

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

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M.M., by her next friend Danielle McDonald,  
C.P. and A.P., by their next friend Brianna  
Griffin, MARIE BILLS, and KATHLEEN  
TANTON, individually and on behalf of a  
class of similarly situated persons,

Plaintiffs-Appellants,

v

Court of Appeals No. 372342

SHERIFF MAT KING, ST. CLAIR  
COUNTY, SECURUS TECHNOLOGIES,  
LLC, PLATINUM EQUITY, LLC, TOM  
GORES, MARK BARNHILL, and DAVID  
ABEL,

LC Case No. 24-000546-CZ

Defendants-Appellees.

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**BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER, NATIONAL CENTER FOR  
YOUTH LAW, AND NATIONAL AND MICHIGAN FOCUSED YOUTH ADVOCACY  
ORGANIZATIONS IN SUPPORT OF PLAINTIFFS-APPELLANTS M.M. ET AL.**

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**Other Authorities**

Am Acad Pediatrics, *Guidance for Children and Families Involved with the Child Welfare System During the COVID-19 Pandemic* (Updated Aug. 30, 2022).....19

Annie E. Casey Found, *Pandemic Learning Loss and Covid-19: Education Impacts* (Updated July 8, 2024) .....21

Annie E. Casey Foundation, *A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families and Communities* (2016) .....7

Ardiel & Rankin, *The Importance of Touch in Development*, 15 Pediatrics & Child Health 153 (2010) .....18

Arredondo, *The Effect of Termination of Parental Rights on Incarcerated Parents*, 22 Conn Pub Int L J 140 (2022).....17

Aznar & Tenenbaum, *Parent-Child Positive Touch: Gender, Age, and Task Differences*, 40 J Nonverbal Bhav 317 (2016).....18

Berdejó, *Criminalizing Race: Racial Disparities in Plea-Bargaining*, 59 BC L Rev 1187 (2018) .....27

Berger et al., *Families at the Intersection of the Criminal Justice and Child Protective Services Systems*, 665 Ann Am Acad Pol & Soc Sci 171 (2016).....8

Blocher, *“The Family Separation Crisis That No One Knows About”*: How Our Flawed Legal and Prison Systems Work to Keep Incarcerated Parents from Their Children, 10 Brandeis U L J 53 (2022) .....7, 8

Bou-Rhodes, *Straight to Video: America's Inmates Deprived of a Lifeline Through Video-Only Visits*, 60 BC L Rev 1243 (2019).....20

Burke, *A Place to Call Home: The Link Between Residential Segregation and the Disproportionate Representation of African American Children in Foster Care*, 14 Geo J L & Mod Crit Race Persp 151 (2022) .....25

Cantos, Gries, & Slis, Behavioral Correlates of Parental Visiting During Family Foster Care, 76 Child Welfare 309 (1997).....13

Casey Family Programs, *How Can Child Protection Agencies Support Children Spending Time with their Parents Who Are Incarcerated?* (February 27, 2023).....13, 19

Casey Family Programs, *What Should Child Protection Agencies Consider when Working with Children Whose Parent or Primary Caregiver Is Incarcerated?* (February 23, 2023) .....8

Chapman, Wall, & Barth, *Children's Voices: The Perceptions of Children in Foster Care*, 74 Am J Orthopsychiatry 293 (2004).....14

Chen, Brody & Miller, *Childhood Close Family Relationships and Health*, 72 Am Psych 555 (2017) .....10

Children’s Bureau, *About* (June 28, 2023).....22

Children’s Bureau, *Achieving Permanency for the Well-Being of Children and Youth*, ACYF-CB-IM-21-01 (January 5, 2021).....13

Children’s Bureau, *The AFCARS Report* (October 4, 2021) .....23

Children’s Bureau, *Bulletins for Professionals: Child Welfare Practice With Families Affected by Parental Incarceration* (January 2021).....13, 14, 15, 19

Children's Bureau, *Child Welfare Outcomes Report Data: Michigan*.....16

Children's Bureau, *Civil Legal Advocacy to Promote Child and Family Well-Being, Address the Social Determinants of Health, and Enhance Community Resilience*, ACYF-CB-IM-21-02 (January 12, 2021).....25

Children’s Bureau, *Family Time and Visitation for Children and Youth in Out-of-home Care* (Feb. 5, 2020) .....13, 15

Cort, Cerulli & He, <i>Investigating Health Disparities and Disproportionality in Child Maltreatment Reporting: 2002-2006</i> , 16 J Pub Health Mgmt & Prac 329 (2010).....	26
Cramer et al., <i>Parent-Child Visiting Practices in Prisons and Jails; A Synthesis of Research and Practice</i> (2017) .....	18, 19
Cushing, Samuels & Kerman, <i>Profiles of Relational Permanence at 22: Variability in Parental Supports and Outcomes Among Young Adults with Foster Care Histories</i> , 39 Child & Youth Servs Rev 73 (2014) .....	11
D'Andrade, <i>How Does Incarceration Affect the Likelihood of Reunification?</i> , in Child Welfare 360: Criminal Justice Involvement of Families in Child Welfare (2018).....	16, 17
Dholakia, Vera Inst, <i>How the United States Punishes People for Being Poor</i> (September 21, 2023).....	28
Diyaolu et al., <i>Black Children Are Disproportionately Identified as Victims of Child Abuse: A National Trauma Data Bank Study</i> , 147 Pediatrics 929 (2021).....	26
Ducharme, “ <i>What This Amounts to Is Child Abuse</i> ” <i>Psychologists Warn Against Separating Kids from Their Parents</i> , TIME (June 19, 2018).....	12
Fed Commc'n Comm'n, <i>FCC Caps Exorbitant Phone &amp; Video Call Rates for Incarcerated Persons &amp; Their Families</i> , Press Release (July 18, 2024).....	20
Ghandnoosh & Barry, Sent'g Project, <i>One in Five: Racial Disparity in Imprisonment-Causes and Remedies</i> (December 7, 2023).....	28
Grassroots Leadership & Tex. Crim Just Coal, <i>Video Visitation: How Private Companies Push for Visits by Video and Families Pay the Price</i> (2014) .....	19
Hager & Flagg, <i>How Incarcerated Parents Are Losing Their Children Forever</i> , Marshall Project (December 2, 2018).....	16, 17
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Hoffer, <i>Mother or Money?: The Exorbitant Cost of Phone Calls from Jail</i> , Harv Pol Rev (January 15, 2022).....	20
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Jensen, <i>The Costs of Separation: Incarcerated Mothers and the Socioeconomic Benefits of Community-Based Alternatives for Nonviolent Offenders</i> , 35 <i>BYU J Pub L</i> 297 (2021).....	8
Kim et al., <i>Lifetime Prevalence of Investigating Child Maltreatment Among US Children</i> , 107 <i>Am J Pub Health</i> 274 (2017).....	23
Kraft, <i>AAP Statement Opposing Separation of Children and Parents at the Border</i> (May 8, 2018).....	11
Looney & Turner, Brookings Inst, <i>Work and Opportunity Before and After Incarceration</i> (2018).....	28
McCormick, <i>The Role of the Sibling Relationship in Foster Care: A Comparison of Adults with a History of Childhood Out-of-Home Placement</i> (2009) (Ph.D. Dissertation, University of Texas at Arlington).....	9
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McWey & Mullis, <i>Improving the Lives of Children in Foster Care: The Impact of Supervised Visitation</i> , 53 <i>Family Relations</i> 293 (2004).....	13
McWey, Acock & Porter, <i>The Impact of Continued Contact with Biological Parents Upon the Mental Health of Children in Foster Care</i> , 32 <i>Child &amp; Youth Servs Rev</i> 1338 (2010).....	13
McWey, Cui & Stevenson Wojciak, <i>Parent and Caregiver Relationships and Mental Health Symptom Profiles of Youth in Foster Care</i> , 39 <i>Child &amp; Adolescent Soc Work J</i> 573 (2022).....	9
Meyer, <i>Harm Caused by the Adoption and Safe Families Act</i> , 1 <i>Fam Integrity &amp; Just Q</i> 94 (2021).....	9, 10
Michigan Dep’t Health & Hum Serv, <i>Children’s Foster Care Manual</i> (March 1, 2022).....	14, 15, 18
Michigan Dep’t Health & Hum Serv, <i>Children’s Protective Services Policy Manuals</i> (December 30, 2024).....	15
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Minoff & Citrin, <i>Systemically Neglected: How Racism Structures Public Systems to Produce Child Neglect</i> (2022).....	23, 24
MPHI & MDHHS, <i>Child Welfare Improvement Task Force Report</i> (2021).....	24

