

IN THE SUPREME COURT OF MARYLAND

September Term, 2025

No. 47

In Re: B.CD. & B.CB.

On Writ of Certiorari to the Appellate Court of Maryland

Brief of Civil Rights Organizations and Organizations Advocating for
Families as Amici Curiae in support of Petitioner (Filed with the Consent of
All Parties)

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
IDENTITY AND INTEREST OF AMICI CURAIE	7
QUESTIONS PRESENTED	8
STATEMENTS OF CASE AND FACTS	8
ARGUMENT	8
I. <u>CINA is a System That Punishes, Rather Than Supports, Families</u>	11
II. <u>Coupling CINA with Safe Haven Will Disproportionately Harm Black and Poor Families</u>	19
III. <u>CINA's Historical Lineage Is Deeply Rooted in Anti-Black Racism</u>	23
CONCLUSION	29
<u>CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH 8-112</u>	31
<u>CERTIFICATE OF SERVICE</u>	31
APPENDIX	App. 1
<u>INTEREST OF AMICI</u>	App. 1

TABLE OF AUTHORITIES

Cases

<i>C.f. Crosby v. Department of Human Resources,</i> 425 Md. 629 (2012)	14
<i>e.g., K.H. v. Limestone County Department of Human Resources,</i> 361 So. 3d 770 (Ala. Civ. App. 2022)	14
<i>In Interest of A.M.,</i> 630 S.W.3d 25 (Tex. 2019)	14
<i>In re A.K.,</i> No. 720, 2020 WL 94084 (Md. App. Jan. 8, 2020)	16
<i>In re Dustin T.,</i> 93 Md. App. Ct. 726 (1992)	16
<i>In re K.A.W.,</i> 133 S.W.3d 1 (Mo. 2004)	14
<i>In re Parental Rights A.J.G.,</i> 122 Nev. 1418 (2006)	14
<i>In re Parental Rights A.L.,</i> 130 Nev. 914 (2014)	14
<i>In re Priscilla B.,</i> 214 Md. App. 600 (2013)	16
<i>Moore v. City of E. Cleveland,</i> 431 U.S. 494 (1977)	23
<i>Troxel v. Granville,</i> 530 U.S. 57 (2000)	23

Statutes

42 U.S.C. §§ 5101–5106h (West)	26
Adoption and Safe Families Act of 1997, Public Law No. 105-89, 111 Stat. 2115 (1997)	26
Maryland Code Annotated, Courts and Judicial Proceedings § 5-641	9
Maryland Code Annotated, Family Law § 5-714 (2017)	15
Maryland Code Annotated, Family Law § 9-101 (West)	18
Maryland Courts and Judicial Proceedings Article §§ 3-801	9
Maryland Human Services § 1-202 (2019)	15

Regulations

Maryland Code Regulations §07.02.25.03 (D)(7) (2024)	17
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Other Authorities

Aditi Shrivastava & Urvi Patel, <i>Research Reinforces: Providing Cash to Families in Poverty Reduces Risk of Family Involvement in Child Welfare</i> , Center on Budget & Policy Priorities (May 2023).....	21
Billings et al., <i>The School Foodservice Workforce: Characteristics and Labor Market Outcomes</i> , Congressional Research Service (July 2022)	15
Child Welfare Information Gateway, <i>Disclosure of Confidential Child Abuse and Neglect Records</i> , U.S. Department Health & Human Services, Administration for Children & Families (2022).....	15
Dorothy Roberts and Lisa Sangui, <i>Black Families Matter: How the Child Welfare System Punishes Poor Families of Color</i> , The Appeal (March 26, 2018)	27
Eli Hager, <i>The Hidden Trauma of “Short Stays” in Foster Care</i> , The Marshall Project (Feb. 11, 2020)	17
<i>Entries Maryland- FFY-2024</i> , U.S. Dept. Health & Hum Servs., Admin for Children & Fam., Admin on Children Youth & Fam., Children’s Bureau (last visited December 18, 2025).....	21
<i>FY 2023 State of Maryland Out-of-Home Placement and Family Preservation Resource Plan</i> , Maryland Governor’s Office Crime Prevention & Policy (2024)	21
<i>FY 2025 State of Maryland Out-of-Home Placement and Family Preservation Resource Plan</i> , Governor’s Office for Children	12, 20
Heather Andrea Williams, <i>How Slavery Affected African American Families</i> , National Humanities Center (April 9, 2025)	22
Johayra Bouza et al., <i>The Science is Clear: Separating Families Has Long-Term Damaging Psychological and Health Consequences for Children, Families, and Communities</i> , Society for Research Child Development (June 20, 2018)	17
John E. Hansan, <i>Widows Pensions: An Introduction</i> , VCU Libraries Social Welfare History Project (January 20, 2011)	25
Kathleen S. Kenny et al., “ <i>I Felt for a Long Time Like Everything Beautiful In Me Had Been Taken Out</i> ”: Women’s Suffering, Remembering, and Survival Following the Loss of Child Custody, 26 International Journal of Drug Policy 1158 (2015)	17

Kelley Fong, <i>Concealment and Constraint: Child Protective Services Fears and Poor Mothers' Institutional Engagement</i> , 97 Social Forces 1785 (2010)	13
Kelley Fong, <i>Getting Eyes in the Home: Child Protective Services Investigations and State Surveillance of Family Life</i> , 85 American Sociological Review (2020).....	12
Laura D. Zeman, <i>Etiology of Loss Among Parents Falsely Accused of Abuse or Neglect</i> , 10 Journal of Loss & Trauma 19 (2004)	17
Martin Guggenheim, <i>The Role of Counsel in Representing Parents</i> , American Bar Association (2016)	20
<i>Maryland – Child Welfare Outcomes</i> , U.S. Department of Health & Human Services, Children Bureau.....	19, 20
Migration Policy Institute, <i>Maryland Quick Stats on Young Children and Workers Providing Early Childhood Education and Care (ECEC)</i> (2015) ...	15
National Women's Legal Center, <i>The Child Care and Early Learning Workforce is Underpaid and Women are Paying the Price</i> (May 2023)	15
Nicole L. Kovski et al., <i>Association of State-Level Earned Income Tax Credits With Rates of Reported Child Maltreatment, 2004–2017</i> , 20 Journal for Child Maltreatment 1 (2021)	20
Peter J. Pecora et al., <i>Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study</i> (2005)	17
Priya Chidambaram et al., <i>Who are the Direct Care Workers Providing Long-Term Services and Supports (LTTS)?</i> , KFF (Oct. 30 2024)	15
<i>Safe Haven: Giving Your Newborn a Future</i> , Maryland DHS,	10
Sarah Koenig, <i>Infant havens statute is eyed; Bills would shield people who abandon babies at 'safe' spots; 'To prevent tragedies,'</i> The Baltimore Sun, Feb. 16, 2001	9
<i>State Specific Foster Care Data 2022</i> , U.S. Department of Health & Human Services, Administration for Children & Families (2024)	19
Toria Herd et al., <i>Disentangling Neglect from Poverty</i> , Washington University Center for Innovation in Child Maltreatment Policy, Research and Training (2022)	19
We Be Imagining Podcast, <i>Minisode 4 - Mother's Day in the Trenches: Abolishing the Child Welfare System (May 10, 2020)</i>	12

