

<p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, Colorado 80203</p>	<p>DATE FILED March 30, 2026 9:12 PM FILING ID: 20E268B04403B CASE NUMBER: 2026SA106</p>
<p>District Court, Adams County Case No. 2025CV31717 Div. A; Judge Patricia Loew</p>	
<p>In Re:</p> <p>E.L. and D.L., by and through their parent and next friend SCARLET RAMIREZ; J.B., by and through his parent and next friend AUTUMN RAY; ASHLEE TRUJILLO; and CASSONDRA REEVES; individually on their own behalf and on behalf of those similarly situated,</p> <p>Plaintiffs-Petitioners,</p> <p>v.</p> <p>ADAMS COUNTY SHERIFF GENE CLAPS, in his individual and official capacities; BOARD OF COUNTY COMMISSIONERS OF ADAMS COUNTY; ADAMS COUNTY JAIL DIVISION CHIEF WILLIAM DUNNING, in his individual and official capacities; and HOMEWAV, LLC,</p> <p>Defendants-Respondents</p>	<p>▲ COURT USE ONLY ▲</p>
<p><i>Counsel of record for Amici Curiae</i></p> <p>Kim Dvorchak #26795 National Association of Counsel for Children 899 N. Logan Str., Ste.208 Denver, CO 80203 (720) 420-9785 Kim.Dvorchak@NACCchildlaw.org</p>	<p>Case Number: 2026SA000106</p>
<p align="center">BRIEF OF <i>AMICI CURIAE</i> JUVENILE LAW CENTER, NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, AND NATIONAL AND COLORADO-BASED YOUTH-FOCUSED ORGANIZATIONS IN SUPPORT OF PETITIONERS’/PLAINTIFFS’ PETITION FOR ORDER TO SHOW CAUSE PURSUANT TO C.A.R. 21</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that the amicus brief complies with the applicable word limit set forth in C.A.R. 29(d) in that it contains 4,629 words (does not exceed 4,750 words).

The *amicus* brief complies with the content and form requirements set forth in C.A.R. 29(c).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

/s/ Kim Dvorchak
Kim Dvorchak

Counsel for Amici Curiae

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IDENTITY OF *AMICI CURIAE*¹

Juvenile Law Center, National Association of Counsel for Children, CHILD USA, Children & Family Justice Center, Colorado Child & Adolescent Psychiatric Society, Elephant Circle, National Federation of Families, National Youth Justice Network, and Youth MOVE National (collectively “*Amici*”) are national and Colorado-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 criminal and foster systems. Through 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

¹ National Center for Youth Law co-authored similar amicus briefs with Juvenile Law Center in *M.M. v. King*, No. 372342 (Mich. Ct. App.) and *S.L. v. Swanson*, No. 374111 (Mich. Ct. App.) before the Michigan state courts prior to becoming counsel for plaintiffs in this matter. However, National Center for Youth Law did not participate in drafting this brief.

law. *Amici* join together to support Petitioners’/Plaintiffs’ Petition for Order to Show Cause Pursuant to C.A.R. 21.

SUMMARY OF ARGUMENT

Amici write to highlight the unique and devastating harms youth in the foster system² suffer when they are banned from visiting their incarcerated parents in person.

Young people benefit enormously from strong family connections and suffer great harms from family separation.³ These harms can be offset by regular in-person visits with their incarcerated parents.⁴ Visits with family are particularly crucial for children in the foster system, who face separation not only from their parents, but also from other family members, schools, and community.⁵ In-person family time with parents can mitigate this trauma and uncertainty⁶ and can mean the difference

² *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.”

³ See *infra* Part I(B).

⁴ *Id.*

⁵ See *infra* Part I(B)(1).

⁶ See *infra* Parts I(B)(1), I(C).

between a child ultimately reunifying with their parents or the family facing termination of parental rights.⁷

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.⁸

ARGUMENT

I. THE ADAMS COUNTY JAIL BAN ON IN-PERSON FAMILY TIME HARMS CHILDREN IN THE FOSTER SYSTEM

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

Children in the foster system face a heightened risk of harm from the ban on in-person visitation.⁹ Colorado legislators recently noted that “[a]t least one in four

⁷ See *infra* Part I(B)(2).

⁸ See *infra* Part II.

