

# Family Separation in the U.S. Child Welfare System, at the U.S.-Mexico Border, and of Indigenous Communities

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## **Introduction**

Family separation of predominantly communities of color has been an integral part of a prolonged white supremacist and settler colonialist legacy in the U.S. This submission provides a brief historical overview of the origins of family separation in different contexts and how present-day policies impact communities and inflict generational trauma. Among the plethora of kinds of family separations in predominantly communities of color, this submission specifically highlights family separation in the context of the U.S. Child Welfare System, Indigenous communities, and the U.S.-Mexico border.

The submission aims to provide the Committee with a more complete picture of U.S. implementation of the International Covenant on Civil and Political Rights (ICCPR), a treaty which the U.S. ratified in 1992, and highlight areas in which the U.S. government has failed to uphold its human rights commitments under the ICCPR. The human right to family unity is a fundamental universal right recognized by the Universal Declaration of Human Rights (UDHR) and the ICCPR, yet the U.S. has failed to acknowledge and meaningfully redress institutionalized racism and settler colonialism in its policies and practices that violate the right to family unity. The ICCPR review process is thus an opportunity to hold the U.S. accountable, identify solutions to repair the harm, guarantee non-repetition, and build a future where people are free from such cruel and inhumane policies and given the opportunity to thrive without fear or trauma.

This submission was drafted by the American Civil Liberties Union and is submitted to the Human Rights Committee as a coalition report endorsed by the following organizations: Parents Supporting Parents NY, The Advocates for Human Rights, Woodhull Freedom Foundation, Institute for Justice and Democracy in Haiti, Changing Woman Initiative, Family Defense Consulting, Juvenile Law Center, International Center for Advocates Against Discrimination, Global Rights Advocacy, Muslim Advocates, Pale Blue, National Homelessness Law Center, Center for Constitutional Rights, Edfu Foundation Inc., Human Rights Watch, Rise, The Bronx Defenders, Center for Family Representation, CUNY School of Law, Human Rights and Gender Justice Clinic, Houston Immigration Legal Services Collaborative, Haitian Bridge Alliance, NYC Family Policy Project, and Just Detention International.

## The Family Separation Crisis in the US Child Welfare System

### I. Issue Summary<sup>1</sup>

One in three children in the United States will be part of a child welfare investigation by age 18.<sup>2</sup> Every three minutes, a child is removed from their home and placed in the foster system.<sup>3</sup> On average, 700 children are removed from the custody of their parents every day, and more than 200,000 children enter the foster system each year.<sup>4</sup> U.S. child welfare system interventions unnecessarily disrupt family integrity and cause harm to the very children they aim to protect.<sup>5</sup> Those impacted are disproportionately communities of color, especially Black and Indigenous families and people living in poverty.

Federal and state data show racial disparities exist at every stage of child welfare involvement, with particular harm to Black families.<sup>6</sup> Black and Indigenous families are more likely to be reported for child abuse and neglect than white families, a reality produced by institutionalized racism rather than disproportionate levels of abuse and neglect by Black and Indigenous parents.<sup>7</sup> Black families are more likely to be investigated than white families. Nationwide, Black children are on average subject to investigations at nearly twice (1.9 times) the rate of white children and at 1.3 times the rate of Indigenous children.<sup>8</sup> Black children are overrepresented in the child welfare system when compared with their percentage in the total population.<sup>9</sup> Whereas Black children make up just 14 percent of the U.S. child population, they make up 24 percent of child abuse or neglect reports and 21 percent of children entering the foster system.<sup>10</sup> In contrast, white children make up 50 percent of the U.S. child population and only 46 percent of the children represented in abuse or neglect reports and children entering the foster system. Black children are also more likely to be removed from their families, remain separated for longer periods, and are legally orphaned by the child welfare system at a higher rate than white children.<sup>11</sup>

#### *Punishing Poverty*

The child welfare system often responds to circumstances of poverty with punishment—charging families with neglect, investigating them without consideration of extenuating circumstances, removing children from their parents, and in some cases, arresting the parent instead of providing concrete, responsive support.<sup>12</sup> For example, families living in poverty who reside in low-income neighborhoods, especially those experiencing housing instability, are more likely to be investigated, have their children removed and placed in foster homes, and face barriers to reunification.<sup>13</sup> In 2019, more than 25,000 children were removed from their families and entered the foster system because of housing-related circumstances.<sup>14</sup>

Neglect, as defined by the child welfare system<sup>15</sup>, is often a proxy for poverty-related circumstances and the primary reason for child welfare involvement in the majority of cases. While definitions can vary by state, neglect is generally defined as a parent or caregiver failing to provide adequate food, clothing, hygiene, nutrition, shelter, medical care, or supervision in ways that threaten the well-being of the child. This definition is inextricably linked to poverty.

Families and communities living in poverty often have limited or no access to resources, services, and social support for the issues many parents struggle with, such as mental health, relationships, services for children with disabilities, or responding to behavioral issues.<sup>16</sup> Parents' lack of access to reliable information, services, or support is often interpreted by child welfare agencies as intentional neglect and evidence of their inability and lack of fitness to be a parent.