Legislative History

<i>Congressional Globe</i> , 38th Congress, 1st Sess. 2990 (1864)	23
<i>Congressional Globe</i> , 38th Congress, 1st Session 1324 (1864)	23
<i>Congressional Globe</i> , 38th Congress, 2d Sess. 193 (1865)	23
<i>Declaration of the Anti-Slavery, Convention, Assembled at Philadelphia (1883)</i>	23

Books

Alan J. Dettlaff, <i>Confronting the Racist Legacy of the American Child Welfare System: The Case for Abolition</i> (2023).....	24, 25, 26
Dorothy Roberts, <i>Shattered Bonds: The Color of Child Welfare</i> 175-176 (2001).	25
Dorothy Roberts, <i>Torn Apart</i> (2022).....	10, 22, 24, 27
Erin Miles Cloud, Erica R. Meiners, Shannon Perez-Darby, C. Hope Oliver eds., <i>How to End Family Policing: From Outrage to Action</i> , (Erin Miles Cloud et al. eds., 2025)	10
Harriet Beecher Stowe, <i>Uncle Tom's Cabin</i> (1852).....	23
James M. McPherson, <i>Battle Cry of Freedom: The Civil War Era</i> (1988)	23

Law Reviews

Anna Arons, <i>An Unintended Abolition: Family Regulation During the Covid-19 Crisis</i> , 12 COLUMBIA JOURNAL OF RACE AND LAW (2022).....	16
Dorothy E. Roberts, <i>The Community Dimension of State Child Protection</i> , 34 HOFSTRA LAW REVIEW 23 (2005)	17
Miriam Mack, <i>The White Supremacy Hydra: How The Family First Prevention Services Act Reifies Pathology, Control, And Punishment In The Family Regulation System</i> , 11 COLUMBIA JOURNAL OF RACE & LAW (2021)	25
Shanta Trivedi, <i>The Harm of Child Removal</i> , 43 NEW YORK UNIVERSITY REVIEW OF LAW & SOCIAL CHANGE 523 (2019)	16
Vivek Sankaran, et al., <i>A Cure Worse Than the Disease? The Impact of Removal on Children and Their Families</i> , 102 MARQUETTE LAW REVIEW 1161 (2019)	15

IDENTITY AND INTEREST OF AMICI CURAIE

Amici Curiae, the American Civil Liberties Union (“ACLU”), the ACLU of Maryland, Angela Olivia Burton, Baltimore Families for Justice, Blessings in Transformation, the Center for Constitutional Rights, the City University of New York (CUNY) School of Law Family Defense Clinic, Civil Rights Corps, Dorothy Roberts, Elephant Circle, InTuned Consulting, LLC, JMACforFamilies, Joyce McMillan, K. Adeniyi Law, APC, Legal Services for Prisoners with Children, Mining for Gold, the MJCF: Coalition, Movement for Family Power, the National Center for Youth Law, Operation Stop CPS, Rise, the Sayra and Neil Meyerhoff Center for Families, Children and the Courts (“CFCC”), South East Family Freedom Alliance, UpEND, The Bronx Defenders, and The University of Baltimore School of Law Family Law Clinic are civil rights organizations and organizations advocating for families impacted by the child welfare system—what families subject to it often call the family policing system—that witness and experience the harms that this system inflicts on poor families and families of color. Entanglement in the family policing system can have long lasting consequences and harms; interpreting Safe Haven laws such that the program becomes yet another pathway into the family policing system will hurt, not help families.

Amici write to highlight for the Court the harms associated with a CINA finding, and to underscore that permitting the Appellate decision to stand will predominantly and negatively impact poor families and families of color. Furthermore, the Appellate Court’s interpretation of the Safe Haven law will discourage use of the program due to fear of the consequences of a CINA prosecution, thus undermining the intent of the law.

A fuller description of *amici*’s identity and interests are included in the Appendix.

QUESTIONS PRESENTED

Amici adopt the Questions Presented as presented by the Petitioner.

1. Does a parent neglect their child – i.e. place them at “substantial risk of harm” – when they act in line with Maryland’s Safe Haven Program?
2. Is a CINA neglect finding a “civil liability” against which the Safe Haven Program provides a shield?

STATEMENTS OF CASE AND FACTS

Amici adopt the Statement of the Case and Statement of the Facts as stated by Petitioner.

ARGUMENT

Amici submit this brief to aid the Court in understanding the full scope of civil liability that encompasses a finding of neglect pursuant to Courts and

Judicial Proceedings Article §§ 3-801, et seq. (“The CINA Statute” or “CINA”), which was misunderstood by the Appellate Court of Maryland.

The decision to surrender one’s newborn pursuant to the Safe Haven statute is rarely, if ever, made lightly. Often this decision is made by people with little support (material or otherwise) and who are facing desperate circumstances. In enacting the Safe Haven law, Maryland recognized that parents and newborns facing such difficult circumstances need pathways that provide a measure of safety (albeit imperfect) for both newborns and the birthing parent, not punishment. Indeed, one of Safe Haven bill’s sponsors, Senator Sharon M. Grosfeld, poignantly noted about her intent regarding the legislation, “I wanted to do something to protect these babies, and these women — or girls — who are in such desperate situations that to be prosecuted seemed a grave injustice.”¹

Accordingly, Maryland’s Safe Haven law provides that where a mother of a newborn leaves her newborn unharmed and “with a responsible adult person under certain circumstances,” that mother will be immune from “civil liability and criminal prosecution.” Md. Code Ann., Cts. & Jud. Proc. § 5-641.

¹ Sarah Koenig, *Infant havens statute is eyed; Bills would shield people who abandon babies at ‘safe’ spots; ‘To prevent tragedies,’* The Baltimore Sun, Feb. 16, 2001 (quoting Montgomery County delegate Sharon M. Grosfeld, a Safe Haven bill sponsor), <https://www.baltimoresun.com/2001/02/16/infant-havens-statute-is-eyed/>.

Program guidance specifically notes, “[t]he program allows a mother or responsible adult to surrender a newborn without the risk of arrest or prosecution.”²

And yet, the Appellate Court would hold that Maryland parents utilizing this law would face civil prosecution. The Appellate Court’s conclusion that Maryland’s Safe Haven law does not include immunity from CINA liability is erroneous and turns Maryland’s critical recognition on its head. Such a decision injects the very injustice Senator Grosfeld warned against, ultimately punishing, not assisting, children and families in Maryland—most especially Black and poor children and families—thereby making them all less safe.

The CINA Statute comprises a part of the “child welfare system”—what directly impacted people, scholars, and advocates often call the family policing, or family regulation system³—which disproportionately harms poor families and families of color. *Amici* explain that Maryland’s family policing system is neither benign nor a system that supports families. Rather, in

² *Safe Haven: Giving Your Newborn a Future*, Maryland DHS, available at: <https://dhs.maryland.gov/documents/Brochures/In%20Home%20Services/Safe%20Haven%20Brochure.pdf>.

³ See generally Dorothy Roberts, *Torn Apart* (2022); Erin Miles Cloud, Erica R. Meiners, Shannon Perez-Darby, C. Hope Oliver eds., *How to End Family Policing: From Outrage to Action*, (Erin Miles Cloud et al. eds., 2025).

reality, CINA functions as a system of punishment—subjecting the families it targets to vast surveillance, control, separation, and multi-generational trauma.