NAACP & Children's Rights, <i>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</i> (March 1, 2020).....	25
Najdowski & Bernstein, <i>Race, Social Class, and Child Abuse: Content and Strength of Medical Professionals' Stereotypes</i> , 86 <i>Child Abuse &amp; Neglect</i> 217 (2018).....	26
Nat'l Ctr for Juv Just, AFCARS, <i>Disproportionality Rates for Children of Color in Foster Care Dashboard (2010-2021)</i> (2021) .....	24
Nat'l Immigr Project & Immigrants' Rts Clinic Stanford Law School, <i>Bias in the Criminal Legal System: A Report on Racial Bias in the Criminal Process and Its Impact on Noncitizens of Color in Removal Proceedings</i> (2024).....	27
Native Child Advoc Res Ctr, <i>Practice Brief 3: Tribal Children and Forced Assimilation</i> (2022).....	26
Nicholson, <i>Racing Against the ASFA Clock: How Incarcerated Parents lose More than Freedom</i> , 45 <i>Duquesne L Rev</i> 83 (2006) .....	17
Papovich, <i>Trauma &amp; Children in Foster Care: A Comprehensive Review</i> , <i>Forensic Scholars Today</i> (July 10, 2019) .....	11
Patrice, <i>The Double Edged Sword of Prison Video Visitation: Claiming to Keep Families Together While Furthering the Aims of the Prison Industrial Complex</i> , 9 <i>Fla A &amp; M U L Rev</i> 83 (2013).....	18
Patten, <i>The Subordination of Subsidized Guardianship in Child Welfare Proceedings</i> , 29 <i>NYU Rev L &amp; Soc Change</i> 237 (2004).....	10
Prison Pol'y Initiative, <i>Michigan Profile</i> .....	27
Raimon, Lee, & Genty, <i>Sometimes Good Intentions Yield Bad Results: ASFA's Effect on Incarcerated Parents and their Children, in Intentions and Results: A Look Back at the Adoption and Safe Families Act</i> (2009).....	16, 17
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Singer & Brodzinsky, *Virtual Parent-child Visitation in Support of Family Reunification in the Time of COVID-19*, 2 Dev Child Welfare 153 (2020) .....17, 20, 21, 22

Smariga, *Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know*, ABA Center on Children and the Law (2007) .....12, 15, 21

Sobol, *Connecting the Disconnected: Communication Technologies for the Incarcerated*, 53 Wake Forest L Rev 559 (2018) .....9

Stewart, *Re-Envisioning Child Well-Being: Dismantling the Inequitable Intersections Among Child Welfare, Juvenile Justice, and Education*, 12 Colum J Race & L 630 (2022) .....11, 12

Swann & Sylvester, *The Foster Care Crisis: What Caused Caseloads to Grow?*, 43 Demography 309 (2006) .....8, 9

Tighe, “Of Course we are Crazy”: *Discrimination of Native American Indians Through Criminal Justice*, 11 Just Pol’y J 1 (2014) .....28

Tomlinson, *Termination of Parental Rights Under Adoption and Safe Families Act (ASFA)*, 115 Am Jur Trials 465 (2024 Update) .....16

Wan, *What Separation from Parents Does to Children: “The Effect is Catastrophic”*, Washington Post (June 18, 2018) .....12

Wang, Prison Pol’y Initiative, *Research Roundup: The Positive Impacts of Family Contact for Incarcerated People and their Families* (December 21, 2021) .....19

Wang, Prison Pol’y Initiative, *The U.S. Criminal Justice System Disproportionately Hurts Native People: The Data, Visualized* (October 8, 2021) .....27

Widra, Prison Pol’y Initiative, *Seeing Eye to Eye: Understanding the Limits of Video Visitation* (April 11, 2016) .....20

Youth.GOV, *Child Welfare Services to Children and Families of Prisoners* .....8

Youth Leader Interviews (Dec. 2024 - Jan. 2025) ..... *passim*



## 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 **National Center for Youth Law** (“NCYL”) is a private, non-profit law firm that uses the law to help children achieve their potential by transforming the public agencies that serve them. NCYL’s priorities include ensuring that children and youth 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 well-being. NCYL represents youth in cases that have broad impact and has extensive experience using litigation to enforce the rights of young people in the foster system.

The **American Academy of Child and Adolescent Psychiatry** promotes the healthy development of children, adolescents, and families through advocacy, education, and research. Child and adolescent psychiatrists are the leading physician authority on children’s mental health. For more information, please visit [www.aacap.org](http://www.aacap.org).

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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.

**CHILD USA** is an interdisciplinary non-profit think tank dedicated to preserving and enhancing children’s rights. CHILD USA engages in-depth legal analysis and cutting-edge social science research to come up with the best policies to protect children, prevent future abuse and neglect, and bring justice to victims.

The **Children and Family Justice Center** (“CFJC”) is a comprehensive children's law center that has represented young people in conflict with the law for over 25 years. In addition to direct representation of youth and families in matters relating to delinquency and crime, immigration/asylum and fair sentencing practices, the CFJC also collaborates with community members and other advocacy organizations to develop fair and effective strategies for systems reform.

Founded in 1973, **Children’s Defense Fund** (“CDF”) envisions a nation where marginalized children flourish, leaders prioritize their well-being, and communities wield the power to ensure they thrive. The only national, multi-issue advocacy organization working at the intersection of child well-being and racial justice, CDF advances the well-being of America’s most diverse generation, the 74 million children and youth under the age of 18 and 30 million young adults under the age of 25. CDF’s grassroots movements in marginalized communities build power for child-centered public policy, informed by racial equity and the lived experience of children and youth. Its renowned CDF Freedom Schools® program is conducted in nearly 100 cities across 30 states and territories.

The **Gault Center**, formerly the National Juvenile Defender Center, was created to promote justice for all children by ensuring excellence in the defense of youth in delinquency proceedings. Through systemic reform efforts, the Gault Center seeks to disrupt the harmful impacts of the legal system on children, families, and communities; decriminalize adolescence,

particularly where youth of color are treated disparately; and ensure the constitutional protections of counsel for all young people. Recognizing the interrelated, racialized histories and current ties of the delinquency and child welfare systems and that harms caused by systems that surveil and police families drive young people into the carceral system, the Gault Center’s support for increased rights for youth extends beyond the delinquency system. The Gault Center (as the National Juvenile Defender Center) has participated as amicus curiae before the United States Supreme Court and federal and state courts across the country.

The **National Federation of Families** (“NFF”), a national family-run organization, serves as the national voice for families of children who experience emotional, behavioral, and mental health and/or substance use challenges - across the lifespan. NFF links more than 120 state and local affiliates and national partners focused on the issues of children and youth with emotional, behavioral, or mental health needs and substance use challenges and their families. Its emphasis on advocacy offers families a voice in the formation of national policy, services and supports for their children with mental health needs and substance use challenges across the lifespan

The **National Institute for Criminal Justice Reform** (“NICJR”) works to reduce incarceration and violence, improve the outcomes of system-involved youth and adults, and increase the capacity and expertise of the organizations that serve these individuals. NICJR provides technical assistance, consulting, research, organizational development, and advocacy in the fields of juvenile and criminal justice, youth development, and violence prevention. NICJR works with an array of organizations, including government agencies, nonprofit organizations, and philanthropic foundations.

**National Network for Youth** is a network of youth homelessness service providers and young people with lived experience of homelessness working to transform policy and systems to prevent and end youth, young adult, and young parent family homelessness.

