

No. 17-55208

**IN THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

JENNY LISETTE FLORES, *et al.*,

Plaintiffs-Appellees-Appellees,

v.

JEFFERSON B. SESSIONS III, ATTORNEY GENERAL OF THE UNITED
STATES, *et al.*,

Defendants-Appellants.

On Appeal from the
United States District Court for the
Central District of California
D.C. No. 2:85-cv-04544-DMG-AGR

**BRIEF OF *AMICI CURIAE* YOUTH ADVOCACY
ORGANIZATIONS IN SUPPORT OF JENNY LISETTE
FLORES, ET AL., PLAINTIFFS-APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

None of Amici curiae is owned by any parent corporation and no publicly traded corporation owns any stock of any amicus curiae.

See Fed. R. App. P. 26.1.

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Public Counsel is the nation's largest public interest law firm specializing in delivering pro bono legal services to low-income communities. Public Counsel's goals are to protect the legal rights of disadvantaged children; to provide individuals and non-profit community organizations in underserved communities with legal representation; and to represent immigrants who have been the victims of torture, persecution, trafficking, and other crimes. The Children's Rights Project at Public Counsel provides free legal representation to children and youth in Los Angeles County, including undocumented unaccompanied minors. Many of the immigrant children who are our clients have suffered serious trauma both in their countries of origin and after being brought to the United States. Our clients also include children and youth who have experienced confinement in locked facilities, in the juvenile justice system, and in federal immigration detention. We have witnessed first-hand the adverse effects both on the physical and mental health and on the long-term well-being and future prospects of children who have experienced locked detention.

Centro Legal de la Raza was founded in 1969 to provide culturally and linguistically appropriate legal aid services to low-income residents of the Bay Area. Centro Legal's Immigration Project provides legal representation and consultations to detained and non-detained immigrants, refugees, and asylum

seekers throughout Northern California. Centro Legal advises and/or represents hundreds of detained individuals before the immigration courts and Board of Immigration Appeals each year. Centro Legal provides legal rights presentations and consultations three times a month to individuals in immigration detention and represents clients before the detained immigration court on a weekly basis. In addition, Centro Legal is currently representing over 400 unaccompanied minors in seeking asylum and/or Special Immigrant Juvenile Status. As Centro Legal provides legal education, consultations and direct service representation to a high volume of detained individuals and to unaccompanied minors, it has a substantial interest in the present case.

Children's Rights is a national advocacy non-profit organization dedicated to improving the lives of vulnerable children in government systems. Children's Rights uses civil rights litigation, policy expertise, and public education to create positive systems change, with a 20-year track record in the area of child welfare reform of raising accountability, protecting rights, and improving outcomes for children. Children's Rights has brought approximately 20 federal class action child welfare reform lawsuits against state and local child welfare agencies throughout the country, and it has won legal victories that improved the child welfare systems for thousands of children. As part of its work, Children's Rights also directly represents youth petitioning for Special Immigrant Juvenile ("SIJ") status, which

provides the legal right to remain and work in the United States indefinitely.

Children's Rights has particular concerns about the harmful effects resulting from the over-institutionalization of children in state custody, especially children who already have been traumatized as a result of separation from their homes and families. In many cases, it has successfully challenged unnecessary and harmful practices in this area.

The Human Rights Defense Center ("HRDC") is a nonprofit charitable corporation headquartered in Florida that advocates nationally in furtherance of the human rights of people held in state and federal jails, prisons, and detention facilities. Such advocacy is inclusive of the rights of juvenile prisoners and alien detainees. HRDC's advocacy efforts include publishing Prison Legal News ("PLN"), a monthly publication that covers criminal justice-related news and litigation nationwide, publishing and distributing self-help reference books for prisoners, and engaging in litigation in state and federal courts on issues concerning detainees. PLN has reported extensively on both juvenile and immigration detention facilities and human rights violations within them.

Juvenile Law Center, founded in 1975, is the oldest public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Among other things,

Juvenile Law Center works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal. It also seeks to guarantee that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

The **National Institute for Criminal Justice Reform** is a national non-profit organization providing technical assistance, consulting, research, and organizational development in the fields of juvenile and criminal justice, youth development, and violence prevention. NICJR provides consultation, program development technical assistance and training to an array of organizations; including government agencies, non-profit organizations, and philanthropic foundations. Our services are rooted in evidence-based, data-driven practices aimed violence prevention and positive youth development in order to reduce recidivism and promote public safety nationwide.

