

CASE NO. 15-56434

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JENNY LISETTE FLORES, ET AL.,
Plaintiffs-Appellees,

v.

LORETTA E. LYNCH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.,
Defendants-Appellants.

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

**BRIEF FOR THE AMERICAN ACADEMY OF CHILD AND
ADOLESCENT PSYCHIATRY AND THE NATIONAL ASSOCIATION OF
SOCIAL WORKERS AS *AMICI CURIAE* SUPPORTING APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rules 26.1 and 29(c)(1) of the Federal Rules of Appellate Procedure, *Amici Curiae* state as follows:

The American Academy of Child and Adolescent Psychiatry has no parent company, and no publicly held company owns more than 10% of its stock.

The National Association of Social Workers has no parent company, and no publicly held company owns more than 10% of its stock.

TABLE OF CONTENTS

	Page
CORPORATE DISCLOSURE STATEMENT	i
INTEREST OF THE <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
A. Detention of Families in ICE Immigration Detention Centers Poses a Severe Risk to Children’s Mental Health.....	4
1. Mothers and Children at Berks Reported Detention as Harmful to Children’s Mental Health.....	5
2. Families at Karnes Reported the Negative Effects of Detention on Their Mental Well-Being	7
B. Studies Confirm that Immigration Detention Harms Children	9
1. Asylum-Seekers Suffer in Detention	10
2. Minors Are Particularly Vulnerable to the Harms of Immigration Detention	14
3. Family Detention Poses a Special Risk to Children	20
C. The Negative Health Effects of Detention on Minors Can Be Immediate and Long-Lasting.....	24
1. Studies Show that Short-Term Immigration Detention Is Harmful to Children	24
2. Prolonged Detention Increases the Harmful Effects on Children.....	27
3. Detention Can Have Long-Lasting Harmful Effects on Minors.....	28
CONCLUSION.....	30

TABLE OF AUTHORITIES

	Page(s)
FEDERAL CASES	
<i>Bellotti v. Baird</i> , 443 U.S. 622 (1979).....	14
<i>Reno v. Flores</i> , 507 U.S. 292 (1993).....	15
RULES	
Fed. R. App. Proc. 29.....	2
OTHER AUTHORITIES	
Australian Human Rights Comm’n, <i>The Forgotten Children: National Inquiry into Children in Immigration Detention</i> , (2014), A1	passim
Israel Bronstein & Paul Montgomery, <i>Psychological Distress in Refugee Children: A Systematic Review</i> , 10 <i>Clinical Child Fam. Psychol. Rev.</i> 44, (2010), A326.....	16, 20
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Guy J. Coffey, et al., <i>The Meaning and Mental Health Consequences of Long-Term Immigration Detention for People Seeking Asylum</i> , 70 <i>Soc. Sci. & Med.</i> 2070 (2010), A426	passim
Michael Dudley et al., <i>Children and Young People in Immigration Detention</i> , 25 <i>Curr. Opin. Psychiatry</i> 285 (2012), A437.....	12, 13, 15, 21
Gary W. Evans and Pilyoung Kim, <i>Childhood Poverty, Chronic Stress, Self-Regulation, and Coping</i> , 7 <i>Child Development Perspectives</i> 1, 43-48 (2013), A446	20
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INTEREST OF THE AMICI CURIAE

The American Academy of Child and Adolescent Psychiatry (“AACAP”) and the National Association of Social Workers (“NASW”) submit this *amici curiae* brief in support of Plaintiffs-Appellees. *Amici* are national organizations with expertise in the physical, mental, and/or social health and well-being of children.

Founded in 1953, **AACAP** is comprised of approximately 9,000 child and adolescent psychiatrists. AACAP partners with its members in advocacy efforts at the federal and state levels to improve policies and services for children and adolescents with mental illness. AACAP works to inform policymakers and administrators about issues affecting child and adolescent psychiatry and children’s mental health and provides information to its members regarding pertinent legislation and regulatory activities.

Established in 1955, the **NASW** is the largest association of professional social workers in the United States with over 130,000 members in 55 chapters. The California Chapter of NASW has 10,500 members. NASW develops policy statements on issues of importance to the social work profession. Consistent with those statements, NASW supports efforts to ensure that children of immigrant families, regardless of citizenship status, are subject to the same societal protection as children from nonimmigrant families. As social work practitioners and

proponents of human rights, NASW advocates for the protection of vulnerable people and condemns policies, practices, and attitudes of bigotry, intolerance, and hate that put human rights in jeopardy. NASW also supports the U.S. government in its methods of providing homeland security and combating terrorism that are consistent with human rights, values and ethics. The struggle to protect human rights remains a vital priority for the social work profession in the 21st century.

Amici file this brief out of deep concern that the Government's existing policy and practices of family detention inflict serious harm on asylum-seeking children. While Appellees have consented to *Amici*'s submission of this brief, the Appellants take no position on the filing of the brief.¹

SUMMARY OF ARGUMENT

Immigration detention poses a severe risk to the mental health of minors, whether they are detained with or without their parents. In recent visits to ICE family detention centers, Dr. Alan Shapiro and Dr. Luis Zayas found that detained children suffered serious and potentially permanent harm to their mental health after only brief periods of detention. Research confirms that the very fact of

¹ Pursuant to Federal Rule of Appellate Procedure 29, *Amici Curiae* affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici*, their members, or their counsel made a monetary contribution to its preparation or submission.

detention, even absent abuse or neglect, often leads to clinically significant levels of mental health disorder in detained immigrants. Detention exacerbates existing health problems, re-traumatizes asylum-seekers fleeing traumatic experiences, and inflicts new psychological damage. Minors are especially sensitive to these harms and have been found to frequently develop mental health problems and developmental disorders in confinement. They may exhibit symptoms of these disorders after even brief periods of detention, and the harmful effects of detention can last well past the term of confinement, impacting children's long-term mental and social development. This is true whether they are detained alone or with family members. Indeed, children face a similar risk of harm when they are confined with a powerless, despairing parent.