The **National Youth Justice Network** (“NYJN”) works towards our vision of community-based, healing-centered justice. We envision communities that honor the inherent dignity of all children and families and recognize children as children by responding to trauma, conflict, or risky behavior with care, not criminalization. Maintaining strong family relationships is a vital part of positive youth development. Founded in 2005, NYJN leads a membership community of 73 state-based youth advocacy organizations and numerous individuals across 42 states, as well as a growing cadre of graduates from our Youth Justice Leadership Institute.

The **Youth Law Center** (“YLC”) is a national organization, founded in 1978, that advocates to transform the foster care and juvenile justice systems so that children and youth can thrive. Through legal, legislative, and policy advocacy, YLC works to advance the rights of young people who come into contact with the juvenile justice and child welfare systems and to strengthen the supports available to them so they can transition successfully to adulthood and thrive. YLC has long advocated for maintaining family connections for system-involved youth, recognizing that policies restricting visitation between children in foster care and their incarcerated parents create additional trauma and barriers to family reunification. YLC's work to protect the rights of children in foster care includes ensuring they can maintain meaningful connections with their parents to best support the child's well-being and healthy development.

**Youth MOVE** (Motivating Others through Voices of Experience) **National** (“YMN”) is a youth led and driven non-profit (headquartered in Michigan) that has been connecting, supporting, and developing youth leadership in advocacy to create positive system change for over 20 years.

We envision a future in which young people are valued as empowered leaders, advocates, and designers of communities built for all youth to thrive. We do this through policy change and systems reform work, national trainings and accreditation programs, and working directly with youth nationwide to address their specific communities' needs through our 40+ chapter network (many in Michigan), particularly within juvenile justice and criminal legal systems. We have directly seen the harm that family separation causes youth, particularly marginalized youth, and are in support of the appeal of the Michigan civil rights case filed as part of the Right2Hug campaign.

## INTRODUCTION

*Amici* write to highlight the unique and devastating harms youth in the foster system<sup>2</sup> suffer when they are banned from visiting their incarcerated parents in person. Children of incarcerated parents are at a high risk of entering the foster system because they don't have another parent or guardian available to care for them, because incarceration can cause destabilizing economic stress to families, and because the same communities face heightened surveillance by police and the foster system.<sup>3</sup>

As common sense and decades of research demonstrate, young people benefit enormously from strong family connections and suffer great harms from family separation.<sup>4</sup> These harms can be offset by regular in-person visits with their incarcerated parents.<sup>5</sup> Visits with family are particularly crucial for children in the foster system, as this system separates children not only from their parents, but also from other family members, schools they previously attended, and community support. During such times of trauma and uncertainty, family connection, and in particular, in-person visitation with parents, can mitigate these harms.<sup>6</sup> Not only do these visits support wellbeing, but they can also mean the difference between a child ultimately reunifying with their parents or the family facing termination of parental rights.<sup>7</sup>

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<sup>2</sup> *Amici* use the term “foster system” to refer to what is also commonly known as the “foster care system,” the “child welfare system,” or the “family regulation system.”

<sup>3</sup> See *infra* Parts I(A), II(A).

<sup>4</sup> See *infra* Part I(B).

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

<sup>6</sup> *Id.*

<sup>7</sup> See *infra* Part I(B)(2).

The ban on in-person visits also entrenches racial and economic disparities: because Black, Indigenous, Latino, and low-income families are disproportionately pulled into both the foster system and the criminal court system, they suffer disproportionately from the harms of the policy.<sup>8</sup>

## ARGUMENT

### I. ST. CLAIR'S BAN ON IN-PERSON VISITATION HARMS CHILDREN IN THE FOSTER SYSTEM

Children of incarcerated parents are disproportionately at risk of foster system involvement. Once in the foster system, children have a unique need for ongoing connections with their parents to provide stability in the face of the uncertainty and disruption that comes with foster system involvement. In-person visitation is also crucial to child wellbeing and to family reunification. Virtual communications cannot substitute for the intimacy and opportunities to bond provided by in-person visitation.

#### A. Children of Incarcerated Parents Are at High Risk of Entering the Foster System.

*Shortly after losing my mom in 2012, DHS removed us from my dad's home. We didn't have the time to grieve for the loss of our mother before being forced into the system less than 4 months later. Locking him up caused us to lose our home.*

- Ciani, youth leader with Advocates Transforming Youth Systems<sup>9</sup>

Children in the foster system disproportionately experience parental incarceration.<sup>10</sup> Some researchers estimate as many as 40% of children in the foster system have a parent who

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<sup>8</sup> See *infra* Part II.

<sup>9</sup> *Youth Leader Interviews* (Dec. 2024 - Jan. 2025) (on file with Juvenile Law Center).

<sup>10</sup> Compare Blocher, “*The Family Separation Crisis That No One Knows About*”: *How Our Flawed Legal and Prison Systems Work to Keep Incarcerated Parents from Their Children*, 10 Brandeis U L J 53, 60 (2022) (noting that around 40% of foster children have a parent who has experienced incarceration) with Annie E. Casey Foundation, *A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families and Communities* (2016), p 5, available at



experienced incarceration,<sup>11</sup> as compared with 7% of children generally. Children in the foster system therefore face a heightened risk of harm from the ban on visitation.

Most incarcerated parents are imprisoned for reasons unrelated to abuse or neglect of their children. Research has estimated that “only 3% of children with incarcerated parents in the child welfare system are there because their parent’s incarceration is directly related to an accusation of child abuse or neglect.”<sup>12</sup> More commonly, incarceration of a parent leads to involvement with the foster system, either because no guardian is available to care for a child, or because of the economic and emotional instability incarceration causes families.<sup>13</sup> This is particularly true for incarcerated mothers who are the sole providers for their children.<sup>14</sup> The number of mothers who are incarcerated has more than doubled over the last 25 years; some evidence suggests that nearly 30%

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<<https://tinyurl.com/3uv2tae3>> (accessed February 13, 2025) (noting that 7% of U.S. children have experienced parental incarceration).

<sup>11</sup> “*The Family Separation Crisis*,” 10 Brandeis U L J at 60; see also Youth.GOV, *Child Welfare Services to Children and Families of Prisoners* <[https://youth.gov/youth-topics/children-of-incarcerated-parents/child-welfare-services-children-and-families-prisoners#\\_ftn1](https://youth.gov/youth-topics/children-of-incarcerated-parents/child-welfare-services-children-and-families-prisoners#_ftn1)> (accessed January 27, 2025) (“[E]stimates suggest that tens of thousands of young people in foster care may have incarcerated parents.”).

<sup>12</sup> Casey Family Programs, *What Should Child Protection Agencies Consider when Working with Children Whose Parent or Primary Caregiver Is Incarcerated?*” (February 23, 2023), <<https://www.casey.org/parental-incarceration-issue/>> (accessed January 28, 2025), citing Berger et al., *Families at the Intersection of the Criminal Justice and Child Protective Services Systems*, 665 Ann Am Acad Pol & Soc Sci 171, 175 (2016).

<sup>13</sup> See, e.g., Swann & Sylvester, *The Foster Care Crisis: What Caused Caseloads to Grow?*, 43 Demography 309, 325 (2006) (finding that female incarceration was the largest contributor to the rise in foster care caseloads from 1985 to 2000). See also Berger et al., *Families at the Intersection of the Criminal Justice and Child Protective Services Systems*, 665 Ann Am Acad Pol & Soc Sci 171, 189 (2016) (noting that 15% of incarcerated adults in Wisconsin had children who became CPS-involved within 11 months following the incarceration).

<sup>14</sup> See Jensen, *The Costs of Separation: Incarcerated Mothers and the Socioeconomic Benefits of Community-Based Alternatives for Nonviolent Offenders*, 35 BYU J Pub L 297, 305 (2021) (“[C]hildren of incarcerated women are significantly more likely to end up in the foster care system.”).

of the growth in the foster system population from 1985-2000 resulted from increasing levels of female incarceration.<sup>15</sup>

**B. In-Person Visits with Incarcerated Parents Are Vital to the Wellbeing of Children in the Foster System.**

*A child should be allowed to visit their parents while incarcerated because it is important for the child and the parent to still maintain a connection. It's important for the child to know that their father or mother is still there and still supports them even though they can't be physically there while the child navigates through life. It can motivate a child because even though the visits might be short and the talks might be brief it still matters and it still has some kind of positive effect and again gives them a sense of hope!*

*- Rodney, youth leader with Advocates for Youth Justice<sup>16</sup>*

In-person visitation allows youth in the foster system to maintain and build closer bonds with their parents, to support their wellbeing, and to increase their chances of family reunification.