The **Pacific Juvenile Defender Center** ("PJDC") is the California regional affiliate of the National Juvenile Defender Center. PJDC works to improve children's access to counsel and quality of representation in the justice system. PJDC provides support to its more than 900 members across the state to ensure quality legal representation and due process for California children, including immigrant children. Collectively, its members—who are juvenile trial lawyers,

appellate counsel, law school clinical programs, and nonprofit law centers—represent tens of thousands of youth in delinquency, dependency, criminal, and immigration courts. PJDC also has long been concerned about the overuse of secure detention of children, and the lifelong effects of incarceration on youth and their development. It joins this amicus brief because it believes all youth, including immigrant children, are entitled to robust due process and should be protected from the ill-effects of incarceration.

Pegasus Legal Services for Children is a New Mexico nonprofit corporation established in 2002 to promote and defend the rights of children and youth to safe and stable homes, quality education and healthcare, and a voice in decisions that impact their lives. Pegasus represents children, including immigrant children, who live in New Mexico. Pegasus joins this brief as an advocate for ensuring that children are not subject to unlawful detention. Detention of children, regardless of conditions, places them at significant risk of profound harm, including negatively impacting their development and well-being.

The **Prison Law Office** is a nonprofit public interest law firm based in Berkeley, California that provides free legal services to adult and juvenile offenders to improve their conditions of confinement. The office provides direct services to thousands of prisoners and juveniles each year, advocates for policy changes, and, if necessary, engages in impact litigation to ensure that correctional

institutions meet standards required by the U.S. Constitution. The Prison Law Office has litigated numerous successful institutional reform cases that, among other things, have improved health care services, guaranteed prisoners with disabilities reasonable accommodations and equal access to prison programs, reduced the use of excessive force, limited racial discrimination and restricted the use of solitary confinement in adult and juvenile correctional systems.

WestCoast Children's Clinic, located in Oakland, California, is a non-profit community psychology clinic that has provided mental health services to Bay Area children since 1979. Its mission is threefold: 1) to provide psychological services to vulnerable children, adolescents, and their families regardless of their ability to pay; 2) to train the next generation of mental health professionals; and 3) to improve services to children and families by conducting research on the impact of clinical services, and using findings to advocate on behalf of the children we serve. Annually, it serves over 1,700 children who live in poverty and high-stress communities. Its clients experience ongoing trauma, physical and sexual abuse, neglect, disrupted attachments, and community violence. Most of its clients have been removed from their families because of abuse or neglect. Sixty-five percent live in foster care, with the remaining at risk of entering foster care. WestCoast provides services through specialized, mobile, and community-based programs. Many of its clients have also experienced confinement in juvenile justice and

institutional settings. WestCoast has seen that detaining youth in locked facilities can exacerbate the impact of prior trauma, and the experience of being detained causes further harm.

Young Minds Advocacy (“YMA”), based in San Francisco and founded in 2012, is a nonprofit organization focused on ensuring full access to quality mental health care for children and youth across California and the western United States. YMA uses a blend of impact litigation, policy advocacy, and strategic communications to achieve its mission. Additionally, it focuses on vulnerable youth populations, including low-income youth and young people in the child welfare, foster care, and juvenile justice systems. It is well-established that detaining children in congregate institutional facilities is extremely harmful to their mental and emotional health. Not only are youth’s preexisting mental illnesses exacerbated in custodial settings, but also, the experience of being detained is traumatic in and of itself—especially for children—and often creates mental health problems for youth that did not exist before detention. Moreover, research consistently shows that children who are detained in institutional settings have higher rates of unaddressed trauma and unmet mental health needs than young people in the general population. YMA is joining this amicus brief because it believes that all efforts must be made to avoid warehousing children and youth in restrictive institutional settings, given the proven, long-term negative health

outcomes that result from detention.

All parties to the action have consented to the filing of this amicus curiae brief. Based on substantial experience in legal advocacy for individual children, youth and families, and in legal and policy advocacy at a systemic level, the children's advocacy amici organizations who submit this brief are able to offer a unique and valuable policy perspective that would not be duplicative of the arguments and authorities presented by the parties and other amici, and would be helpful to this Court in deciding the important issues presented in this case.