As petitioner explains, nothing in the Safe Haven statute requires a CINA finding for the State to take custody of the surrendered newborn. Interpreting the Safe Haven law as such only serves to transform this program into yet another entry-point to the family policing system. Upholding the Appellate Court’s decision will likely have the unintended consequence of discouraging pregnant people—particularly those, like Ms. C., who have older children at home whom they wish to parent—from utilizing the program for fear of the myriad consequences that flow from CINA investigations, prosecutions and findings.

Punishing those who feel, for whatever reason, they have no other option but to surrender their newborn is the very grave injustice that the law was intended to prevent. *Amici* urge this court to clarify that Maryland’s Safe Haven program’s promise of civil and criminal immunity includes immunity from CINA liability.

I. CINA is a System That Punishes, Rather Than Supports, Families.

I would not describe [Child Protective Services] as a system of support. While it is often framed as protective, my experience was one of surveillance and disruption rather than care. The intervention compounded existing stress and introduced new

trauma for my family. Long-term, my children and I experience [Post-Traumatic Stress Disorder] and separation anxiety and continue to engage in therapy to rebuild safety and trust.

- *Ms. M.S., Howard County, Maryland, a parent who faced CINA prosecution in 2023*

The family policing system purports to be a non-adversarial system dedicated to keeping children safe. However, for the families subject to it, the system often operates to police, punish, surveil, and isolate. When the Department of Social Services (DSS) treats the surrender of a newborn pursuant to the Safe Haven program as child neglect, it creates an entry-point into the family policing system and the harms that flow from it.

Such a case often begins with a call to DSS and a subsequent investigation by DSS workers. Regardless of the investigation’s ultimate outcome and whether the allegation against a parent is substantiated,⁴ families undergoing an investigation are subjected to expansive surveillance.⁵ Investigations routinely include unannounced home searches and invasive

⁴ The majority of investigations in Maryland are unsubstantiated. See *FY 2025 State of Maryland Out-of-Home Placement and Family Preservation Resource Plan*, Governor’s Office for Children (Jan. 2025), [https://dlslibrary.state.md.us/publications/JCR/2024/2024_289-290\(GOC\).pdf](https://dlslibrary.state.md.us/publications/JCR/2024/2024_289-290(GOC).pdf) (noting, “64% of families came to the attention of child and family well-being in 2023 unnecessarily”).

⁵ Kelley Fong, *Getting Eyes in the Home: Child Protective Services Investigations and State Surveillance of Family Life*, 85 AM. SOCIO. REV. 610, 624 (2020) (noting, “CPS investigations are much more informationally invasive” than their analogue stage in the criminal legal system).

questioning of parents about the intimate details of their lives, including their mental and medical health and their relationship histories, and can involve questioning of friends, family, neighbors, and service providers.⁶ For parents like Ms. C who have older children at home, these children may be interrogated by caseworkers, often alone, without their parents, and in some cases, children are strip-searched.

These invasive investigations often signal to parents that relying on social networks, helping professionals, and programs such as Maryland's Safe Haven program that purport to provide help to those in need, may in fact put their families at risk. To minimize the risk of harm to their families, parents adapt their behavior accordingly. Research shows that parents who have been investigated by the family policing system are less likely to ask for professional help or discuss their families' challenges or needs in the future for fear of another investigation.⁷

For investigations that result in a court filing, the harms do not abate. CINA cases require parents to abide by court-ordered "care plans." These plans routinely include unannounced home searches, myriad court-ordered

⁶ See We Be Imagining Podcast, *Minisode 4 - Mother's Day in the Trenches: Abolishing the Child Welfare System*, Spotify at 18:00 (May 10, 2020), <https://open.spotify.com/episode/4ZgpcBbuVX1P7AdOq9iQXF>.

⁷ Kelley Fong, *Concealment and Constraint: Child Protective Services Fears and Poor Mothers' Institutional Engagement*, 97 Social Forces 1785 (2010).

programs, and mandated consent to unfettered state access to deeply private information such as medical, mental health, and treatment records. Trusted service providers may be called to testify against their own client or patient, and their clinical notes may be entered into evidence.⁸ For parents utilizing Safe Haven who have older kids at home, if DSS determines they are unfit to parent those older children, parents may face restrictions on parental activity such as who may enter the family's home or have contact with the children. Through all of this, if parents fail to sufficiently comply, they risk family separation and even permanent termination of parental rights—deemed the “civil death penalty” by many. *See, e.g., K.H. v. Limestone Cnty. Dep't of Hum. Res.*, 361 So. 3d 770, 772 (Ala. Civ. App. 2022) (noting, “termination of parental rights – an extreme remedy that has been described, at various times, as being draconian and equivalent to a civil death penalty.”); *In re K.A.W.*, 133 S.W.3d 1, 12 (Mo. 2004) (observing, “termination of parental rights has been characterized as tantamount to the ‘civil death penalty.’”); *In re Parental Rights A.L.*, 130 Nev. 914, 918 (2014) (noting, “terminating parental rights ‘is an exercise of awesome power’ that is ‘tantamount to the imposition of a civil death penalty.’” (quoting *In re Parental Rights A.J.G.*, 122 Nev. 1418, 1423 (2006)); *In Int. of A.M.*, 630 S.W.3d 25, 25 (Tex. 2019)

⁸ Roberts, *supra* note 3, at 163-165; 183-185.

(noting, “[t]ermination of parental rights has rightly been called the civil death penalty.”).

Even after a CINA case is adjudicated and closed, collateral consequences persist. Following a CINA finding, absent a successful appeal, parents’ names are included in Maryland’s child abuse registry. *See C.f. Crosby v. Dep’t of Human Res.*, 425 Md. 629, 632-633 (2012) (affirming collateral estoppel of parent challenging Department’s administrative finding of child neglect and inclusion on the Maryland child abuse registry where child was adjudicated as a child in need of assistance (CINA)). A parent listed on the registry may lose their job, or be barred from working in certain sectors that disproportionately employ people from the same communities that CINA impacts, namely low-income communities of color.⁹ These fields

⁹ See, e.g., Nat’l Women’s L. Ctr., *The Child Care and Early Learning Workforce is Underpaid and Women are Paying the Price* (May 2023; 2-4), <https://nwlc.org/wp-content/uploads/2023/05/child-care-workers-5.25.23v3.pdf> (noting “[w]omen make up a disproportionate share of the child care and early learning workforce” and are often low-income); Migration Pol’y Inst., *Maryland Quick Stats on Young Children and Workers Providing Early Childhood Education and Care (ECEC)* (2015), <https://www.migrationpolicy.org/sites/default/files/publications/ECEC-Workforce-Maryland-FactSheet.pdf> (noting the Maryland ECEC workforce is 96% female, approximately 50% people of color, with an average annual earning of \$28,000); Priya Chidambaram et al., *Who are the Direct Care Workers Providing Long-Term Services and Supports (LTTS)?*, KFF (Oct. 30 2024), <https://www.kff.org/medicaid/who-are-the-direct-care-workers-providing-long-term-services-and-supports-ltss/> (noting, “home health aids, personal care aides, and nursing assistants . . . are more likely to be under

include early childcare, in-home health care, and employment as custodial, food service/cafeteria, security, transportation or administrative staff in hospitals or schools.¹⁰ For parents choosing Safe Haven because of poverty and a lack of resources, inclusion on the registry further limits their earning potential and compounds their economic precarity.

