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Via TrueFiling

Supreme Court of California
350 McAllister Street
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Re: Amicus Curiae Letter of:

National Center for Youth Law
Juvenile Law Center
Alliance for Children's Rights
Children & Family Justice Center
Children's Defense Fund - California
Criminal Law & Justice Center, UC Berkeley School of Law
Lawyers for Children Inc.
Legal Services for Prisoners with Children
Movement for Family Power
Public Counsel
Sayra & Neil Meyerhoff Center for Families,
Children and the Courts¹
Youth Law Center

in Support of Petition for Review per Rule 8.500(g)

Torres on H.C., Case No. S291645 (COA No. D086130, Trial
Court No. CS335474)

¹ This amicus letter is submitted on behalf of the Center for Families, Children and the Courts and not on behalf of the University of Baltimore, the University System of Maryland, or the State of Maryland.

Dear Chief Justice Cantil-Sakauye and Associate Justices:

The above-listed *Amici* submit this letter in support of the petition for review in the above-captioned case pursuant to Rule of Court 8.500(g). *In re Torres* concerns the scope of pretrial release in California and the limits on intentional imposition of unaffordable money bail. As this Court recognized in *In re Humphrey*, 11 Cal. 5th 135, 147 (2021), “Studies suggest that pretrial detention heightens the risk of losing a job, a home, and custody of a child.” *Amici* write to explain how charging parents unaffordable bail can lead to the state placing their children in the foster system and even permanent termination of their parental rights. *Amici* also highlight the harms of foster system involvement and the disparate impacts of unaffordable money bail on California’s Black, Latine and Indigenous children and children in poverty due to the deep racial and economic disparities reflected in both the foster system and the carceral system.

Interest of Amici Curiae

National Center for Youth Law; Juvenile Law Center; Alliance for Children’s Rights; Children & Family Justice Center; Children’s Defense Fund - California; Criminal Law & Justice Center, UC Berkeley School of Law; Lawyers for Children Inc.; Legal Services for Prisoners with Children; Movement for Family Power; Public Counsel; Sayra & Neil Meyerhoff Center for Families, Children and the Courts, and Youth Law Center

(collectively “*Amici*”) are national and California-based organizations that are experts in law, children’s rights, the relationship between adolescent development and social science research and the law, and state foster systems. *Amici* share a common interest in ensuring family integrity and supporting child wellbeing, including when members of the family are experiencing incarceration, and work to ensure that those who are arrested and incarcerated receive their constitutional protections. *Amici* are jointly concerned about the profound racial and economic disparities present in the carceral and foster systems. Through impact litigation, previous *amicus* briefs filed around the country, influential publications, and/or daily practice with and on behalf of young people, *Amici* have helped shape national and state jurisprudence and policy on children and the law. *Amici* join together to support the Petition for Review.

Reasons Why Review Should Be Granted

I. Children of Parents Held in Pretrial Detention Are at High Risk of Foster System Involvement.

Children who could otherwise safely live with their parents can enter the foster system solely because their parents are detained for being unable to afford bail. California law does not require police to give parents an opportunity to contact a relative or friend to set up appropriate alternative childcare when they are arrested.² As a result, the state can take their child into

² Legal Services for Prisoners with Children, *Incarcerated Parents Manual, Chapter 1: Juvenile Dependency Court and*

custody on an “emergency” basis. Cal. Welf. & Inst. Code § 315. After 48 hours, the county child welfare agency must seek court approval to continue holding the child, and the juvenile court must hold a detention hearing the next judicial day to determine whether the child should remain in the state’s emergency custody. Cal. Welf. & Inst. Code §§ 315, 319. Bail hearings in California are typically held within 48 hours of arrest. Cal. Penal Code § 825. A parent who can afford bail will likely be able to appear at the juvenile court’s detention hearing and show that they can care for the child, while those who remain incarcerated due to unaffordable bail will not. Moreover, if the parent remains incarcerated and unable to arrange for care of the child when the juvenile court holds a full hearing a few weeks later, the court has grounds to deem the child “dependent” and place them in the legal custody of the state. Cal. Welf. & Inst. Code § 300(g).