Granting leave to file this attached amicus brief would not delay or complicate the proceedings in this case. The parties would have ample time to respond to the points discussed in this brief, if requested and granted leave by this Court, prior to oral argument.

No party or counsel for a party has authored the attached amicus brief in whole or in part, or made any monetary contribution to fund the preparation or submission of this brief. No person other than amici curiae or their counsel made a monetary contribution to the preparation or submission of this brief.

For the reasons stated above, amici Public Counsel, Centro Legal de la Raza, Children's Rights, Juvenile Law Center, Human Rights Defense Center, Juvenile Law Center, National Institute for Criminal Justice Reform, Pacific Juvenile Defender Center, Pegasus Legal Services for Children, Prison Law Office,

WestCoast Children's Clinic, and Young Minds Advocacy respectfully request leave to file the attached amicus brief.

I. INTRODUCTION

In deciding whether to affirm the district court's order enforcing Paragraph 24A of the settlement agreement, amici urge this Court to keep in mind two well-settled principles of public policy emphasizing the protection of children and youth, which are expressed in numerous federal and state statutes, regulations and policies. First, detention in institutional facilities – especially locked facilities – is inherently harmful to the growth, development, and physical and mental health of children and adolescents, and is permissible only as a last resort. Second, children, no less than adults, are entitled to basic due process protections regarding locked confinement, and no government agency should be permitted to lock up a child based only on its own unreviewable determination that such detention is necessary.

The position of the government in this case is highly anomalous, contrary to long-standing public policies at both the federal and state levels, and it directly conflicts with these two basic principles. The government contends that it may detain children in locked facilities—causing significant and even permanent harm to these children—without ever demonstrating to a neutral arbiter that such detention is necessary to protect the child, promote public safety, or address a flight risk. In no other context would a state or federal government agency advance such a position. This Court should not accept this novel contention here.

II. DETENTION OF CHILDREN IN INSTITUTIONAL SETTINGS IS INHERENTLY HARMFUL.

A. Child welfare and health professional have long recognized the harm to children resulting from institutional confinement.

There is a broad consensus among child welfare and health professionals that children should be placed in institutional, congregate care settings—even humane, well-staffed, high-quality institutional settings—only in strictly limited circumstances and only as a last resort. This is because institutional care deprives children of the family relationships, interpersonal attachments, and access to normal educational, social, and recreational activities that are essential to child development. See Mary Dozier et al., *Consensus Statement on Group Care for Children and Adolescents: A Statement of Policy of the American Orthopsychiatric Association*, Am. J. Orthopsychiatry Vol. 84, No. 3, 219-225 (2014), <https://www.apa.org/pubs/journals/features/ort-0000005.pdf> (institutional care deprives children of healthy attachments and normal developmental experiences, causes psychological harm and problem behaviors, and should only be used as a short-term intervention when it is the “least detrimental alternative” consistent with the therapeutic needs of the child); Richard P. Barth, *Institutions vs. Foster Homes: The Empirical Base For the Second Century of Debate* (Jordan Institute for Families, School of Social Work 2002), <http://assembly.ca.gov/sites/assembly.ca.gov/files/BarthInstitutionsvFosterHomes>.

pdf. Likewise, the Child Welfare League of America's position on residential placement of children reflects the broad consensus that children should be placed in the least restrictive, most family-like setting in which the needs of the child can be met, and that residential placement should be used only when therapeutically necessary. *See* Child Welfare League of America, *Position Statement on Residential Services* (2005), <https://ncfy.acf.hhs.gov/library/2005/position-statement-residential-services>.

B. Federal and state governments have recognized this likelihood of harm.

The federal government recognized this consensus among social science and child welfare professionals as early as 1980. Thus, for example, the Adoption Assistance and Child Welfare Act requires all states, as a condition of receiving federal funding for foster care and child welfare services, to implement procedural safeguards to ensure that children removed from home due to abuse, neglect, or abandonment are placed in the “least restrictive setting” consistent with their needs, and to prioritize family foster care over group homes and other forms of congregate care. 42 U.S.C. §§ 671(a)(16), 675(5)(A) (requiring states to have case review system for all children in foster care, and to ensure that “each child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available ... consistent with the best interest and special needs of the child...”). In 2015, the Children's Bureau of

the federal Administration for Children and Families noted the “consensus among multiple stakeholders that most children and youth ... are best served in a family setting” and that congregate care “should be used only for as long as is needed to stabilize the child or youth so they can return to a family-like setting.” U.S. Dep’t of Health & Human Servs., Administration for Children and Families, Children’s Bureau, *A National Look at the Use of Congregate Care in Child Welfare* (2015), www.acf.hhs.gov/sites/default/files/cb/cbcongregatecare_brief.pdf. The Children’s Bureau, surveying data from all 50 states’ child welfare systems, reported a “significant decrease in the percentage of children placed in congregate care settings in the past decade” and that “child welfare practice is moving toward more limited use of congregate care.” *Id.*