Despite recognizing that access to resources and social supports are protective factors that may prevent unintended neglect and protect children from maltreatment, state and local agencies within the child welfare system spend nearly 10 times more on the foster system than on services that would support families to stay together and in reunifying parents with their children.<sup>17</sup>

System interventions fail to adequately address the needs of the family and in some cases exacerbate the problems that they intend to remedy. For example, loss and reduction of income and an increase in material hardships can adversely impact a family's overall well-being.<sup>18</sup> However, current child welfare system interventions do not effectively address these factors, strengthen families, or protect children's health.<sup>19</sup> In some cases, child welfare involvement exacerbates financial hardships, with some states requiring families with children in the foster system to pay child support.<sup>20</sup>

### *Disproportionate Harm to Black Families*

The child welfare system exists at the intersection of entrenched economic inequality and systemic racism in the U.S. Income and wealth inequality in the U.S. has steadily worsened since 1980.<sup>21</sup> Due to systemic racism and other factors, families of color disproportionately face economic hardships.<sup>22</sup> In 2018, Black children were more than three times as likely to be living in poverty as white children.<sup>23</sup> The wealth gap between Black and white families in the U.S. was the same in 2016 as it was in 1968, and data suggests that the gap has increased since the start of the Covid-19 pandemic.<sup>24</sup>

An extensive body of research has examined the factors contributing to these disparities.<sup>25</sup> Discriminatory and racist policies and practices—rooted in the legacy of enslavement—have subjected Black families to residential segregation, housing discrimination, discriminatory exclusion from employment opportunities, and limitations to social benefits and safety nets, limiting their ability to accumulate wealth.<sup>26</sup> Legal discrimination has been further aggravated by disparate surveillance, punitive interventions, and incarceration of Black families, resulting in increased economic and social fragility.<sup>27</sup>

Black families are more likely to be reported for maltreatment due to ongoing surveillance of their families and communities by social services and law enforcement.<sup>28</sup> Structural racism and lack of investment in community supports also restrict these parents' access to the services and support they need to help their children thrive. Child welfare authorities intervene even when children are not in danger of abuse or neglect and punish parents instead of providing them with support.

*Removing a child from their parents' care, even for a short period of time, is a drastic measure that can cause profound harm.*

Children who are removed from their homes experience poorer outcomes compared to their peers who do not experience system involvement. Specifically, they are more likely to be incarcerated;<sup>29</sup> become teen mothers;<sup>30</sup> experience poor outcomes related to cognitive development,<sup>31</sup> education,<sup>32</sup> and employment;<sup>33</sup> and have a higher likelihood of having mental health conditions and substance use disorders.<sup>34</sup>

*Children and youth exiting the foster system experience poor outcomes.*

Around 50,000 children are adopted from the foster system every year, but more than twice as many remain in foster homes waiting to be adopted. In 2019, more than 122,000 children were waiting to be adopted, many of whom had on average been in the foster system for more than two and a half years. More than half were children with no legal family because their parents' rights had been terminated and they were not in contact with or placed with kin.

More than 20,000 youth leave the foster system every year without family connections or supportive networks simply because they "age out." This happens when child welfare authorities fail to help children achieve permanency through reunification with their family or by adoption, and state child welfare laws do not permit agencies to retain custody of young adults. Youth transition out of care with fewer people who are sources of support than they entered the system, in part because the child welfare system does not invest time in cultivating or maintaining relationships with supportive adults who cannot provide permanency or a placement for the youth. Foster youth who age out disproportionately experience high rates of homelessness, incarceration, unemployment, and lack of access to health care, resulting in great personal and emotional costs as well as billions in societal costs. Guidance and care from a strong, consistent support network for children in the foster system could mitigate these dire outcomes.

Racial disparities in the U.S. child welfare system, along with the prerequisites for reunification and impact to children and families, exacerbate socioeconomic and racial inequities. The child welfare system's interventions and disparate impacts help to entrench these inequities in marginalized communities. These poor outcomes result in intergenerational child welfare involvement.

*Due Process Concerns*

Despite the often-profound consequences of child welfare involvement—including family separation, termination of parental rights, and in some cases criminal charges—parents have fewer due process protections in child welfare cases than individuals facing similarly serious consequences in the criminal legal system. Parents facing these grave outcomes need reliable information and consistent legal support. Instead, most parents experience the early stages of child welfare intervention without legal representation or support and are unaware of their rights and how they can assert them.

Child welfare reports and investigations can also lead to parents being charged with child maltreatment and placed on a state registry, adversely affecting their chances of securing and keeping jobs. Every year, more than 600,000 allegations of child maltreatment are substantiated by child welfare officials, many without judicial oversight. The parents are identified as “perpetrators” and listed on state child maltreatment registries for years or decades. In most states, placement on the registry often results in denial of employment and precludes parents from becoming foster parents.

These registries are used by employers for background checks across a broad range of fields related to childcare, health care, and education. Women experiencing poverty, especially women of color, are disproportionately impacted because they are more likely to be overrepresented in child welfare investigations and occupy a significant share of care-related jobs. Women of color are also more likely to experience financial and emotional pressures that are exacerbated by barriers to obtaining or maintaining employment due to inclusion on the registry—even after the maltreatment charges are dismissed. This, in turn, may prevent families from becoming stable and increase the risk of child maltreatment, perpetuating a vicious cycle.

## **II. Recommended Questions**

1. What steps is the U.S. taking to mitigate the harmful impacts of U.S. child welfare interventions, minimize unnecessary disruptions to family integrity, and ensure due process protections for families?
2. What steps is the U.S. taking to address racial disparities in the child welfare system, including the disproportionate harms to Black and Indigenous parents and their children?
3. What steps is the U.S. taking to address the extreme economic hardship at the heart of many child welfare cases and the corrosive impact of systemic racism?

