

STATE OF MICHIGAN  
IN THE SUPREME COURT  
APPEAL FROM THE COURT OF APPEALS

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IN RE BATES, Minors.

Supreme Court No. 165815

Court of Appeals No. 361566

Lower Court No. 18-004645-NA

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**BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER,  
AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN, CHILDREN'S RIGHTS,  
DETROIT JUSTICE CENTER, AND NATIONAL CENTER FOR YOUTH LAW  
IN SUPPORT OF APPELLANT-MOTHER**

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## INTEREST AND IDENTITY OF *AMICI CURIAE*<sup>1</sup>

**Juvenile Law Center** fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center's legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential *amicus* briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity.

The **American Civil Liberties Union of Michigan** (ACLU) is the Michigan affiliate of a nationwide nonpartisan organization of over a million members dedicated to protecting the rights and liberties guaranteed by the United States Constitution. The ACLU has participated in many cases before this Court and in federal court to advocate in support of the constitutional right to family integrity, including in cases involving the termination of parental rights. See, e.g., *In re Hicks/Brown*, 500 Mich 79; 893 NW2d 637 (2017); *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014); *In re Mays*, 490 Mich 993; 807 NW2d 307 (2012); see also *Pueblo v Haas*, 511 Mich 345; 999 NW2d 433 (2023); *Hunter v Hunter*, 484 Mich 247; 771 NW2d 694 (2009); *DeRose v DeRose*, 469 Mich 320; 666 NW2d 636 (2003); *Caspar v Snyder*, 77 F Supp 3d 616 (ED Mich, 2015); *Ratte v Corrigan*, 989 F Supp 2d 550 (ED Mich, 2013).

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<sup>1</sup> Pursuant to MCR 7.312(H)(5), *amici curiae* state that no counsel for a party authored this brief in whole or in part, nor did anyone, other than *amici* and their counsel, make a monetary contribution intended to fund the preparation or submission of the brief.



**Children's Rights** is a national public interest organization based in New York that investigates, exposes, and combats violations of the rights of children. Through strategic advocacy and civil rights impact litigation, Children's Rights holds governments accountable for keeping children and youth safe, healthy, and free from discrimination. Since its founding in 1995, Children's Rights has achieved lasting, systemic change for hundreds of thousands of children throughout the country across over 20 jurisdictions. Our work challenges racist, discriminatory laws, policies, and practices that punish parents experiencing poverty by taking their children and unnecessarily placing them in dysfunctional foster systems. Our advocacy centers on building solutions that will advance the rights of children for generations.

The **Detroit Justice Center** (DJC) is a non-profit law firm advocating alongside communities to create economic opportunities, transform the criminal punishment system, and promote just cities. DJC seeks to build equitable communities free from racial and socio-economic discrimination, based on the principle that it is not possible to build inclusive cities where everyone is safe and has what they need to thrive, without remedying the effects of mass incarceration. DJC works to challenge entrenched opinions that incarceration and other carceral measures serve as an effective solution. Attorneys in the Legal Services and Advocacy Practice represent system-involved clients in various courts, including family court where they tackle issues of custody and parenting time. DJC is committed to expanding the public safety conversation to explore means of divesting from carceral structures to invest in communities, while simultaneously protecting the constitutional rights of those impacted by the criminal punishment system.

The **National Center for Youth Law** (NCYL) is a non-profit organization that works to build a future in which every child thrives and has a full and fair opportunity to achieve the future they envision for themselves. For over five decades, NCYL has worked to protect the rights of

low-income youth and youth of color in order to ensure that they have the resources, support, and opportunities they need to live safely with their families in their communities and that public agencies promote their safety and wellbeing.

## INTRODUCTION

The right to family integrity is one of “the oldest of the fundamental liberty interests recognized” by the United States Supreme Court. *Troxel v Granville*, 530 US 57, 65; 120 S Ct 2054; 147 L Ed 2d 49 (2000). Fundamental liberty interests, including the right to family integrity, must not be infringed upon absent a compelling state interest and adoption of the least restrictive means to achieve that interest. *Ashcroft v American Civil Liberties Union*, 542 US 656, 665-66; 124 S Ct 2783; 159 L Ed 2d 690 (2004). Judicial review of compelling state interests and the supposedly narrowly tailored means to achieve those interests is an exacting examination in which government actions must satisfy strict scrutiny. *Ashcroft*, 542 US at 669-70. This process is designed to “leave[] few survivors.” *City of Los Angeles v Alameda Books, Inc* 535 US 425, 455; 122 S Ct 1728; 152 L Ed 2d 670 (2002) (Souter, J., dissenting). Termination of parental rights permanently extinguishes the fundamental right to family integrity and thus should require the highest level of judicial scrutiny to pass constitutional muster. Yet, Black, Latinx, and Indigenous families consistently find their right to family integrity obliterated by child welfare agencies and family courts at shockingly disproportionate rates. More than 200,000 children are removed from their families each year, with Black, Indigenous, and Latinx children overly represented in that number.<sup>2</sup>

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<sup>2</sup> See, e.g., Children’s Bureau, US Department of Health & Human Services, *The AFCARS Report* (June 23, 2020), pp 1-2, available at <<https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport27.pdf>>.

Removing children from their homes and terminating parental rights without first considering placing the children with family members or other community members who can provide safety for the children while preserving the parent-child relationship *does not survive* this level of scrutiny. The termination of parental rights has been described as the family law equivalent of the death penalty. *In re B.C.*, 141 Ohio St 3d 55, 60; 2014-Ohio-4558; 21 NE3d 308 (2014), quoting *In re Smith* 77 Ohio App 3d 1, 16; 601 NE2d 45 (1991). This is not an overstatement. Indeed, termination of parental rights is an irreversible and destructive blow to the most fundamental familial relationship. *Santosky v Kramer*, 455 US 745, 753-54; 102 S Ct 1388; 71 L Ed 2d 599 (1982); see also *id.* at 787 (Rehnquist, J., dissenting) (reasoning that very few consequences of judicial action are so grave as the permanent, legal severing of the parent-child relationship).