It is also well understood in the juvenile justice context that institutional placements have harmful effects on youth and should be used only as a last resort when necessary because a child is a danger to himself or others or is a flight risk. Even for youth who have been charged with or convicted of an offense, research has shown that confinement in juvenile halls, camps, or other institutional settings causes serious, long-term harm, and is in many cases unnecessary to protect public safety. *See, e.g.,* Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, at 2-3 (Justice Policy Institute ed., 2006), [13](http://www.justicepolicy.org/images/upload/06-</p></div><div data-bbox=)

11_rep_dangersofdetention_jj.pdf (review of recent health research literature shows that “detention has a profoundly negative impact on young people’s mental and physical well-being, their education, and their employment”); Elizabeth S. Bernert et al., *How Does Incarcerating Young People Affect Their Adult Health Outcomes*, 139 *Pediatrics* 2 (Feb. 2017), <http://pediatrics.aappublications.org/content/139/2/e2016262> (incarceration during adolescence leads to worse physical and mental health later in adulthood); Richard A. Mandel, *No Place for Kids: The Case For Reducing Juvenile Incarceration* (Annie E. Casey Foundation 2011), <http://www.aecf.org/resources/no-place-for-kids-full-report/> (overreliance on institutional confinement exposes youth to maltreatment, incarcerates youth who do not pose threats to public safety, and has negative outcomes compared to family- and community-based alternatives).

As a result, juvenile justice policy in many states and at the federal level has shifted dramatically away from incarceration and towards family- and community-based alternatives. The numbers of youth in juvenile halls, camps, and other institutional placements has declined steadily over the past 20 years. *See, e.g.*, Office of Juvenile Justice & Delinquency Prevention, *The Number of Juveniles in Residential Placement Continued to Decline in 2013* (2015), http://www.ojjdp.gov/ojstatbb/snapshots/DataSnapshot_CJRP2013.pdf; Pew Charitable Trusts, *Re-Examining Juvenile Incarceration: High Cost, Poor*

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[briefs/2015/04/reexamining-juvenile-incarceration](http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/04/reexamining-juvenile-incarceration) (highlighting several states that enacted laws limiting youth incarceration and decreasing lengths of stay).

C. Immigrant children in particular suffer harm in detention.

This basic principle of child welfare and juvenile justice applies to immigrant children with special force. Such children are particularly likely to have suffered serious trauma, both in their country of origin and during or after their journey to the United States and their apprehension by immigration authorities. Because children who have been previously traumatized are especially vulnerable to the negative effects of institutional care, The American Academy of Pediatrics has expressed grave concern about the detention of immigrant children:

Children and mothers from Central America who have crossed the border to enter the United States have high rates of exposure to trauma in the form of threat of death, physical and sexual abuse, and exploitation that leave serious physical and psychological scars. The act of detention or incarceration itself is associated with poorer health outcomes, higher rates of psychological distress, and suicidality making the situation for already vulnerable women and children even worse. For children, exposure to early adverse experiences, often referred to as toxic stress, has long-term consequences ... [including] measurable effects in his or her developmental trajectory, with lifelong consequences for educational achievement, economic productivity, health status, and longevity.

Letter from American Academy of Pediatrics to Jeh Johnson (July 24, 2015), <https://www.aap.org/en-us/advocacy-and-policy/federal-advocacy/Documents/AAP%20Letter%20to%20Secretary%20Johnson%20Family%20Detention%20Final.pdf>. In the same letter, the American Academy of Pediatrics concludes that, in light of the complex trauma history of many immigrant children, detention facilities are “not capable of providing generally recognized medical and mental health care for children.”

This conclusion accords with empirical research, which has demonstrated that institutional detention has profound negative effects on immigrant children.