A parent’s pretrial detention also leads to foster system involvement in more subtle ways. Most children are removed from their families for “neglect,”³ a nebulous term that is often a proxy for “poor.”⁴ While California law attempts to distinguish

Visiting Rights, at 4 (2023), <https://prisonerswithchildren.org/wp-content/uploads/2023/09/Chapter-1-JUVENILE-DEPENDENCY-COURT-Child-Custody-and-Visiting-Rights-Manual-for-Incarcerated-Parents.pdf>.

³ See ACLU & Human Rights Watch, *If I Wasn’t Poor, I Wouldn’t Be Unfit: The Family Separation Crisis in the US Child Welfare System*, at 34 (Nov. 17, 2022), https://www.hrw.org/sites/default/files/media_2022/11/us_crd1122web_3.pdf.

⁴ Children’s Bureau, Admin. for Children & Families, U.S. Dep’t of Health & Human Services, IM-21-02, *Civil Legal Advocacy to Promote Child and Family Well-Being, Address the Social*

poverty from neglect, in practice, the two are often conflated.⁵ Of the nearly 17,000 California youth removed from their homes in 2024, 85.4% were removed for neglect.⁶ Pretrial detention can contribute to findings of neglect because the family loses the parents' earnings just as they face additional costs like fees and legal representation.⁷ This can result in, for instance, homelessness, inadequate housing, or inability to afford food or clothes for children, which the state perceives as neglect.⁸

While even brief periods of pretrial detention have significant negative effects on youth and families, the longer that the parent is detained, the less likely that they will be reunited

Determinants of Health, and Enhance Community Resilience, at 5 (Jan. 12, 2021), <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2102.pdf>.

⁵ Gabriel Petek, Cal. Legis. Analyst's Office, *California's Child Welfare System: Addressing Disproportionalities and Disparities* (Apr. 24, 2024), <https://lao.ca.gov/Publications/Report/4897> ("Although the law specifies that a parent's economic disadvantage does not itself constitute general neglect, the definition nonetheless may be broadly interpreted . . . individuals working with children may have difficulty distinguishing between a family's need for support (due to poverty and other risk factors) or need for child welfare system involvement.").

⁶ Cal. Child Welfare Indicators Project at U.C. Berkeley, *Entries to Foster Care* (2025), <https://ccwip.berkeley.edu/childwelfare/reports/Entries/STSG/r/ab636/l>.

⁷ J.W. Bourgeois et. al, *The Forgotten: The Impact of Parental and Familial Incarceration on Fragile Communities*, Center for Justice Research at Texas Southern Univ., at 72 (2022), <https://centerforjusticeresearch.org/wp-content/uploads/2023/09/The-Impact-of-Parental-and-Familial-Incarceration-on-Fragile-Communities.pdf>.

⁸ Children's Bureau, *supra* note 4.

with their child. Incarcerated parents are more likely to have their rights terminated, and their children are more likely to end up “legal orphans.”⁹ Incarcerated parents are only about 30% as likely to reunify with their children as non-incarcerated parents, even after controlling for mental health, substance abuse, domestic violence issues, age, and ethnicity.¹⁰

This is in part because federal law requires that states consider terminating parental rights when a child has been in a foster placement for 15 of the most recent 22 months absent a “compelling reason”, or even earlier than that under certain circumstances. Cal. Welf. & Inst. Code § 16508.1; 42 U.S. Code § 675)(E); *see, e.g.*, Cal. Welf. & Inst. Code § 361.5 (a)(2)(l), (a)(3)(C). Pretrial detention can easily exceed these time limits. Data released in 2021 showed that thousands of Californians had been held pretrial for more than a year, and more than 1,300 had been held for more than three years.¹¹

⁹ Martha Raimon et al., in *In Intentions and results: A look back at the Adoption and Safe Families Act*, “Sometimes good intentions yield bad results: ASFA’s effects on incarcerated parents and their children,” Urban Institute, at 121-123 (2009), <https://affcn.org/wp-content/uploads/IntentionsandResults.pdf>; Eli Hager & Anna Flag, *How Incarcerated Parents Are Losing Their Children Forever*, The Marshall Project (2018), <https://www.themarshallproject.org/2018/12/03/how-incarcerated-parents-are-losing-their-children-forever>.