Both parents and children suffer tremendously from severing familial bonds, and, given their youth, children are uniquely harmed by the consequences of family separation. Research confirms that children experience physical, emotional, and psychological harm when parental rights are terminated, and they are separated from their families. See later Section I.B. Given these dire effects, courts should tread cautiously before terminating parental rights and consider less restrictive approaches, including a weighing of alternatives, a calculation of the impact to the fundamental liberty interest, and the selection of the alternative that satisfies the government's interest with the least intrusion on family integrity.

Custody orders, and kinship or guardianship arrangements are examples of less restrictive alternatives that may be available to family courts and child welfare agencies, and they slow the pace at which child welfare agencies and family courts rip families apart and inflict harm on children. These placements can provide safety to children, which satisfies the government's most

cited compelling interest. These placements are also incredibly beneficial to children. Numerous studies show that, overwhelmingly, kinship placements avoid much of the trauma that termination of parental rights and family separation cause<sup>3</sup> because kinship placements allow children to maintain connections with their family. See later Section I.C. Children have a vested interest in maintaining strong familial connections, avoiding the well documented physical, mental, and emotional trauma termination causes, and experiencing the positive adult outcomes associated with ongoing familial connections maintained through childhood. Courts should therefore be required to consider kinship placement as an alternative to termination of parental rights and to explicitly state why kinship placement or other remedies cannot adequately protect a child's safety prior to terminating a parent's rights.

## ARGUMENT

### I. TERMINATION OF PARENTAL RIGHTS INFLICTS SIGNIFICANT EMOTIONAL AND PSYCHOLOGICAL HARM ON CHILDREN

Stability and strong familial support systems are necessary for children to thrive. Social and psychological evidence overwhelmingly demonstrates that children who have connections to their families—specifically their parents and siblings—have better outcomes in nearly all categories; including but not limited to, possessing higher self-confidence, the ability to regulate emotions, fewer instances of chronic illnesses, and the ability to maintain age-appropriate employment.<sup>4</sup> The opposite is true for children who are prevented from maintaining familial

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<sup>3</sup> Sankaran & Church, *The Ties That Bind Us: An Empirical, Clinical, and Constitutional Argument Against Terminating Parental Rights*, 61 Fam Ct Rev 246, 258 (2023).

<sup>4</sup> See Franck Meyer, *Harm Caused by the Adoption and Safe Families Act*, 1 Fam Integrity & Just Q. 84, 86 (2022); Cushing, Samuels & Kerman, *Profiles of Relational Permanence at 22: Variability in Parental Supports and Outcomes Among Young Adults with Foster Care Histories*, 39 Child & Youth Servs Rev 73, 79-80 (2014); McCormick, *The Role of the Sibling Relationship in Foster Care: A Comparison of Adults with a History of Childhood Out-of-Home Placement*

bonds. Children suffer from intense anxiety, deep depression, and feelings of loss and grief because of family separation.<sup>5</sup> They may also suffer from altered and poor developmental health and are at higher risk of involvement with the criminal justice system as adults.<sup>6</sup> Children benefit tremendously from family relationships, suffer greatly without them, and courts should be obligated to consider less drastic alternatives to terminating parental rights such as kinship and guardian arrangements.

**A. Children Benefit Emotionally And Psychologically From Familial Relationships**

“Our human wisdom, practice experience, and research evidence point to children needing more than just *a* family to thrive; instead, they need *their own* family to thrive . . . .”<sup>7</sup> Every child exists within a relational context of unique and meaningful connections—their family, community, and culture. The continuity of these connections and the sense of belonging they foster promote psychological safety and better long-term outcomes for children.<sup>8</sup>

Research has repeatedly demonstrated the importance of family connections for a child’s

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(2009) (Ph.D. Dissertation, University of Texas at Arlington), pp 78-80; McWey, Cui & Stevenson Wojciak, *Parent and Caregiver Relationships and Mental Health Symptom Profiles of Youth in Foster Care*, 39 Child & Adolescent Soc Work J 573, 573-74, 578-79 (2022); McWey, Acock & Porter, *The Impact of Continued Contact with Biological Parents Upon the Mental Health of Children in Foster Care*, 32 Child & Youth Servs Rev 1338, 1342-43 (2010); see also Bramlett, Radell & Chow, *Health and Well-Being of Children in Kinship Care: Findings from the National Survey of Children in Nonparental Care*, 95 Child Welfare 41, 53-55 (2017).

<sup>5</sup> Mitchell, *The Neglected Transition: Building a Relational Home for Children Entering Foster Care* (Oxford: Oxford University Press, Inc, 2016), pp 4-5.

<sup>6</sup> Zimring et al., *Posttraumatic Stress Disorder and Removal from Home as a Primary, Secondary, or Disclaimed Trauma in Maltreated Adolescents*, 27 J Fam Violence 813, 814 (2012); Children’s Rights Litigation Committee, American Bar Association, *Trauma Caused by Separation of Children from Parents: A Tool to Help Lawyers* (January 2020), pp 4-10, available at <[https://www.americanbar.org/content/dam/aba/publications/litigation\\_committees/childrights/child-separation-memo/parent-child-separation-trauma-memo.pdf](https://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/child-separation-memo/parent-child-separation-trauma-memo.pdf)>.

<sup>7</sup> *Harm Caused by the Adoption and Safe Families Act*, 1 Fam Integrity & Just Q at 86 (emphasis added).

<sup>8</sup> *Id.* at 88.

development and wellbeing.<sup>9</sup> Psychological and sociological research reinforces “the importance of the biological parent-child relationship as a determinant of the child’s personality, resilience and relationships with others, regardless of whether the child in fact lives with that parent.”<sup>10</sup>

During childhood, maintaining relationships can act as a “buffer” against developmental stress, ameliorating the impact that trauma and adversity have on long-term physical health outcomes.<sup>11</sup> For children who have been removed from their homes, maintaining family connections supports a positive sense of identity and leads to higher self-esteem by “mitigating feelings of loss, rejection, self-blame and abandonment.”<sup>12</sup> Multiple studies have found that children who maintain ties to their birth family, even after adoption, experience less anxiety, and feel more at ease.<sup>13</sup>

The positive effects of preserving family connections continue beyond childhood. One study found that children in foster care who reported maintaining close connections with both biological parents as well as other parental figures were more likely to demonstrate age-appropriate employment, education, and financial security, and were less likely to suffer from

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<sup>9</sup> Children also benefit tremendously from maintained relationships with their siblings, and as such, federal guidance specifically instructs agencies to place sibling groups together as often as possible. 42 USC 671(a)(31). Placing sibling groups together is a “critical aspect” of establishing relational permanency children need to thrive. Children’s Bureau, US Department of Health & Human Services, *Achieving Permanency for the Well-being of Children and Youth* (January 5, 2021), p 9, available at <<https://www.acf.hhs.gov/sites/default/files/documents/cb/im2101.pdf>>.