⁹ Office of the Child’s Representative and Office of Respondent Parents’ Counsel, Guided Reference in Dependency, 3rd Ed. at F199 (2026) [hereinafter “GRID”], https://coloradochildrep.org/wp-content/uploads/2026/01/GRID_2026-INT-ebook.pdf (citing H.B. 23-1027 § 19-1-103(64.5) 75th Gen. Assemb. (Colo. 2023) (Children’s Code references to “visitation” changed to “family time” to acknowledge “normalcy of contact between parent and children”)).

Colorado children who are adjudicated dependent or neglected have a parent or guardian who was incarcerated at some time during dependency or neglect hearings.”¹⁰

These children are typically not placed *because* of abuse or neglect.¹¹ Rather, parental incarceration leads to foster system involvement either because no guardian is available to care for a child or because the incarceration causes economic and emotional instability.¹² Children of incarcerated mothers are especially likely to be placed in foster care.¹³ The number of incarcerated mothers has more than doubled

Reduce Child & Incarcerated Parent Separation, S.B. 23-039, 75th Gen. Assemb., 2nd Reg. Sess. (Colo. 2023), <https://leg.colorado.gov/bills/sb23-039> [hereinafter S.B. 23-039]; *see also* H.B. 29-1013, 75th Gen. Assemb., 2nd Reg. Sess. (Colo. 2025), <https://leg.colorado.gov/bills/hb25-1013> (requiring visitation for incarceration persons).

¹¹ Casey Family Programs, *What Should Child Protection Agencies Consider when Working with Children Whose Parent or Primary Caregiver Is Incarcerated?* (Feb. 23, 2023), <https://www.casey.org/parental-incarceration-issue> (accessed Mar. 25, 2026) (citing L.M. Berger, et al., *Families at the Intersection of the Criminal Justice and Child Protective Services Systems*, 665 *Annals Am. Acad. Pol. & Soc. Sci.* 171, 175 (2016)).

¹² *See, e.g.*, Christopher A. Swann & Michelle Sheran Sylvester, *The Foster Care Crisis: What Caused Caseloads to Grow?*, 43 *Demography* 309, 325 (2006) (female incarceration was the largest contributor to the rise in foster care caseloads from 1985 to 2000); *see also* L. M. Berger, et al., *supra note*, at 189 (15% of incarcerated adults in Wisconsin had children who became CPS-involved within 11 months following the incarceration).

¹³ *See* Rahgan 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.”).

over the last 25 years; some evidence suggests that nearly 30% of the growth in the foster system population from 1985-2000 resulted from increasing levels of female incarceration.¹⁴

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

As Colorado legislators have explicitly recognized, family togetherness is vital to positive youth outcomes.¹⁵ For young people in the foster system, in-person visits support both well-being and family reunification.

1. In-Person Family Time 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.¹⁶ In passing

¹⁴ See Swann & Sheran, *supra* note 12, at 325, 329-30; see also Neil 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).

¹⁵ See generally S.B. 23-039 (the Act promotes in-person visitation for children and their incarcerated parents, although it does allow for some exceptions).

¹⁶ See Amelia 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.”); see also Adam McCormick, *The Role of the Sibling Relationship in Foster Care: A Comparison of Adults with a History of Childhood Out-of-Home*

S.B. 23-039, the Colorado legislature emphasized the importance of “preserving children’s relationships with incarcerated parents,” noting that this “decreas[es] risks to children’s mental health” and “reduce[s] the trauma of family separation caused by incarceration.”¹⁷ “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.”¹⁸ 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.¹⁹ The positive effects of family connections continue beyond childhood: Children in the foster system who

Placement 77-81 (May 2009) (Ph.D. Dissertation, U. Tex. at Arlington), https://mavmatrix.uta.edu/socialwork_dissertations/128/ (discussing the positive impact of childhood sibling relationships on foster alumni self-esteem and income); Lenore McWey, Ming Cui & Stevenson Wojciak, *Parent and Caregiver Relationships and Mental Health Symptom Profiles of Youth in Foster Care*, 39,5 *Child & Adolescent Soc. Work J.* 573, 573-74, 578-79 (2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10569441/> (discussing the positive impact of maintaining quality relationships with biological parents on foster youths’ mental health).

¹⁷ S.B. 23-039 § 1(1)(e), (2).