By requiring that the Government release "all minors" as expeditiously as possible, or, where release is not possible, hold children in the least restrictive setting possible, the *Flores* Settlement Agreement ("Agreement") limits the harm that federal immigration detention causes to children. *Amici* urge this Court to affirm the District Court's decision that the Agreement applies to all minors, not just unaccompanied children, and should not be amended, because it is consistent with well-established medical research demonstrating the risks of detention to all children.

ARGUMENT

A. Detention of Families in ICE Immigration Detention Centers Poses a Severe Risk to Children’s Mental Health

Recent evaluations of children and parents in Immigration and Customs Enforcement (“ICE”) family detention centers illustrate the severe damage that immigration detention inflicts on children. ICE family detention centers are both secure and unlicensed, meaning that ingress and egress are controlled “via jail-like security procedures,”² and no qualified and independent agency has verified that the centers meet minimal safety requirements for children.³

Minors detained for only a few weeks in these facilities exhibited numerous symptoms of mental health disorder, including suicidal ideation. Medical professionals who met with families in ICE detention concluded that family detention cannot be implemented in a manner that does not jeopardize the mental well-being of children.⁴

² Supplemental Record Excerpts (“SRE”) 12 (Declaration of Carol Donohoe (“Donohoe Decl.”) ¶ 6).

³ SRE 93-94 (Declaration of Genevra Gilden Berger ¶ 28).

⁴ Declaration of Alan Shapiro, MD, Dkt. No. 187-7, Case No. 2:85-cv-04544-DMG-AGR, filed on Aug. 14, 2015 (“Shapiro Decl.”) ¶ 16; SRE 81-82 (Declaration of Luis H. Zayas (“Zayas Decl.”) ¶¶ 36-37).

1. Mothers and Children at Berks Reported Detention as Harmful to Children’s Mental Health

In August 2015, sixteen families at Berks County Residential Center in Leesport, Pennsylvania (“Berks”), described how brief periods in detention—ranging from two to six weeks—had harmed their mental health. These families related their concerns to Dr. Alan Shapiro, a pediatrician who has been providing care to under-served children, including newly arrived immigrants, for over twenty-five years.⁵ The average stay of the families who met with Dr. Shapiro was approximately one month, with a range of two to six weeks.⁶

“Notwithstanding this range,” Dr. Shapiro “observed significant stress and symptoms of mental health conditions” among the parents and children.⁷ After only a few weeks in detention, children at Berks exhibited “symptoms of behavioral regression . . . , oppositional-defiant disorder, depression, anxiety, and increased aggression.”⁸ Dr. Shapiro observed that their parents also exhibited “key symptoms of depression,” including feelings of despair in connection with their and their children’s future.⁹ The parents were especially frustrated and concerned

⁵ Dkt. No. 187-7 (Shapiro Decl.) ¶¶ 1, 7.

⁶ *Id.* ¶ 6, 15.

⁷ *Id.* ¶ 15.

⁸ *Id.* ¶¶ 7-8, 14.

⁹ *Id.* ¶¶ 13, 14.

by the changes they observed in their children since their placement in the detention center.¹⁰

In Dr. Shapiro’s opinion, ICE family detention “leads to isolation, helplessness, hopelessness, and serious long-term medical and mental health consequences” for children.¹¹ One mother described the effects of detention on her thirteen-year-old daughter after only fifteen days of confinement: the girl began acting out, withdrew from most activities, and refused to talk to her mother.¹² The daughter stated that “she did not understand why her mother could not help them get out of the detention center.”¹³

Other parents agreed that detention had negatively impacted their children’s mental health.¹⁴ They reported to Dr. Shapiro that their children had begun fighting, acting out, refusing to eat, and having trouble sleeping.¹⁵ One especially distraught mother related that her son was threatening suicide.¹⁶ After interviewing

¹⁰ *Id.* ¶ 14.

¹¹ *Id.* ¶ 16.

¹² *Id.* ¶ 14.

¹³ *Id.*

¹⁴ *Id.* ¶¶ 8, 14.

¹⁵ *Id.*

¹⁶ *Id.* ¶ 10.

these families, Dr. Shapiro concluded that ICE family detention “places both the child and parents’ short-term and long-term well-being at risk.”¹⁷

2. Families at Karnes Reported the Negative Effects of Detention on Their Mental Well-Being

Families detained at Karnes County Residential Center in Karnes City, Texas (“Karnes”), reported the development of similar mental health problems. In August 2014, ten families detained at Karnes met with Dr. Luis Zayas, a psychologist who has been a practicing clinician in child and adolescent mental health for over 40 years.¹⁸ These families had been detained at Karnes for “a relatively limited period of time”—about two to three weeks.¹⁹ But Dr. Zayas already saw signs that detention may have “serious and long-lasting impacts on the psychological health and well-being of the families.”²⁰ Dr. Zayas found that mothers were depressed, anxious, and constantly concerned about their children’s well-being.²¹ At least three mothers expressed distress at the thought “that they brought their children from one nightmarish situation to another.”²²

¹⁷ *Id.* ¶ 15.

¹⁸ SRE 67, 69, 72 (Zayas Decl. ¶¶ 1, 7, 14).

¹⁹ SRE 71 (Zayas Decl. ¶ 10).

²⁰ *Id.*

²¹ SRE 72, 75-76 (Zayas Decl. ¶¶ 10, 22, 23, 26).

²² SRE 75 (Zayas Decl. ¶ 23).

