure. These studies consistently document children’s feelings of trauma, loss, fear, anger, and helplessness, as well as stress, shock, and confusion.⁴⁸

There remains a disconnect in our public consciousness. The state child welfare system forcibly separates over 200,000 children every year from their parents,⁴⁹ yet the harm and trauma children experience when they are forcibly separated by the state remains. The myth of benevolence, created by the child welfare system and perpetuated by its supporters, has disappeared this from our collective understanding.

⁴⁷ See, e.g., Monique B. Mitchell & Leon Kuczynski, *Does anyone know what is going on? Examining children’s lived experience of the transition into foster care*, 32 *Children and Youth Services Review* 437–44, (Mar. 2010), available at: <https://www.sciencedirect.com/science/article/abs/pii/S0190740909003089>; Vivek Sankaran, Christopher Church, and Monique Mitchell, *A cure worse than the disease? The impact of removal on children and their families*, 102 *Marq. L. Rev.* 1161, 1163-1194 (2019), available at: <https://scholarship.law.marquette.edu/mulr/vol102/iss4/6>

⁴⁸ Rosalind D. Folman, “*I Was Taken*”: *How Children Experience Removal from Their Parents Preliminary to Placement into Foster Care*, 2, no. 2 *Adoption Quarterly* 735 (1998), available at: https://www.tandfonline.com/doi/epdf/10.1300/J145v02n02_02; Monique B. Mitchell, “*No One Acknowledged My Loss and Hurt*”: *Non-death Loss, Grief, and Trauma in Foster Care*, 35, no. 1 *Child and Adolescent Social Work Journal*, 1-9, (February 2018), available at: <https://link.springer.com/article/10.1007/s10560-017-0502-8>.

⁴⁹ “Child Welfare and Foster Care Statistics”, updated September 22, 2022, Anne E. Casey Foundation, available at: <https://www.aecf.org/blog/child-welfare-and-foster-care-statistics>

b. *Forced Separation of Families Harms Parents*

1. Trauma, Grief, and Stigma

Unsurprisingly, parents also experience harm and trauma from forced family separation.⁵⁰ While the consequences to children that result from the family policing system have been well-documented, the consequences that result for parents have been less well-examined. This is due in part to the myth of family policing intervention that frames parents as “abusers” who deserve to have their children taken from them. However, only 13% of children removed from their home suffered from physical abuse: the rest were categorized as victims of neglect, or as in the instant case, had a parent who used substances.⁵¹

Studies that have examined parents’ mental health following the forced separation of their children have shown severe consequences, including the development of post-traumatic stress syndrome, as well as other mental health issues including depression and anxiety.⁵² Multiple

⁵⁰ Nicola Ross, Jessica Cocks, Lou Johnston, and Lynette Stoker “*No voice, no opinion, nothing*”: *Parent experiences when children are removed and placed in care*, Research report, University of Newcastle (2017), at 43, available at: <https://www.lwb.org.au/assets/Parent-perspectives-OOHC-Final-Report-Feb-2017.pdf>; See A.B.A. article, *supra* note 14.

⁵¹ “*If I wasn’t Poor, I wouldn’t Be Unfit*,” *supra* note 1.

⁵² Wendy L. Haight, James E. Black, Sarah Mangelsdorf, Grace Giorgio, Lakshmi Tata, Sarah J. Schoppe, and Margaret Szewczyk, *Making Visits Better: The Perspectives of Parents, Foster Parents, and Child Welfare Workers*, 81, no. 2, *Child Welfare* 173-202 (March/April 2002), available at: <https://www.jstor.org/stable/45390056>; Kathleen S. Kenny, Clare Barrington, and Sherri L. Green, “*I Felt for a Long Time Like Everything Beautiful In Me Had Been Taken Out*”: *Women’s Suffering, Remembering, and Survival Following the Loss of Child Custody*, 26, no. 11 *International Journal of Drug Policy* 1158-1166, (November 2015), available at: <https://www.sciencedirect.com/science/article/abs/pii/S0955395915001772?via%3Dihub>; Kendra L. Nixon, H. L. Radtke, and Leslie M. Tutty, “*Every Day It Takes a Piece of You Away*”: *Experiences of Grief and Loss Among Abused Mothers Involved with Child Protective Services*, 7, no. 2 *Journal of*

studies have shown that mothers whose children are forcibly separated from them turn to prescription drugs and alcohol to manage the pain of losing their child.⁵³ The pain of this loss can be so severe, a recent study found that mothers who experience forced separation of a child by the state were more likely to experience unintentional, non-fatal overdoses compared to mothers who had never experienced this loss.⁵⁴ Another study showed that mothers who lost a child due to forced separation were more likely to attempt suicide, and die by suicide, compared to mothers who had state child welfare involvement but did not experience forced separation.⁵⁵