In addition, parents who utilize Safe Haven who have older children at home or who choose to parent subsequent children face the risk of future involvement in the family policing system solely because of their history of child neglect. A CINA finding can result in an involuntary removal of older or subsequent children from a parent's care, especially in future CINA proceedings. *See In re Priscilla B.*, 214 Md.App. 600, 626 (2013), (holding that the circuit court did not err by considering parents' DSS history and noting, "the court can and should consider any history of neglect"); *In re A.K.*, No. 720,

35, Black or Hispanic, low-wage, uninsured, or covered by Medicaid when compared with [registered nurses]" (cleaned up); Billings et al., *The School Foodservice Workforce: Characteristics and Labor Market Outcomes*, Cong. Res. Serv. (July 2022), <https://www.congress.gov/crs-product/R47199> (noting school foodservice workers are majority female, "more likely to . . . have dependent children living at home" and are "more likely than workers as a whole to live in poverty and to participate in public programs such as Medicaid").

¹⁰ See, e.g., Md. Code Ann., Fam. Law § 5-714 (2017); Md. Human Serv. § 1-202 (2019); Child Welfare Info. Gateway, *Disclosure of Confidential Child Abuse and Neglect Records*, U.S. Dep't Health & Hum. Servs., Admin. Child. & Fam. (2022), <https://www.childwelfare.gov/resources/disclosure-confidential-child-abuse-and-neglect-records/>.

2020 WL 94084, at *9 (Md. App. Jan. 8, 2020) (noting, “the court is required to consider the totality of the circumstances and any history of neglect by parents to determine if children are ‘placed at risk of significant harm’ by remaining in their parents’ custody.” (quoting *In re Dustin T.*, 93 Md. App. Ct. 726, 735 (1992)).

For parents who use the Safe Haven program and who have older children in the home or who go on to have children in the future, the risk of family separation is a reality. A forced removal of a child has a profound impact on a family.¹¹ Social scientists have established that “the moment when a child is taken from [their] parents is a source of lifelong trauma, regardless of how long the separation lasts.”¹² Rates of Post Traumatic Stress Disorder (PTSD) among children separated from their families are nearly twice that of veterans returning from combat.¹³ Removal can damage a child even when their parents are far from perfect,¹⁴ and subsequent reunification

¹¹ Vivek Sankaran, et al., *A Cure Worse Than the Disease? The Impact of Removal on Children and Their Families*, 102 Marq. L. Rev. 1161, 1163-94 (2019).

¹² Anna Arons, *An Unintended Abolition: Family Regulation During the Covid-19 Crisis*, 12 Columbia J. of Race and L., 1, 18-22 (2022).

¹³ Peter J. Pecora et al., *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study* at 1 (2005), https://www.casey.org/media/AlumniStudies_NW_Report_FR.pdf.

¹⁴ Shanta Trivedi, *The Harm of Child Removal*, 43 New York University Review of Law & Social Change 523, 527 (2019).

does not cure those harmful effects.¹⁵ Children have described the experience of being removed as “like being kidnapped,”¹⁶ and parents have described being separated from their children as a “living death.”¹⁷

Not only are parents on the registry at greater risk of being separated from their children if there are future family policing investigations, but also, they are often precluded from being caregivers (e.g. custody and foster parent) to loved ones. *See* MD Code Regs. §07.02.25.03 (D)(7) (2024) (“The local department may not license or continue to license as a resource parent an individual if they or any household member has been indicated for child abuse or neglect, either in this state or in another state.”); Md. Code Ann., Fam. Law § 9-101 (West) (“In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or

¹⁵ Johayra Bouza et al., *The Science is Clear: Separating Families Has Long-Term Damaging Psychological and Health Consequences for Children, Families, and Communities*, Soc'y for Res. Child Dev. (June 20, 2018), <https://www.srcd.org/briefs-fact-sheets/the-science-is-clear>.

¹⁶ Eli Hager, *The Hidden Trauma of “Short Stays” in Foster Care*, The Marshall Project (Feb. 11, 2020), <https://www.themarshallproject.org/2020/02/11/the-hidden-trauma-of-short-stays-in-foster-care>.

¹⁷ Laura D. Zeman, *Etiology of Loss Among Parents Falsely Accused of Abuse or Neglect*, 10 J. Loss & Trauma 19 (2004); Kathleen S. Kenny et al., “*I Felt for a Long Time Like Everything Beautiful In Me Had Been Taken Out*”: Women’s Suffering, Remembering, and Survival Following the Loss of Child Custody, 26 International Journal for Drug Policy 1158 (2015).

neglect is likely to occur if custody or visitation rights are granted to the party.”). A CINA finding on a parent’s record due to their use of the Safe Haven law can therefore place a parent at heightened risk of unwanted family separation, either with older or future children, or as a caregiver to other loved ones.

II. Coupling CINA with Safe Haven Will Disproportionately Harm Black and Poor Families.

Exempting CINA findings from Safe Haven’s promise of civil immunity will further imperil and disproportionately harm already marginalized poor families and families of color, as the family policing system is “marked by pronounced and disturbing racial disparities.”¹⁸

CINA regulates and separates Black families at disproportionate rates, and Black children and families fare worse at nearly every stage of the system. On the front end of CINA, in 2023, white children constituted approximately 38% of Maryland’s child population, but only 26% of children with at least one substantiated allegation of maltreatment.¹⁹ Conversely Black children constituted 30% of Maryland’s child population, but 36% of the

¹⁸ Dorothy E. Roberts, *The Community Dimension of State Child Protection*, 34 Hofstra L. Rev. 23, 23 (2005).

¹⁹ *Maryland – Child Welfare Outcomes*, U.S. Dep’t. of Health & Hum. Servs., Child. Bureau, <https://cwoutcomes.acf.hhs.gov/cwodatasite/byState/maryland#footnote8>.

children with a substantiated allegation of maltreatment.²⁰ In 2022, Black children entered Maryland's foster system at a rate 2.4 times higher than the rate of white children, and Black children made up approximately 51% of the total children in Maryland's foster system.²¹ When considering the percentage placed outside of their home in general – including foster placements, kinship placements, and residential placements – the disproportionalities further increase. In fiscal year 2022 (on 9/30 FY), Black children accounted for 56% of children in out-of-home placements, whereas white children represented only 25%.²²

Just as race is a strong predictor of who the family policing system targets, so too is poverty. Nationally, nearly 85% of families investigated by the family policing system have incomes below 200% of the federal poverty line (\$49,720 for a family of 3 in 2023).²³ In fact, families in poverty are 22

²⁰ *Id.*

²¹ *Id.*; *State Specific Foster Care Data 2022*, U.S. Dep't of Health & Hum. Servs., Admin. for Child. & Fam. <https://acf.gov/cb/report/state-specific-foster-care-data-2022> (2024).

²² *Maryland – Child Welfare Outcomes*, U.S. Dep't. of Health & Hum. Servs., Child. Bureau,

<https://cwoutcomes.acf.hhs.gov/cwodatasite/byState/maryland/>.