**1. In-Person Visitation Is Critical to the Wellbeing of Children in the Foster System.**

Youth in the foster system who maintain connections to their families—specifically their parents and siblings—have better outcomes in multiple domains, including self-esteem, mental and physical health, and income potential.<sup>17</sup> “Our human wisdom, practice experience, and

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<sup>15</sup> See *The Foster Care Crisis*, 43 *Demography* at 301, 325, 329-30; see also Sobol, *Connecting the Disconnected: Communication Technologies for the Incarcerated*, 53 *Wake Forest L Rev* 559, 566-67 (2018) (discussing the significant increase in incarceration of women from 1970 to 2014 and the fact that 80% of incarcerated women are mothers, most of whom are primary caretakers).

<sup>16</sup> See note 9.

<sup>17</sup> See Meyer, *Harm Caused by the Adoption and Safe Families Act*, 1 *Fam Integrity & Just Q* 94, 96 (2021) (Separating children from their families to be placed with strangers often results in “dire life-long predictive outcomes.”); McCormick, *The Role of the Sibling Relationship in Foster Care: A Comparison of Adults with a History of Childhood Out-of-Home Placement* (2009) (Ph.D. Dissertation, University of Texas at Arlington), pp 78-81 (discussing the positive impact of childhood sibling relationships on foster alumni self-esteem and income); McWey, Cui &

research evidence point to children needing more than *a* family to thrive; instead, they need *their own* family to thrive.”<sup>18</sup> Every child exists within a relational context of unique and meaningful connections—their family, community, and culture. The continuity of these connections can foster a sense of belonging and psychological safety that lead to better long-term outcomes for children.<sup>19</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>20</sup> Indeed, a child’s relationships with parents can be a crucial “buffer” against developmental stress, ameliorating the impact that trauma and adversity have on long-term physical health outcomes.<sup>21</sup> The positive effects of family connections continue beyond childhood: Children in the foster system who maintained close connections with both biological parents and other parental figures were more likely as adults to demonstrate age-appropriate employment, education, and financial security, and less likely to

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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) (discussing the positive impact of maintain quality relationships with biological parents on foster youths’ mental health).

<sup>18</sup> *Harm Caused by the Adoption and Safe Families Act* at 96 (emphasis added).

<sup>19</sup> See *id.* at 98.

<sup>20</sup> Patten, *The Subordination of Subsidized Guardianship in Child Welfare Proceedings*, 29 *NYU Rev L & Soc Change* 237, 240 (2004).

<sup>21</sup> Chen, Brody & Miller, *Childhood Close Family Relationships and Health*, 72 *Am Psych* 555, 558 (2017).

suffer from mental health issues, substance abuse, homelessness, and involvement with the criminal court system.<sup>22</sup>

The converse is true as well; “plentiful research show[s] the detrimental physical and psychological effects caused by [separation due to parental incarceration], especially for the child, whose brain is at a critical stage in its development.”<sup>23</sup> Leading trauma experts have explained that “[d]epriving [children] of their caregivers . . . has effects on the brain as profound as starving them.”<sup>24</sup> The act of separating children from their parents triggers physical, emotional, and psychological distress for children<sup>25</sup> and places them at risk of psychological complications including toxic stress, which in turn contributes to anxiety, behavioral problems, depression, and lifelong health consequences.<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

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<sup>22</sup> 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).

<sup>23</sup> Scotti, *Generating Trauma: How the United States Violates the Human Rights of Incarcerated Mothers and Their Children*, 23 *CUNY L Rev* 38, 53 (2020); see also Kraft, *AAP Statement Opposing Separation of Children and Parents at the Border* (May 8, 2018), available at <<https://rb.gy/9d9duo>> (accessed January 29, 2025) (then president of the American Academy of Pediatrics discussing the separation of families at the Mexican border).

<sup>24</sup> *Generating Trauma* at 54 (second alteration in original).

<sup>25</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); Papovich, *Trauma & Children in Foster Care: A Comprehensive Review*, *Forensic Scholars Today* (July 10, 2019), available at <<https://rb.gy/yh9bwc>> (accessed January 29, 2025).

<sup>26</sup> *Re-Envisioning Child Well-Being*, 12 *Colum J Race & L* at 639.

(“the stress hormone”) skyrocket, their blood pressure rises, and their heart rates accelerate.<sup>27</sup> In the long term, “[w]hat may begin as acute emotional distress could reemerge later in life as PTSD, behavioral issues and other signs of lasting neuropsychological damage.”<sup>28</sup>

For children removed from their homes by the foster system, in-person visitation is crucial to their wellbeing. For these children, parental incarceration typically occurs as part of a constellation of traumatic events, including separation from the other parent, siblings, grandparents, and extended kin; moving out of their home, community, and school; and being placed in a stranger’s home or in a group or institutional setting. Uncertainty is the hallmark of a child’s existence in the foster system; the child doesn’t know if or when they will return home or how long they will remain in their current foster placement. Maintaining a strong relationship with a parent can help provide a measure of consistency and mitigate the trauma of these destabilizing and life-altering changes.<sup>29</sup>

Indeed, decades of research have shown that visitation is key to maintaining family connections and the associated positive outcomes. Youth in the foster system who have more frequent and consistent visitation with their parents, including incarcerated parents, experience improved well-being, fewer behavioral problems, lower levels of depression, and better

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<sup>27</sup> Wan, *What Separation from Parents Does to Children: “The Effect is Catastrophic”*, Washington Post (June 18, 2018), available at <<https://rb.gy/gu57t5>> (accessed January 29, 2025).

<sup>28</sup> Ducharme, *“What This Amounts to Is Child Abuse” Psychologists Warn Against Separating Kids from Their Parents*, TIME (June 19, 2018), available at <<https://time.com/5316030/kids-separation-parents-psychological-harm/>> (accessed February 6, 2025). See also *Re-Envisioning Child Well-Being*, 12 Colum J Race & L at 639 (discussing ongoing separation from parents causing lifelong health consequences).

<sup>29</sup> See Smariga, *Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know*, ABA Center on Children and the Law (2007), p. 7, available at <<https://rb.gy/1i85po>> (accessed January 29, 2025).

adjustment.<sup>30</sup> In view of this research, both federal and state policy emphasize the importance of visitation and the family bond for children in the foster system. The U.S. Department of Health and Human Services Children’s Bureau recognizes that child welfare agencies should ensure frequent and meaningful family time because “[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>31</sup> Similarly, Michigan’s Children’s Foster Care Manual instructs that “[m]aintaining family contact and parenting time is essential to child and family

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<sup>30</sup> Children’s Bureau, *Family Time and Visitation for Children and Youth in Out-of-home Care*, ACYF-CB-IM-20-02 (Feb. 5, 2020), pp 3-4, available at <<https://www.acf.hhs.gov/sites/default/files/documents/cb/im2002.pdf>> (accessed January 30, 2025); 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 (2010) (finding that youth who had frequent, consistent visitation with their biological mothers had lower levels of depression and externalizing behaviors like aggression and delinquency than peers who had limited or no visitation); McWey & Mullis, *Improving the Lives of Children in Foster Care: The Impact of Supervised Visitation*, 53 Family Relations 293, 298-99 (2004) (finding continued contact between children involved in the foster care system and at least one biological parent is positively correlated to children’s current well-being); Cantos, Gries, & Slis, *Behavioral Correlates of Parental Visiting During Family Foster Care*, 76 Child Welfare 309 (1997) (youth in foster care with more frequent visits with biological parents had fewer behavior problems than those visited less frequently or not at all); Children’s Bureau, *Bulletins for Professionals: Child Welfare Practice With Families Affected by Parental Incarceration* (January 2021), available at <<https://shorturl.at/jZ8hX>> (accessed February 13, 2025) (“Continuing contact during a parent’s incarceration is critical for maintaining the parent-child relationship and has important implications for long-term child well-being.”); Casey Family Programs, *How Can Child Protection Agencies Support Children Spending Time with their Parents Who Are Incarcerated?* (February 27, 2023), p 2, available at <<https://tinyurl.com/m7b9rp8v>> (accessed February 13, 2025) (finding that research supports in-person visits with incarcerated parents; that such visits benefit children, parents, and communities; and that “parent-child connection can be a protective factor when visits are frequent, consistent, and predictable, and when parents are sensitive and responsive to children’s needs”).