¹⁰ Amy C. D’Andrade, *How Does Incarceration Affect the Likelihood of Reunification?*, Child Welfare 360 - Criminal Justice Involvement of Families in Child Protection: Impact and Implications at 12 (2018), https://scholarworks.sjsu.edu/cgi/viewcontent.cgi?article=1055&context=social_work_pub.

¹¹ Robert Lewis, *Waiting for Justice*, CalMatters (March 31, 2021), <https://calmatters.org/justice/2021/03/waiting-for-justice>.

Even if the parent is eventually acquitted, that does not mean the child will automatically be returned home. To “earn” reunification, the parent must satisfy the requirements of a case plan developed by the county agency— which likely includes components far beyond the initial reason the child was removed¹²—and comply with court orders issued at the broad discretion of the juvenile court. Cal. Welf. & Inst. Code §§ 361.5, 362(d). Further, while termination of parental rights is a complex inquiry, if pretrial detention prevents a parent from demonstrating or maintaining a strong parent-child relationship, it is exponentially more difficult to demonstrate that the relationship is worthy of preservation.¹³

II. Foster System Involvement Carries High Risks of Harm and Leads to Poor Long-Term Outcomes.

Children can suffer severe psychological and physical harm when separated from their families, even temporarily.¹⁴ The

¹² Amy C. D’Andrade and R. Chambers, *Parental problems, case plan requirements, and service targeting in child welfare reunification*, 34 *Child. & Youth Serv. Rev.* 2131-2138 (2012) (In one large urban California county, more than 30% of parents were ordered services for problems they were not known to have); Josh Gupta-Kagan, *Confronting Indeterminacy and Bias in Child Welfare Law*, 33 *Stanford L. & Policy Rev.* 217, 220 (2022) (“Any adjudicated child maltreatment leads to an evolving case planning process in which the steps a parent must take to reunify need not be tethered to the maltreatment which courts adjudicated.”).

¹³ *Id.* See also Raimon, *supra* note 9, at 121-129.

¹⁴ See, e.g., Christina Scotti, *Generating Trauma: How the United States Violates the Human Rights of Incarcerated Mothers and Their Children*, 23 *CUNY L. Rev.* 38, 53 (2020) (“plentiful

potential for additional harm skyrockets once youth are placed in the foster system. Up to 26% of California youth report suffering physical abuse by an out-of-home caregiver, and up to 15% report that they were sexually abused while in the foster system.¹⁵

Youth in the foster system are also more likely to experience poor educational outcomes, including chronic school disengagement, high drop out rates, poor attendance, higher rates of suspension, and alarming rates of school mobility.¹⁶ They often face inadequate medical care, higher rates of emotional and behavioral difficulties, and higher risk of commercial sexual exploitation.¹⁷ The over 2,500 youth who “age out” of the

research show[s] the detrimental physical and psychological effects caused by such separation, especially for the child, whose brain is at a critical stage in its development.”).

¹⁵ Mark E. Courtney et al., *Findings from the California Youth Transitions to Adulthood Study (CalYOUTH): Conditions of Youth at Age 19*, Chapin Hall at Univ. of Chicago at 154-55 (2016), https://www.chapinhall.org/wp-content/uploads/CY_YT_RE0516.pdf.

¹⁶ U.S. Dep’t of Educ., *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care* at 3 (June 23, 2016), <https://www.ed.gov/sites/ed/files/policy/elsec/leg/essa/edhhs-fostercarenonregulatorguide.pdf>; see generally Cheryl L. Somers et al., *Academic Achievement Among a Sample of Youth in Foster Care: The Role of School Connectedness*, 57 *Psychol. Sch.* 1845 (2020); California Department of Education, *Foster Youth in California Schools* (July 3, 2025), <https://www.cde.ca.gov/ds/sg/fosteryouth.asp>.