Along with severe trauma and loss, parents also experience significant stigma associated with forcible family separation, a stigma that does not generally accompany other forms of loss. Parents report that this sense of stigma has broad impacts on their sense of purpose and ambitions,

Public Child Welfare 172-193 (2013), available at:

<https://www.tandfonline.com/doi/abs/10.1080/15548732.2012.715268>;
Laura Dreuth Zeman, *Etiology of Loss Among Parents Falsely Accused of Abuse or Neglect*, 10, no. 1 *Journal of Loss and Trauma*, 19-31 (2005), available at:

<https://www.tandfonline.com/doi/full/10.1080/15325020490890624>.

⁵³ Kenny et al., “*I Felt for a Long Time Like Everything Beautiful In Me Had Been Taken Out*,” *supra* note 52; Nixon et al., “*Every Day It Takes a Piece of You Away*,” *supra* note 52.

⁵⁴ Meaghan Thumath, David Humphreys, Jane Barlow, Putu Duff, Melissa Braschel, Brittany Bingham, Sophie Pierre, and Kate Shannon, *Overdose Among Mothers: The Association Between Child Removal and Unintentional Drug Overdose in a Longitudinal Cohort of Marginalised Women in Canada*, 91 *International Journal of Drug Policy* (May 2021), available at: <https://pubmed.ncbi.nlm.nih.gov/33129662/>

⁵⁵ Elizabeth Wall-Wieler, Leslie L. Roos, Marni Brownell, Nathan Nickel, Dan Chateau, and Deepa Singal, *Suicide Attempts and Completions Among Mothers Whose Children Were Taken into Care by Child Protective Services: A Cohort Study Using Linkable Administrative Data*, 63, no. 3 *Canadian Journal of Psychiatry*, 170-177 (March 2018), available at: <https://journals.sagepub.com/doi/10.1177/0706743717741058>

as well as the relationships they form with others.⁵⁶ This sense of stigma can be so severe, studies have shown that mothers who lose a child to the state have higher rates of depression, substance use, and use of psychotropic medications than mothers who experience the death of a child, likely due to a loss of social support and a lack of social acknowledgment of the grief they experience.⁵⁷

2. People Living in Poverty Suffer the Harshest Financial Consequences

Exacerbating the mental health and social consequences parents experience, forcible family separation can have significant financial consequences for parents who are already experiencing financial hardship. Following family separation, parents are presented with a “service plan,” detailing the classes, tests, and other requirements with which they are expected to comply if they hope to be considered for what the state refers to as “reunification.” This occurred to O.R. in the instant case.

The costs associated with these requirements include taking significant time off from work for appointments that are largely only held during working hours, as well as significant travel time which often must be done via public transportation. This comes with little to no consideration or empathy from state agents who expect parents to comply with all service demands without regard for issues of accessibility, transportation, or job responsibilities.

⁵⁶ Kenny et al., “*I Felt for a Long Time Like Everything Beautiful In Me Had Been Taken Out,*” *supra* note 52.

⁵⁷ Elizabeth Wall-Wieler, Leslie L. Roos, James Bolton, Marni Brownell, Nathan Nickel, and Dan Chateau, *Maternal Mental Health after Custody Loss and Death of a Child: A Retrospective Cohort Study Using Linkable Administrative Data*, 63, no. 5 *Canadian Journal of Psychiatry*, (2018), at 326, available at:

<https://journals.sagepub.com/doi/10.1177/0706743717738494>

This is precisely what happened to O.R., the father in this case. O.R. was forced to undergo “voluntary” random drug screening, and was expected to show up for such screening any day of the week, regardless of his work schedule. When he missed two “voluntary” drug tests due to his work schedule, the court held this against him in its opinion.