Detained children displayed symptoms of separation anxiety, developmental regression, and major psychiatric disorders.²³ One previously weaned infant reverted to breastfeeding, while several young children feared leaving their mother's side and reported nightmares.²⁴ "At least three of the teenagers . . . showed signs of major depressive disorders," including one teen who clearly displayed the full range of symptoms of depression.²⁵ That teenager told Dr. Zayas "that he would rather take his life than to return to his hometown and face the gangs that had tried to recruit him."²⁶

Dr. Zayas concluded that ICE family detention "inflict[s] emotional and other harms on these families, particularly the children."²⁷ He noted that all the families he interviewed had fled severe violence in their home countries and experienced serious trauma prior to their arrival, and that their re-traumatization in immigration detention exacerbated confinement's already harmful effects.²⁸

Dr. Zayas also expressed concern that the stress imposed on children by the detention environment could compromise their brain development and

²³ SRE 71, 75 (Zayas Decl. ¶ 10, 22).

²⁴ SRE 75 (Zayas Decl. ¶ 24).

²⁵ SRE 71-72, 75-76 (Zayas Decl. ¶¶ 10, 15, 22, 23, 24, 25, 26).

²⁶ SRE 76 (Zayas Decl. ¶ 25).

²⁷ SRE 81 (Zayas Decl. ¶ 36).

²⁸ SRE 71, 73 (Zayas Decl. ¶¶ 10, 19).

“contribute[] to the development of chronic illnesses.”²⁹ He determined that children subjected to ICE family detention “are experiencing *trauma upon trauma upon trauma*,” live “in a facility in which they have no sense of their future,” and “witness[] their mothers’ vulnerability and helplessness.”³⁰ Dr. Zayas left Karnes convinced that “even a few weeks of detention has exacerbated the trauma experienced by these families and added a new layer of hardship that, with respect to the children in particular, may be irreversible.”³¹

B. Studies Confirm that Immigration Detention Harms Children

Numerous studies³² conducted around the world confirm what Dr. Shapiro and Dr. Zayas witnessed at ICE family detention centers: children suffer in immigration detention.³³ Some suffer from trauma they endured before or during

²⁹ SRE 76-77, 79-80 (Zayas Decl. ¶¶ 27, 31-32).

³⁰ SRE 71 (Zayas Decl. ¶ 35) (emphasis in original).

³¹ SRE 81-82 (Zayas Decl. ¶ 37).

³² Articles, publications, and other secondary authorities *Amici Curiae* cited in this brief are included as exhibits (Ex. __) to the Appendix, filed concurrently herewith.

³³ See, e.g., Ex. 1, Australian Human Rights Comm’n, *The Forgotten Children: National Inquiry into Children in Immigration Detention*, A16 (2014) (hereinafter “*The Forgotten Children*”), https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf; Ex. 3, Jon Burnett, et al., *State Sponsored Cruelty, Children in Immigration Detention*, Med. Justice (2010), A341, <http://www.statewatch.org/news/2010/sep/uk-medical-justice-state-sponsored-cruelty-report.pdf>; see also Ex. 14, Masao Ichikawa, et al., *Effect of Post-Migration Detention on Mental Health Among Afghan Asylum Seekers in Japan*, 40 *Austl. & N.Z.J. Psychiatry* 341, A1513 (2006); Ex. 16, Allen S. Keller, et al., *From Persecution to Prison: The Health Consequences of Detention for* (footnote continued)

their flight. Others suffer from abuse or neglect on the part of staff in immigration detention facilities. But immigration detention itself adds to and creates new health problems in children.³⁴

1. Asylum-Seekers Suffer in Detention

For adults and children alike, immigration detention is an exercise in “deprivation and powerlessness.”³⁵ Immigrants are often detained in secure, prison-like facilities which deprive them of their liberty and impose dependence upon them.³⁶ They have no freedom to leave, enjoy little privacy, and endure constant surveillance.³⁷ Immigration detention facilities impose a restrictive routine

Asylum Seekers, Physicians for Human Rights & The Bellevue/NYU Program for Survivors of Torture (2003), A1547, (hereinafter “*From Persecution to Prison*”), <http://physiciansforhumanrights.org/library/reports/from-persecution-to-prison.html> (describing the traumatic effects of detention on adults).

³⁴ See Ex. 18, Rachel Kronick, et al., *Asylum-Seeking Children’s Experiences of Detention in Canada: A Qualitative Study*, 85 Am. J. Orthopsychiatry 287, A1788 (2015); see also *From Persecution to Prison* at A1638-39.

³⁵ Kronick at A1788; see also Ex. 4, Guy J. Coffey, et al., *The Meaning and Mental Health Consequences of Long-Term Immigration Detention for People Seeking Asylum*, 70 Soc. Sci. & Med. 2070, A430 (2010) (detainees “spoke of an environment characterised most prominently by confinement and deprivation”).

³⁶ Coffey at A430-31; *From Persecution to Prison* at A1627-1629; Ex. 11, Craig Haney, *Conditions of Confinements for Detained Asylum Seekers Subject to Expedited Removal*, Rep. on Asylum Seekers in Expedited Removal, U.S. Comm’n on Int’l Religious Freedom 178, A517-20 (Feb. 2005), <http://www.uscirf.gov/reports-briefs/special-reports/report-asylum-seekers-in-expedited-removal>.

³⁷ Kronick at A1786; see also SRE 12 (Donohoe Decl. ¶ 6) (“[C]hildren detained at Berks are never allowed outside the grounds of the facility, except perhaps to receive medical treatment the facility is not equipped to provide internally, and to (footnote continued)

upon detainees, and tightly control their permissible activities.³⁸ At the same time, their detention is marked by the uncertainty of whether they will be deported or released, and when.³⁹ Many immigrants thus perceive their detention as “essentially punitive, regardless of what [recreational] activities might be available.”⁴⁰

Immigration detention often causes or exacerbates a host of mental health problems among detainees. Asylum-seekers are especially sensitive to the mental health risks of detention due to their high rates of prior trauma.⁴¹ Detention re-traumatizes them by evoking the traumatic experiences from which they fled,

get haircuts.”); SRE 120 (Declaration of Brittany Perkins (“Perkins Decl.”) ¶ 23) (“My client and her child complained of numerous detention conditions at the Karnes detention center. These conditions include ... lack of privacy[] [and] crowding at the facility.”).