<sup>10</sup> Patten, *The Subordination of Subsidized Guardianship in Child Welfare Proceedings*, 29 NYU Rev L & Soc Change 237, 240 (2004).

<sup>11</sup> Chen, Brody & Miller, *Childhood Close Family Relationships and Health*, 72 Am Psych 555, 558 (2017).

<sup>12</sup> Riley & Singer, *Connections Matter: Relationships with Birth Families are Important for Foster, Adopted Children*, Imprint (August 2, 2019), available at <<https://imprintnews.org/adoption/connections-matter-relationships-with-birth-families-are-important-for-foster-adopted-children/36174>>.

<sup>13</sup> Glaser, *American Baby: A Mother, a Child and the Shadow History of Adoption* (New York: Viking, 2021), p 270.

mental health issues, substance abuse, homelessness, and involvement with the criminal legal system.<sup>14</sup>

The U.S. Department of Health and Human Services Children’s Bureau acknowledges the importance of children maintaining familial relationships, observing that “[c]hildren have inherent attachments and connections with their families of origin that should be protected and preserved whenever safely possible,” and “[w]hen these relationships are prioritized, protective factors are increased, which promotes current and future well-being.”<sup>15</sup> The Children’s Bureau has instructed courts and child welfare professionals that “[c]hildren in foster care should not have to choose between families.”<sup>16</sup> Rather, children should be offered “the opportunity to *expand* family relationships, not sever or replace them.”<sup>17</sup> Children themselves also describe ongoing family attachments as essential to their wellbeing. Young people who have been in foster care value relational permanency and the nurturing and preservation of all relationships that matter to a child.<sup>18</sup>

**B. Children Suffer Physical, Psychological, And Emotional Harm When Separated From Their Families**

The devastating psychological and emotional impact of removing children from their families and permanently ending the parent-child relationship cannot be overstated. Indeed, it is a matter of child health and well-being.

Separating children from their parents contradicts everything we stand for as pediatricians—protecting and promoting children’s health. In fact, highly stressful experiences, like family separation,

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<sup>14</sup> *Profiles of Relational Permanence at 22*, 39 Child & Youth Servs Rev at 79-80.

<sup>15</sup> *Achieving Permanency for the Well-Being of Children and Youth*, pp 2, 10.

<sup>16</sup> *Id.* at 10.

<sup>17</sup> *Id.* (emphasis added).

<sup>18</sup> See Rolock & Pérez, *Three Sides to a Foster Care Story: An Examination of the Lived Experiences of Young Adults, Their Foster Care Case Record, and The Space in Between*, 17 Qualitative Soc Work 195, 198 (2018).

can cause irreparable harm, disrupting a child’s brain architecture and affecting his or her short- and long-term health. This type of prolonged exposure to serious stress—known as toxic stress—can carry lifelong consequences for children.<sup>[19]</sup>

The very act of physically separating children from their parents is stressful and triggers physical, emotional, and psychological distress for children. The act of removal has long-term emotional and psychological consequences for children.<sup>20</sup> Even planned or “orderly” separations can cause emotional distress for children.<sup>21</sup> Simply observing a frightened or visibly distressed parent—as is common when a child welfare agent physically removes children from parents or when parents are forced to take children to a new home and leave them—can cause a similar reaction in children.<sup>22</sup> Studies also show that children whose parents’ rights have been terminated experience something called ambiguous loss, which is a loss that involves a lack of clarity about a loved one’s physical and/or psychological presence.<sup>23</sup> Ambiguous loss can be “the most distressful of . . . losses because it is unclear, there is no closure, and without meaning, there is no hope.”<sup>24</sup>

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<sup>19</sup> Kraft, *AAP Statement Opposing Separation of Children and Parents at the Border* (May 8, 2018), available at <<https://www.aap.org/en/news-room/news-releases/aap/2018/aap-statement-opposing-separation-of-children-and-parents-at-the-border/>> (then president of the American Academy of Pediatrics discussing the separation of families at the Mexican border).

<sup>20</sup> Stewart, *Re-Envisioning Child Well-Being: Dismantling the Inequitable Intersections Among Child Welfare, Juvenile Justice, and Education*, 12 Colum J Race & L 630, 639 (2022), citing Trivedi, *The Harm of Child Removal*, 43 NYU Rev L & Soc Change 523, 531-32 (2019); see also *The Neglected Transition* pp 4-5; Papovich, *Trauma & Children in Foster Care: A Comprehensive Review*, Forensic Scholars Today (July 10, 2019), available at <<https://www.csp.edu/publication/trauma-children-in-foster-care-a-comprehensive-overview/>>.

<sup>21</sup> Howard et al., *Early Mother-Child Separation, Parenting, and Child Well-Being in Early Head Start Families* 13 Attachment & Hum Dev 5, 6-8, 20 (2011).

<sup>22</sup> *Id.*; see also Eck, *Psychological Damage Inflicted By Parent-Child Separation is Deep, Long-Lasting*, PBS: Nova (June 20, 2018), available at <<https://www.pbs.org/wgbh/nova/article/psychological-damage-inflicted-by-parent-child-separation-is-deep-long-lasting/>>.

<sup>23</sup> Samuels, *Ambiguous Loss of Home: The Experience of Familial (Im)permanence Among Young Adults with Foster Care Backgrounds*, 31 Child & Youth Servs Rev 1229, 1230, 1232-38 (2009); Johnson, *Examining Risks to Children in the Context of Parental Rights Termination Proceedings*, 22 NYU Rev L & Soc Change 397, 414 (1996).

<sup>24</sup> Mitchell, *The Family Dance: Ambiguous Loss, Meaning Making, and the Psychological Family in Foster Care*, 8 J Fam Theory & Rev 361, 362 (2016).