## **III. Suggested Recommendations**

1. The U.S. should take urgent measures to address the extreme economic hardship at the heart of many child welfare cases, including adequately funding critical social safety nets for the lowest income and most marginalized households and non-coercive social protection programs that address mental health needs, substance use disorders, and socioeconomic needs, without criminalizing them or linking them to the child welfare system.
2. The U.S. should hold hearings, including congressional hearings to hear from impacted families and communities and regularly publish data that can be disaggregated and commission expert studies and hold hearings on intersectional, persistent racial disparities in the child welfare system.

3. The U.S. should take urgent steps to reduce the harmful impact of child welfare interventions; increase due process protections for parents; and strengthen and support families and communities to combat child maltreatment.
4. The U.S. should prohibit the treatment of poverty-related circumstances, lack of financial resources, or substance use by parents or during pregnancy—without actual or imminent risk of harm—as factors that can trigger child welfare interventions.
5. Per the CERD’s Concluding Observations in 2022, the U.S. should amend or repeal laws, policies, and practices that result in a disparate impact on families of racial and ethnic minorities, such as the Child Abuse Prevention and Treatment Act, the Adoption and Safe Families Act, and the Adoption Assistance and Child Welfare Act.

## **The Child Welfare System’s Harms to Indigenous Communities**

### **I. Issue Summary**

For centuries, Indigenous families and communities have endured egregious abuse and harm through child welfare interventions. The underlying goal of government approved and led policies was assimilation, designed to erase Indigenous children’s identities, weaken the Indigenous family unit, and ultimately destroy Indigenous culture so it would cease to exist in the U.S. These policies inflicted profound harm on Indigenous Peoples who endure the generational effects to this day.

#### *Indian Boarding Schools, 1810s-1969*

In federally approved and enforced Indian boarding schools, which were highly regimented and militarized, child welfare authorities violently indoctrinated Indigenous children into Western culture and forced them to assimilate. Students endured malnutrition and shockingly inhumane living conditions at these institutions and faced rampant physical, sexual, and emotional abuse. Children were “rented out” to labor on farms or as domestic servants during summers and other breaks. Over 50 marked and unmarked graves have been found so far on these school sites, with around 19 boarding schools accounting for over 500 recorded student deaths.<sup>35</sup> A second report is expected to be issued by the U.S. Department of the Interior and include more boarding school death figures and other atrocities previously unreported.

#### *Indian Adoption Project, 1958-1967*

Following the atrocities of the Boarding School era, the Indian Adoption Project promoted and facilitated the adoption of Indigenous children by white families, predominantly evangelicals who sought to erase Indigenous religious beliefs from the U.S. Agencies. The Indian Adoption Project operated under the racist premises that Indigenous children were better off living with white families and that Indigenous culture was inferior to white culture. It continued to unjustly separate Indigenous children from “unfit” parents who were considered financially unstable due to reliance on public welfare and inability to provide adequate housing, or because their reservations were considered unsafe for child-rearing and their traditional practices deemed as inappropriate for children. During this time, the U.S. federal government placed nearly 13,000 Indigenous children with white families nationwide for adoption. Approximately 80 percent of Indigenous families living on reservations lost at least one child to the foster system.

#### *Indian Child Welfare Act (ICWA), 1978*

Before ICWA, approximately one third of Indigenous children were taken from their homes by state welfare agencies and private adoption agencies, and a shocking 85 percent of those children were placed outside of family or community care with non-Indigenous people. Spurred by decades of Indigenous-led advocacy, a congressional investigation in the mid-1970s determined that many removals were unwarranted and unnecessary. In one state, the adoption rate for Indigenous children was eight times higher than that of non-Indigenous children. In another state, Indigenous children were 13 times more likely than non-Indigenous children to be placed in the



foster system. These alarming numbers were the result of more than a century of egregious policies that undercut Indigenous communities' cultural and social standards.

As a part of this inquiry, Congress found that state officials, including judges and social workers, often removed Indigenous children based on biased and culturally insensitive grounds, many times misinterpreted as neglect. For example, officials often viewed the common practice within many Indigenous communities of having a grandparent or other relative care for a child for extended periods of time as abandonment. Non-Indigenous socioeconomic values that State agencies and judges applied in the child-welfare context similarly were found to not account for the difference in family structure and child-rearing practice in Indigenous communities. The result, embedded in cultural bias, was unequal and incongruent application of child-welfare standards for Indigenous families. For example, parental alcohol abuse was one of the most frequently advanced reasons for removing Indigenous children from their parents; however, in areas where Indigenous and non-Indigenous parents had similar rates of problem drinking, alcohol abuse was rarely used as grounds to remove children from non-Indigenous parents.<sup>36</sup>

In 1978, after decades of Indigenous-led activism and recognition of harms caused to Indigenous children and Tribes, Congress passed the Indian Child Welfare Act (ICWA), which applied narrowly to a specific subset of children that it refers to as "Indian" children, effectively excluding children from more than 400 Tribes without federal recognition and Native Hawaiians. ICWA established federal standards for the removal and placement of Indigenous ("Indian") children to promote stability and restore families, culture, and autonomy of federally recognized tribes. ICWA was also designed to reduce the number of Indigenous children placed disproportionately in the custody of the state after being removed from a family setting. Though insufficient, these protections are essential given centuries-long attempts to destroy Indigenous communities through colonization, genocide and massacres, forced assimilation, mass displacements, legalized kidnapping during the boarding school era, and forced-adoption eras.