³⁸ Kronick at A1785-86; *see also* SRE 119 (Perkins Decl. ¶ 21) (“GEO staff controlled the movements of my client and her child by, among other things, setting the meal times during which detainees may eat, setting the facility count times during which the detainees must stay in their rooms, and setting the night time lights-out time, at which time the detainees must stay in their rooms at night without lights on, and must go to sleep.”).

³⁹ *From Persecution to Prison* at A1563, A1623; Haney at A516; Ex. 19, Ann Lorek, et al., *The Mental and Physical Health Difficulties of Children Held Within a British Immigration Detention Center: A Pilot Study*, 33 *Child Abuse & Neglect* 573, A1797 (2009); *see also* Ex. 21, Signe S. Nielsen, et al., *Mental Health Among Children Seeking Asylum in Denmark—The Effect of Length of Stay and Number of Relocations: A Cross-Sectional Study*, 8 *BMC Pub. Health* 293, A1815 (2008), <http://bmcpublikealth.biomedcentral.com/articles/10.1186/1471-2458-8-293>.

⁴⁰ Coffey at A430.

⁴¹ Kronick at A1784-85, A1788.

which can exacerbate existing disorders and cause new ones.⁴² Yet ICE continues to detain immigrant families despite the risk of retraumatization and despite the fact that, by the Government's own admission, nearly 87 percent of families who assert a credible fear of prosecution receive positive fear findings.⁴³

Detained immigrants commonly exhibit signs of anxiety, depression, and post-traumatic stress disorder ("PTSD"). A study of 70 detained adult asylum-seekers in the United States found that 90 percent exhibited symptoms of anxiety, depression, or PTSD, though only 58 percent reported having poor psychological health prior to their detention. Of the symptomatic individuals, 87 percent reported that their symptoms had emerged or worsened during their detention.⁴⁴ Other, larger studies have confirmed those results: many immigrants and refugees, including those with no mental health problems prior to confinement, exhibit signs of depression, anxiety, or PTSD during and even after their detention.⁴⁵ They

⁴² Ex. 5, Michael Dudley et al., *Children and Young People in Immigration Detention*, 25 *Curr. Opin. Psychiatry* 285, A440 (2012); *From Persecution to Prison* at A1624-27; Haney at A522; Ex. 13, Human Rights and Equal Opportunity Comm'n, *A Last Resort? National Inquiry into Children in Immigration Detention* A967 (Apr. 2004) (hereinafter "*Last Resort*"); Lorek at A1800 (asylum-seekers found that detention "remind[ed] them of past traumatic events which they had suffered in their home country").

⁴³ See SRE 177 (Declaration of John L. Lafferty ¶8).

⁴⁴ *From Persecution to Prison* at A1613, A1619.

⁴⁵ Burnett at A350 (studying 141 detained children); *The Forgotten Children* at A15, A62-70 (surveying 1,129 detainees of all ages and conducting mental health (footnote continued)

report a slew of symptoms of mental health disorder, including intense emotional distress⁴⁶ and psychosomatic health problems, such as musculoskeletal pain, gastrointestinal distress, and headaches.⁴⁷ Moreover, studies consistently show elevated levels of suicidal ideation among imprisoned asylum-seekers.⁴⁸ And with

assessments of 243 children detainees); Ex. 9, Janette Green & Kathy Eagar, *The Health of People in Australian Immigration Detention Centres*, 192 MJA 65, A487-88 (2010) (sampling 720 of 7375 detainee medical records); Ex. 23, Zachary Steel, et al., *Impact of Immigration Detention and Temporary Protection on the Mental Health of Refugees*, 188 Brit. J. Psychiatry 58, A1830 at fig. 2 (2006) (surveying 241 refugees, including 154 former detainees).

⁴⁶ Detainees suffering from anxiety often feel fearful, nervous shaky, or restless. Those with depression feel lonely, sad, or have difficulty sleeping. And those with PTSD may involuntarily remember prior traumatic events, strain to avoid recalling those events, or experience recurring nightmares. *See, e.g., From Persecution to Prison* at A1613.

⁴⁷ *From Persecution to Prison* at A1561, A1565, A1643.

⁴⁸ Coffey at A434 (5 of 17 detained refugees reported suicidal ideation); Dudley at A439; *From Persecution to Prison* at A1563, A1619 (18 of 70 detained adults had suicidal ideation, and 2 attempted suicide); Ex. 15, Int'l Detention Coalition, *Immigration Detention Submission to the Special Rapporteur on the Human Rights of Migrants*, at A1528 (Feb. 3, 2012) (hereinafter "IDC Submission"), <http://idcoalition.org/wp-content/uploads/2012/02/IDC-Report-to-SRHRM.pdf> (last visited Dec. 22, 2015) (25% of detained adult study subjects reported suicidal ideation); Ex. 20, Sarah Mares & Jon Jureidini, *Psychiatric Assessment of Children and Families in Immigration Detention—Clinical, Administrative and Ethical Issues*, 28 Austl. & N.Z.J. Pub. Health 520, A1808-09 (2004) (5 of 16 detained adults and 8 of 10 children self-harmed); Ex. 24, Zachary Steel, et al., *Psychiatric Status of Asylum Seeker Families Held for a Protracted Period in a Remote Detention Centre in Australia*, 28 Austl. & N.Z.J. Pub. Health 527, A1840-41 (2004) (5 of 14 detained parents and 5 of 20 children self-harmed; 13 of 14 parents and 11 of 20 children reported suicidal ideation).