Children who experience ongoing family separation are at risk for a host of other psychological complications including toxic stress, the destruction of essential attachments, grief, loss, “anxiety, emotional distress, behavioral problems, depression, and lifelong health consequences.”<sup>25</sup> Grief can further manifest in “guilt, post-traumatic stress disorder, isolation, substance abuse, anxiety, low self-esteem, and despair.”<sup>26</sup>

The emotional and psychological impact of family separation also manifests physically in children. In the immediate moments of separation, children’s cortisol levels (“the stress hormone”) skyrocket, their blood pressure rises, and their heart rates accelerate.<sup>27</sup> In the long-term, children who are separated from their families for extended periods and, therefore, are under sustained stress, experience significantly higher rates of cardiovascular diseases, autoimmune conditions, and respiratory diseases.<sup>28</sup> These severe physical, emotional, and psychological consequences of family separation and termination of parental rights can be ameliorated by a thorough consideration of kinship placements and guardianships, where, if in the best interest of the child, could maintain familial ties and save them from lifelong harm.

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<sup>25</sup> *Re-Envisioning Child Well-Being*, 12 Colum J Race & L at 639.

<sup>26</sup> *The Neglected Transition*, p4.

<sup>27</sup> *Trauma Caused by Separation of Children from Parents*, p 8; Wan, *What Separation from Parents Does to Children: “The Effect is Catastrophic”*, 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](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)>; see also Tang et al, *Parent-Child Separation and Cardiometabolic Outcomes and Risk Factors in Adulthood: A Systematic Review*, 152 *Psychoneuroendocrinology* 1, 1-2 (2023); Bevan & Kumari, *Maternal Separation in Childhood and Hair Cortisol Concentrations in Late Adulthood*, 120 *Psychoneuroendocrinology* 1, 1 (2021).

<sup>28</sup> See *Childhood Close Family Relationships and Health*, 72 *Am Psych* at 558.

**C. Kinship And Guardianship Placements Preserve Familial Connections And Provide A Less Restrictive Alternative To Termination That Can Satisfy Strict Scrutiny**

When it is necessary to remove children from their homes, kinship placements can facilitate ongoing connections to the child’s parents and siblings as well as the child’s culture and broader community.<sup>29</sup> Familial connectivity is imperative for children to thrive during childhood and well into adulthood.<sup>30</sup> Research about the benefits of kinship placements shows that one of the factors that promotes stability is “the degree of genealogical relatedness.”<sup>31</sup> Specifically, placement with grandparents or with caretakers who have a close biological connection to the child are both factors that prevent instability even after an adoption or guardianship has been finalized.<sup>32</sup> In other words, biological connections are inherently beneficial to children and create relational permanency that should not be ignored.

Less restrictive settings, such as kinship and guardianship placements provide safety and stability for children without also inflicting the immense harm associated with the termination of the parent-child relationship and the elimination of access to family.<sup>33</sup>

The government’s compelling interest in the safety and stability of the children can be satisfied through kinship placements and guardianships. These placements not only provide

<sup>29</sup> *Harm Caused by the Adoption and Safe Families Act*, 1 Fam Integrity & Just Q at 86, 88.

<sup>30</sup> See *Profiles of Relational Permanence* at 22, 39 Child & Youth Servs Rev at 79-80.

<sup>31</sup> Testa, *The Quality of Permanence—Lasting or Binding? Subsidized Guardianship and Kinship Foster Care as Alternative to Adoption*, 12 Va J Soc Pol’y & L 499, 524-25 (2005); see also Coupet, “Ain’t I a Parent?”: *The Exclusion of Kinship Caregivers From the Debate Over Expansions of Parenthood*, 34 NYU Rev L & Soc Change 595, 610 (2010).

<sup>32</sup> Quality Improvement Center for Adoption & Guardianship Support & Preservation, *Risk & Protective Factors for Discontinuity in Public Adoption & Guardianship: A Review of the Literature* (January 2017), pp 5, 15, 26, available at <[https://spaulding.org/wp-content/uploads/2021/07/FinalLitReview\\_2-15-17.pdf](https://spaulding.org/wp-content/uploads/2021/07/FinalLitReview_2-15-17.pdf)>.

<sup>33</sup> See Casey Family Programs, *How Are Child Protection Agencies Promoting and Supporting Joint Sibling Placements and Adoptions?* (August 2020), p 1-2, available at <<https://www.casey.org/media/20.07-QFF-SF-Sibling-placements.pdf>>; see also Section I.B earlier.

physical safety for children, but they also facilitate emotional and psychological support in the form of ongoing familial connection; and the termination of the parent-child relationship is not necessary to deliver these benefits. When an option that provides safety to children is available, termination is not narrowly tailored and, therefore, is unconstitutional. See, e.g., *T.D.K. v L.A.W.*, 78 So 3d 1006, 1011 (Ala Civ App, 2011) (In termination proceedings court must “consider whether all viable alternatives to terminating parental rights have been exhausted”), quoting *Ex parte J.E.*, 1 So 3d 1002, 1008 (Ala, 2008); *P.M. v Lee Co Dep’t of Human Resources*, 335 So 3d 1163, 1172 (Ala Civ App, 2021) (Termination not proper where mother had clear bond with the child, relative foster parents intended mother to have continued involvement in child’s life, mother had made progress to provide stability for the child, and relatives were willing to provide care for the child for as long as necessary); *S.M.M. v R.S.M.*, 83 So 3d 572, 576-77 (Ala Civ App, 2011) (finding termination improper where mother suffered from mental health conditions and a history of arrests as well as drug use but father was awarded sole custody and mother would only have supervised visitation with the child); *Ex parte A.S.*, 73 So 3d 1233, 1229-30 (Ala, 2011) (judgement terminating mother’s parental rights reversed where grandmother had sole custody of the child and supervised all visitation with mother); *Interest of B.T.B.*, 472 P3d 827, 830, 841; 2020 UT 60 (2020) (case remanded because despite father’s history of incarceration, failure to provide financial support for the children, and virtually no contact with the children for several years, termination is not “automatic” and wherever possible, “family life should be strengthened and preserved”), quoting Utah Code 78A-6-503; *People ex rel A.M. v T.M.*, 480 P3d 682, 690; 2021 CO 14 (Colo, 2021) (consideration and elimination of less drastic alternatives is implicit in the statutory criteria for termination of parental rights). Kinship placements and guardianships are less restrictive alternatives than terminating parental rights and should be considered given their

potential to enhance a child's physical, emotional, and psychological well-being and avoid the detrimental effects of severing the parent-child or family-child relationship.