¹⁸ Eliza Patten, *The Subordination of Subsidized Guardianship in Child Welfare Proceedings*, 29 *NYU Rev. L. & Soc. Change* 237, 240 (2004), https://socialchangenyu.com/wp-content/uploads/2017/12/ELIZA-PATTEN_RLSC_29.2.pdf.

¹⁹ Edith Chen, Gene H. Brody & Gregory E. Miller, *Childhood Close Family Relationships and Health*, 72 *Am. Psych.* 555, 558 (2017).

maintained close connections with both biological parents and other parental figures had better outcomes in employment, education, and financial security and faced fewer challenges with mental health, substance abuse, homelessness, and criminal system involvement.²⁰

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.”²¹ Leading trauma experts have explained that “[d]epriving [children] of their caregivers . . . has effects on the brain as profound as starving them.”²² Separating children from their parents triggers physical, emotional, and

²⁰ Gretta Cushing, Gina Samuels & Ben 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), https://cwlibrary.childwelfare.gov/discovery/fulldisplay/alma991000205209707651/01CWIG_INST:01CWIG.

²¹ 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); see also Colleen Kraft, *AAP Statement Opposing Separation of Children and Parents at the Border* (May 8, 2018), <https://docs.house.gov/meetings/IF/IF14/20180719/108572/HHRG-115-IF14-20180719-SD004.pdf> (then president of the American Academy of Pediatrics discussing the separation of families at the Mexican border).

²² Scotti, *supra*, at 54 (second alteration in original).

psychological distress for children²³ and places them at risk of psychological complications including toxic stress, which in turn contributes to anxiety, behavioral problems, depression, and lifelong health consequences.²⁴ The impact of family separation also manifests physically in children. In the immediate moments of separation, children’s cortisol levels (“the stress hormone”) skyrocket, their blood pressure rises, and their heart rates accelerate.²⁵ 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.”²⁶

In-person family time is crucial to the wellbeing of children removed from home by the foster system, who also often face separation from the rest of the family;

²³ Kele 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) <https://journals.library.columbia.edu/index.php/cjrl/article/view/9925/4991> (citing Shanta Trivedi, *The Harm of Child Removal*, 43 NYU Rev. L. & Soc. Change 523, 531-32 (2019)); see also Caitlin Papovich, *Trauma & Children in Foster Care: A Comprehensive Review*, Forensic Scholars Today (July 10, 2019), <https://rb.gy/yh9bwc> (accessed Mar. 26, 2026).

²⁴ Stewart, *supra*, at 639.

²⁵ William Wan, *What Separation from Parents Does to Children: ‘The Effect is Catastrophic,’* Wash. Post (June 18, 2018), <https://rb.gy/gu57t5> (accessed Mar. 25, 2026).

²⁶ Jamie Ducharme, *“What This Amounts to Is Child Abuse” Psychologists Warn Against Separating Kids from Their Parents*, TIME (June 19, 2018), <https://time.com/5316030/kids-separation-parents-psychological-harm/> (accessed Mar. 25, 2026); see also Stewart, *supra* note 23, at 639 (discussing ongoing separation from parents causing lifelong health consequences).

moving out of their home, community, and school; and being placed in a stranger's home or in a group or institutional setting.²⁷ Uncertainty is the hallmark of a child's experience in the foster system; they don't know if or when they will return home or how long they will remain in their current placement.²⁸ Maintaining a strong relationship with a parent can help provide consistency and mitigate the trauma of these destabilizing changes.²⁹

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 family time with their parents, including incarcerated parents, experience improved markers of well-being, including fewer

²⁷ See, e.g., U.S. Department of Health and Human Services, Administration for Children & Families, Children's Bureau, *Child Welfare Outcomes Report*, <https://cwoutcomes.acf.hhs.gov/cwodatasite/sixOneLessThan12/index/> (2024 federal data shows 11.7% of Colorado youth in care less than 12 months have three or more placement changes, with rates rising the longer youth remain in care) (filter by length of care under "View"); Elysia Clemens et al., *Educational Stability Policy and the Interplay between Child Welfare Placement and School Moves*, 83 *Child. And Youth Servs. Rev.* 209, 215 (Table 3) (2017) https://www.dcu.ie/sites/default/files/edc/pdf/academic-growth-trajectories_clemens_et_al_2018.pdf (Colorado study finding 31% of children changed schools when initially removed from their homes).