¹⁷ See Bianca D.M. Wilson et al., *Sexual and Gender Minority Youth in Foster Care*, UCLA Sch. Of L., Williams Inst. (Aug. 2014), <https://williamsinstitute.law.ucla.edu/publications/sgm-youth-la-foster-care/>; Annie E. Casey Found., *LGBTQ in Child Welfare: A Systematic Review of the Literature* at 3-5 (Sep. 22, 2016), <https://assets.aecf.org/m/resourcedoc/aecf-LGBTQ2inChildWelfare-2016.pdf>.

California foster system each year without a permanent family are most vulnerable to these outcomes.¹⁸

The consequences of foster system involvement can be lifelong. The foster system has been referred to as “a highway to homelessness” because it is estimated that 20% of young people in the foster system become homeless the moment they are emancipated at age 18, and 50% of the U.S. homeless population has spent time in the foster system.¹⁹ The foster system can also create a pipeline to juvenile and criminal legal system involvement.²⁰

III. Unaffordable Bail Disproportionately Harms Black, Latine, and Indigenous Families and Families Living in Poverty.

Decades of research highlights the foster system’s longstanding practice of disproportionately separating families of color, particularly Black, Latine and Indigenous families, and

¹⁸ Annie E. Casey Found., *What Happens to Youth Aging Out of Foster Care?* (Feb. 25, 2025), <https://www.aecf.org/blog/what-happens-to-youth-aging-out-of-foster-care>; Children’s Bureau, Admin. for Children and Families, U.S. Dep’t of Health and Human Services, *Exits: Overview Dashboard FFY 2023*, https://tableau-public.acf.gov/views/afcars_dashboard_exits/exitreason?%3Aembed=y&%3AisGuestRedirectFromVizportal=y.

¹⁹ Nat’l Foster Youth Inst., *Housing & Homelessness*, <https://nfyi.org/issues/homelessness-2/> (last accessed July 15, 2025).

²⁰ See, e.g., Rachel Anspach, *The Foster Care to Prison Pipeline: What It Is and How It Works*, Teen Vogue (May 25, 2018), <https://www.teenvogue.com/story/the-foster-care-to-prison-pipeline-what-it-is-and-how-it-works> (explaining that one quarter of foster care alumni will enter criminal legal system within two years of leaving care).

those living in poverty, due to service provider bias and structural racism.²¹ According to the Legislative Analyst’s Office, “[t]he proportions of Black and Native American youth in foster care are around four times larger than the proportions of Black and Native American youth in California overall.”²² Latine youth are also more likely to be placed in California’s foster system than white youth.²³ Conversely, white children are underrepresented in California’s foster system.²⁴ Even when white children share similar characteristics as “minority children,” white children are more likely to stay with their

²¹ See, e.g., Emma Ruth, *Regulating Families: How the Family Policing System Devastates Black, Indigenous, and Latinx Families and Upholds White Supremacy* (2022), UpEND Movement, 3-4, <https://upendmovement.org/wp-content/uploads/2022/06/upEND-Regulation.pdf>; Modupeola Diyaolu et al., *Black Children Are Disproportionately Identified as Victims of Child Abuse: A National Trauma Data Bank Study*, 147 *Pediatrics* 929, 929 (2021); Natalie Cort et al., *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); Native Child Advocacy Resource Center, *Practice Brief 3: Tribal Children and Forced Assimilation*, 5-6 (September 1, 2022) <https://nativecac.org/pb3/>.