## II. TERMINATION OF PARENTAL RIGHTS IS DISPROPORTIONATELY INFLICTED ON BLACK, LATINX, AND INDIGENOUS CHILDREN AND PERPETUATES THE RACIST ORIGINS OF THE CHILD WELFARE SYSTEM

The United States child welfare system purportedly exists to protect the safety and well-being of all children.<sup>34</sup> However, decades of research and accounts of lived experiences confirm that the system instead has a long history of separating children and families of color, particularly Black and Indigenous families, because of unjust and racist policies and practices.<sup>35</sup> The child welfare system utilizes surveillance, regulation, and punishment to control families and ensure adherence to white standards of parenting.<sup>36</sup> Non-white families, specifically Black families, are especially the target of these tactics.<sup>37</sup> They are more likely to be investigated by child welfare agencies and are more likely to suffer worse outcomes from these investigations.<sup>38</sup> Absent strict scrutiny to temper the impact of the racism entrenched in the child welfare system, Black, Latinx, and Indigenous children will continue to suffer at alarmingly disproportionate rates from the devastation of family separation and termination of parental rights.

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<sup>34</sup> Children's Bureau, *About* (June 28, 2023), available at <<https://www.acf.hhs.gov/cb/about>> ("The Children's Bureau, an agency within the Administration for the Children and Families within the U.S. Department of Health and Human Services, seeks to improve the safety, permanency, and well-being of children.").

<sup>35</sup> See Williams, upEND, *Regulating Families: How the Family Policing System Devastates Black, Indigenous, and Latinx Families and Upholds White Supremacy* (2022), pp 3-4, available at <<https://upendmovement.org/wp-content/uploads/2022/06/upEND-Regulation.pdf>>.

<sup>36</sup> See *id.*

<sup>37</sup> *Id.* at pp 5, 12-13.

<sup>38</sup> Minoff & Citrin, Center for the Study of Social Policy, *Systemically Neglected: How Racism Structures Public Systems to Produce Child Neglect* (March 2022), pp 5, 13-15, available at <<https://cssp.org/wp-content/uploads/2022/03/Systemically-Neglected-How-Racism-Structures-Public-Systems-to-Produce-Child-Neglect.pdf>>.

**A. Black, Latinx, And Indigenous Children Are Separated From Their Families At Disproportionate Rates**

The discrimination entrenched in the child welfare system is evident in the historic, pervasive, and ongoing overrepresentation of Black families in the child welfare system. Over 215,000 children were removed from their families and entered foster care in 2020.<sup>39</sup> Black children made up 25% of the children in foster care despite being only 15% of youth in America.<sup>40</sup> Over 50% of Black children in the United States will experience a child welfare investigation before their eighteenth birthday (nearly double the rate of white children).<sup>41</sup> Nearly 10% of all Black children will be removed from their parents and placed into foster care (double the rate of white children).<sup>42</sup> Similarly, Indigenous children account for less than 1% of the population of all children in the United States, however, represent 2.5% of all children removed from their homes and placed in foster care.<sup>43</sup> While Latinx children are not overrepresented in foster care nationally, they are disproportionately placed in foster care in some states, and the number of states where this is true has seen steady growth.<sup>44</sup> By contrast, white children are underrepresented in the child welfare system. White children account for almost 50% of all children in the United States but make up only 44% of all children removed from their homes and placed in foster care.<sup>45</sup>

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<sup>39</sup> Children's Bureau, US Department of Health & Human Services, *The AFCARS Report* (October 4, 2021), p 1, available at <<https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport28.pdf>>.

<sup>40</sup> *Regulating Families: How the Family Policing System Devastates Black, Indigenous, and Latinx Families and Upholds White Supremacy*, p 5.

<sup>41</sup> Kim et al., *Lifetime Prevalence of Investigating Child Maltreatment Among US Children* 107 *Am J Pub Health* 274, 277-78 (2017), available at <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5227926/pdf/AJPH.2016.303545.pdf>>.

<sup>42</sup> *Systemically Neglected*, p 5.

<sup>43</sup> National Center for Juvenile Justice, *Disproportionality Rates for Children of Color in Foster Care Dashboard* (2021), available at <[http://www.ncjj.org/AFCARS/Disproportionality\\_Dashboard.asp?selDisplay=2](http://www.ncjj.org/AFCARS/Disproportionality_Dashboard.asp?selDisplay=2)>.

<sup>44</sup> *Systemically Neglected*, p 15.

<sup>45</sup> *Disproportionality Rates for Children of Color in Foster Care Dashboard*.

Once in the child welfare system, Black children are more likely to have their relationships with their parents legally severed. One in forty-one Black children will have their parents' rights terminated (more than double the rate of the rate of the general population).<sup>46</sup> Additionally, in nearly every state with at least one recognized Indigenous tribe, Indigenous children are grossly over-represented in the foster care system.<sup>47</sup>

**B. The Disproportionate Separation Of Black, Latinx And Indigenous Children From Their Families Is A Continuation Of Historical Racism**

It is well-established that the right for parents to raise their own children is a fundamental liberty interest. *Troxel v Granville*, 530 US 57, 65; 120 S Ct 2054; 147 L Ed 2d 49 (2000). As set forth earlier, see Introduction, it is quintessentially American and deeply rooted in this country's history and tradition. *Id.* at 66, quoting *Parham v J.R.*, 442 US 584, 602; 99 S Ct 2493; 61 L Ed 2d 101 (1979). However, not all parents have historically been able to freely participate in this tradition. Black, Indigenous, and, increasingly Latinx children and parents have not had their right to family integrity respected or protected in this country. The systemic erosion of these family structures—through surveillance, regulation, and punishment—began with routine child seizure during chattel slavery, the promulgation of “Indian” boarding schools in the 1880's, and most recently, through the vicious separation of Latinx children from their parents at the U.S.-Mexico border. The child welfare system deploys many of the same tactics—surveillance, regulation, and punishment—and, as a result, continues the sordid tradition of disproportionately ripping Black, Latinx, and Indigenous children from their families.