The catch-22 of course is that the Appellee disparages O.R. for having a 20-hour warehouse job,⁵⁸ as if that is an indication that he is irresponsible and/or poor, but then accuses him of being a drug abuser because he was unable to leave his job during his scheduled work hours in order to attend a random drug screening. Appellee showed no willingness to accommodate O.R.’s work schedule in the timing of the drug tests. Further, Appellee and the court below ask this court to affirm that a person who took four voluntary drug tests, and only missed one test that was not made up, (which was subsequent to a request that the tests not be on Tuesday through Thursday due to his work schedule, yet the test was *again* scheduled for a Tuesday,)⁵⁹ was evidence that he could not be trusted to care for his child. Parents commonly experience loss of employment in order to comply with service demands.⁶⁰ Given the bias against poor persons in dependency cases, one can only assume here that had the father missed work to take the voluntary drug test, and lost his warehouse job, the Appellee would have held his joblessness against him.

⁵⁸ See Appellee Answer at p. 16, note 7.

⁵⁹ Appellee Answer at pp. 17-18.

⁶⁰ Wanja Ogongi and Community Legal Services, *Barriers to Successful Reunification of Children with their Families After Foster Care*, Stoneleigh Foundation, (August 2012), at 2, available at: <https://stoneleighfoundation.org/wp-content/uploads/2018/02/Ogongi.Moving-the-Dial.pdf>.

It is important to note that these demands of random drug tests regardless of other obligations, and attending “services” regardless of whether they are useful or at times that O.R. could attend, are all made within a system of surveillance and punishment that penalizes parents for any form of “non-compliance.” In this regard, “compliance” and “non-compliance” are judgments passed on parents solely related to participation in services, not whether services are effective in meeting their needs.

In the present case, the trial court held O.R.’s unwillingness to attend a “Child Family Team” against him, as showing his unfitness to parent his child.⁶¹ There was no discussion by Appellee or the lower court of the reason O.R. declined that service offering, or whether that offering would be useful to O.R. Perhaps it was only offered at a time he was required to work. Perhaps the offering was not helpful to him in his circumstances. Regardless, the lower courts and Appellee required him to attend in order to get his child back.

Most of the children forcibly removed from their parents are lower income: 47% live below federal poverty guidelines.⁶² Many lower paying jobs, especially part-time jobs, offer workers no time off, and they are not legally required to in this country. The United States has no employment protections in place for working persons who need time off to do voluntary drug tests. In this case, as in many cases where families are forcibly separated by the courts, O.R. was penalized for not having a job that allowed him time off to “voluntarily” drug test.

⁶¹ See Appellee Answer at pp. 18, 23.

⁶² See Stephanie Nieto, *The Cost of Being Poor: Entering Foster Care and Losing Hope*, Seton Hall University, (2019), available at: <https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1081&context=pete-rsheim-exposition>

Adding to the costs of compliance, parents experience direct financial consequences including the costs to participate in certain services or to obtain regular drug tests.⁶³ Parents also lose eligibility for certain resources when their children are taken from them, including access to certain housing programs which they need to be eligible to have their children returned.⁶⁴ Thus, parents lose eligibility to certain resources when their children are forcibly separated from them—then the state requires them to access the resources for which they are no longer eligible to have their children returned. States may also order that parents pay child support to offset the costs of foster care.⁶⁵ If this does not happen while children are in foster care, states can bill parents for the cost of foster care following reunification—bills that can exceed tens of thousands of dollars.⁶⁶ To underscore the intentionally vicious circle this creates—states forcibly separate children from their parents for reasons largely related to poverty, then if parents somehow meet the intense demands put on them by the system, they are presented with a bill for the care of their children while they were in foster care, further driving them into poverty—the very reason that led to their children being taken from them.⁶⁷ This is the logic of the child welfare system.

⁶³ “*If I wasn’t Poor, I wouldn’t Be Unfit*,” *supra* note 1.

⁶⁴ Wanja Ogongi, *Barriers to Successful Reunification of Children With Their Families After Foster Care*, *supra* note 60.

⁶⁵ Maria Cancian, Steven T. Cook, Mai Seki, and Lynn Wimer, *Making Parents Pay: The Unintended Consequences of Charging Parents for Foster Care*, 72 *Children and Youth Services Review*, 100-110, (2017), available at: <http://dx.doi.org/10.1016/j.childyouth.2016.10.018>.