²³ Toria Herd et al., *Disentangling Neglect from Poverty*, Washington University Ctr. for Innovation in Child Maltreatment Pol'y, Res. and Training (2022), [https://cicm.wustl.edu/items/disentangling-neglect-from-poverty/#:~:text=Neglect%20is%20linked%20to%20poverty.&text=85%25%20of%20families%20investigated%20for, and%20live%20in%20impoverished%20neighborhoods.\)](https://cicm.wustl.edu/items/disentangling-neglect-from-poverty/#:~:text=Neglect%20is%20linked%20to%20poverty.&text=85%25%20of%20families%20investigated%20for, and%20live%20in%20impoverished%20neighborhoods.))

times more likely to be involved in the family policing system than families living above the poverty line.²⁴ Indeed, Maryland's own Governor's Office for Children acknowledges as much, identifying "poverty-related root causes of family instability, [and] youth behavioral health" as among the "primary drivers" of family policing system involvement in its recent *FY 2025 State of Maryland Out-of-Home Placement and Family Preservation Resource Plan*.²⁵

That class inequality is a strong predictor of who exists in the cross-hairs of the family policing system should not be misunderstood to mean that poverty *de facto* causes neglect. It does not. Rather, poverty causes families to face material hardship. Instead of addressing poverty and its attendant circumstances by providing families with material support, the family policing system, more often than not, labels it neglect (the most common reason children are separated from their parents in Maryland²⁶).²⁷ For

²⁴ Martin Guggenheim, *The Role of Counsel in Representing Parents*, American Bar Association (2016).

²⁵ *FY 2025 State of Maryland Out-of-Home Placement and Family Preservation Resource Plan*, *supra* note 4.

²⁶ Maryland – Child Welfare Outcomes, U.S. Dep't. Health and Hum. Servs., Child. Bureau,

<https://cwoutcomes.acf.hhs.gov/cwodatasite/byState/maryland/>.

²⁷ Numerous studies show that providing caretakers with direct financial support correlates to reductions in child maltreatment reports. *See, e.g.*, Nicole L. Kovski et al., *Association of State-Level Earned Income Tax Credits With Rates of Reported Child Maltreatment, 2004–2017*, 20 J. Child Maltreatment 1, 1 (2021) (finding that a relationship between states' earned income tax credit (EITC) and the rate of reported child maltreatment, and

instance, data show that in fiscal year 2024, 15% of children entering Maryland's foster system come from families experiencing homelessness, and 23% come from families identified as having "inadequate housing."²⁸ Yet, instead of addressing a clear need for housing support and other material assistance, the family policing system's response most often consists of mandating programs focused on parental behavior modification.²⁹

noting that the more generous the states' ETIC, the greater the declines in rates of reported child maltreatment); Aditi Shrivastava & Urvi Patel, *Research Reinforces: Providing Cash to Families in Poverty Reduces Risk of Family Involvement in Child Welfare*, Center on Budget & Policy Priorities (May 2023), <https://www.cbpp.org/research/income-security/research-reinforces-providing-cash-to-families-in-poverty-reduces-risk-of> (noting, "[a] new body of research . . . finds that material hardship increases the risk for child welfare involvement due to neglect and abuse, and when families are given cash assistance, their risk for child welfare involvement is reduced.").

²⁸ *Entries | Maryland- FFY-2024*, U.S. Dept. Health & Hum Servs., Admin for Children & Fam., Admin on Children Youth & Fam., Children's Bureau (last visited Dec. 18, 2025), https://tableau-public.acf.gov/views/afcars_dashboard_main_page/entries-circumstances?%3Aembed=y&%3AisGuestRedirectFromVizportal=y.

²⁹ See, e.g., *FY 2023 State of Maryland Out-of-Home Placement and Family Preservation Resource Plan*, Md. Governor's Off. Crim. Prevention & Pol'y (2024), <https://gocpp.maryland.gov/wp-content/uploads/AGENCY-FINAL-REVISED-2023-JCR-Pages-267-268-HS-%C2%A7-8-703e-GOCPYVS-FY-2023-State-of-Maryland-Out-of-Home-Placement-and-Family-Preservation-Resource-Plan-MSAR-6523.pdf> (noting federally Family First Prevention Services Act services implemented throughout 2024 focusing on evidence-based programs including "therapeutic intervention aimed at improving family dynamics," "family-centered treatment aimed at reducing severe behavioral issues in youth," "treatment that improves parent-child relationships," and a home visiting program "that supports caregivers of young children through personalized guidance to promote child well-being, positive parenting, and family self-sufficiency").

The harms that flow from coupling Safe Haven with CINA will therefore disproportionately affect families of color and poor families, thereby only exacerbating the situations that often lead a parent to surrender their newborn in the first place.

III. CINA's Historical Lineage Is Deeply Rooted in Anti-Black Racism.

Far from happenstance, the realities of who is targeted by the family policing system stem from our nation's long history of using family separation as a tool of coercion and subjugation against poor families and families of color, who continue to bear the brunt of the harms today. Recognition of this racially tinged legacy should inform the Court's analysis, in order to ensure the full promise of racial equity includes those subject to the family policing system.

Forced family separation was essential to the maintenance of chattel slavery in the United States from 1619 until 1865, via the Transatlantic Slave Trade, the horrors of the auction block, and the rape and forced procreation of enslaved women to facilitate the subsequent sale of enslaved

children.³⁰ In Maryland and Virginia alone, about one third of enslaved children experienced family separation.³¹

Following the abolition of slavery, Reconstruction lawmakers were explicit that the Thirteenth and Fourteenth Amendments would ensure the constitutional right to family integrity for all.³² To the authors of these Reconstruction Amendments, family separation was “the greatest perceived sin of American slavery,³³ and reconstruction lawmakers “shared a

³⁰ Roberts, *supra* note 3 at 90 (“For four hundred years, most Black children in America belonged to enslavers who had absolute discretion to sell or give them away[.]”).

³¹ Heather Andrea Williams, *How Slavery Affected African American Families*, National Humanities Center, <https://nationalhumanitiescenter.org/tserve/freedom/1609-1865/essays/aafamilies.htm> (April 9, 2025).

³² *Cong. Globe*, 38th Cong., 1st Sess. 1324. (1864) (remarks of Massachusetts Sen. Wilson: “When this amendment to the Constitution be consummated, the sacred rights of human nature, the hallowed family relations of husband and wife, parent and child will be protected by the guardian spirit of that law”); *Cong. Globe*, 38th Cong., 2d Sess. 193 (1865), (remarks of Iowa Rep. Kasson, explaining the Thirteenth Amendment would protect “the right of the father to his child – the parental relation”); *Cong. Globe*, 38th Cong. 1st Sess. 2990 (1864) (remarks of Illinois Rep. Ingersoll, that Thirteenth Amendment would ensure the inalienable right of the Black man “to the endearments and enjoyment of family ties’ and no white man has any right to rob him or infringe upon any of these blessings”); *see also Moore v. City of E. Cleveland*, 431 U.S. 494, 503 (1977) (“[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition[.]”).

³³ James M. McPherson, *Battle Cry of Freedom: The Civil War Era* 37 (1988); *see also* Harriet Beecher Stowe, *Uncle Tom’s Cabin* 112 (1852), (“The most dreadful part of slavery, to my mind, is its outrages on the feelings and affections – the separating of families, for example.”); *see also Declaration of*

passionate commitment to the stability of family life as a badge of freedom.”

The Due Process Clause right “to establish a home and bring up children”³⁴ is a legacy of the abolitionist intention to preserve the sanctity of the family unit.