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<sup>46</sup> Children's Rights & Columbia Law School Human Rights Institute, *Racial (In)justice in the U.S. Child Welfare System* (July 2022), pp 5-6, available at <<https://www.childrensrights.org/wp-content/uploads/imported-files/Childrens-Rights-2022-UN-CERD-Report-FINAL.pdf>>.

<sup>47</sup> Human Rights Watch & ACLU, *“If I Wasn't Poor, I Wouldn't Be Unfit”*: *The Family Separation Crisis in the US Child Welfare System* (November 2022), p 44-45, available at <[https://www.hrw.org/sites/default/files/media\\_2022/11/us\\_crd1122web\\_3.pdf](https://www.hrw.org/sites/default/files/media_2022/11/us_crd1122web_3.pdf)>.

**1. Since slavery, Black children have been systematically torn from their families because of white parenting standards**

In 1619, at the start of chattel slavery, enslaved Africans were not considered people and thus did not have the same rights to family unity as the white enslavers. White people held the power and created rules and mechanisms for enforcement, which resulted in Black children being separated from their families at disproportionate rates.<sup>48</sup> White enslavers would use the threat of taking children away and/or selling them to the highest bidder to get enslaved people to modify their behavior, conform to the standards and whims of the enslavers, and generally stay in line.<sup>49</sup> To navigate the precarious nature of their family unit and to have any chance of keeping their families together, enslaved people had to behave in ways white enslavers deemed “good” – they were forced to comply.<sup>50</sup>

These policies continue to echo today, more than 400 years later. Black parents must allow their behavior to be regulated and demonstrate conformity with surveillance systems in order to maintain their family unit.<sup>51</sup> Today, family policing relies on an expansive network of information sharing between schools, health care facilities, public assistance offices, and law enforcement. Black parents, who are statistically more likely to rely on public assistance, are more exposed to individuals required by law to report suspected child abuse.<sup>52</sup> As such, they are disproportionately impacted through family policing and mandatory reports of child abuse. Most often, those reports

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<sup>48</sup> See *Regulating Families: How the Family Policing System Devastates Black, Indigenous, and Latinx Families and Upholds White Supremacy*, p 5.

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

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> See “*If I Wasn’t Poor, I Wouldn’t Be Unfit*”: *The Family Separation Crisis in the US Child Welfare System*, pp 49, 52.

are unsubstantiated.<sup>53</sup> In fact, the child welfare system is often wielded as a retaliatory tool for neighbors and community members who are well aware of the system's punitive nature.<sup>54</sup>

Once a child is removed from a parent's care, the child welfare system imposes many obstacles to family reunification whether the original reason for separation was justified or not. In particular, as they did in the 1600s, Black parents are forced to modify their behavior to regain or maintain custody of their children. Specifically, they are required to comply with convoluted safety plans, attend parenting courses, participate in anger management programs, and jump through any other hoops child welfare officials deem necessary to prove the legitimacy of their right to raise their own children.<sup>55</sup>

**2. Despite federal law seeking to protect Indigenous families, Indigenous children continue to be overrepresented in the child welfare system**

In the 1880's, Indigenous children were taken from their homes, forced to live at boarding schools, forbidden to speak their own languages or engage in their religious customs, and required to cut their hair and wear clothing typically worn by westerners.<sup>56</sup> The staff at these boarding schools made every effort to convince the children and their parents that they, the staff, were superior caretakers for the children.<sup>57</sup> To ensure that this conditioning remained intact and that children were not connected to their heritage—or their parents for that matter—parents were often

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<sup>53</sup> Child Welfare Information Gateway, *Child Maltreatment 2018: Summary of Key Findings*, (2020), p 2, available at <<https://ctf.alabama.gov/wp-content/uploads/2020/10/2018-Child-Maltreatment-2.pdf>>.

<sup>54</sup> Roberts, *The Racial Geography of Child Welfare: Toward a New Research Paradigm*, 87 *Child Welfare* 125, 138-141 (2008), available at <<https://cap.law.harvard.edu/wp-content/uploads/2015/07/robertsrd.pdf>>.

<sup>55</sup> *Regulating Families: How the Family Policing System Devastates Black, Indigenous, and Latinx Families and Upholds White Supremacy* pp 5, 10, 12-13.

<sup>56</sup> See *id.* at 6-7.

<sup>57</sup> *Id.*



not allowed to visit their children in these boarding schools.<sup>58</sup> These separations were so rampant and detrimental that the federal government enacted the Indian Child Welfare Act (ICWA) to, at least ostensibly, ensure that tribal courts had some authority to make decisions regarding the welfare, care, custody and control of Indian children. 25 USC 1901, 1902.

Despite ICWA, Indigenous children continue to be removed from their parents' care at disproportionate rates and white caretakers are still positioned as superior or preferable to Indigenous parents. A couple of recent cases foreshadow an erosion of ICWA. In 2013, in the *Adoptive Couple v Baby Girl* case, the Supreme Court decided that a white adoptive couple should take custody of an infant Indigenous child even though her father was ready and willing to care for her. 570 US 637, 641-42; 133 S Ct 2552; 186 L Ed 2d (2013). The Court determined that the provisions of ICWA designed to prevent the breakup of Indigenous families (25 USC 1901(4)) and set a heightened burden of proof for the termination of parental rights (25 USC 1912(f)), did not apply because the adoption was an informal, private adoption. *Id.* at 646-54. Additionally, the Court did not give any direction regarding the standard that should be applied on remand. The adoption was finalized. *Adoptive Couple v Baby Girl*, 404 SC 490, 493; 746 SE2d 346 (2013). In June 2023, non-Indigenous couples and the State of Texas filed a lawsuit challenging the constitutionality of ICWA. *Haaland v Brackeen*, 599 US 255, 268-71; 143 S Ct. 1609; 216 L Ed 2d 254 (2023). The Supreme Court affirmed the protections provided to tribal governments and Indigenous families pursuant to ICWA. *Id.* at 296. Yet there remains no readily discernable

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<sup>58</sup> See *Regulating Families: How the Family Policing System Devastates Black, Indigenous, and Latinx Families and Upholds White Supremacy*, p 7; see also *Interior Department to Investigate Abuse of Indigenous Children at American Boarding Schools* (July 14, 2021), available at <<https://eji.org/news/interior-department-to-investigate-abuse-of-indigenous-children-at-american-boarding-schools/>>.

mechanism to ensure that states are compliant with ICWA.<sup>59</sup> These cases exposed gaps in ICWA's protections and leave open the opportunity for continued erosion.