⁶⁶ *States Send Kids to Foster Care and Their Parents the Bill*, *supra* note 25.

⁶⁷ *Id.*

In this case, O.R. might have regained custody of his child if he had lost his job in order to drug test. For persons living paycheck to paycheck, as most Americans are forced to do, losing days of work, or losing a job, can mean loss of housing or food or power or transportation, which would count against them being able to provide a “suitable environment” for their child.⁶⁸

IV. Foster Care Harms Children

Despite severe and well-documented harms, the U.S. child welfare system and legal system rarely consider the harm caused by the forcible separation.⁶⁹ While N.R. was ultimately placed with his mother, he could have been placed in foster care based on the court’s finding. It should be concerning to this Court that Appellee, the trial court and reviewing court all believed that a foster care placement would be supported here despite no evidence of harm or risk of harm.

a. Children in Foster Care Experience Increased Abuse

Following forcible family separation, children’s experiences in foster care continue to be harmful and traumatic. There is substantial evidence that children are actually more likely to be abused *while* in foster care than in the general population.⁷⁰

Children in foster care are also particularly vulnerable for physical and sexual abuse at the hands of their foster providers, whether those providers are foster parents or institutional staff. Multiple studies across decades have shown that rates of physical and sexual abuse among children in foster care are 2 to 4 times greater than rates of physical and sexual abuse

⁶⁸ “*If I wasn’t Poor, I wouldn’t Be Unfit,*” *supra* note 1.

⁶⁹ A.B.A. article, *supra* note 14.

⁷⁰ *Id.*

in the general population.⁷¹ In a large-scale study of over 600 youth who had spent time in foster care, one-third of those youth reported being maltreated by their foster parents.⁷²

In another large study of youth who had spent time in group home settings, reports of physical and sexual abuse at the hands of staff members were frequent. One youth reported, “I was hit. I was punched in the face. One time I was knocked unconscious, one staff grabbed my arm, I was trying to get it out, he full on judo hit me and knocked me out. I had a bunch of staff restrain me.”⁷³ In describing the rampant sexual abuse that occurs in institutional care, another youth stated, “I think the number one thing I would change is the amount of sexual assault that happens...In

⁷¹ Mary I. Benedict, Susan Zuravin, Diane Brandt, and Helen Abbey, *Types and Frequency of Child Maltreatment by Family Foster Care Providers in an Urban Population*, 18, no. 7 *Child Abuse & Neglect*, 577-585 (July 1994), available at:

<https://www.sciencedirect.com/science/article/abs/pii/0145213494900841>;

Nina Biehal, *Maltreatment in Foster Care: A review of the evidence*, 23 *Child Abuse Review*, 48-60, (2014), available at:

<https://onlinelibrary.wiley.com/doi/abs/10.1002/car.2249>; J. William Spencer and Dean D. Knudsen, *Out-of-Home Maltreatment: An Analysis of Risk in Various Settings for Children*, 14 *Children and Youth Services Review*, 485-492, (1992), available at:

<https://www.sciencedirect.com/science/article/abs/pii/019074099290002D>.

⁷² Peter J. Pecora, Ronald C. Kessler, Jason Williams, Kirk O'Brien, A. Chris Downs, Diana English, James White, Eva Hiripi, Catherine Roller White, Tamera Wiggins, and Kate Holmes, *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Survey*, Casey Family Programs, at 30, (March 2005), available at:

<https://www.casey.org/northwest-alumni-study/>

⁷³ Sarah Fathallah & Sarah Sullivan, *Away From Home: Youth Experiences of Institutional Placements in Foster Care*, Think of Us, at 40 (July 2021), available at:

https://assets.website-files.com/60a6942819ce8053cefd0947/60f6b1eba474362514093f96_Away%20From%20Home%20-%20Report.pdf

residential facilities, staff are molesting female residents.”⁷⁴ Another youth reported being sexually trafficked by her group home staff, stating, “The group home staff was my pimp.”⁷⁵

While this may seem like an extreme, isolated incident, it is not. Recent reports have demonstrated that youth in group home settings are frequently trafficked for sex by the staff of those facilities, with investigations into this practice occurring in multiple states.⁷⁶ The system that justifies its existence on the need to protect children from harm *is itself* a direct cause of that harm for tens of thousands of children every year.

b. Children in Foster Care Experience Worse Life Outcomes

Children in foster care are also at increased risk for mental health disorders, are more likely to be overprescribed psychotropic medication, and are at increased risk for exposure to sex trafficking.⁷⁷

Multiple studies document that children who are removed from their homes and placed into foster care are at risk for a host of negative outcomes including low educational attainment, homelessness, unemployment,

⁷⁴ *Id.* at 41.