suicidal ideation comes suicide attempts—and successes.⁴⁹

While many asylum-seekers have traumatic pasts and face uncertain futures, studies show that detention is an additional and substantial trauma that poses a serious risk of harm to them. The fact of detention alone increases the number and severity of detainees' mental health issues.⁵⁰

2. Minors Are Particularly Vulnerable to the Harms of Immigration Detention

Immigration detention poses a particular risk to minors. A detention facility cannot meet children's basic needs in a time of crucial physical, mental, and social development. As the law recognizes, children possess a "peculiar vulnerability" not seen in adults. *Bellotti v. Baird*, 443 U.S. 622, 634 (1979) (plurality opinion). They require a nurturing environment to promote healthy emotional and cognitive

⁴⁹ *From Persecution to Prison* at A1563; Ex. 22, *SIEC Alert #72: Suicide and Self-Harm Among Refugees and Asylum Seekers* (Jan. 2010), A1824, Ctr. for Suicide Prevention, https://www.suicideinfo.ca/LinkClick.aspx?fileticket=UH_9zd558Rg%3D&tabid=538 (last visited Dec. 22, 2015) (suicide rate in United Kingdom immigration detention facilities was 112/100,000 between 1997 and 2005).

⁵⁰ *See generally* Ichikawa, A1510 ("Post-migration detention was significantly related to higher symptom scores for all the mental disorders. ... We found that post-migration detention was associated with worsened mental health status ... [by] comparing the detained and non-detained asylum seekers."); *see also* Ex. 17, Allen S. Keller, et al., *Mental Health of Detained Asylum Seekers*, 362 *Lancet* 1721, A1780 (2003) ("Participants who had been released had marked reductions in all psychological symptoms, but those still detained were more distressed than at baseline."); Steel (2006) at A1830, A1832 ("These effects [of detention] were independent of other established predictors of psychiatric morbidity in refugees.").

development, and they are extremely sensitive to the effects of stress. But detention instead provides them with an environment of overwhelming stress inimical to their well-being.

The immigration detention environment harms a child's mental health.⁵¹ Immigrant children in ICE detention facilities are confined in secure, unlicensed facilities and deprived of their freedom of movement. Fleeing trauma at home, only to encounter further trauma in the United States, these children are "disoriented, confused, and frightened by the detention setting."⁵² Detained immigrant children feel helplessness and fear in an environment where they are pervasively under-stimulated and constantly surveilled.⁵³ Demonstrating compassion one moment while imposing restrictions and rules the next, facility staff "unpredictably oscillat[e] between warmth and a cold-rejecting stance."⁵⁴ Often, detained children do not understand why they are being detained or how

⁵¹ Burnett at A350, A383; Dudley at A440; *The Forgotten Children* at A16; Kronick at A1788; Lorek at A1800-01; *see also Reno v. Flores*, 507 U.S. 292, 331 (1993) (Stevens, J., dissenting) ("[T]he Agency... made no comment at all on the uniform body of professional opinion that recognizes the harmful consequences of the detention of juveniles.").

⁵² Lorek at A1797.

⁵³ Coffey at A430; Kronick at A1785-86, A1788; Mares & Jureidini at A1809.

⁵⁴ Kronick at A1788.

long their detention might last.⁵⁵ This confusing and hostile environment is extremely stressful for children, especially those who have recently fled traumatic circumstances.⁵⁶ Research demonstrates that post-migratory stressors such as detention increase rates of PTSD and depression in immigrant children.⁵⁷ Even when detention does not threaten a child's physical integrity, it is "an experience of deprivation that shatters children's sense of safety and emotional well-being."⁵⁸

As with adults, the stress of immigration detention leads to the development of extreme anxiety, depression, and PTSD in minors.⁵⁹ Many children grow hopeless, unable to understand why they are in "prison" or when they might be released.⁶⁰ Staff conducting mental health assessments of 243 refugee children

⁵⁵ Lorek at A1797; Dkt. No. 187-7 (Shapiro Decl.) ¶¶ 14-15; SRE 81 (Zayas Decl. ¶ 35).

⁵⁶ SRE 71 (Zayas Decl. ¶ 10).

⁵⁷ Ex. 2, Israel Bronstein & Paul Montgomery, *Psychological Distress in Refugee Children: A Systematic Review*, 10 *Clinical Child Fam. Psychol. Rev.* 44, A333-34 (2010); Ex. 7, Mina Fazel, et al., *Mental Health of Displaced and Refugee Children Resettled in High-Income Countries: Risk and Protective Factors*, 379 *Lancet* 266, A458 (2012); Ex. 12, Ellen Heptinstall, et al., *PTSD and Depression in Refugee Children*, 13 *Eur. Child and Adolesc. Psychiatry* 373, A562-64 (2004).

⁵⁸ Kronick at A1788-89.

⁵⁹ Bronstein & Montgomery at A327-28, A333; Burnett at A383; *The Forgotten Children* at A61-63; Kronick at A1788; Lorek at A1797-98; Dkt. No. 187-7 (Shapiro Decl.) ¶ 8; SRE 71, 75-76 (Zayas Decl. ¶ 10, 24-25).

⁶⁰ *The Forgotten Children* at A71, A109 ("Our son says that he feels that we are robbers, but we are not robbers. He always talks about jail and punishment."); Kronick at A1786-87; Lorek at A1800; Dkt. No. 187-7 (Shapiro Decl.) ¶ 14.

detained in Australia found that 34 percent had disorders “comparable in seriousness to children referred to hospital-based ... services for psychiatric treatment”—as opposed to less than two percent of children in the general population.⁶¹ In a study of 141 children in immigration detention in the United Kingdom, 74 children (52 percent) reported psychological harm from their detention, and 92 children (65 percent) reported physical health problems that were either caused or exacerbated by their confinement.⁶² Like adults in immigration detention, children reported psychosomatic health symptoms such as abdominal pains and headaches.⁶³ They also had trouble sleeping, experienced loss of appetite, felt nervous or sad, and involuntarily recalled past traumatic events.⁶⁴ Most severely, the detention environment that leads adults to consider suicide can have the same effect on minors, who have been found to engage in suicidal ideation, self-harm, and even suicide attempts.⁶⁵

⁶¹ *The Forgotten Children* at A62.