²⁸ See *id.*

²⁹ See Margaret Smariga, *Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know*, ABA Ctr. on Child. and the L. 7 (2007), <https://rb.gy/1i85po> (accessed Mar. 25, 2026).

behavioral problems and lower levels of depression.³⁰ 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

³⁰ See, e.g., Lenore McWey, Alan Acock & Breanne 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) (youth who had frequent, consistent visitation with their biological mothers had lower levels of depression, aggression, and delinquency than peers); Lenore McWey & Ann Mullis, *Improving the Lives of Children in Foster Care: The Impact of Supervised Visitation*, 53 *Family Relations* 293, 298-99 (2004) (continued contact between children involved in the foster system and at least one biological parent correlated to children’s well-being); Arthur L. Cantos, Leonard T. Gries, & Vikki Slis, *Behavioral Correlates of Parental Visiting During Family Foster Care*, 76 *Child Welfare* 309 (1997) (youth in the foster system with more frequent visits with biological parents had fewer behavior problems than others); Children’s Bureau, *Bulletins for Professionals: Child Welfare Practice With Families Affected by Parental Incarceration* (Jan. 2021) [hereinafter “*Bulletins for Professionals*”], <https://shorturl.at/jZ8hX> (accessed Feb. 13, 2025) (“Continuing contact during a parent’s incarceration is critical for maintaining the parent-child relationship and ... for...well-being.”); Casey Family Programs, *How Can Child Protection Agencies Support Children Spending Time with their Parents Who Are Incarcerated?* 2 (Feb. 27, 2023) [hereinafter “*How Can Child Protection Agencies Support Children*”], <https://tinyurl.com/m7b9rp8v> (accessed Mar. 24, 2026) (in-person visits with incarcerated parents benefit children, parents, and communities).

whenever safely possible” and “[w]hen these relationships are prioritized, protective factors are increased, which promotes current and future well-being.”³¹ Children with foster system experience also describe ongoing family attachments and family time as essential to their wellbeing.³² Whether visitation is beneficial and appropriate depends, in part, on individual parent-child relationships. However, broad restrictions on in-person visitation jeopardize child wellbeing.

2. In-Person Time with Incarcerated Parents Is Crucial to Family Reunification for Children in the Foster System.

Restrictions on meaningful visitation directly interfere with the State’s “primary goal”³³ of supporting family reunification. To terminate rights in Colorado, the court must consider factors including the “physical, mental, and emotional conditions and needs of the child.”³⁴ Moreover, at a permanency hearing

³¹ Children’s Bureau, *Achieving Permanency for the Well-Being of Children and Youth*, ACYF-CB-IM-21-01, 2, 10 (Jan. 5, 2021), <https://acf.gov/sites/default/files/documents/cb/im2101.pdf> (accessed Mar. 25, 2026).

³² See GRID, *supra* note 9; Mimi V. Chapman, Ariana Wall, & Richard P. Barth, *Children’s Voices: The Perceptions of Children in Foster Care*, 74 *Am. J. Orthopsychiatry* 293, 297, 303 (2004) (foster children most frequently reported feelings of happiness following visitation with family and most reported wanting more such contact).

³³ See Press Release, Colo. Off. of Respondent Parents’ Counsel, *Reunification Celebration honors the people and efforts that help Colorado families stay together* (June 19, 2023), <https://coloradoorpc.org/reunification-celebration-honors-the-people-and-efforts-that-help-colorado-families-stay-together/>.

³⁴ Colo. Rev. Stat. § 19-3-604(3) (2024).

focusing on the child’s placement, courts will look to whether a parent maintained a “meaningful and safe relationship with the child while incarcerated.”³⁵ The stronger the parent-child bond, the more likely that courts will prioritize the family’s continued connection, which, in turn, makes reunification more likely.³⁶ Research shows that regular, meaningful family time results in youth spending less time in out-of-home care and a greater likelihood of reunification.³⁷

Although incarceration cannot be the sole grounds for termination,³⁸ in general, incarcerated parents are more likely to have their rights terminated.³⁹

³⁵ S.B. 23-039 § 19-3-702 (7)(b).