⁷⁵ *Id.* at 41.

⁷⁶ Luz Moreno-Lozano, “*There is Not a Good Answer*”: *Texas Foster Care Under Fire After Refuge Sex Trafficking Allegations*, *Austin American-Statesman*, March 18, 2022, available at: https://www.statesman.com/story/news/2022/03/18/texas-foster-care-under-fire-after-refuge-sex-trafficking-allegations-bastrop-county/7075522001//2022/03/18/texas-foster-care-under-fire-after-refuge-sex-trafficking-allegations-bastrop-county/7075522001/_; Sherman Smith, “*Twisted Cruelty*”: *Foster Girls Crushed by Abuse at Newton Group Home*, *The Topeka Capital-Journal*, June 1, 2020, available at: <https://www.cjonline.com/story/news/politics/state/2020/06/02/rsquotwisted-crueltyrsquo-foster-girls-crushed-by-abuse-at-newton-group-home/114926130/>.

⁷⁷ A.B.A. article, *supra* note 14.

economic hardship, unplanned pregnancies, mental health disorders, and criminal justice involvement.⁷⁸

There are many reasons for the poor outcomes. In addition to not being told why they were taken from their parents, children receive little to no information on when or if they will ever be returned home, which further diminishes their ability to trust. While in foster care, children continue to be moved multiple times, also with little explanation. Studies demonstrate that the frequency of moves can be as many as 15 during the first 18 months of placement,⁷⁹ and often moves were at the whim of the placement homes for reasons such as toddlers throwing tantrums, teenagers refusing to do chores, or disapproval of a child's sexual orientation.⁸⁰ And,

⁷⁸ See, e.g., Mark Courtney, Amy Dworsky, Adam Brown, Colleen Cary, Kara Love, and Vanessa Vorhies, *Midwest evaluation of the adult functioning of former foster youth: Outcomes at ages 26*, Chapin Hall (2011); Pecora, et al., *Improving family foster care: Findings from the Northwest Foster Care Alumni Study*, supra note 72; Hannah Lantos, et al. *Integrating positive youth development and racial equity, inclusion, and belonging approaches across the child welfare and justice systems*, Child Trends (2022), available at: <https://www.childtrends.org/publications/integrating-positive-youth-development-and-racial-equity-inclusion-and-belonging-approaches-across-the-child-welfare-and-justice-systems>; Mark. E. Courtney, et al., *Findings from the California Youth Transitions to Adulthood Study (CalYOUTH): Conditions of youth at age 23*, Chapin Hall, (2020), available at: <https://www.chapinhall.org/research/cal-youth-wave4-report>

⁷⁹ Rae R. Newton, Alan J. Litrownik, and John A. Landsverk, *Children and Youth in Foster Care: Disentangling the Relationship Between Problem Behaviors and Number of Placements*, 24, no. 10 *Child Abuse & Neglect* 1363-1374, (October 2000).

⁸⁰ Nancy Rolock, Eun Koh, Ted Cross, and Jennifer Eblen Manning, *Multiple Move Study: Understanding Reasons for Foster Care Instability*, Child and Family Research Center, University of Illinois at Urbana-Champaign, (November 2009), available at: https://cfr.illinois.edu/pubs/rp_20091101_MultipleMoveStudyUnderstandingReasonsForFosterCareInstability.pdf

as noted above, children are more likely to be physically and sexually abused while in foster care than at home.