However, ICWA has not been implemented uniformly, in part due to the refusal of state judges to recognize tribal sovereignty and the jurisdiction ICWA granted tribal courts over child welfare decisions involving tribal members. In 2016, the U.S. Bureau of Indian Affairs (BIA) recognized that "[s]ome State court interpretations of ICWA have essentially voided Federal protections for groups of [Indigenous] children to whom ICWA clearly applies. And commenters provided numerous anecdotal accounts where [Indigenous] children were unnecessarily removed from their parents and extended families; where the rights of [Indigenous] children, their parents, or their Tribes were not protected; or where significant delays occurred in [Indigenous] child-custody proceedings due to disputes or uncertainty about the interpretation of the Federal law."<sup>37</sup>

Despite the recent U.S. Supreme Court decision in *Haaland v. Brackeen* rejecting constitutional challenges to ICWA<sup>38</sup>, hailed by many as a landmark victory for tribal sovereignty, Indigenous children and families, and the future of Native people, there does not appear to be any mechanism to ensure that states are implementing ICWA in accordance with the guidelines issued by the BIA.

## *Disproportionate Harm to Indigenous Families*

Indigenous people are deeply overrepresented within the child welfare system, where unfamiliar cultural practices and systemically-perpetuated poverty were and are consistently used to tear apart Indigenous families and communities and place Indigenous children with white, Christian families. Removals are too often based on racist stereotypes about Indigenous people and the unavoidable consequences of poverty, a condition thrust upon tribal communities after the seizure of their lands and violent interruption of traditional ways of life caused by colonization and system racism that resulted from it.<sup>39</sup>

Indigenous parents are up to four times more likely to have their children taken and placed into foster homes than their non-Indigenous counterparts. Indigenous children are still overrepresented among children entering the foster system, at nearly double the nationwide rate. For example, in Oklahoma, Indigenous children “represented more than 35 percent of those in foster care, yet [Indigenous people] make up only around 9 percent of Oklahoma’s population” as of 2017. In Alaska, 65 percent of the total number of children in out-of-home care are Indigenous, far more than their 19 percent of the population. In Nebraska, the percentage of children in the foster system who are Indigenous is four times greater than their percentage of the state population. In South Dakota, “[a]n [Indigenous] child [was] 11 times more likely to be placed in foster care than a white child” in 2017, and more recent data from 2021 shows that “over 60% of children in the custody of CPS are [Indigenous], most are from one of the nine tribes located in South Dakota.”<sup>40</sup> Other reports in June 2023 indicate that more than 700 Indigenous children—or about one of every 40 living in the state of South Dakota—experienced the termination of their parents’ rights from 2017 to 2021. That was one of the highest rates in the country and nearly 13 times the rate for white children in the state.<sup>41</sup>

## **II. Recommended Questions**

1. How will the U.S. ensure the uniform implementation of ICWA by all state agencies in matters concerning Indigenous children in accordance with the guidelines issued by the BIA?

## **III. Suggested Recommendations**

1. The U.S. should implement policies to protect the tribal sovereignty, integrity, and rights of Indigenous children, families, and communities consistent with the principle of Free, Prior and Informed consent. The U.S. should:
  - a. Require BIA consultation with Tribes for the development of culturally appropriate practices, policies, and considerations to incorporate into ICWA guidelines for U.S. states;
  - b. Require BIA supplied training to child welfare agency workers on Indigenous culture, combatting internal bias, ICWA, and best practices based on Tribal consultations and recommendations;

- c. Update the ICWA implementation guides following consultation and co-development with Tribes of culturally appropriate practices, policies, and considerations;
  - d. Obtain updated statistical reporting from child welfare agencies on the implementation of ICWA; and
  - e. Require states to establish state benchmarks for reducing the number of Indigenous children in state child welfare systems following consultation with Tribes.
2. The U.S. should enact legislation to build on, enhance, and protect the minimum requirements of the Indian Child Welfare Act, including ensuring full access for Tribes in proceedings; establishing State-Tribal Compacts or defining government-to-government consultation processes; recognizing tribal customary adoptions; and creating State-Tribal forums for enhanced communication and decision making.
  3. The U.S. should regularly publish data that can be disaggregated on the implementation of ICWA and the overrepresentation of Indigenous families in the child welfare system.
  4. The U.S. should develop federal benchmarks for reducing the number of Indigenous children in state child welfare systems following consultation and recommendations by Tribes and Indigenous communities.

## **Impact of the Family Separation Crisis at the U.S.-Mexico Border and the Current Status of Efforts by the U.S. to Reunite Families**

### **I. Issue Summary**

In 2018, the Trump administration enacted its “zero-tolerance policy,” ordering the Department of Justice to initiate criminal prosecutions of adults for unauthorized entry into the U.S. border—to intentionally harm families as a means to deter them from entering the U.S.<sup>42</sup> Although family separation was not yet labeled as a policy until 2018, the U.S. government had already been separating families as part of a 2017 “pilot program” in El Paso, Texas.