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

³⁷ See, e.g., I.P. Davis, et al., *Parental visiting and foster care reunification*, 18 *Child. and Youth Servs. Rev.* 363, 363–382 (1996), [https://doi.org/10.1016/0190-7409\(96\)00010-2](https://doi.org/10.1016/0190-7409(96)00010-2) (consistent visitation for children under 12 led to greater chances of reunification); Sonya J. Leathers, Lydia Falconnier, and Jill E. Spielfogel, *Predicting Family Reunification, Adoption, and Subsidized Guardianship Among Adolescents in Foster Care*, 80 *Am. J. of Orthopsychiatry* 422, 422-431 (July 2010), <https://pmc.ncbi.nlm.nih.gov/articles/PMC2921894/> (higher reunification rates for 12 and 13 year olds with more frequent visits); Maryellen White, Eric Albers & Christine Bitonti, *Factors in Length of Foster Care: Work Activities and Parent-Child Visitation*, 23 *J. of Sociology & Soc. Welfare* 75, 76, 79, 81 (1996), <https://scholarworks.wmich.edu/jssw/vol23/iss2/5> (parental visits associated with shorter time in care; also summarizing foundational research from 1978 by Fanshel and Shinn).

³⁸ See Colo. Rev. Stat. § 19-3-604(2)(k)(IV) (2024).

³⁹ Martha L. Raimon, Arlene F. Lee, & Philip 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*

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.⁴⁰ Research has shown that inability to access reunification services like visitation while incarcerated is a primary driver of this disparity.⁴¹ Families denied meaningful contact while a parent is incarcerated face a heightened risk of permanent separation by a judicial termination of parental rights.⁴²

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

In-person rather than virtual visits are crucial to the family connections that benefit youth wellbeing and support children’s reunification with parents. Visits in

121, 121-23 (2009), <https://tinyurl.com/9mt2uvyc>; *see also* Eli Hager & Anna Flagg, *How Incarcerated Parents Are Losing Their Children Forever*, Marshall Project (Dec. 2, 2018), <https://tinyurl.com/54y73xy4> (accessed Mar. 24, 2026) (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....”).

⁴⁰ Amy D’Andrade, *How Does Incarceration Affect the Likelihood of Reunification?*, in *Child Welfare 360: Criminal Justice Involvement of Families in Child Welfare* 12 (2018), <https://tinyurl.com/rbz9cbp8> (accessed Mar. 24, 2026).

⁴¹ *Id.*

⁴² See *Bulletins for Professionals* at 9.

which children can connect with their parents in a child-friendly environment offer the most positive impact for families, mitigating the long-term negative outcomes associated with parental incarceration.⁴³ The American Academy of Pediatrics has recommended that “whenever possible, in-person visitation is preferable.”⁴⁴ In-person visits facilitate “the irreplaceable qualities of eye contact and physical closeness that are so crucial to family-child contact.”⁴⁵ This kind of meaningful

⁴³ Lindsey Cramer et al., *Parent-Child Visiting Practices in Prisons and Jails; A Synthesis of Research and Practice*, 3, 7, 10 (2017), <https://tinyurl.com/mpfzjchy> (accessed Mar. 24, 2026); see also Patrice A. Fulcher, *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.”); Alyssa Mikytuck & Jennifer 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); Ana Aznar & Harriet R. Tenenbaum, *Parent-Child Positive Touch: Gender, Age, and Task Differences*, 40 J. Nonverbal Behav. 317, 317-18 (2016) (physical interactions are critical to children’s physical and psychological development); Evan L. Ardiel & Catharine H. Rankin, *The Importance of Touch in Development*, 15 Pediatrics & Child Health 153 (2010) (same).

⁴⁴ Abbie Goldberg et al., *The Impact of COVID-19 on child welfare-involved families: Implications for parent-child reunification and child welfare professionals*, 3 Dev. Child Welfare 203, 219 (2021), <https://journals.sagepub.com/doi/pdf/10.1177/25161032211045257> (accessed Mar. 26, 2026) (noting attorneys’ concerns that stopping in-person visitation during the pandemic posed a “serious threat to child-parent bonds and ultimately reunification” and quoting American Academy of Pediatrics statement).