### 3. Family separation at the border inflicts significant harm to Latinx families

In 2017, as families from Central and South America came to the United States/Mexico border seeking asylum, the U.S. Department of Justice (DOJ) directed border officials to detain any adults who crossed the border without permission.<sup>60</sup> There were no exceptions made for parents arriving with their children.<sup>61</sup> Children and babies were separated from their parents, placed in cages, and, later turned over to the custody of the United States Department of Health and Human Services who then transferred them to shelters run by the Office of Refugee Resettlement, sometimes hundreds of miles away from their parents with no notice or due process.<sup>62</sup> There was no reunification plan in place and no way to track where the children were taken.<sup>63</sup> The separated families were not told when—or even if—they would ever see each other again.

Throughout the two years that migrant children were separated from their parents, the public discourse centered around what rights the parents had to their children, despite seminal United States Supreme Court precedent establishing children's fundamental right to family

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<sup>59</sup> ACLU et al, *Family Separation in the U.S. Child Welfare System, at the U.S.-Mexico Border, and of Indigenous Communities* (September 12, 2023), p 9, available at <<https://www.aclu.org/wp-content/uploads/2023/10/ICCPR-Family-Separation-Submission-Finalized.pdf>>.

<sup>60</sup> See *Regulating Families: How the Family Policing System Devastates Black, Indigenous, and Latinx Families and Upholds White Supremacy*, pp 11-12.

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

<sup>62</sup> *Family Separation in the U.S. Child Welfare System, at the U.S.-Mexico Border, and of Indigenous Communities*, p 12-13; ACLU, *Family Separation: By the Numbers* (October 2, 2018), available at <<https://www.aclu.org/issues/family-separation>>.

<sup>63</sup> See *Regulating Families: How the Family Policing System Devastates Black, Indigenous, and Latinx Families and Upholds White Supremacy*, p 11-12.

integrity.<sup>64</sup> Parents were framed as “bad parents” and “criminals” who crossed the border “illegally” and endangered their children, forfeiting their parental rights.<sup>65</sup> Parents fleeing their home countries seeking safety for their children had their children forcibly removed from them for exposing them to the inherent danger of migration. Even after President Trump signed an order pausing his family separation policy, family separations continued because border agents could remove children from the care of their parents if the agent, in his own subjective opinion whether rooted in bias or animus, deemed the parent “unfit.”<sup>66</sup> As a result, migrant children were placed with U.S. citizens and foster families while their parents remained in custody or were sent back to the country from which they fled.<sup>67</sup> The American Academy of Pediatrics, medical professionals, and leading child welfare organizations all agreed and “publicly denounced the forced separation of children from their parents, citing the long-lasting, detrimental effects on children’s emotional growth and cognitive development.”<sup>68</sup>

### **C. Family Separation Due To Poverty Furthers Racial Disparities In The Child Welfare System**

While children are no longer explicitly removed from their homes because they are Black, Latinx, or Indigenous, the families most impacted by separation come from these communities. Today, “neglect” is most often used as the reason to remove children from their families.<sup>69</sup> “Neglect” is a nebulous and broadly defined term that is often a euphemism for “poor.” According

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> ACLU, *ACLU Announces Major Settlement in Family Separation Lawsuit* (October 16, 2023), available at <<https://www.aclu.org/press-releases/aclu-announces-major-settlement-in-family-separation-lawsuit>>.

<sup>69</sup> See “*If I Wasn’t Poor, I Wouldn’t Be Unfit*”: *The Family Separation Crisis in the US Child Welfare System*, p 34.

to a January 2021 memorandum by the United States Administration for Children and Families, many “neglect” removals are the result of poverty.<sup>70</sup> Issues like “inadequate housing” or failure to provide “adequate nutrition” were the among the most cited sources of neglect.<sup>71</sup> Additionally, while federal laws set the minimum requirements for state and local family regulation systems, each state has its own system and definition of abuse and “neglect”, which is often also a proxy for poverty related circumstances and is the primary basis for removal in the vast majority of cases.<sup>72</sup>

Indeed, removal for neglect has a disproportionate impact on communities of color in light of systemic racism and inequity. President Biden echoed this sentiment in April 2021, stating “too many children are removed from loving homes because poverty is often conflated with neglect,” and that the “effects of systemic racism and economic barriers mean that families of color are disproportionately affected.”<sup>73</sup>

Of the over 215,000 children removed from their homes in 2020, approximately 70% were removed from their families for poverty related “neglect.”<sup>74</sup> Of all Black children removed from

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<sup>70</sup> Children’s Bureau, US Department of Health & Human Services, *Civil Legal Advocacy to Promote Child and Family Well-Being, Address the Social Determinants of Health, and Enhance Community Resilience* (January 12, 2021), p 5, available at <<https://www.acf.hhs.gov/sites/default/files/documents/cb/im2102.pdf>>.

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

<sup>72</sup> Webb, *Building A Guaranteed Income to End the “Child Welfare” System*, 12 Colum J Race & L 669, 675-77 (2022); Children’s Bureau, US Department of Health & Human Services, *The AFCARS Report* (June 28, 2022), p 2, available at <<https://adoptioncouncil.org/content/uploads/2022/11/afcars-report-29.pdf>>.

<sup>73</sup> Executive Office of the President, *A Proclamation on National Foster Care Month*, 86 Fed Reg 23849 (April 30, 2021), available at <<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/04/30/a-proclamation-on-national-foster-care-month-2021/>>.