Nevertheless, the practice of legally-sanctioned family separation along racial lines continued. Following the Civil War, southern states enacted Black Codes, and later Jim Crow laws, and empowered courts to forcibly separate Black families whenever the court deemed such separation in the child’s “best interest”—a governing standard that still exists in dependency proceedings today.³⁵ Under these laws, Black children were “bound out” to work for plantations over their parents’ objections if courts “found the parents to be unfit, unmarried, or unemployed.”³⁶

In the North, social reformers of the early 19th century established charities to “rescue” children of poor European immigrants from their parents by separating them from their families, placing them in private foster homes,

the Anti-Slavery, Convention, Assembled at Philadelphia (1883), available at <https://www.loc.gov/resource/llst.052/?sp=6&st=image> (last visited April 9, 2025), (advocating for emancipation in part because of indignity that families “were ruthlessly torn asunder – the tender babe from the arms of its frantic mother”).

³⁴ *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (cleaned up).

³⁵ Roberts, *supra* note 3, at 97.

³⁶ *Id.* at 97 (internal citation omitted).

and forcing them to labor for their foster parents in exchange for their keep.³⁷

Eventually, this practice became known as the Orphan Train movement, widely recognized as the genesis of the United States' foster system.³⁸

By the early 20th century, many states had enacted government-funded welfare programs to provide aid, known as Mother's Pensions, to "deserving" husbandless mothers—primarily white, widowed, or unmarried women with children. The goal of these programs was to prevent the dissolution of fatherless (white) families through child removal, and to provide support to white women so they could stay home with their children instead of working outside the house.³⁹ Through "suitable home" rules, states structurally barred Black mothers from accessing this aid. In 1931, 96% of welfare recipients were white, while only 3% were Black.⁴⁰

³⁷ Alan J. Dettlaff, *Confronting the Racist Legacy of the American Child Welfare System: The Case for Abolition* 39-40 (2023).

³⁸ *Id.* at 39-41.

³⁹ John E. Hansan, *Widows Pensions: An Introduction*, VCU Libraries Social Welfare History Project (January 20, 2011) <https://socialwelfare.library.vcu.edu/programs/widows-pensions-an-introduction/>, (President Theodore Roosevelt stated in a special message to Congress, "Surely poverty alone should not disrupt the home. . . . The widowed or deserted mother, if a good woman, willing to work and to do her best, should ordinarily be helped in such fashion as will enable her to bring up her children herself in their natural home. Children from unfit homes, and children who have no homes, who must be cared for by charitable agencies, should, so far as practicable, be cared for in families.").

⁴⁰ Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* 175-176 (2001).

While the initial purpose of these welfare programs was to prevent family separation, as Black families began accessing welfare benefits en masse due to the Great Migration and the gains of the Civil Rights Movement, child welfare policy became more punitive and focused on surveillance and child removal. In 1961, the federal government promulgated the “Flemming Rule” which mandated that states could not deny federal funds to families due to “unsuitability.”⁴¹ Rather, states were required to either provide services to make the home suitable, or remove children from “unsuitable” homes, even though “unsuitability” did not require evidence of harm or risk of harm to a child.⁴² The Flemming Rule in turn incentivized family separation by providing federal reimbursement to assist in the costs of removing children to the foster system.⁴³ The results were devastating to Black families. By 1961, 25 percent of children in the foster system were Black, even though Black children comprised only 10 percent of the general population.⁴⁴ Of Black children in the foster system, 81 percent were there solely because their mother was unmarried or they were living in homes deemed unsuitable.⁴⁵

⁴¹ Dettlaff, *supra* note 37 at 60-61.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 62.

⁴⁵ *Id.*

As welfare assistance increasingly went toward Black recipients, welfare policy shifted even farther from assistance toward surveillance and separation. In 1974, Congress incentivized family separation by conditioning allocation of federal funds on states' placement of children to the foster system.⁴⁶ Thereafter, in the 1990s, new laws were enacted which prioritized involuntary termination of parental rights and adoption over family reunification by accelerating the timeline for termination of parental rights, and providing federal bonuses to states that increase the number of adoptions, without comparable funding to increase the number of family reunifications.⁴⁷ By 2000, 36 percent of children in the foster system were Black, despite comprising only 15 percent of the child population, a rate more than double their proportion of the population.⁴⁸

⁴⁶ See generally 42 U.S.C. §§ 5101–5106h (West); and see Miriam Mack, *The White Supremacy Hydra: How The Family First Prevention Services Act Reifies Pathology, Control, And Punishment In The Family Regulation System*, 11 COLUM. J. RACE & L. 767, 783-84, 803-804 (2021).

⁴⁷ See Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997) (absent certain exceptions, ASFA mandates, “in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months ... the State shall file a petition to terminate the parental rights of the Child’s parents ... and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption).

⁴⁸ Dorothy Roberts and Lisa Sangui, *Black Families Matter: How the Child Welfare System Punishes Poor Families of Color*, The Appeal (Mar. 26, 2018), available at www.theappeal.org/black-families-matter-how-the-child-welfare-system-punishes-poor-families-of-color-33ad20e2882e/

Thus, as the infrastructure and funding for family surveillance and separation expanded, funding for direct services to poor families shrank: because Black families experienced poverty at higher rates, these policy reforms ensured that families of color have disproportionately borne the brunt of these punitive policies.⁴⁹

Maryland's CINA system of today is an outgrowth of this history—one of disregard for the integrity of poor families and families of color—and continues to be structured accordingly. And it is these families—poor parents and parents of color—who will bear the brunt of the harm should the Appellate Court's interpretation of the Safe Haven law stand.

CONCLUSION

Accusing parents using Safe Haven of child neglect undermines the intent of the Safe Haven program by bringing it into the broader, punitive family policing system. Exempting CINA from Safe Haven's promise of civil immunity not only contravenes the law's guarantee that a mother surrendering her newborn will be immune from civil liability and criminal prosecution, but also undermines the goals and purpose of the law—to “[p]rovide for safe abandonment of a newborn” where the mother or responsible adult is unable to care for the newborn. M.D. Code Regs.

⁴⁹ *Id.*; Roberts, *supra* note 3, at 120.

07.02.27.01 (B)(1) (2018). Because of the aforementioned harms of and racial and class disparities produced by Maryland's family policing system, the Court should clarify that those who make the difficult choice to rely on the Safe Haven law, should not, consistent with the purpose of the law, face prosecution under CINA. Accordingly, *Amici* urge this Court to overturn the Appellate Court's ruling, and clarify that Safe Haven includes immunity from civil liability under CINA.

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CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH 8-112

1. This brief contains 5,409 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
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I hereby certify that, pursuant to Rule 20-201(g), on January 12, 2026, the foregoing brief was served on all counsel of record via MDEC, and that, within one business day, two paper copies will be sent by Alexa Richardson via first-class mail, postage prepaid, to:

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APPENDIX

INTEREST OF AMICI

Amici Curiae, the American Civil Liberties Union (“ACLU”), the ACLU of Maryland, Angela Olivia Burton, Baltimore Families for Justice, Blessings in Transformation, the Center for Constitutional Rights, the City University of New York (CUNY) School of Law Family Defense Clinic, Civil Rights Corps, Dorothy Roberts, Elephant Circle, InTuned Consulting, LLC, JMACforFamilies, Joyce McMillan, K. Adeniyi Law, APC, Legal Services for Prisoners with Children, Mining for Gold, the MJCF: Coalition, Movement for Family Power, the National Center for Youth Law, Operation Stop CPS, Rise, the Sayra and Neil Meyerhoff Center for Families, Children and the Courts (“CFCC”), South East Family Freedom Alliance, UpEND, The Bronx Defenders, and The University of Baltimore School of Law Family Law Clinic are civil rights organizations and organizations advocating for families impacted by the child welfare system—what families subject to it often call the family policing system—that witness and experience the harms that this system inflicts on poor families and families of color. Entanglement in the family policing system can have long lasting consequences and harms; interpreting Safe Haven laws such that the program becomes yet another pathway into the family policing system will hurt, not help families.