⁶² Burnett at A383, A388-89.

⁶³ Lorek at A1798-1800.

⁶⁴ Kronick at A1787 (sleep disturbance and loss of appetite); Lorek at A1798 (loss of appetite), A1800 (depression, sleep issues, etc.); Dkt. No. 187-7 (Shapiro Decl.) ¶ 8 (refusal to eat, depression, anxiety); SRE 75-76 (Zayas Decl. ¶ 24 (nightmares), ¶ 25 (major depression)); *see also* Burnett at A383, A389; *The Forgotten Children* at A142.

⁶⁵ Burnett at A385-86 (at least 3 of 141 children attempted suicide); *The Forgotten Children* at A65-66, A142-43 (128 detained children self-harmed during a 15-month period); Mares & Jureidini at A1809 (8 of 10 children self-harmed); Steel (footnote continued)

Immigration detention can also cause regression in minors' emotional and social development, and may result in permanent developmental disability. Studies have found that children in immigration detention regularly display signs of social and developmental regression.⁶⁶ Young children show signs of separation anxiety and revert to infantile behavior, including bedwetting, requiring diapers, thumb sucking, and even selective mutism.⁶⁷ Researchers found that nearly all preschoolers in Australian detention facilities “experience delays in one or more areas of development (learning, play, social skills, emotional regulation, cognition, physical development).”⁶⁸ Immigration detention has a similarly negative effect on the social and emotional maturation of both grade-schoolers and teenagers.⁶⁹ Older children may exhibit greater aggression and oppositionality—or grow quiet and

(2004) at A1841, A1843 (5 of 20 children self-harmed; 11 of 20 children expressed suicidal ideation); *see also Last Resort* at A987-93; SRE 75-76 (Zayas Decl. ¶¶ 24-25).

⁶⁶ Burnett at A383-84; *The Forgotten Children* at A119; *Last Resort* at A975-82, A985-87; Lorek at A1799; Shapiro Decl. ¶ 8; SRE 71, 75 (Zayas Decl. ¶¶ 10, 24).

⁶⁷ Burnett at A383; Kronick at A1787; Lorek at A1799-1800; SRE 71, 75 (Zayas Decl. ¶¶ 10, 22, 24).

⁶⁸ *The Forgotten Children* at A119.

⁶⁹ *Id.* at A137, A151.

withdrawn.⁷⁰ And children of all ages, fearful of what might happen next, begin to cling to their parents' side.⁷¹

Detention especially harms minors because of the negative effect stress has on cognitive development. “Adverse childhood experiences, such as trauma and detention, have detrimental effects on children’s brain growth and neural development.”⁷² Overexposure to certain kinds of adversity can result in a “toxic stress response”—the prolonged activation of stress response systems in the body and brain.⁷³ The “ongoing stress, despair, and uncertainty of detention” can easily provoke such a response.⁷⁴ These responses “can disrupt the development of brain architecture and other organ systems, and increase the risk for stress-related disease and cognitive impairment, well into the adult years.”⁷⁵ Toxic stress is cumulative—the more often the toxic stress response occurs, the greater the

⁷⁰ Burnett at A383; *The Forgotten Children* at A147; SRE 75-76 (Zayas Decl. ¶¶ 24-25).

⁷¹ Burnett at A383; Kronick at A1787; Dkt. No. 187-7 (Shapiro Decl.) ¶ 8; SRE 71, 75 (Zayas Decl. ¶¶ 10, 22).

⁷² SRE 79 (Zayas Decl. ¶ 31).

⁷³ Ex. 25, *Toxic Stress*, Harvard Ctr. on the Developing Child, A1847, <http://developingchild.harvard.edu/science/key-concepts/toxic-stress/> (last visited Dec. 22, 2015) (hereinafter “*Toxic Stress*”).

⁷⁴ SRE 76-77 (Zayas Decl. ¶ 27).

⁷⁵ *Toxic Stress* at A1847-88.

potential damage to the child.⁷⁶ The toxic stress response provoked by immigration detention thus adds to the stress already faced by detained children, compromises their brain development, and not only impairs “their intellectual and cognitive development but also contribut[es] to the development of chronic illnesses.”⁷⁷ In fact, continuous exposure to toxic stress has been shown to cause not only developmental delays and depression but also health problems later in life, including heart disease, diabetes, and substance abuse.⁷⁸ Only by minimizing the amount of time that minors spend in immigration detention can authorities limit the accumulation of toxic stress and prevent further damage to those children’s development.

3. Family Detention Poses a Special Risk to Children

Conditions specific to family detention can be harmful to minors. Studies of immigrant children detained with parents have consistently found that the children are severely impacted by their confinement.⁷⁹ The children are not merely deprived

⁷⁶ *Id.*; see also Bronstein & Montgomery at A333-34.

⁷⁷ SRE 79 (Zayas Decl. ¶ 32); see also Bronstein & Montgomery at A327-28; A333; Ex. 6, Gary W. Evans and Pilyoung Kim, *Childhood Poverty, Chronic Stress, Self-Regulation, and Coping*, 7 *Child Development Perspectives* 1, 43 at A448-49 (2013); Lorek at A1798-99.

⁷⁸ *Toxic Stress* at A1848.