To challenge the formal practice of forcibly separating asylum-seeking parents and young children, in February 2018, the ACLU and Juvenile Law Center filed a class-action lawsuit, *Ms. L. v. ICE*, that broadened an existing ACLU lawsuit seeking to reunite a mother and her seven-year-old daughter who were fleeing violence in the Democratic Republic of Congo.<sup>43</sup> Overall, the zero-tolerance policy resulted in the separation of over 5,500 children from their parents at the U.S.-Mexico border.<sup>44</sup> The number, made known through the lawsuit, is not definite since the Trump administration did not keep comprehensive records or utilize a tracking system while separating families.<sup>45</sup> Of those 5,500 children, more than 500 were under the age of five. After separating families, U.S. border authorities purposefully misinformed parents, claiming that the parents did not have the right to asylum and had to be deported either with their child or alone.<sup>46</sup> Many deported parents did not understand the agreements they had signed due to a language barrier, and authorities told parents at times that their child would be waiting for them on the plane. When two parents realized that this was a lie, agents physically forced them onto the plane.<sup>47</sup>

Jessika L, who is part of the ACLU lawsuit, fled El Salvador with her children to seek asylum in the U.S. after receiving death threats from the gang MS-13. Although Jessika swore in her affidavit that she had never been a part of or aided any gangs in El Salvador, the U.S. government falsely accused her of gang affiliation and separated her from her sons.<sup>48</sup> After almost three months of separation, Jessika was reunited with her sons by paying a bond of \$12,500 through a fund set up by the Refugee and Immigrant Center for Education and Legal Services in Texas. Juana (pseudonym) and her four daughters were separated at the U.S.-Mexico border in 2018. While her daughters stayed with their biological father in the U.S., Juana was deported to Honduras after over four months in U.S. detention.<sup>49</sup>

Shortly after a federal judge in California ordered the Trump administration to reunite thousands of families in June 2018<sup>50</sup>, a steering committee was formed by the ACLU—with the law firm of Paul Weiss, Kids in Need of Defense, Women’s Refugee Commission, and Justice in Motion—that has since managed to identify most of the separated families and inform them of their reunification options. Despite civil society efforts, hundreds of families still needed to be located at the end of the Trump administration. President Joe Biden then signed an executive order in February 2021 that created the Task Force on the Reunification of Families (Task Force) to address family separation. The Biden administration is still combing through thousands of files to determine how many families remain separated.<sup>51</sup> According to the Task Force’s latest report, and the ACLU’s assessment, hundreds of children have yet to be reunited.<sup>52</sup> The ACLU has coordinated with the Task Force to establish parole processes whereby separated parents can reunite with their children in the U.S.

Since taking office in January 2021, Biden’s Justice Department has inherited the defense of numerous family separation lawsuits filed under the Federal Tort Claims Act. There are now over 40 lawsuits seeking monetary compensation on the behalf of separated families, with more filed periodically.<sup>53</sup> By aggressively defending the family separation policy and refusing to settle, Biden’s Justice Department is inducing parents and children to relive their trauma and denying separated families any potential compensation for their trauma.

## II. Recommended Questions

1. Why is the Biden administration’s Justice Department actively defending the zero-tolerance policy in the damages cases? Moreover, what accommodations are being made for families being represented in ongoing lawsuits, such as avoiding re-traumatization through unnecessary depositions or psychological examinations of children?

## III. Suggested Recommendations

1. The Biden administration should use the maximum extent of its legal authorities to ensure the reunification of separated families and ensure that such family separations are prohibited in the future.
2. The Biden administration should provide compensation for the physical and mental harm experienced by separated families.

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<sup>1</sup> Hina Naveed, *‘If I Wasn’t Poor, I Wouldn’t Be Unfit’ The Family Separation Crisis in the US Child Welfare System*, (ACLU and Human Rights Watch, 2022), <https://www.aclu.org/report/if-i-wasnt-poor-i-wouldnt-be-unfit-family-separation-crisis-us-child-welfare-system>.

<sup>2</sup> Hyunil Kim, Christopher Wildeman, Melissa Jonson-Reid, and Brett Drake, “Lifetime Prevalence of Investigating Child Maltreatment Among US Children,” *American Journal of Public Health* 107, no. 2 (2017): 274-280, doi:10.2105/ajph.2016.303545.

<sup>3</sup> US Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, *The AFCARS Report: Preliminary FY 2019 Estimates as of June 23, 2020 - No. 27* (2020), 1, <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport27.pdf>.

<sup>4</sup> *Id.*, 1.

<sup>5</sup> Children’s Bureau, *Children’s Bureau Vision Infographic*, U.S. Department of Health and Human Services, June 15, 2020, <https://www.acf.hhs.gov/cb/infographic/childrens-bureau-vision-infographic>.

<sup>6</sup> Dorothy Roberts and Lisa Sangoi, “Black Families Matter: How the Child Welfare System Punishes Poor Families of Color,” *The Appeal*, March 26, 2018, <https://theappeal.org/black-families-matter-how-the-child-welfare-system-punishes-poor-families-of-color-33ad20e2882e/>. See also National Center for Juvenile Justice, *Disproportionality Rates for Children of Color in Foster Care Dashboard (2010-2020)*, Jan. 26, 2021, [https://ncjj.org/AFCARS/Disproportionality\\_Dashboard.asp?selDisplay=2](https://ncjj.org/AFCARS/Disproportionality_Dashboard.asp?selDisplay=2); National Conference of State Legislatures, *Disproportionality and Race Equity in Child Welfare* (2021), <https://www.ncsl.org/research/human-services/disproportionality-and-race-equity-in-child-welfare.aspx>.