Amici write to highlight for the Court the harms associated with a CINA finding, and to underscore that permitting the Appellate decision to stand will predominantly and negatively impact poor families and families of color. Furthermore, the Appellate Court's interpretation of the Safe Haven law will discourage use of the program due to fear of the consequences of a CINA prosecution, thus undermining the intent of the law.

A fuller description of *amici*'s identity and interests are included below:

The American Civil Liberties Union is a nationwide, non-profit, non-partisan organization with nearly two million members and supporters dedicated to the preservation and defense of civil liberties. **The ACLU of Maryland** is the state affiliate of the national ACLU which serves over 40,000 members statewide, many of whom may be impacted by the family policing system. Both organizations (together, the "ACLU") have long been committed to protecting individuals' rights to make their own decisions to shape their lives and intimate relationships, to protect against government overreach into the family and home, and to ensure federal and state laws are interpreted and applied in conformity with constitutional guarantees. Defending the fundamental right of parents to the care and custody of their children is a matter of substantial interest to the ACLU. Towards this end, the ACLU frequently has appeared as amici in several cases involving unconstitutional interference with this right and discrimination against

parents in the family policing system. See e.g In re Child of Barni A., 2024 ME 16, 314 A.3d 148, as revised (Mar. 7, 2024); Matter of K.Y.Z., No. 68, 2025 WL 2955728 (N.Y. Oct. 21, 2025). Accordingly, the ACLU is well positioned to assist the Court in this matter.

Angela Burton is a community lawyer, scholar, and public servant with over thirty years of experience advocating for the rights of parents and children in the family policing system, commonly known as the child welfare system. Her commitment to social justice is driven by a deep understanding of the systemic inequities faced by vulnerable families. She has served in the faculty at New York University School of Law, Syracuse University College of Law, and The City of New York (CUNY) School of Law. She has consistently fought to protect the human, constitutional, and civil rights of marginalized individuals, ensuring their voices are heard. Her recent publications include How judges can use their discretion to combat anti-black racism in the United States family policing system, Family Court Review (2023), Liberate the Black Family from the Family Policing System: A Reparations Perspective on Ending Anti-Black Racism in “Child Welfare” Family Integrity and Justice Quarterly (2022), and Toward Community Control of Child Welfare Funding: Repeal the Child Abuse Prevention and Treatment Act and Delink Child Protection from Family Well-Being, Columbia Journal of Race and Law (2021).

Baltimore Families for Justice (BFJ), organized in 2025, is a group of parents committed to building a city and a world where all families have what they need to thrive. BFJ has engaged in community advocacy, educational events, and direct actions, including the May Day Family Feeder March and the Families Fast for Gaza week of action in Baltimore. BFJ also seeks opportunities to support other organizing efforts around the city that support and uplift families' rights to flourish and to stay together.

Blessings in Transformation is a community-based organization led by directly impacted families and children, committed to keeping families safe, strong, and together. We provide advocacy, legal education, and direct support to prevent unnecessary family separation and to uplift families disproportionately targeted by family policing, particularly poor families and families of color. We support this amicus brief because parents who seek help through laws like Safe Haven must be met with compassion, not prosecution. Allowing courts to interpret these protections as grounds for neglect only deepens family harm, undermines trust in systems meant to provide safety, and disproportionately endangers marginalized families.

Founded in 1966, the **Center for Constitutional Rights** ("CCR") is a national, nonprofit legal, educational, and advocacy organization dedicated to protecting and advancing rights guaranteed by the United States Constitution and international law. Advocating against punitive treatment of

marginalized families has been central to much of CCR's decades-long legal work. CCR filed an amicus in *K.W. v. The City of New York*, detailing the racialized history and discriminatory impacts of the family policing system on families of color. CCR has challenged government punishment at all levels of government in cases such as *Floyd, et al. v. City of New York, et al.*, which successfully challenged racially discriminatory stop and frisk practices by the New York City Police Department. Additionally, CCR has used open records litigation to support nationally known family rights advocates.

The **CUNY Law Family Defense Clinic** is a project of Main Street Legal Services, the clinical arm of the City University of New York School of Law, whose mission is to train outstanding social justice lawyers, especially from underrepresented communities. The Family Defense Clinic represents parents and families at every phase of child welfare proceedings, and works to secure the fundamental rights of families facing surveillance, regulation, and separation by the state. Through direct advocacy, movement support, and systemic advocacy, the Family Defense Clinic seeks to ensure families in New York thrive without harmful state intervention.

Civil Rights Corps is a national civil rights non-profit legal organization dedicated to challenging systemic injustice in the American legal system. It works with individuals directly impacted by the legal system, their families and communities, activists, organizers, judges, and government

officials to create a legal system that promotes equality and freedom. CRC has worked extensively to ensure that courts apply the appropriate level of scrutiny—strict scrutiny—as a prerequisite to the deprivation of a fundamental liberty interest.

Dorothy Roberts is a George A. Weiss University Professor of Law & Sociology at the University of Pennsylvania, with joint appointments in the Departments of Africana Studies and Sociology and the Law School, where she is the inaugural Raymond Pace and Sadie Tanner Mossell Alexander Professor of Civil Rights. She is also Founding Director of the Penn Program on Race, Science & Society and a MacArthur Fellow. She is an expert on racial identity and reproductive oppression and has devoted her scholarship and advocacy to challenging racial inequities and injustices in U.S. institutions, including the child welfare, foster, and adoption systems. Her major books include the award-winning *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (1997); *Shattered Bonds: The Color of Child Welfare* (2001); *Fatal Invention: How Science, Politics, and Big Business Re-create Race in the Twenty-first Century* (2011); *Torn Apart: How the Child Welfare System Destroys Black Families—And How Abolition Can Build a Safer World* (2022); and *The Mixed Marriage Project: A Memoir of Love, Race, and Family* (forthcoming 2026).

Elephant Circle is a community-led birth justice nonprofit that aims to protect and support all families during the perinatal period. Its work is focused on dismantling systemic barriers to perinatal health care and eliminating surveillance and policing in the healthcare context. Its team supports parents undergoing child protective services investigations, and its parent defense program represents parents in dependency and neglect court proceedings.

InTuned Consulting LLC is a community-based consulting practice led by directly impacted people who have navigated family policing, foster care, and incarceration. We provide trauma-informed guidance, education, and practical tools to families and organizations affected by systemic harm. We support the Maryland Safe Haven amicus brief because allowing investigation or punishment of parents seeking Safe Haven protections undermines the law's intent. Interpreting the law this way puts already vulnerable families at greater risk and contradicts the principle of care over punishment.