One might think that these children have worse life outcomes for the very reason they were in foster care: their family of origin. However, a number of studies have compared youth who experienced foster care with youth who experienced similar forms of maltreatment but remained in their homes—essentially isolating the effects of family separation and foster care—and found similarly poor outcomes for youth who entered foster care. A series of causal studies done by MIT economist Joseph Doyle found that children who experienced foster care were twice as likely to experience teen motherhood, three times as likely to be incarcerated as adults, and had employment and earning rates 40% lower than similarly situated children who never entered foster care.⁸¹ Other causal studies have produced similar findings—when compared to youth with similar backgrounds and experiences, youth who experience foster care experience lower levels of educational attainment and higher rates of poverty, homelessness, early parenthood, referral to drug or alcohol treatment, and incarceration.⁸²

⁸¹ Toni Watt and Seoyoun Kim, *Race/Ethnicity and Foster Youth Outcomes: An Examination of Disproportionality Using the National Youth in Transition Database*, 102 *Children and Youth Services Review*, 251-258, (2019), available at:

<https://www.sciencedirect.com/science/article/abs/pii/S0190740919300362>

⁸² Joseph J. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97, no. 5 *American Economic Review*, 1583-1610, (December 2007), available at:

<https://www.aeaweb.org/articles?id=10.1257/aer.97.5.1583>; Joseph J.

Doyle, Jr., *Child Protection and Adult Crime: Using Investigator Assignment to Estimate Causal Effects of Foster Care*, 116, no. 4 *Journal of Political Economy*, 746-770, (2008), available at:

<https://www.journals.uchicago.edu/doi/10.1086/590216>; Joseph J. Doyle, Jr., *Causal Effects of Foster Care: An Instrumental-Variables Approach*, 35 *Children and Youth Services Review*, 1143-1151, (2013), available at: <https://www.sciencedirect.com/science/article/abs/pii/S0190740911000958>;

c. *Children of Color, Especially in California, are Disproportionately Removed From Their Families and Have Worse Outcomes Than White Children*

Children of color continue to be disproportionately removed and placed into foster care.⁸³ California continues to have the largest number of children in foster care.⁸⁴ Research has shown that children of color are at increased risk for poorer outcomes compared with the general foster care

Joseph J. Doyle, Jr. and Anna Aizer, *Economics of Child Protection: Maltreatment, Foster Care & Intimate-Partner Violence*, 10 Annual Review of Economics, 87-108, (August 2018), available at: <https://www.annualreviews.org/doi/10.1146/annurev-economics-080217-053237>; Sylvana M. Côté, Massimiliano Orri, Mikko Marttila, and Tiina Ristikari, *Out-of-Home Placement in Early Childhood and Psychiatric Diagnoses and Criminal Convictions in Young Adulthood: A Population-Based Propensity Score-Matched Study*, 2, no. 9 The Lancet Child & Adolescent Health, 647-653, (September 2018), available at: [https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642\(18\)30207-4/fulltext](https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642(18)30207-4/fulltext); Sue D. Hobbs, Daniel Bederian-Gardner, Christin M. Ogle, Sarah Bakanosky, Rachel Narr, and Gail S. Goodman, *Foster Youth and At-Risk Non-Foster Youth: A Propensity Score and Structural Equation Modeling Analysis*, 126 Children and Youth Services Review (2021), available at: <https://www.sciencedirect.com/science/article/abs/pii/S0190740921001134?via%3Dihub>; William P. Warburton, Rebecca N. Warburton, Arthur Sweetman, and Clyde Hertzman, *The Impact of Placing Adolescent Males Into Foster Care on Education, Income Assistance, and Convictions*, 47, no. 1 Canadian Journal of Economics, 35-69 (February 2014), available at: <https://onlinelibrary.wiley.com/doi/10.1111/caje.12064>

⁸³ Lantos, et al., *Integrating positive youth development and racial equity, inclusion, and belonging approaches across the child welfare and justice systems*, *supra* note 78.

⁸⁴ KIDS COUNT Data Center, *Children in foster care in California; Children entering foster care in the United States*, Annie E. Casey Foundation, (2022).

population.⁸⁵ When social workers and judges make decisions without objective criteria, relying instead on their own common sense or intuition, stereotypes and implicit associations will likely affect their judgment.⁸⁶ The entirely discretionary determinations advocated for by Appellee will only exacerbate the above harms by allowing these monumental decisions to be informed by bias as opposed to objective criteria.