⁴⁵ *Id.*

connection supports the parent and child in maintaining, growing, and repairing their relationship.⁴⁶ Similarly, the Children’s Bureau recognizes that in-person visits are best practice; while virtual visits can be “a valuable supplement,” they should not entirely replace in-person visits.⁴⁷

Research also supports using video visitation, phone calls, and mail to supplement rather than supplant in-person family visits for incarcerated individuals.⁴⁸ Researchers investigating virtual family visitation 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

⁴⁶ *Bulletins for Professionals* at 11. See also *How Can Child Protection Agencies Support Children* at 2; Megan 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).

⁴⁷ *Bulletins for Professionals* at 13; see also *How Can Child Protection Agencies Support Children* at 2.

⁴⁸ See, e.g., Cramer, et al. *supra* note 41, 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* 2 (2014), <https://tinyurl.com/3db56usk> (accessed Mar. 25, 2026) (“Every available study agrees: Best practices for developing [parent-child] bonds involve in-person visitation, preferably contact.”); See generally Leah Wang, Prison Pol’y Initiative, *Research Roundup: The Positive Impacts of Family Contact for Incarcerated People and their Families*, (Dec. 21, 2021), <https://tinyurl.com/4wkyvr7v> (accessed Mar. 24, 2026) (discussing numerous studies associated with the benefits of in-person visitation).

in virtual visits make it more difficult to foster or maintain a healthy, secure parent-child attachment.”⁴⁹

Parent-child bonding is better achieved through in-person activities like hugging, eating together, or engaging in play, rather than virtual visits and phone calls.⁵⁰ Even in-person visits 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.⁵¹

Banning in-person visitation in favor of virtual options can also affect the child welfare agency’s perception of the parent-child relationship, disadvantaging parents seeking reunification. When visits are professionally supervised, child welfare agency staff watch and record the parent’s behavior, assess the quality and strength of the parent-child relationship, and make recommendations to the court

⁴⁹ Jacqueline Singer & David Brodzinsky, *Virtual Parent-child Visitation in support of family reunification in the time of COVID-19*, 2 Dev. Child Welfare 153, 167 (2020), <https://journals.sagepub.com/doi/epdf/10.1177/2516103220960154>. See also Emily Widra, Prison Pol’y Initiative, *Seeing Eye to Eye: Understanding the Limits of Video Visitation*, (Apr. 11, 2016), <https://tinyurl.com/57ykwnfs> (accessed Feb.13, 2025) (“video visitation[] falls short of in-person interactions across six major aspects of conversations”).

⁵⁰ Singer & Brodzinsky, *supra*, at 154-55, 160.

⁵¹ Alexandre Bou-Rhodes, *Straight to Video: America’s Inmates Deprived of a Lifeline Through Video-Only Visits*, 60 B.C. L. Rev. 1243, 1269 (2019), <https://lira.bc.edu/works/publication-article/tsdmx-33h07> (accessed Mar. 25, 2026).

about reunification or termination of parental rights.⁵² In-person visitation gives parents the opportunity to demonstrate strong connections, while relying solely on virtual visits may limit caseworkers' understanding of the parent-child dynamic.⁵³ One only has to look at the difference between in-person education and online learning during the pandemic to see how the virtual barrier affects children's attention and engagement.⁵⁴ In-person visits may also be the only opportunity for parents to practice and demonstrate the parenting skills set out in their case plans, such as appropriate feeding, play, and physical affection.⁵⁵ This can delay reunification or prevent it entirely.⁵⁶

⁵² Smariga, *supra* note 27, at 7, 18; Singer & Brodzinsky, *supra* note 46 at 154-55.

⁵³ Singer & Brodzinsky, *supra* note 46, at 155, 162-64.

⁵⁴ *See, e.g.*, Annie E. Casey Foundation, *Pandemic Learning Loss and Covid-19: Education Impacts*, (updated July 8, 2024), <https://tinyurl.com/3sb3jduj> (accessed Mar. 25, 2026) (finding students struggled with focus and engagement due to transition to remote learning).

⁵⁵ Singer & Brodzinsky, *supra* note 46, at 154-55, 162-64.

⁵⁶ *See id.* at 165-67.