⁷⁹ Burnett at A350, A409; *The Forgotten Children* at A16; Kronick at A1788-89; *Last Resort* at A589; Lorek at A1800; Mares & Jureidini at A1809-10; Steel (2004) at A1842-43.

of their liberty, privacy, and hope; they are forced to bear witness to the distress of their caretakers.⁸⁰

The stress of immigration detention often renders parents mentally unwell and incapable of parenting. “[W]hen parents are mentally unwell, the probability of harm increases” and children “can experience a threat to the meaning of their life.”⁸¹ Detained children perceive their caretakers as powerless to remove them from detention, protect them from staff, or change their circumstances.⁸² Parents’ mental health is sometimes so compromised in detention as to “place[] the children in the same position as unaccompanied children.”⁸³ Thus, “family unity” can have little or no mitigating effect on the negative health consequences of detention on children.

The high rate of mental illness experienced by parents in immigration detention poses a serious threat to their children’s health and development. An extensive literature demonstrates a strong link between the mental health of

⁸⁰ *The Forgotten Children* at A109, A148; Kronick at A1788; Lorek at A1800; Steel (2004) at A1841.

⁸¹ *The Forgotten Children* at A67; Burnett at A400.

⁸² Dudley at A441; *The Forgotten Children* at A131, A147; Kronick at A1788; Dkt. No. 187-7 (Shapiro Decl.) ¶ 15.

⁸³ *Last Resort* at A960.

caregivers and the well-being of children, including among asylum-seekers.⁸⁴

Children are strongly impacted by parental incapacity because parents “play the most critical role in helping their children’s early development,” which can “set trajectories for learning and development throughout the child’s life.”⁸⁵ Parental mental illness increases children’s vulnerability to emotional and behavioral disorders for two reasons. First, children in immigration detention experience great distress when they see their parents struggle with anxiety, depression, PTSD, and even suicidal ideation.⁸⁶ Second, they often receive insufficient love, nurturing, and care because their afflicted parent can no longer function as a parent.⁸⁷ Simply put,

⁸⁴ Ex. 8, Simone Goosen, et al., *Frequent Relocations Between Asylum-Seeker Centres Are Associated with Mental Distress in Asylum-Seeking Children: A Longitudinal Medical Record Study*, 43 Int’l J. Epidemiology 94, A472 (2014); Ex. 10, Meredith L. Gunlicks & Myrna M. Weissman, *Change in Child Psychopathology with Improvement in Parental Depression: A Systematic Review*, 47 J. Am. Acad. Child Adolesc. Psychiatry 379, A491 (2008); *see also The Forgotten Children* at A67 (“The high rates of depression and unhappiness amongst parents are causing anxiety amongst children in detention.”); Kronick at A1788 (“The extensive literature pointing to a strong link between caregiver mental illness and the wellbeing of children, including in asylum-seeking populations, suggests that the detrimental effects of detention on parents contributes significantly to a negative impact on children.”) (citations omitted); *Last Resort* at A958 (“The inquiry also received evidence that the declining mental health of parents in detention had a significant impact on children in detention.”).

⁸⁵ *The Forgotten Children* at A109.

⁸⁶ *Id.* at A137.

⁸⁷ Burnett at A397; *The Forgotten Children* at A108; *Last Resort* at A958, A976.

adults “cannot provide for children’s emotional needs while they are in a situation of deprivation themselves.”⁸⁸

The combination of parental mental illness and detention conditions also leads to a breakdown in family structure in family detention. “Family roles break down significantly” in detention partly due to parental mental incapacity.⁸⁹ Rates of attachment disorder increase as parents struggle with mental illness; one study found evidence of attachment disorders in 30 percent of children in family detention.⁹⁰ Family structures also suffer because detention renders parents powerless to help their children. Children then “become aware that their parents are disempowered” and lose respect for their parents’ authority.⁹¹ Some children cannot understand why their parents are unable to free them from the immigration detention center, while others tell their parents that “the guards are stronger than [they] are.”⁹² In the worst cases, this combination of mental incapacity and powerlessness renders adults incapable of parenting. Children in family detention are thus “required to assume roles and responsibilities of adults” and take care of

⁸⁸ *Last Resort* at A957.

⁸⁹ *Id.* at A954.

⁹⁰ *The Forgotten Children* at A105, A109; *Last Resort* at A956.

⁹¹ *The Forgotten Children* at A131, A137; Burnett at A397.

⁹² *The Forgotten Children* at A108; Dkt. No. 187-7 (Shapiro Decl.) ¶ 14.

both themselves and their despairing parents.⁹³ One child in family detention in Australia related “that he wanted someone to look after him as he was caring for both his mother and father himself. He said that he stayed up all night by drinking coffee so that he could keep watch over them.”⁹⁴ In these cases, family detention can deal particularly serious harm to the mental health of minors.

C. The Negative Health Effects of Detention on Minors Can Be Immediate and Long-Lasting

Immigration detention begins to have a harmful impact on children, including those subject to the Agreement, soon after they are detained. That impact increases with the length of detention and can last well after release. It is thus imperative that the amount of time children spend in immigration detention be extremely limited.

1. Studies Show that Short-Term Immigration Detention Is Harmful to Children

The U.S. Department of Justice has acknowledged “the harsh impact that even brief detention may have on a juvenile, especially when he/she is placed in a secure facility.”⁹⁵ This is consistent with research that has found an increased

⁹³ *Last Resort* at A963-64, A976.

⁹⁴ *Id.* at A964.

⁹⁵ Ex. 26, U.S. Dept. of Justice, National Advisory Committee for Juvenile Justice and Delinquency Prevention, Standards for the Administration of Juvenile Justice A2167 (1980), <http://files.eric.ed.gov/fulltext/ED201923.pdf>.

incidence of mental health disorders in refugee and immigrant children after only a couple of weeks of detention.⁹⁶ Indeed, mothers recently detained at Berks and Karnes reported a variety of behavioral and mood changes in their children after the first days of detention.⁹⁷

Studies show that even short-term immigration detention can inflict serious psychological harm on children. Many minors enter detention immediately following other traumatic experiences, including an arduous journey to the United States and whatever experience initially prompted them to flee their country.⁹⁸ Detention quickly compounds that trauma, reducing the child—and, in the case of family detention, their caretaker—to a state of dependence and helplessness that often mimics their pre-migratory experience.