<sup>7</sup> Kathryn S. Kruse, “Differences in Racially Disproportionate Reporting of Child Maltreatment Across Report Sources,” *Journal of Public Child Welfare* 7, no. 4 (2013): 351-369, doi:10.1080/15548732.2013.798763; Michael Fitzgerald, “Too Many Black Families Get Caught in Child Welfare’s ‘Front Door,’ Advocates and System Leaders in New York Agree,” *The Imprint*, Oct. 28, 2020, <https://imprintnews.org/child-welfare-2/too-many-black-families-get-caught-in-child-welfares-front-door-advocates-and-system-leaders-in-new-york-agree/48843>.

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<sup>8</sup> Hina Naveed, *'If I Wasn't Poor, I Wouldn't Be Unfit' The Family Separation Crisis in the US Child Welfare System*, (ACLU and Human Rights Watch, 2022), <https://www.aclu.org/report/if-i-wasnt-poor-i-wouldnt-be-unfit-family-separation-crisis-us-child-welfare-system>.

<sup>9</sup> Annie E. Casey Foundation, "Black Children Continue to Be Disproportionately Represented in Foster Care," April 13, 2020, <https://datacenter.kidscount.org/updates/show/264-us-foster-care-population-by-race-and-ethnicity>; C. Puzzanchera, M. Taylor, W. Kang, and J. Smith, *Disproportionality Rates for Children of Color in Foster Care Dashboard (2010-2020)*, National Council of Juvenile and Family Court Judges, 2023, [https://ncjj.org/AFCARS/Disproportionality\\_Dashboard.asp?selDisplay=2](https://ncjj.org/AFCARS/Disproportionality_Dashboard.asp?selDisplay=2).

<sup>10</sup> Hina Naveed, "If I Wasn't Poor, I Wouldn't Be Unfit" The Family Separation Crisis in the US Child Welfare System, Human Rights Watch and ACLU, November 17, 2022 <https://www.hrw.org/report/2022/11/17/if-i-wasnt-poor-i-wouldnt-be-unfit/family-separation-crisis-us-child-welfare>.

<sup>11</sup> National Conference of State Legislatures, *Disproportionality and Race Equity in Child Welfare*; Roberts and Sangoi, "Black Families Matter: How the Child Welfare System Punishes Poor Families of Color," *The Appeal*, March 26, 2018; See also Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* (New York: Basic Books, 2002).

<sup>12</sup> Mary Retta, "Parents Face Truancy, Neglect Claims for Keeping Kids at Home during COVID," *Teen Vogue*, Feb. 1, 2022, <https://www.teenvogue.com/story/truancy-parents-covid>; Conor Friedersdorf, "This Widow's 4 Kids Were Taken After She Left Them Home Alone," *The Atlantic*, July 16 2014, <https://www.theatlantic.com/national/archive/2014/07/this-widows-4-kids-were-taken-because-she-left-them-home-alone/374514/>; Conor Friedersdorf, "Working Mom Arrested for Letting Her 9-Year-Old Play Alone at Park," *The Atlantic*, July 15, 2014, <https://www.theatlantic.com/national/archive/2014/07/arrested-for-letting-a-9-year-old-play-at-the-park-alone/374436/>; Elizabeth Brico, "Poverty Isn't Neglect, But the State Took My Children Anyway," *Talk Poverty* (blog), November 16, 2018, <https://talkpoverty.org/2018/11/16/poverty-neglect-state-took-children/>.

<sup>13</sup> Katherine E. Marcal, "The Impact of Housing Instability on Child Maltreatment: A Causal Investigation," *Journal of Family Social Work*, 21, nos. 4-5 (2018): 331-347, doi:10.1080/10522158.2018.1469563, pp. 331-347. Amy Dworsky, *Families at the Nexus of Housing and Child Welfare*, (State Policy Advocacy and Reform Center, 2014), <https://www.partnering-for-change.org/wp-content/uploads/2019/07/Families-at-the-Nexus-of-Housing-and-Child-Welfare.pdf>.

<sup>14</sup> Children's Bureau, *The AFCARS Report: No. 27, 2*.

<sup>15</sup> In public health terms, neglect is often characterized as the persistent absence of responsive caregiving that threatens development and well-being, especially in young children. The legal definitions of neglect used in the child welfare context is much broader and do not require establishing that a child has suffered physical or emotional harm.

<sup>16</sup> ATD Fourth World, "Most Visible Dimension of Poverty: Lack of Resources," May 10, 2019, <https://www.atd-fourthworld.org/lack-of-resources-prevents-people-from-living-with-dignity/>.

<sup>17</sup> "Protective Factors to Promote Well-Being and Prevent Child Abuse & Neglect," Child Welfare Information Gateway, 2020, <https://www.childwelfare.gov/topics/preventing/promoting/protectfactors/>; Elizabeth Brico, "The Government Spends 10 Times More on Foster Care and Adoption Than Reuniting Families," *Talk Poverty* (blog), August 23, 2019, <https://talkpoverty.org/2019/08/23/government-more-foster-adoption-reuniting/>.

<sup>18</sup> Aislinn Conrad-Hiebner and Elizabeth Byram, "The Temporal Impact of Economic Insecurity on Child Maltreatment: A Systematic Review," *Trauma Violence Abuse* 21, no. 1 (2020): 157-178, doi:10.1177/1524838018756122.