⁸⁵ Ryan Davidson, Meredith Morrissey & Connie Beck, *The Hispanic Experience of the Child Welfare System*, 57 Family Court Review, at 202, (2019), available at: https://www.researchgate.net/publication/332607705_The_Hispanic_Experience_of_the_Child_Welfare_System; See also U.S. Department of Health and Human Services, Children's Bureau, *Child welfare outcomes 2018: Report to Congress*, (2021), available at: <https://cwoutcomes.acf.hhs.gov/cwodatasite>; Hannah Lantos, et al., *Integrating positive youth development and racial equity, inclusion, and belonging approaches across the child welfare and justice systems*, supra note 78; Mark E. Courtney, et al., *Findings from the California Youth Transitions to Adulthood Study (CaYOUTH): Conditions of youth at age 23*, 23, Chapin Hall, (2020), available at: https://www.chapinhall.org/wp-content/uploads/CY_YT_RE1020.pdf

⁸⁶ *Helping Courts Address Implicit Bias: Resources for Education*, National Center for State Courts, at Appendix G-3, (2012) (noting that when the basis for judgment is somewhat vague (e.g. situations that call for discretion) biased judgments are more likely), available at: https://www.national-consortium.org/data/assets/pdf_file/0023/9176/helping-courts-address-implicit-bias.pdf; See also Victor D. Quintanilla, *Beyond Common Sense: A Social Psychological Study of Iqbal's Effect on Claims of Race Discrimination*, 17 MICH. J. RACE & L. 1, 3 (2011), available at: <https://repository.law.umich.edu/mjrl/vol17/iss1/1>; Suzette M. Malveaux, *Front Loading and Heavy Lifting: How Pre-Dismissal Discovery Can Address the Detrimental Effect of Iqbal on Civil Rights Cases*, 14 LEWIS & CLARK L. REV. 65, 99-101 (2010), available at: <https://scholar.law.colorado.edu/faculty-articles/992>

CONCLUSION

Appellant's child was taken from him where there was no evidence of abuse or neglect. The Appellee and the lower courts used one drug test to find there was substantial risk of serious harm to the child. The child welfare system, and the courts, are part of a system that is biased against and disadvantages people of color and people of lower income. This system also ignores the well-documented harms of investigation by the state, forcible family separation, and foster care, when doing an analysis of the best interests of the child. We respectfully request a holding from this Court that would require the monumental decisions made by social workers, trial courts, and reviewing courts to be informed by objective criteria as opposed to subjective and biased reasoning. This Court should consider the documented harms of state intervention, especially forced family separations. Here, the court should not have taken jurisdiction over N.R. and certainly should not have removed him from his father based on past use of a substance outside of N.R.'s presence, and with absolutely no evidence of any harm or risk of harm. Appellee and the lower courts acted without any consideration of the documented harms from state intervention. A decision in O.R.'s favor would help prevent other California families from experiencing this kind of inappropriate and harmful intervention. A decision in Appellee's favor will perpetuate the very harms this system is supposed to prevent.

Date: April 5, 2023

Respectfully Submitted,

/s/ Tasha Alyssa Hill

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CERTIFICATE OF COMPLIANCE

This brief is set using 13pt Times New Roman. According to the computer program used to prepare this brief, this brief contains 10,794 words, excluding the cover, tables, signature block, and this certificate.

The undersigned certifies that this brief complies with the form requirements set by California Rules of Court, rule 8.204(b) and contains fewer words than permitted by rule 8.520(c) or by Order of this Court.

Date: April 5, 2023

/s/ Tasha Alyssa Hill

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PROOF OF SERVICE
IN THE SUPREME COURT OF CALIFORNIA

In re N.R.,
Supreme Court Case No: S274943
Appellate Court Case No: B312001

I, Tasha Hill, declare and state:

That I am not a party to the within action; that I am an attorney admitted to practice law in the State of California, representing Amici Professor Alan Dettlaff, Professors of Social Work, and Social Workers.

That on April 5, 2023, I served the following:

**BRIEF OF AMICI CURIAE IN SUPPORT OF OBJECTOR AND
APPELLANT**

Upon the persons or organizations listed below electronically. I utilized service through the truefiling electronic system.

O.R. - Appellant, through their attorney of record, Sean Burleigh,
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I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration was executed on April 5, 2023 at Boulder, Colorado.

/S/ Tasha Alyssa Hill