<sup>31</sup> Children’s Bureau, *Achieving Permanency for the Well-Being of Children and Youth*, ACYF-CB-IM-21-01 (January 5, 2021) pp 2 & 10, available at <<https://www.acf.hhs.gov/cb/policy-guidance/im-21-01>> (accessed January 30, 2025).

attachment and well-being.”<sup>32</sup> Children with foster system experience themselves also describe ongoing family attachments and visitation as essential to their wellbeing.<sup>33</sup> Whether visitation is beneficial and appropriate depends, in part, on individual parent-child relationships. Parent-child visitation and contact may not be beneficial for every child in the foster system. However, given the proven, profound benefits of getting to see family members in-person, every child should be given the option of in-person visitation.

## **2. Visitation with Incarcerated Parents Is Crucial to Family Reunification for Children in the Foster System.**

Courts consider whether to terminate parental rights based on the apparent strength of the parent-child relationship, as well as the caseworker’s perception of that relationship. To terminate rights in Michigan, the court must find both that one of the legal grounds for termination has been met *and* that termination would be in the child’s best interests.<sup>34</sup> The courts use the strength of the parent-child bond as a factor in determining the child’s best interests.<sup>35</sup> Therefore, the stronger, more positive, and consistent the relationship, the more likely reunification will occur.<sup>36</sup> Because restrictions on in-person visitation can interfere with meaningful parent-child relationships and can

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<sup>32</sup> Michigan Dep’t Health & Hum Serv, *Children’s Foster Care Manual* (March 1, 2022), p 1, available at <<https://mdhhs-pres-prod.michigan.gov/olmweb/EXF/FO/Public/FOM/722-06I.pdf#pagemode=bookmarks>> (accessed January 30, 2025).

<sup>33</sup> See note 9; Chapman, Wall, & Barth, *Children’s Voices: The Perceptions of Children in Foster Care*, 74 Am J Orthopsychiatry 293, 297, 303 (2004) (finding foster children in the study most frequently reported feelings of happiness following visitation with family and most reported wanting more contact with biological parents and siblings).

<sup>34</sup> MCL 712A.19b(5).

<sup>35</sup> See, e.g., *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014) (strength of parent-child bond should be considered in determining whether termination of parental rights is in child’s best interests).

<sup>36</sup> See *Bulletins for Professionals* at 9 (Parents “maintaining meaningful contact with their children . . . can ultimately help prevent termination of parental rights.”).



create the perception that a parent does not want to maintain their relationship, courts may terminate parental rights based on an incomplete or inaccurate representation of the best interests of the child.<sup>37</sup>

Restrictions on meaningful visitation like those at issue in this case directly interfere with the State's goal of supporting family reunification. Michigan's foster system has committed to keeping children with their families or reunifying them whenever safely possible.<sup>38</sup> Reunification depends largely on visitation; the Children's Foster Care Manual issued by the Michigan Department of Health and Human Services states that "[o]ne of the best predictors of timely and successful reunification is the frequency and quality of visits between a child and their parents."<sup>39</sup> Research shows that regular, meaningful family time results in youth spending less time in out-of-home care and a greater likelihood of reunification.<sup>40</sup> Families denied meaningful contact while a parent is incarcerated therefore face a heightened risk of permanent separation by a judicial termination of parental rights.<sup>41</sup> Visitation has been called "the heart of permanency planning" because it plays a critical role in the legal future of the parent-child relationship.<sup>42</sup>

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<sup>37</sup> See McMillen, *I Need to Feel Your Touch: Allowing Newborns and Infants Contact Visitation with Jailed Parents*, 2012 U Ill L Rev 1811, 1828-29 (2012).

<sup>38</sup> Michigan Dep't Health & Hum Serv, *Children's Protective Services Policy Manuals* (December 30, 2024) PSM 711 p 1, available at <<https://mdhhs-pres-prod.michigan.gov/olmweb/ex/PS/Mobile/PSM/PSM%20Mobile.pdf>> (accessed January 31, 2025) ("The Children's Protective Services (CPS) program is committed to keeping children and families together safely, strengthening families, and preventing further harm.").

<sup>39</sup> *Children's Foster Care Manual* at 1.

<sup>40</sup> *Family Time* at 2-4.

<sup>41</sup> See *Bulletins for Professionals* at 9.

<sup>42</sup> *Visitation with Infants and Toddlers in Foster Care* at 7.

From the outset, incarcerated parents are more likely to have their rights terminated, and their children are more likely to end up “legal orphans.”<sup>43</sup> In many states, including Michigan, parental incarceration may be considered in the termination of parental rights,<sup>44</sup> making visitation opportunities even more crucial.<sup>45</sup> Incarcerated parents are only about 30% as likely to reunify with their children as unincarcerated parents, even after controlling for mental health, substance abuse, domestic violence issues, age, and ethnicity.<sup>46</sup> Research has shown that inability to access reunification services like visitation while incarcerated is a primary driver of this disparity.<sup>47</sup>

Incarcerated parents are also at a disadvantage because federal law mandates that states file for the “involuntary terminat[ion of] parental rights when a child has been in foster care placement for 15 of the most recent 22 months.”<sup>48</sup> Given that the average length of incarceration in the U.S.

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<sup>43</sup> Raimon, Lee, & Genty, *Sometimes Good Intentions Yield Bad Results: ASFA’s Effect on Incarcerated Parents and their Children*, in *Intentions and Results: A Look Back at the Adoption and Safe Families Act (2009)*, pp 121-23, available at <<https://tinyurl.com/9mt2uvyc>>; see Hager & Flagg, *How Incarcerated Parents Are Losing Their Children Forever*, Marshall Project (December 2, 2018), available at <<https://tinyurl.com/54y73xy4>> (accessed February 13, 2025) (Parents “who have a child placed in foster care because they are incarcerated—but who have not been accused of child abuse, neglect, endangerment, or even drug or alcohol use—are more likely to have their parental rights terminated than those who physically or sexually assault their kids, according to a Marshall Project analysis of approximately 3 million child-welfare cases nationally.”).

<sup>44</sup> MCL 712A.19b(3)(h); *Sometimes Good Intentions Yield Bad Results* at 125.

<sup>45</sup> Around 3,000 Michigan children have had their parental rights terminated and are waiting for an adoptive home. Children’s Bureau, *Child Welfare Outcomes Report Data: Michigan*, available at <<https://cwoutcomes.acf.hhs.gov/cwodatasite/byState/michigan/>> (accessed February 3, 2025).

<sup>46</sup> D’Andrade, *How Does Incarceration Affect the Likelihood of Reunification?*, in *Child Welfare 360: Criminal Justice Involvement of Families in Child Welfare (2018)*, p 12, available at <<https://tinyurl.com/rbz9cbp8>> (accessed February 13, 2025).

<sup>47</sup> *Id.*

<sup>48</sup> Tomlinson, *Termination of Parental Rights Under Adoption and Safe Families Act (ASFA)*, 115 Am Jur Trials 465, § 2 (2024 Update); 42 US Code § 675(5)(E).

is well over 15 months, many incarcerated parents are at significant risk of losing their children forever.<sup>49</sup> Federal law provides limited exceptions to this filing timeline, one of which is a documented compelling reason that termination is not in the child’s best interests.<sup>50</sup> A strong parent-child relationship therefore has the potential to prevent or delay the filing of a petition for termination of parental rights. If a petition is ultimately filed, the decision whether to terminate parental rights depends on the judge’s determination regarding the best interests of the child.<sup>51</sup> If an incarcerated parent is hampered in maintaining a strong relationship with their child because of visitation restrictions, it is exponentially more difficult to demonstrate that the parent-child relationship is worthy of being preserved.<sup>52</sup> With visitation and other supportive services, in contrast, incarcerated children and families are much more likely to reunify.<sup>53</sup>

**C. Virtual Visits between Children in the Foster System and Incarcerated Parents Cannot Substitute for In-Person Visits.**

*Video calls and phone calls are very different from in person. In some cases, on a call you are limited to a very small amount of time*

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<sup>49</sup> See 42 US Code § 675(5)(E); Nicholson, *Racing Against the ASFA Clock: How Incarcerated Parents lose More than Freedom*, 45 Duquesne L Rev 83,88-89 (2006); Arredondo, *The Effect of Termination of Parental Rights on Incarcerated Parents*, 22 Conn Pub Int L J 140, 143 (2022); *How Incarcerated Parents Are Losing Their Children Forever*, *supra* (describing the Adoption and Safe Families Act and the way in which the law makes parents more vulnerable to losing their children).