<sup>19</sup> Lawrence M. Berger and Sarah A. Font, "The Role of the Family and Family-Centered Programs and Policies," *The Future of Children*, 25, no. 1 (2015): 155-176, doi:10.1353/foc.2015.0007.

<sup>20</sup> Joseph Shapiro, Teresa Wiltz, and Jessica Piper, "States send kids to foster care and their parents the bill – often one too big to pay," *NPR All Things Considered*, Dec. 27, 2021, <https://www.npr.org/2021/12/27/1049811327/states-send-kids-to-foster-care-and-their-parents-the-bill-often-one-too-big-to->.

<sup>21</sup> Juliana Menasce Horowitz, Ruth Igielnik, and Rakesh Kochhar, "Trends in income and wealth inequality," *Pew Research Center*, January 9, 2020, <https://www.pewresearch.org/social-trends/2020/01/09/trends-in-income-and-wealth-inequality/>; Aimee Picchi, "The new Gilded Age: 2,750 people have more wealth than half the planet," *CBS MoneyWatch*, December 7, 2021, <https://www.cbsnews.com/news/wealth-inequality-billionaires-piketty-report/>.

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<sup>22</sup> Aditya Aladangady and Akila Forde, “Wealth Inequality and the Racial Wealth Gap,” *FEDS Notes* No. 2021-10-22 (2021): doi:10.17016/2380-7172.2861; Alliance for Children’s Rights, *The Path to Racial Equity in Child Welfare: Valuing Family and Community* (2021), [https://allianceforchildrensrights.org/wp-content/uploads/REJPS\\_summit\\_report.pdf](https://allianceforchildrensrights.org/wp-content/uploads/REJPS_summit_report.pdf).

<sup>23</sup> “Child Poverty in America 2019: National Analysis,” Children’s Defense Fund, 2020, <https://www.childrensdefense.org/wp-content/uploads/2020/12/Child-Poverty-in-America-2019-National-Factsheet.pdf>.

<sup>24</sup> Heather Long and Andrew Van Dam, “The black-white economic divide is as wide as it was in 1968,” *The Washington Post*, June 4, 2020, <https://www.washingtonpost.com/business/2020/06/04/economic-divide-black-households/>; Catarina Saraiva, “Black-White Wealth Gap Getting Worse, 160 Years of US Data Show,” *Bloomberg*, June 7, 2022, <https://www.bloomberg.com/news/articles/2022-06-07/black-white-wealth-gap-getting-worse-160-years-of-us-data-show#xj4y7vzkg>.

<sup>25</sup> Alan J. Dettlaff and Reiko Boyd, “Racial Disproportionality and Disparities in the Child Welfare System: Why Do They Exist, and What Can Be Done to Address Them?” *The ANNALS of the American Academy of Political and Social Science* 692, no.1 (2020): 253–274, <https://doi.org/10.1177/0002716220980329>.

<sup>26</sup> Liz Mineo, “Racial Wealth Gap May Be a Key to Other Inequities,” *The Harvard Gazette*, June 3, 2021, <https://news.harvard.edu/gazette/story/2021/06/racial-wealth-gap-may-be-a-key-to-other-inequities/>; Bradley L. Hardy, Trevon D. Logan, and John Parman, *The Historical Role of Race and Policy for Regional Inequality* (Washington, DC: The Hamilton Project, 2018), [https://www.hamiltonproject.org/assets/files/PBP\\_HardyLoganParman\\_1009.pdf](https://www.hamiltonproject.org/assets/files/PBP_HardyLoganParman_1009.pdf).

<sup>27</sup> Wendy Sawyer, “Visualizing the racial disparities in mass incarceration,” *Prison Policy Initiative*, July 27, 2020, <https://www.prisonpolicy.org/blog/2020/07/27/disparities/#slideshows/slideshow4/3others>; Emily Moss, Kriston McIntosh, Wendy Edelberg, and Kristen Broady, “The Black-white wealth gap left Black households more vulnerable,” *Brookings*, Dec. 8, 2020, <https://www.brookings.edu/blog/up-front/2020/12/08/the-black-white-wealth-gap-left-black-households-more-vulnerable/>.

<sup>28</sup> Elizabeth Hlavinka, “Racial Disparity Seen in Child Abuse Reporting,” *MedPage Today*, October 5, 2020, <https://www.medpagetoday.com/meetingcoverage/aap/88958>; Kathi L. H. Harp and Amanda M. Bunting, “The Racialized Nature of Child Welfare Policies and the Social Control of Black Bodies,” *Social Politics* 27, no.2 (2020): 258–281, doi: 10.1093/sp/jxz039.

<sup>29</sup> Laura Bauer and Judy L. Thomas, “Throwaway Kids: Star investigation reveals stark outcomes for America’s foster care children,” *Kansas City Star*, December 15, 2019, <https://fostersuccess.org/wp-content/uploads/2021/09/Complete-Foster-Care.pdf> (accessed October 27, 2022).

<sup>30</sup> Joseph J. Doyle, Jr., “Child Protection and Child Outcomes: Measuring the Effects of Foster Care,” *American Economic Review Journal*, vol. 97, no. 5 (2007): accessed October 21, 2022, doi:10.1257/aer.97.5.1583.

<sup>31</sup> Sarah Font and Marina Haddock Potter, “Socioeconomic Resource Environments in Biological and Alternative Family Care and Children’s Cognitive Performance,” *Sociological Inquiry*, vol. 89, no. 2 (2019): accessed October 27, 2022, doi.org:10.1111%2Fsoin.12262, pp. 263–287.