See Micah Bump & Elzbieta Gozdziaik, *The Care of Unaccompanied*

Undocumented Children in Federal Custody: Issues and Options, 22 *Protecting Children* 2:77-78 (American Humane 2007),

https://issuu.com/georgetownfs/docs/gozdziaik_federal_custody; *see also*

American Bar Association, *Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Migrant Children in the United States* (2004),

http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/Immigrant_Standards.authcheckdam.pdf (standards developed by the ABA Commission on Immigration with the participation of leading experts in immigration policy, health, corrections, and related fields, calling for strong

presumption against institutional detention and in favor of release to a parent or other appropriate caretaker).

The harms caused by detention of immigration children are not theoretical or speculative. Individual children who are currently being detained, and who will be directly affected by this Court's decision, have suffered actual and serious harm due to the government's practice of indefinite, unreviewable detention of unaccompanied immigrant children. The declaration submitted to the district court by attorney Lorelei Williams states that she has personally observed that "detained children—already traumatized by horrific experiences in their countries of origin—have expressed to me feeling profound helplessness and despair." (Plaintiffs'-Appellees' Supplemental Excerpts of Record at PER 66.) Media reports concerning detained children highlight the case of a 14-year-old boy who fled extreme domestic abuse in his country of origin, and who has remained in locked detention for over a year, even after he was granted asylum, so that the effects of his severe trauma have been "made worse by his indefinite detention." Karen de Sa, *Honduran Boy, 14, Wins U.S. Asylum But Remains In Jail*, San Francisco Chronicle, Mar. 5, 2017, <http://www.sfchronicle.com/bayarea/article/Honduran-boy-14-wins-U-S-asylum-but-remains-in-10977616.php>; *see also* Tyche Hendricks, *Hundreds of Migrant Teens Are Being Held Indefinitely in Locked Detention*, KQED California Report, Apr. 11, 2016,

<https://ww2.kqed.org/news/2016/04/11/hundreds-of-migrant-teens-are-being-held-indefinitely-in-locked-detention/> (children’s attorney “has seen kids who have harmed themselves, including cutting themselves, in responses to the powerlessness of indefinite detention. An official at the Yolo County juvenile hall said they routinely have kids on suicide watch”).

The government’s position in this litigation, if accepted, would subvert thirty years of research, best practice standards, and legislation uniformly providing that children should not be placed in institutional care unless clearly necessary. Asserting that it possesses the unreviewable discretion to detain children in locked facilities, the government seeks to evade the practices and procedures designed to ensure that children are placed in institutional care only as a last resort. In so doing, the government threatens to subject these children to the serious harms that follow from unnecessary detention.

III. CHILDREN ARE ENTITLED TO BASIC DUE PROCESS PROTECTIONS REGARDING DETENTION.

Not only does the government’s position contravene well-recognized principles of child welfare and juvenile justice, it also contravenes the Constitution. Ever since the Supreme Court decided *In re Gault*, 387 U.S. 1 (1967), the idea that *any* government entity—federal, state, or local—may lock up a child either for his own protection or that of the public without basic due process protections has been thoroughly discredited. The *Gault* opinion described the serious harms and

inequities experienced by youth when deprived of basic due process protections, and it squarely rejected the fallacy of ‘benevolent paternalism’ based on the discredited notion that juvenile justice agencies are not the children’s adversary and could be relied upon to act in their best interests. *See also Schall v. Martin*, 467 U.S. 253, 277 (1984) (holding that state juvenile detention statute provided adequate procedural safeguards adequate, in part because “a detained juvenile is entitled to a formal, adversarial probable-cause hearing within three days...”).

Almost 50 years of case law and the evolution of public policy since *Gault* have only underscored the critical importance of procedural due process both in juvenile justice cases and in any other context where a government entity seeks to detain children. For example, the laws of all 50 states require basic procedural safeguards whenever a youth is detained by law enforcement, juvenile justice, or probation agencies. *See* National Center for Juvenile Justice and Office of Juvenile Justice and Delinquency Prevention, *Juvenile Offenders and Victims: 2014 National Report*, at 162 (Melissa Sickmund & Charles Puzzanchera eds., 2014), <https://www.ojjdp.gov/ojstatbb/nr2014/downloads/NR2014.pdf> (“In all states, law requires that a detention hearing be held within a few days (generally within 24 hours). At that time, a judge reviews the decision to detain the youth and either orders the youth released or continues the detention.”); Randy Hertz et al., *Trial Manual for Defense Attorneys in Juvenile Cases*, at 79-81 (National Juvenile