<sup>50</sup> 42 US Code § 675(5)(E)(ii); MCL 712A.19a(8)(b).

<sup>51</sup> MCL 712A.19b(5) (“If the court finds that there are grounds for termination of parental rights *and* that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.”) (emphasis added).

<sup>52</sup> See *Sometimes Good Intentions Yield Bad Results* at 125; Singer & Brodzinsky, *Virtual Parent-child Visitation in Support of Family Reunification in the Time of COVID-19*, 2 Dev Child Welfare 153, 165-67 (2020), available at <<https://tinyurl.com/mpzd9nec>>.

<sup>53</sup> *How Does Incarceration Affect the Likelihood of Reunification?* at 12 (“For mothers and fathers, the negative association of incarceration with reunification weakened, and was no longer statistically significant when parents’ service use was taken into consideration.”).

*and might not really be able to think or get all words out. In a video call, all you can do is look through a camera which is depressing. Children need that in person interaction because they can express themselves better.*

- Angela, youth leader with Advocates for Youth Justice<sup>54</sup>

In-person rather than virtual visits are crucial to the family connections that benefit youth wellbeing and support their reunification with parents. Visits in which children can connect with their parents in a child-friendly environment offer the most positive impact for families, including mitigating the long-term negative outcomes associated with parental incarceration.<sup>55</sup> The Michigan Foster Care Manual instructs that visits between children in the foster system and their parents should be “in-person” and “interactive” and can be supplemented with other types of contact, such as virtual.<sup>56</sup> This aligns with the national consensus that in-person visitation is necessary to maximize the benefits of contact between youth in the foster system and their parents. The American Academy of Pediatrics states that “for children in the child welfare system, continued family support and visitation with parents and siblings is critical to promote well-being, secure attachments and successful timely reunification and permanency,” and recommends that

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<sup>54</sup> See note 9.

<sup>55</sup> Cramer et al., *Parent-Child Visiting Practices in Prisons and Jails; A Synthesis of Research and Practice*, pp. 3, 7, 10 (2017), available at <<https://tinyurl.com/mpfzjchy>> (accessed February 13, 2025). See also Patrice, *The Double Edged Sword of Prison Video Visitation: Claiming to Keep Families Together While Furthering the Aims of the Prison Industrial Complex*, 9 Fla A & M U L Rev 83, 103-6 (2013) (“[T]he most effective form of parent-child visitation is through contact visitation.”); Mikytuck & Woolard, *Family Contact In Juvenile Confinement Facilities: Analysis of the Likelihood of and Barriers to Contact*, 58 J Offender Rehab 371, 372 (2019) (discussing importance of family contact for adolescent youth). Aznar & Tenenbaum, *Parent-Child Positive Touch: Gender, Age, and Task Differences*, 40 J Nonverbal Behav 317, 317-18 (2016) (discussing numerous studies finding that physical interactions are critical to children’s physical and psychological development); Ardiel & Rankin, *The Importance of Touch in Development*, 15 Pediatrics & Child Health 153 (2010) (same).

<sup>56</sup> *Children’s Foster Care Manual* at 1.

“whenever possible, in-person visitation is preferable.”<sup>57</sup> This kind of meaningful connection supports the parent and child in maintaining, growing, and repairing their relationship.<sup>58</sup> Importantly, Children’s Bureau guidance for children in the foster system with incarcerated parents states that in-person visits are best practice; while virtual visits can be “a valuable supplement,” they should not entirely replace in-person visits.<sup>59</sup>

Overwhelming research supports using video visitation, phone calls, and mail to supplement rather than supplant in-person visits for incarcerated individuals and their families.<sup>60</sup> Researchers investigating virtual visitation between youth in the foster system and their parents during the Covid-19 pandemic overwhelmingly concluded that “the time spent in virtual visits cannot be equated with the time spent in face-to-face contact. . . . [T]he limitations inherent in virtual visits make it more difficult to foster or maintain a healthy, secure parent-child

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<sup>57</sup> Am Acad Pediatrics, *Guidance for Children and Families Involved with the Child Welfare System During the COVID-19 Pandemic* (Updated Aug. 30, 2022), available at <<https://tinyurl.com/ydy5xsfe>> (accessed February 13, 2025).

<sup>58</sup> *Bulletins for Professionals* at 11. See also *How Can Child Protection Agencies Support Children* at 2; *I Need to Feel Your Touch* at 1828-29.

<sup>59</sup> *Bulletins for Professionals* at 13; see also *How Can Child Protection Agencies Support Children* at 2.

<sup>60</sup> See, e.g., *Parent-Child Visiting Practices in Prisons and Jails* at 12 (“[V]ideo visits may be a viable supplement and useful option for some families but they should not replace in-person visits entirely.”); Grassroots Leadership & Tex. Crim Just Coal, *Video Visitation: How Private Companies Push for Visits by Video and Families Pay the Price* (2014), p 2, available at <<https://tinyurl.com/3db56usk>> (accessed February 13, 2025) (“Every available study agrees: Best practices for developing [parent-child] bonds involve in-person visitation, preferably contact.”). See generally Wang, Prison Pol’y Initiative, *Research Roundup: The Positive Impacts of Family Contact for Incarcerated People and their Families*, (December 21, 2021), available at <<https://tinyurl.com/4wkyvr7v>> (accessed February 13, 2025) (discussing numerous studies associated with the benefits of in-person visitation).

attachment.”<sup>61</sup> In the instant case, the additional quality control issues in the virtual visiting system, such as malfunctioning or grainy video feeds and dropped connections, exacerbate these problems even further.<sup>62</sup> The high costs<sup>63</sup> of phone and video calls create further barriers, and families may even have to choose between paying for phone and video calls or other necessities.<sup>64</sup>

In contrast to virtual visits and phone calls, parent-child bonding is better achieved through in-person activities like hugging, eating together, or engaging in play.<sup>65</sup> Even in-person visits that must take place with plexiglass separations allow for more personal connection through direct eye-contact, whereas the positioning of cameras in video calls prevents true eye-to-eye contact, a critical component of communication.<sup>66</sup>

Banning in-person visitation in favor of virtual options can also affect the child welfare agency’s perception of the parent-child relationship, which in turn influences court decisions.

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<sup>61</sup> *Virtual Parent-child Visitation*, 2 Dev Child Welfare at 167. See also Widra, Prison Pol’y Initiative, *Seeing Eye to Eye: Understanding the Limits of Video Visitation*, (April 11, 2016), available at <<https://tinyurl.com/57ykwnfs>> (accessed February 13, 2025) (explaining that “video visitation[] falls short of in-person interactions across six major aspects of conversations” according to psychological research).

<sup>62</sup> *Virtual Parent-child Visitation*, 2 Dev Child Welfare at 160. See also Bou-Rhodes, *Straight to Video: America’s Inmates Deprived of a Lifeline Through Video-Only Visits*, 60 BC L Rev 1243, 1257-58 (2019) (“Video visits, in sum, have inherent disadvantages for the people who use them, are prone to technological issues, and are more expensive as well as substantially less personal than in-person visits.”).

<sup>63</sup> Although the FCC has recently limited the prices of video and phone calls it is unclear when such caps will be phased in. See Fed Comm’n Comm’n, *FCC Caps Exorbitant Phone & Video Call Rates for Incarcerated Persons & Their Families*, Press Release (July 18, 2024), available at <<https://docs.fcc.gov/public/attachments/DOC-404087A1.pdf>> (accessed February 4, 2025).