<sup>74</sup> NAACP & Children’s Rights, *Re: Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and 45 C.F.R. Part 80 Regarding Discrimination by the State of Minnesota* (March 1, 2020), pp 4-5, available at <[https://www.childrensrights.org/wp-content/uploads/2024/03/2024.03.01-NAACP\\_-Childrens-Rights\\_MN-OCR-Complaint37.pdf](https://www.childrensrights.org/wp-content/uploads/2024/03/2024.03.01-NAACP_-Childrens-Rights_MN-OCR-Complaint37.pdf)>.

their families, about 63% were removed for poverty related “neglect”—despite representing only approximately 15% of the entire population.”<sup>75</sup>

Black children being overrepresented in poverty related “neglect” cases is an inevitability. Black communities have been systemically under resourced for decades. Due to historical and structural inequities, families of color—especially Black families—experience higher rates of poverty.<sup>76</sup> Therefore, Black families have a disproportionate need for social services, which in turn subjects them to higher rates of state surveillance and scrutiny than those with greater resources.<sup>77</sup> Every time families access health care, mental health services, financial benefits like food stamps or disability payments, or even send their children to school, they encounter mandated reporters, making them more likely to be reported and investigated for abuse or “neglect.”<sup>78</sup> Public health studies show that medical providers are more likely to report people of color and children living in poverty for suspected abuse or neglect than their peers, even when the injury precipitating the medical visit was similar.<sup>79</sup> Policies that enforce residential segregation, discrimination in labor

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<sup>75</sup> *Id.*

<sup>76</sup> Children's Defense Fund, *Child Poverty in America 2019: National Analysis* (2020), pp 1-3, available at <<https://staging.childrensdefense.org/wp-content/uploads/2020/12/Child-Poverty-in-America-2019-National-Factsheet.pdf>>.

<sup>77</sup> See Harp & Bunting, *The Racialized Nature of Child Welfare Policies and the Social Control of Black Bodies*, 27 Soc Pol 258, 259 (2020).

<sup>78</sup> See Cancian, Shook Slack & Youn Yang, Institute for Research on Poverty, *The Effect of Family Income on Risk of Child Maltreatment* (August 2010), p 3, available at <<https://www.irp.wisc.edu/publications/dps/pdfs/dp138510.pdf>>; Inguanta & Sciolla, *Time Doesn't Heal All Wounds: A Call to End Mandated Reporting Laws*, 19 Colum Soc Work Rev 116, 123-124 (2021).

<sup>79</sup> Diyaolu et al., *Black Children Are Disproportionately Identified as Victims of Child Abuse: A National Trauma Data Bank Study*, 147 Pediatrics 929, 929 (2021); Cort, Cerulli & He, *Investigating Health Disparities and Disproportionality in Child Maltreatment Reporting: 2002-2006*, 16 J Pub Health Mgmt & Prac 329, 330-31, 333-35 (2010); Najdowski & Bernstein, *Race, Social Class, and Child Abuse: Content and Strength of Medical Professionals' Stereotypes*, 86 Child Abuse & Neglect 217, 217-18, 220-21 (2018).

markets, unequal access to quality education further perpetuate the disproportionate concentration of Black families among the poor.<sup>80</sup>

Moreover, regulations like the 1970 Controlled Substances Act, the 1986 Anti-Drug Abuse Act and the 1994 Violent Crime Act exacerbated deeply entrenched inequities. These regulations led to the rapid growth in the kinds of behaviors that were criminalized, drastically increased the populations of U.S. prisons, and spawned the “crack baby” phenomenon.<sup>81</sup> Simultaneously, child welfare models shifted from the “helping” approach of the 1980 Adoption Assistance and Child Welfare Act (which allocated billions of dollars to states to provide direct, financial assistance to families) to one that employs a decidedly more punitive, removal focused strategy.<sup>82</sup> Between 1974, when mandatory reporting became a requirement in each state, and 1990, cases of “maltreatment” or “neglect” rose dramatically—from 60,000 in 1974 to more than 2,000,000 in 1990.<sup>83</sup> These policies destabilized Black families, incarcerated Black people at disproportionate rates, and continued to place Black people at an economic disadvantage, while simultaneously linking good parenting to access to money and characterizing low-income Black people as unfit parents.<sup>84</sup>

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<sup>80</sup> See Roberts, *Torn Apart: How The Child Welfare System Destroys Black Families—And How Abolition Can Build A Safer World* (New York: Basic Books, 2022), p 288; *Regulating Families: How the Family Policing System Devastates Black, Indigenous, and Latinx Families and Upholds White Supremacy*, pp 7-10.

<sup>81</sup> *Regulating Families: How the Family Policing System Devastates Black, Indigenous, and Latinx Families and Upholds White Supremacy*, p 8.

<sup>82</sup> *Id.* at 8-9.

<sup>83</sup> White et al., Children’s Rights, *Fighting Institutional Racism at the Front End of Child Welfare Systems: A Call to Action to End the Unjust, Unnecessary, and Disproportionate Removal of Black Children from Their Families* (May 15, 2021), p 8, available at <<https://www.childrensrights.org/wp-content/uploads/2021/05/Childrens-Rights-2021-Call-to-Action-Report.pdf>>.

<sup>84</sup> *Id.*; *Regulating Families: How the Family Policing System Devastates Black, Indigenous, and Latinx Families and Upholds White Supremacy*, pp 7-10.

Given the well documented tendency for Black families to experience adverse outcomes when child welfare agencies are involved, Black parents are understandably hesitant to request assistance from child welfare agencies and instead rely on informal kinship and guardianship arrangements.<sup>85</sup> These relationships maintain familial ties, shield Black children from an abusive child welfare state, and mitigate the harms caused by family separation.

### CONCLUSION

This country has a long history of systemically separating Black, Latinx, and Indigenous children from their families and under resourcing communities of color that heighten the risk of family separation by the child welfare system. Continuing to allow termination of parental rights, without first requiring child welfare agencies and courts to consider kinship placements and guardianships will perpetuate and deepen the disproportionate impact of termination and family separation on families of color. Exacting judicial scrutiny is required to avoid this inevitable consequence. Moreover, courts must consider alternatives to termination to avoid the irreconcilable damage forced separation and termination of parental rights cause on children during their formative years.

Wherefore, *amici curiae* respectfully ask this Court to reverse the decision of the trial court and the Court of Appeals and remand the matter to the trial court for a determination as to why a child custody order could not protect the children's safety and stability while also preserving their relationship with their parents.

Respectfully submitted,

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<sup>85</sup> See *Fighting Institutional Racism at the Front End of Child Welfare Systems*, pp 7-11.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to MCR 7.212(B)(3), I hereby certify that this document contains 7,554 countable words, based upon the word count of the word processing system used to prepare the brief.

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