Just Making a Change for Families (JMACforFamilies) is a non-profit led by persons impacted by family policing and all of its tentacles. Our work is to dismantle the family policing system while simultaneously investing in community support that keeps families together. We build by offering advocacy training, court support, community based resources, mental

health services, City, State and Federal legislative work. Our goal is to provide the support families need to prevent family separation by a system that disproportionately impacts Black families and families with limited resources, creating horrible outcomes for the children and generational harm. Building safe resources for vulnerable communities is how we remove systemic barriers and build racial equity.

Joyce McMillan is a thought leader, advocate, community organizer, educator, and the Founder and Executive Director of Just Making A Change for Families (JMACforFamilies). Having experienced the family policing system firsthand, she is concerned about the wellbeing of families who become entangled in the family policing system's net. Ms. McMillan supports the push for family equity, wellbeing, and family perseverance and the prevention of systems and tactics that often lead to unwarranted family separation.

K. Adeniyi Law, APC fights boldly to uphold fundamental rights, preserve sacred family bonds, and minimize the trauma caused by family surveillance and separation. We seek justice on behalf of families impacted by the CPS system and fight to preserve sacred family bonds and end trauma caused by family surveillance and separation. Although K. Adeniyi Law represents individual parents, we fight for the whole family. Our work does not end when families are successfully reunited. When families become

disentangled from the CPS system, they are seldom provided the tools and resources to heal after system-induced trauma. K. Adeniyi Law links families to resources to assist them on their healing journey. K. Adeniyi Law also educates the public concerning the harms of this system and inspires others to invest in solutions that offer true healing for families and protection for children.

Legal Services for Prisoners with Children (“LSPC”) is a nonprofit public benefit corporation with over 45 years of experience advocating to release incarcerated people, restore human and civil rights, and reunify families and communities. Guided by the vision of people in prison and of formerly incarcerated individuals working in unity with attorneys and policy advocates, LSPC seeks to transform the injustice of mass incarceration. LSPC provides legal training, legal technical assistance, and advocacy support to legal services offices throughout the state on legal and policy issues affecting incarcerated, formerly incarcerated and convicted individuals and their families.

Mining For Gold's mission is to to communally nurture freedom dreams in the ongoing movement toward racial justice and liberation by establishing necessary relationships with those most impacted by federal and state policies and practices. Our vision is to actualize a society where we

flourish without racialized oppression and carceral restrictions to re-claiming humanity.

The **MJCF:Coalition** is deeply committed to protecting Black, Indigenous, and other families of color from the harms of family policing systems that disproportionately criminalize poverty and motherhood. We strongly support Ms. C's appeal and the principle that Maryland's Safe Haven law must provide true immunity, not punishment, for parents who responsibly and courageously seek care for their newborns. If the lower court's ruling is allowed to stand, it will not only undermine the intent of the Safe Haven Act but also perpetuate a dangerous precedent that places vulnerable families—particularly poor women and women of color—at even greater risk of state surveillance and family separation. The MJCF:Coalition joins this amicus brief in support of the Petitioner.

Movement for Family Power (MFP) is a national, abolitionist movement hub and incubator, cultivating and harnessing community power to end family policing and build a world where all families can thrive. Founded in 2018, MFP shifts narratives and supports grassroots organizers and lived experts on the frontlines of dismantling the family policing system through our three-pronged approach--connection, capacity, and care. MFP advocates for family safety and well-being outside of carceral systems and believes that interpreting Maryland's Safe Haven law to allow for family

policing investigation and prosecution will further imperil already marginalized families to whom the state often responds with punishment rather than support. MFP regularly supports amicus curiae briefs and other legal briefings that challenge pervasive and ongoing threats to family integrity.

The **National Center for Youth Law (“NCYL”)** is a private, non-profit law firm that uses the law to help children and youth grow and thrive. For over 50 years, NCYL has worked to protect the rights of children, promote their healthy development, and ensure that they have the knowledge, skills, resources, agency, and decision-making power to achieve their goals. NCYL pursues both litigation and policy solutions to ensure that children and youth are safer than they are now and that they are supported in healing and thriving in families and their communities. Part of NCYL’s work focuses on children and youth in the foster system, those at risk of entry into the foster system, and their families and communities. NCYL strives to stop coercive and harmful state interventions by the family regulation system into the lives of children and secure supports in communities so that children can experience safe and supportive family and community connections.

Operation Stop CPS supports the amicus brief because we recognize how this case has far-reaching implications beyond Maryland, particularly for families in states like North Carolina, where we organize. Across the country,

we see Safe Haven laws being misinterpreted or weaponized—most often against poor families and families of color. We believe that strong legal clarification is urgently needed to prevent further harm and criminalization. We support the Petitioner in this case not because we believe the system can be perfected, but because we believe in exposing its harms and building toward its abolition.

Rise is a New York City–based organization led by parents with lived experience in the child welfare system. Rise works to strengthen families and improve child welfare policy and practice by elevating the voices of parents directly impacted by family regulation and foster care involvement. Through parent leadership development, advocacy, and public education, Rise brings grounded, experiential expertise to policy debates affecting children and families in New York.

Rise is signing on to this amicus brief because if this ruling is allowed to stand, it will not only undermine the intent of the Safe Haven Act but also places vulnerable and puts our families at even greater risk of state surveillance and family separation. Rise joins this amicus brief in support of the Petitioner to ensure that protections that safeguard both children and families are preserved.

The Sayra and Neil Meyerhoff Center for Families, Children and the Courts ("CFCC") is a law center at the University of Baltimore School

of Law. CFCC envisions communities where children and families thrive without unnecessary involvement in the legal system. CFCC is guided by the principles of social justice, anti-racism, and inclusion. CFCC signs on in its own capacity and not on behalf of the University of Baltimore School of Law, the University of Baltimore, the University System of Maryland, or the State of Maryland.

The **South East Family Freedom Alliance** is a regional movement hub addressing the harms of family policing by centering community empowerment and healing. The South East Family Freedom supports this Amicus Curiae. Maryland's Safe Haven law allows struggling parents like Ms. C to make an impossible choice in the interests of their children's wellbeing with the knowledge that they will be immune from criminal and civil liability. Finding that Ms. C neglected her children defies the guarantee of civil immunity and the framework of the Safe Haven law, in favor of a precedent that punishes and endangers families, and disproportionately low-income families and families of color.

The **UpEND Movement** works to end the harmful family policing system and build real supports for families. We are signing on to this amicus brief because Ms. C's case shows how families, especially Black and Brown families, and families experiencing poverty, are punished even when they seek help. Maryland's Safe Haven law was created to give parents a safe

option without fear of punishment, but the lower court's decision does the opposite and puts families at greater risk. We believe the Court should make clear that Safe Haven protections include freedom from family policing charges, so parents can trust these laws and children can be cared for without families fearing separation or surveillance

The Bronx Defenders is a nonprofit provider of innovative, holistic, client-centered criminal defense, family defense, immigration and civil legal services, and social work support to low-income people in the Bronx. The attorneys, social workers, and parent advocates in BXD's Family Defense Practice represent parents and caregivers in proceedings alleging child abuse or neglect and termination of parental rights proceedings in New York City Family Court, Bronx County. BXD has represented approximately 15,000 parents and caregivers and represents an additional 1,200 parents each year.

The University of Baltimore School of Law Family Law Clinic provides pro bono representation by trained student attorneys to clients in family law litigation and other matters. Student attorneys also engage in community-based projects regarding family law and reproductive justice matters. The Family Law Clinic is focused on client-centered and justice forward representation in all matters.