<sup>64</sup> Hoffer, *Mother or Money?: The Exorbitant Cost of Phone Calls from Jail*, Harv Pol Rev (January 15, 2022), available at <<https://harvardpolitics.com/jail-phone-calls/>>.

<sup>65</sup> *Virtual Parent-child Visitation*, 2 Dev Child Welfare at 154-55, 160.

<sup>66</sup> *Straight to Video* at 1269.

Visitation between parents and their children in the foster system is often subject to mandatory supervision by a caseworker or visitation monitor.<sup>67</sup> During supervised visitation, child welfare agency staff watch and record the parent's behavior and the child's reactions and assess the quality and strength of the parent-child relationship. These observations inform the caseworkers' recommendations to the court about reunification or termination of parental rights.<sup>68</sup> In-person visitation gives parents the opportunity to maintain and demonstrate their strong connections, while relying solely on virtual visits limits caseworkers' understanding of the parent-child dynamic<sup>69</sup> and may disadvantage parents seeking reunification. For example, a case worker could attribute a child's disengagement to a lack of connection with the parent when, in fact, the behavior reflects the child's difficulty maintaining attention in a virtual setting.<sup>70</sup> One only has to look at the difference between in-person education and the attempts at online learning during the pandemic to see how deeply the virtual barrier affects children's attention and engagement.<sup>71</sup> Similarly, a case worker may attribute a parent's silence to a lack of interest when in reality it reflects challenges with technology.<sup>72</sup> In-person visits may also be the only opportunity for parents to practice and demonstrate some of the parenting skills set out in their case plans, such as appropriate

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<sup>67</sup> See, e.g., MCL 712A.13a(13); *Visitation with Infants and Toddlers in Foster Care* at 15.

<sup>68</sup> *Visitation with Infants and Toddlers in Foster Care* at 7 & 18; *Virtual Parent-child Visitation*, 2 Dev Child Welfare at 154-55.

<sup>69</sup> *Virtual Parent-child Visitation*, 2 Dev Child Welfare at 155, 162-64.

<sup>70</sup> See *id.* at 156-57.

<sup>71</sup> See, e.g., Annie E. Casey Found, *Pandemic Learning Loss and Covid-19: Education Impacts*, (Updated July 8, 2024), available at <<https://tinyurl.com/3sb3jduj>> (accessed February 13, 2025) (finding students struggled with focus and engagement due to transition to remote learning).

<sup>72</sup> See *Virtual Parent-child Visitation*, 2 Dev Child Welfare at 160.



feeding, play, and physical affection.<sup>73</sup> Without in-person visitation, a parent may not get the opportunity to demonstrate compliance with their case plan until after their release, delaying reunification or preventing it entirely.<sup>74</sup>

## **II. ST. CLAIR’S BAN ON IN-PERSON VISITATION ENTRENCHES RACIAL AND ECONOMIC DISPARITIES**

Black, Latine, and Indigenous youth and families are overrepresented in both the child welfare and carceral systems. Michigan’s permanent ban on in-person visitation will therefore disproportionately harm Black, Latine, and Indigenous youth.

### **A. The Foster System Disproportionately Separates Black, Latine, and Indigenous Children and Children Living in Poverty from their Families.**

*Coming from a lower class you can barely afford the basic needs for living. If you told me I have to pay to talk to my family that is incarcerated, I would be stressed out trying to make it work and my mental health would not be the same.*

*- Ria, youth leader with Advocates Transforming Youth Systems<sup>75</sup>*

The United States foster system purports to protect the safety and well-being of all children,<sup>76</sup> yet decades of research and accounts of lived experiences highlight the system’s long

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<sup>73</sup> *Id.* at 154-55, 162-64.

<sup>74</sup> See *id.* at 165-67.

<sup>75</sup> See note 9.

<sup>76</sup> Children’s Bureau, *About* (June 28, 2023), available at <<https://www.acf.hhs.gov/cb/about>> (accessed February 4, 2025) (The Children’s Bureau, an agency within the Administration for the Children and Families within the U.S. Department of Health and Human Services, “seek[s] to improve the safety, permanency, and well-being of children.”).

history of disproportionately surveilling and separating families of color, particularly Black and Indigenous families and those living in poverty.<sup>77</sup>

Nationwide, over 215,000 children were removed from their families and entered the foster system in 2020.<sup>78</sup> Black children made up 25% of the children in the foster system but only 15% of all youth in the United States in 2020.<sup>79</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>80</sup> Nearly 10% of all Black children will be removed from their parents and placed into the foster system (almost double the rate of white children).<sup>81</sup> The overrepresentation of Black children is not grounded in inherent differences between Black and white families. In fact, Black children “are more likely to be in foster care placement than receive in-home services, *even when they have the same problems and characteristics as white children.*”<sup>82</sup> White children are more likely than Black children to be permitted to stay with their families, to be returned home or adopted, and to receive more services.<sup>83</sup>

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<sup>77</sup> See Ruth, upEND, *Regulating Families: How the Family Policing System Devastates Black, Indigenous and Latinx Families and Upholds White Family Supremacy* (2022), pp 3-4, available at <<https://tinyurl.com/bddubkhn>> (accessed February 4, 2025).

<sup>78</sup> Children’s Bureau, *The AFCARS Report* (October 4, 2021), p 1, available at <<https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport28.pdf>> (accessed February 4, 2025).

<sup>79</sup> *Regulating Families* at 5.

<sup>80</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://tinyurl.com/y7hmk32z>>.

<sup>81</sup> Minoff & Citrin, *Systemically Neglected: How Racism Structures Public Systems to Produce Child Neglect* (2022), p 5, available at <<https://tinyurl.com/4j653sfb>> (accessed February 5, 2025).

<sup>82</sup> Robert, *Race and Class in the Child Welfare System*, FrontLine, available at <<https://tinyurl.com/y2naxp>> (accessed February 13, 2025).

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

Indigenous children are also grossly over-represented in the foster system.<sup>84</sup> In 2021, Indigenous children entered the foster care system at approximately twice the rate of their non-Indigenous peers.<sup>85</sup> While Latine children are not overrepresented in the foster system nationally, they are disproportionately placed in the foster system in some states, and the number of states where this is true has steadily grown.<sup>86</sup> In Michigan, children of color are vastly overrepresented in the foster system, making up 51% of youth in the foster system but only 31% of all Michigan children.<sup>87</sup>

Today, most children are removed from their families for “neglect,”<sup>88</sup> a nebulous term that is often a euphemism for “poor.” This, too, heightens the risk of system involvement for Black and

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<sup>84</sup> Hum Rts Watch & ACLU, *“If I Wasn’t Poor, I Wouldn’t Be Unfit”*: *The Family Separation Crisis in the US Child Welfare System* (November 2022), pp 44-45, available at <<https://tinyurl.com/yc66ubad>> (accessed February 13, 2025).

<sup>85</sup> *Id.*; Nat’l Ctr for Juv Just, AFCARS, *Disproportionality Rates for Children of Color in Foster Care Dashboard (2010-2021)* (2021), available at <<https://tinyurl.com/mw7arc3w>> (accessed February 5, 2025).

Despite federal law designed to keep Indigenous families together, rates of separation remain high. Moreover, recent developments in case law suggest the law may not sufficiently protect these families. In 2013, in *Adoptive Couple v Baby Girl*, the Supreme Court held 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 729 (2013). In *Haaland v Brackeen*, the Supreme Court affirmed the protections provided to tribal governments and Indigenous families pursuant to ICWA. 599 US 255, 268-71, 296; 143 S Ct 1609; 216 L Ed 2d 254 (2023). Yet there remains no readily discernable mechanism to ensure that states are compliant with ICWA. These cases exposed gaps in ICWA’s protections and leave Indigenous families at continued risk of separation.

<sup>86</sup> *Systemically Neglected* at 15.

<sup>87</sup> MPHI & MDHHS, *Child Welfare Improvement Task Force Report* (2021), p 3, available at <<https://tinyurl.com/2n65u25f>> (accessed February 5, 2025).