²² Cal. Legis. Analyst’s Office, *Update: Racial and Ethnic Disproportionalities and Disparities in California’s Child Welfare System* (April 2024), <https://lao.ca.gov/handouts/socservices/2024/Child-Welfare-Disparities-040324.pdf>

²³ *Id.*

²⁴ *Id.*

families, receive more services, and are more likely to be returned home or adopted than children who are not white.²⁵

Deep racial disparities at every stage of the criminal legal system further heighten the disparities in family separation.²⁶ Black and Latine defendants are significantly more likely to be detained pretrial than white defendants and are charged higher bail.²⁷ One study in San Francisco found that even though Black men were more likely than white men to meet the criteria for pretrial release, they were less likely to be granted release.²⁸

²⁵ Dorothy Roberts, *Race and Class In the Child Welfare System*, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/fostercare/caseworker/roberts.html>.

²⁶ National Immigration Project and Immigrant Rights' 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* at 3 (September 2024), <https://law.stanford.edu/wp-content/uploads/2024/06/2024-Bias-Criminal-Legal-System.pdf>; Carlos Berdejo, *Criminalizing Race: Racial Disparities in Plea Bargaining*, 59 *Boston College Law Review* 1187, 1221 (2020), <https://www.project-scope.org/wp-content/uploads/2020/08/Criminalizing-Race.pdf>; Scott Tighe, *Of Course we are Crazy: Discrimination of Native American Indian Through Criminal Justice*, 11 *Justice Policy Journal* 2 (2014), https://www.cjcj.org/media/import/documents/tighe_discrimination_final_formatted.pdf.

²⁷ Prison Policy Initiative, *Summary of Research Studies Related to Racial Disparities in Pretrial Detention* (October 2019), https://www.prisonpolicy.org/reports/pretrial_racial_disparities_sources.html.

²⁸ The W. Haywood Burns Institute, *San Francisco Justice Reinvestment Initiative: Racial and Ethnic Disparities Analysis for the Reentry Council* (2015), https://burnsinstitute.org/wp-content/uploads/2020/09/SF-JRI-_compressed.pdf.

Poor people are also more likely to end up in the carceral system, in part due to the criminalization of poverty,²⁹ and are then more likely to be represented by under-resourced counsel. Their economic status will constrain their ability to afford bail, and will be further exacerbated due to their inability to work while detained.³⁰

With the odds stacked against them in both the foster system and the carceral system, California’s Black, Latine, and Indigenous children and children living in poverty face a disproportionate risk of family destabilization. Pretrial confinement due to unaffordable bail will cause even greater adverse consequences for these youth.

For the foregoing reasons, *Amici* request that this Court grant the pending petition for review.

Respectfully,

/s/ Jean Strout

²⁹ Nazish Dholakia, *How the United States Punishes People for Being Poor*, Vera Institute (Sept. 21, 2023), <https://www.vera.org/news/how-the-united-states-punishes-people-for-being-poor>; see, e.g., Marisa Kendel, *No Sleeping Bags, Keep Moving: California Cities Increase Crackdown on Homeless Encampments*, CalMatters (Sept. 12, 2024), <https://calmatters.org/housing/homelessness/2024/09/camping-ban-ordinances/>.

³⁰ Alicia Virani et. al, *Coming Up Short: The Unrealized Promise of In re Humphrey*, UCLA School of Law Bail Practicum & Berkeley Law Policy Advocacy Clinic (2022), https://law.ucla.edu/sites/default/files/PDFs/Criminal_Justice_Program/Coming_Up_Short_Report_2022_WEB.pdf.

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Document received by the CA Supreme Court.

PROOF OF SERVICE

Re: *Torres on H.C.*, S291645

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause. I am employed in the County of Alameda, State of California. My business address is 1212 Broadway, Ste. 600, Oakland, CA 94612. On the date listed below, I served the AMICUS CURIAE LETTER IN SUPPORT OF PETITION FOR REVIEW (CAL. RULES OF COURT, RULE 8.500(g)) on the following via email:

San Diego County Superior Court
appeals.central@sdcourts.ca.gov

And by transmitting a PDF version of the document via electronic service through TrueFiling on the parties listed below:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 16, 2025 at Oakland, California.

/s/ Jean Strout
Jean Strout