<sup>32</sup> Chantal Hinds, “A Feature, not a Bug: The Foster System’s History of Othering,” *Next 100*, January 6, 2022, <https://thenext100.org/a-feature-not-a-bug-the-foster-systems-history-of-othering/> (accessed September 6, 2023).

<sup>33</sup> Annie E. Casey Foundation, “Foster Youth Transitions: Using Data to Drive Policy and Practice Decisions,” November 13, 2018, <https://www.aecf.org/resources/fostering-youth-transitions> (accessed October 27, 2022).

<sup>34</sup> Daniel J. Pilowsky and Li-Tzy Wu, “Psychiatric symptoms and substance use disorders in a nationally representative sample of American adolescents involved with foster care,” *Journal of Adolescent Health*, vol. 38, no. 4 (2006): accessed October 27, 2022, doi:10.1016%2Fj.jadohealth.2005.06.014, pp. 351–358.

<sup>35</sup> Bryan Newland, “Federal Indian Boarding School Initiative Investigative Report,” United States Department of the Interior, May 2022, [https://www.bia.gov/sites/default/files/dup/inline-files/bsi\\_investigative\\_report\\_may\\_2022\\_508.pdf](https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf) (accessed October 26, 2022), pp. 8-9.

<sup>36</sup> 81 FR 38781, Bureau of Indian Affairs, Indian Child Welfare Act Proceedings; Final Rule, Part II, 38781 (2016). <https://www.federalregister.gov/d/2016-13686>.

<sup>37</sup> 25 CFR 23, Bureau of Indian Affairs, December 2016 Guidelines for Implementing the Indian Child Welfare Act, 7 (2016). <https://www.federalregister.gov/documents/2016/06/14/2016-13686/indian-child-welfare-act-proceedings>.

<sup>38</sup> Crystal Pardue, “Looking Beyond Haaland v. Brackeen,” *ACLU* (blog), July 11, 2023, <https://www.aclu.org/news/racial-justice/looking-beyond-haaland-v-brackeen>.

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<sup>39</sup> Terry L. Cross, “Child Welfare in Indian Country: A Story of Painful Removals,” *Health Affairs* 33, no.12 (2014): 2256-9, doi:10.1377/hlthaff.2014.1158; *Hearing Before the United States Senate Select Committee on Indian Affairs, First Session on S. 1214*, 95th Cong. (1997), <https://narf.org/nill/documents/icwa/federal/lh/hear080477/hear080477.pdf>.

<sup>40</sup> South Dakota Department of Social Services Division of Child Protection Services, *Child and Family Services Plan 2020-2024: Annual Progress and Services Report FY 2021, 2021* (2021), 55, [https://dss.sd.gov/docs/childprotection/apsr/ASPR\\_2021.pdf](https://dss.sd.gov/docs/childprotection/apsr/ASPR_2021.pdf).

<sup>41</sup> Jessica Lussenhop and Agnel Philip, “Native American Families Are Being Broken Up in Spite of a Law Meant to Keep Children With Their Parents,” *ProPublica*, June 15, 2023, <https://www.propublica.org/article/native-american-parental-rights-termination-icwa-scotus>.

<sup>42</sup> Priscilla Alvarez, “Justice Department wants psychological examinations of parents suing after being separated from children at US-Mexico border,” *CNN*, Sept. 27, 2022, <https://www.cnn.com/2022/09/27/politics/family-separation-lawsuit-psychological-exams/index.html>.

<sup>43</sup> “Ms. L v. ICE,” ACLU, last updated March 11, 2021, <https://www.aclu.org/cases/ms-l-v-ice>.

<sup>44</sup> “How a Trump-era policy that separated thousands of migrant families came to pass,” *PBS News*, Aug 13, 2022, <https://www.pbs.org/newshour/show/how-a-trump-era-policy-that-separated-thousands-of-migrant-families-came-to-pass>.

<sup>45</sup> Jonathan Blitzer, “A Mother, Separated from her Children at the Border, Comes Home,” *The New Yorker*, May 5, 2021, <https://www.newyorker.com/news/annals-of-immigration/a-mother-separated-from-her-children-at-the-border-comes-home>.

<sup>46</sup> Leila Rafei, “Family Separation, Two Years After Ms. L,” *ACLU* (blog), Feb. 26, 2020, <https://www.aclu.org/news/immigrants-rights/family-separation-two-years-after-ms-l>.

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

<sup>48</sup> Jessica L., “MS-13 beat me up and threatened to kill me. Then the US government took my kids,” *USA Today*, July 1, 2018, <https://www.usatoday.com/story/opinion/2018/07/01/fled-ms-13-save-my-children-us-government-took-them-away-column/708672002/>.

<sup>49</sup> “The US government separated their family. This is what they lost,” *CNN Politics*, Aug. 13, 2021, <https://www.cnn.com/videos/politics/2021/08/13/us-mexico-border-family-separation-orig-mss.cnn>.

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

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

<sup>52</sup> Rafael Carranza, Chris Quintana, and Joey Garrison, “Biden said Trump-era family separations were ‘abhorrent.’ So why is DOJ fighting relief claims?” *USA Today*, June 26, 2023, <https://www.usatoday.com/story/news/investigations/2023/06/26/separated-families-biden-trump-zero-tolerance/70350466007/>.

<sup>53</sup> *Id.*