<sup>88</sup> *“If I Wasn’t Poor, I Wouldn’t Be Unfit”* at 34.

Indigenous families who have faced structural barriers to economic success.<sup>89</sup> Of the over 215,000 children removed from their homes in 2020, approximately 70% were removed from their families for “neglect,” a “broad and poorly defined category that often results in children being removed for concerns related to poverty rather than abuse.”<sup>90</sup> According to a January 2021 memorandum by the United States Administration for Children and Families, many “neglect” removals are the result of poverty,<sup>91</sup> with children often removed for “inadequate housing” or failure to provide “adequate nutrition.”<sup>92</sup>

Economic distress also leads to a disproportionate need for social services, which in turn subjects low-income families to higher rates of state surveillance and scrutiny than families with greater access to private services.<sup>93</sup> Bias by service providers heightens these disparities; public health studies show medical providers are more likely to report people of color and children living in poverty for suspected abuse or neglect than their white peers, even when the injury precipitating

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<sup>89</sup> See Burke, *A Place to Call Home: The Link Between Residential Segregation and the Disproportionate Representation of African American Children in Foster Care*, 14 Geo J L & Mod Crit Race Persp 151, 165-66 (2022), available at <<https://tinyurl.com/389wv4pk>>. (accessed February 13, 2025).

<sup>90</sup> NAACP & Children’s Rights, *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://tinyurl.com/49x6erpm>> (accessed February 5, 2025).

<sup>91</sup> Children’s Bureau, *Civil Legal Advocacy to Promote Child and Family Well-Being, Address the Social Determinants of Health, and Enhance Community Resilience*, ACYF-CB-IM-21-02 (January 12, 2021), p 5, available at <<https://tinyurl.com/ydm32m2w>> (accessed February 5, 2025).

<sup>92</sup> *Id.*

<sup>93</sup> See Harp & Bunting, *The Racialized Nature of Child Welfare Policies and the Social Control of Black Bodies*, 27 Soc Pol 258, 259 (2020).

the medical visit was similar.<sup>94</sup> Similarly, case workers' misunderstanding of Tribal culture and stereotypes about Indigenous caretaker behaviors and alcohol abuse likely play a significant role in the disproportionate representation of Indigenous youth in the foster system.<sup>95</sup>

**B. Racial Disparities in the Criminal Court System Exacerbate Disparities in Family Separation.**

*Families are supposed to be together, and the system is supposed to help people not break them up.*

*- Amara, youth leader with Advocates for Youth Justice<sup>96</sup>*

Deep racial disparities in the carceral system further heighten the disparities in family separation. Black men make up less than 13% of the U.S. male population, but 35% of all men incarcerated with sentences longer than a year.<sup>97</sup> Black people are incarcerated in state prisons at five times the rate of white people.<sup>98</sup> Among incarcerated women, 44% of are Black even though Black women comprise only about 13% of the female population.<sup>99</sup> In 2018 and 2019, Native

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<sup>94</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).

<sup>95</sup> Native Child Advoc Res Ctr, *Practice Brief 3: Tribal Children and Forced Assimilation* (2022), pp 5-6, available at <<https://tinyurl.com/yc89k7w4>> (accessed February 13, 2025).

<sup>96</sup> See note 9.

<sup>97</sup> Hinton, Henderson, & Reed, *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System* (2018), p 2, available at <<https://tinyurl.com/55mzxknh>> (accessed February 13, 2025).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

people constituted less than 1% of the population but made up 2.3% of those in federal community supervision and 2.1% of all federally incarcerated people.<sup>100</sup>

These disparities reflect the implicit and explicit bias that permeates the criminal court process.<sup>101</sup> For example, Black and Latine drivers are more likely to be pulled over for a traffic stop, particularly during the day when police officers can determine the race of the driver.<sup>102</sup> During stops, they are more likely to be searched and experience harsher treatment than white drivers.<sup>103</sup> Prosecutorial decisions reflect bias as well; white defendants are approximately 25% more likely than Black defendants to have their top charge dropped or decreased.<sup>104</sup> Research suggests that when prosecutors have “low information” on defendants, they may use race as a proxy for a defendant’s latent criminality and likelihood of recidivism.<sup>105</sup> The U.S. Commission

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<sup>100</sup> Wang, Prison Pol’y Initiative, *The U.S. Criminal Justice System Disproportionately Hurts Native People: The Data, Visualized* (October 8, 2021), available at <<https://tinyurl.com/4jlx2fm9>> (accessed February 13, 2025). See also Prison Pol’y Initiative, *Michigan Profile*, available at <<https://tinyurl.com/ybczh77w>> (accessed February 13, 2025) (depicting racial disparities in Michigan incarceration rates).

<sup>101</sup> Nat’l Immigr Project & Immigrants’ Rts Clinic Stanford Law School, *Bias in the Criminal Legal System: A Report on Racial Bias in the Criminal Process and Its Impact on Noncitizens of Color in Removal Proceedings* (2024), p 3, available at <<https://tinyurl.com/3xav2sfs>> (accessed February 13, 2025).

<sup>102</sup> *Id.* at 5.

<sup>103</sup> *Id.*

<sup>104</sup> Berdejó, *Criminalizing Race: Racial Disparities in Plea-Bargaining*, 59 BC L Rev 1187, 1221 (2018), available at <<https://tinyurl.com/4wz934y2>>.

<sup>105</sup> *Id.* at 1188.

on Civil Rights similarly attributes criminal court system overrepresentation of Indigenous people to “differential treatment by the system, lack of access to adequate counsel and racial profiling.”<sup>106</sup>

Poverty also increases the risk of criminal court system involvement. Many states criminalize activities associated with poverty, such as driving without a license, homelessness, or inability to pay fines.<sup>107</sup> Those in poverty are more likely to be represented by under-resourced counsel,<sup>108</sup> and fees, fines, and bail policies make it harder for those in poverty to exit the system and get back on track with employment and education.<sup>109</sup> The impact is dramatic: the likelihood that a boy from a family in the bottom 10 percent of the income distribution will end up in prison in his thirties is 20 times greater than that of a boy from a family in the top 10 percent.<sup>110</sup>

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With the odds stacked against them in both the foster system and the criminal court system, Black, Latine, and Indigenous children as well as those living in poverty face layers of oppression that can destabilize their families and their communities. Bans on in-person visitation will therefore be more harmful to Black, Latine, and Indigenous youth.

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<sup>106</sup> Tighe, “*Of Course we are Crazy*”: *Discrimination of Native American Indians Through Criminal Justice*, 11 *Just Pol’y J* 1, 12 (2014), available at <<https://tinyurl.com/4kffyz5k>>.

<sup>107</sup> See Ghandnoosh & Barry, Sent’g Project, *One in Five: Racial Disparity in Imprisonment—Causes and Remedies* (December 7, 2023), p 6, available at <<https://tinyurl.com/jwrms3ny>> (accessed February 13, 2025).

<sup>108</sup> See *id.* at 6-7 & 19.

<sup>109</sup> See *id.* at 19; Dholakia, Vera Inst, *How the United States Punishes People for Being Poor* (September 21, 2023), available at <<https://tinyurl.com/mry8k52t>> (accessed February 13, 2025).

<sup>110</sup> Looney & Turner, Brookings Inst, *Work and Opportunity Before and After Incarceration* (2018), p 2, available at <<https://tinyurl.com/yt3j3pyx>> (accessed February 13, 2025).



## CONCLUSION

Prohibiting children in the foster system from visiting their parents in person hurts youth and prevents families from maintaining and demonstrating strong parent-child bonds. As a result of these bans, children are more likely to have their relationship with an incarcerated parent permanently legally severed, resulting in additional deep and long-lasting harm. This country's history and current practice of disproportionately separating families of color and incarcerating people of color means that these burdens will disproportionately fall on Black, Latine, and Indigenous youth and continue the cycle of inequity. *Amici Curiae* respectfully request that for the foregoing reasons this Honorable Court reverse the circuit court decision and remand for further proceedings.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to MCR 7.212(B), I hereby certify that this document contains 7,497 countable words, based upon the word count of the word processing system used to prepare the brief.

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Dated: February 24, 2025