II. THE BAN ON IN-PERSON FAMILY TIME ENTRENCHES RACIAL AND ECONOMIC DISPARITIES IN THE FOSTER AND CRIMINAL LEGAL SYSTEMS

Decades of research highlight how structural racism has led to the disproportionate separation of families of color, particularly Black, Latine and Indigenous families, and those living in poverty.⁵⁷

In Colorado, Black children are vastly overrepresented in the foster system, with disparities at every stage of involvement – from hot line calls alleging suspected abuse to the rates of children who age out of the system without a family.⁵⁸ Latine

⁵⁷ See, e.g., Emma Ruth, upEND, *Regulating Families: How the Family Policing System Devastates Black, Indigenous, and Latinx Families and Upholds White Supremacy* 3-4 (2022), <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 A. Cort, Catherine Cerulli & Hua He, *Investigating Health Disparities and Disproportionality in Child Maltreatment Reporting: 2002-2006*, 16 *J. Pub. Health Mgmt. & Prac.* 329, 330-31, 333-35 (2010); Cynthia J. Najdowski & Kimberly M. 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 (2022), https://nativecac.org/NCARC_PracticeBrief_3.pdf.

⁵⁸ Jennifer Brown, *Colorado begins to reckon with racial bias in child welfare, where Black kids are way overrepresented*, *The Colorado Sun*, Oct. 19, 2021, <https://coloradosun.com/2021/10/19/cps-racial-bias-black-kids-overrepresented-colorado/>; see also S.B. 23-039 § (1)(c) (finding “The incarceration of a parent disproportionately affects children of color and exacerbates the number of children living in poverty”).

and Indigenous children are also overrepresented in Colorado’s foster system.⁵⁹ Leadership at the Office of Children, Youth and Families have recognized these racial disparities as “shocking.”⁶⁰

Deep racial disparities in the carceral system further exacerbate these inequities.⁶¹ Black and Hispanic defendants in Colorado are significantly more likely to spend time in jail than white defendants.⁶² A recently created data dashboard in Colorado’s 17th Judicial District, which includes Adams County, shows dramatic

⁵⁹ Dolores Tolliver, Powerpoint Presentation, *Racial Disparities and Disproportionality in Child Welfare*, slides 16 - 19 (Feb. 1, 2023), <https://coloradocpo.org/wp-content/uploads/2024/09/Racial-Disparities-and-Disproportionality-in-Child-Welfare-Doris-Tolliver-Presentation-2.1.2023.pdf> (citing data from Annie E. Casey Foundation).

⁶⁰ See Brown, *supra* note 58.

⁶¹ Nat’l Immigr. Project and Immigrant Rights’ Clinic, Stanford L. 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* 3 (Sept. 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 B. C. L. Rev. 1187, 1221 (2020), <https://www.project-scope.org/wpcontent/uploads/2020/08/Criminalizing-Race.pdf>; Scott Tighe, *Of Course we are Crazy: Discrimination of Native American Indian Through Criminal Justice*, 11 Just. Pol’y J. 2, 12 (2014), https://www.cjcj.org/media/import/documents/tighe_discrimination_final_formatted.pdf.

⁶² Zach Newman, 9News, *DA dashboards show inequities in pretrial treatment, sentences in some judicial districts* (Sep. 12, 2022), <https://www.9news.com/article/news/investigations/disparity-pretrial-sentence-colorado/73-4b9b36a9-ee0d-4587-8f39-d3330114c602> (citing data from Colorado Prosecutor Dashboards Project available at <https://data.dacolorado.org/>).

differences in pretrial detention rates for Black defendants. In 2024, counting only the defendants who were held in jail pre-trial for non-traffic cases and ultimately convicted, 47% of Black defendants were jailed compared to only 36% of white defendants.⁶³ Similar rates applied for every year of available data since 2020.⁶⁴ Although disparities were not as dramatic for Hispanic defendants, they were still present (for example, 40% of Hispanic defendants were jailed in 2024).⁶⁵

The harms of preventing in-person visitation will therefore disproportionately fall on Black, Latine, and Indigenous youth and continue the cycle of inequity.

CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully request that this Honorable Court grant Petitioners'/Plaintiffs' Petition for Order to Show Cause Pursuant to C.A.R. 21.

Respectfully submitted,

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⁶³ *Sentencing*, Colo. Dashboards Project (last accessed Mar. 25, 2026), <https://data.dacolorado.org/17th/sentencing>.

⁶⁴ *Id.*

⁶⁵ *Id.*

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Dated: March 30, 2026

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **Brief of *Amici Curiae***
upon all parties via Colorado Courts E-filing System on March 30th, 2026.

/s/ Kim Dvorchak
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