Defense Center 2016), <http://njdc.info/trial-manual-for-defense-attorneys-in-juvenile-delinquency-cases-by-randy-hertz-martin-guggenheim-anthony-g-amsterdam/> (survey of state statutes requiring a detention hearing within a specified time of a youth's arrest, at which a judge determines whether detention is necessary due to danger to self or others, or flight risk); Elizabeth Calvin, *Legal Strategies to Reduce Unnecessary Detention of Children*, at Appendix A, pp. 84-89 (National Juvenile Defense Center 2004), <http://njdc.info/wp-content/uploads/2013/11/Legal-Strategise-to-Reduce-the-Unnecessary-Detention-of-Children.pdf> (50-state survey of statutes requiring detention hearings); *see also* Institute of Judicial Administration & American Bar Association, *Juvenile Justice Standards Annotated: A Balanced Approach*, at 131, 134 (1996), www.ncjrs.gov/pdffiles1/ojjdp/166773.pdf (best practice standard calling for hearing within 24 hours of detention).

Similarly, in the child welfare context, the laws of all 50 states require a hearing within a short time after a government agency has detained a child due to abuse, neglect, or abandonment. *See* S. Gatowski et al., *Enhanced Resource Guidelines: Improving Court Practice In Child Abuse and Neglect Cases*, at 108 (National Council of Juvenile and Family Court Judges 2016), <http://www.ncjfcj.org/EnhancedResourceGuidelines> (“In all states, the initial hearing must take place within a short time after the child has been removed from

the home ... The main purpose of the initial hearing is to determine whether removal was necessary ... If the court determines that the child needs to be placed, the court must evaluate the appropriateness of the placement proposed by the agency and seek the most appropriate, least restrictive alternative that can meet the needs of the child.”). Guidelines for state juvenile courts issued by the National Council of Juvenile and Family Court Judges require a hearing within three days, even when a child is detained for the child’s own protection rather than because of an alleged offense. *See* National Council of Juvenile and Family Court Judges, *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*, at 30 (1995), www.ncjfcj.org/sites/default/files/resguide_0.pdf.

Thus, even in cases where the government detains a child because of a determination that no parent, relative, or other caregiver is available to care for that child, well-settled principles of child welfare law require the very proceedings that the government in this case now seeks to avoid. Child welfare agencies’ determinations that a child must be placed in institutional care because no less restrictive alternative is available are *never* within the agencies’ unreviewable discretion; they are always subject to challenge in a hearing before an impartial tribunal. The Supreme Court’s decision in *Reno v. Flores*, 507 U.S. 292 (1993), on which the government relies heavily in this appeal, is not to the contrary. That case held only that immigrant children who had no parent available to care for

them did not have a constitutional liberty interest in release from non-secure shelter care. The question whether immigrant children have a right to a hearing as to the factual determination whether they have a parent available to care for them, or whether there are other less restrictive alternatives to detention in a locked, jail-like institution, was not before the Court.

In sum, in no other context would it be plausible to suggest that a government agency could lawfully detain children in locked institutions for an indefinite period of time, based only on that entity's own discretionary and unreviewable determination that the child presented a danger to himself or others, or was a flight risk, or that no less restrictive alternative was available. The government's position in this case conflicts with decades of federal and state legislation and with case law applying constitutional protections, all of which recognize the critical role of procedural safeguards in protecting children and adolescents from arbitrary, unjust, or unnecessary detention.

For the reasons stated above, amici Public Counsel, Centro Legal de la Raza, Children's Rights, Juvenile Law Center, Human Rights Defense Center, Juvenile Law Center, National Institute for Criminal Justice Reform, Pacific Juvenile Defender Center, Pegasus Legal Services for Children, Prison Law Office, WestCoast Children's Clinic, and Young Minds Advocacy respectfully urge this Court to consider the substantial body of health and social science research,

professional best practice standards in the fields of child welfare and juvenile justice, and constitutional and statutory protections, which contradict the government's position in this case.

Dated: March 10, 2017

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Signature of Attorney or
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/s/ Jack W. Londen

Date

March 10, 2017

("s/" plus typed name is acceptable for electronically-filed documents)

CERTIFICATE OF SERVICE

I certify that on March 10, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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