One study in the United Kingdom found that short-term immigration detention psychologically harmed 74 of 141 children (52 percent) detained for an average of only 26 days. More than a quarter of the children were reported to be suffering continuing mental health issues after their release.⁹⁹ Likewise, a study of 20 Canadian families in short-term immigration detention—the median length of detention was under two weeks—found that children exhibited signs of depression,

⁹⁶ Burnett at A350; Kronick at A1785-88; Lorek at A1795, A1800.

⁹⁷ *See supra* Part A.

⁹⁸ *Last Resort* at A951-53; Kronick at A1784; Lorek at A1800.

⁹⁹ Burnett at A350.

aggression, mood changes, and emotional distress.¹⁰⁰ Those families were not subject to violence or extreme deprivation, but the children nevertheless appeared traumatized, especially those under the age of six. Two cases of selective mutism occurred after detentions of only 48 hours, and persisted for nearly six months, and several families reported a deterioration in academic performance and behavioral issues among their children that continued after their release.¹⁰¹

Another study of 24 refugee children detained in the United Kingdom between 11 to 155 days made similar findings.¹⁰² Those children had numerous health problems, displayed regressive behavior, and exhibited symptoms of depression and anxiety after very brief detentions.¹⁰³ A clinical psychologist evaluated 11 of the children, aged 3-11 years, and found that all of them “had begun to display symptoms of depression and anxiety” since being detained.¹⁰⁴ Researchers concluded that “the high levels of mental and physical health difficulties detected support the view that detention, even for short periods of time, is detrimental and not appropriate for children.”¹⁰⁵

¹⁰⁰ Kronick at A1787.

¹⁰¹ *Id.*

¹⁰² Lorek at A1800-03.

¹⁰³ *Id.* at A1797-1800.

¹⁰⁴ *Id.* at A1797.

¹⁰⁵ *Id.* at A1801.

2. Prolonged Detention Increases the Harmful Effects on Children

Length of time in immigration detention is linked to both a higher likelihood of mental health problems and more severe problems.¹⁰⁶ Studies of asylum-seeking children show that length of detention correlates with worsening mental health.¹⁰⁷

An extensive study of the health of children in Australian detention centers found that the longer a child was detained, “the more likely the detainee is to need access to mental health services and support.”¹⁰⁸ Experts found that children who stayed in detention longer “had significantly higher” incidence of mental health disorder and that “children’s mental health deteriorates the longer that they are detained.”¹⁰⁹ Those experts concluded that the effect of length of stay stems “predominantly” from the fact that the longer a child stays in detention, the higher the likelihood of exposure to traumatic events and the stronger the child’s feelings of isolation, detachment, and despair.¹¹⁰ The study concluded that “the [Australian] Department [of Immigration], ACM [the corrections company], mental health

¹⁰⁶ Coffey at A435; *From Persecution to Prison* at A1561, A1629-30; Green & Eager at A488; Keller at A1780; Steel (2006) at A1830.

¹⁰⁷ *The Forgotten Children* at A109 (finding that, after a year of detention, rates of attachment disorder among young children increased); *see also* Nielsen at A1817, A1819, A1821.

¹⁰⁸ *Last Resort* at A954.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

experts and children themselves agree that the longer the period of detention the more likely it is that children will have mental health issues.”¹¹¹

This research is consistent with studies of detained asylum-seeking adults, which have found striking increases in mental illness during prolonged detention. One study found that the prevalence of depression, PTSD, and mental-health-related disabilities among detained adult refugees was almost double for those detained for over six months.¹¹² Another study of asylum-seeking adults in the United States found that 70% of participants viewed their mental health as having worsened substantially while in detention and, upon follow-up, their mental health had further deteriorated.¹¹³

3. Detention Can Have Long-Lasting Harmful Effects on Minors

The negative effects of immigration detention do not cease upon release. Detention poses severe risks to immigrants’ long-term mental health and well-being.¹¹⁴ Released detainees have described detention as having changed them as people, draining them of their confidence, agency, and sociability.¹¹⁵ They have

¹¹¹ *Id.* at A973.

¹¹² Steel (2006) at A1830.

¹¹³ Keller at A1780.

¹¹⁴ Coffey at A434; *From Persecution to Prison* at A1639-41; Ichikawa at A1513-14; Steel (2006) at A1828.

¹¹⁵ Coffey at A431, A434-35.

also reported extreme difficulty with cognitive functions, including their concentration and memory.¹¹⁶

The potential long-lasting negative effect of immigration detention on minors is particularly concerning. Studies have found that children suffer from symptoms of anxiety and depression after release from immigration detention. In a study of children detained in Australia, 39 percent reported needing psychiatric help after their release.¹¹⁷ Over a quarter of children in short-term detention in the United Kingdom continued to suffer as a result of their experiences, “both at home and in school.”¹¹⁸ And in a Canadian study of refugees in extremely short-term detention, families reported that their children: suffered symptoms of separation anxiety and PTSD after their release; experienced difficulties at school and showed regression of milestones; and, in two cases, suffered from selective mutism for over six months after detentions of only forty-eight hours.¹¹⁹

Detention poses an especially great risk of permanent developmental regression in asylum-seeking minors. Children of all ages exhibit signs of developmental regression in detention, which can have lifelong negative impacts

¹¹⁶ *Id.*

¹¹⁷ *The Forgotten Children* at A203.

¹¹⁸ Burnett at A350, A387.

¹¹⁹ Kronick at A1787.

on learning, emotional development, sociability, and attachment.¹²⁰ Parents of refugees detained in Australia reported that, after their release, their children still showed signs of developmental issues, including speech impediments, nightmares, and aggressive behavior.¹²¹ Teenagers reported both social difficulties and cognitive defects, and clinicians treating former detainees reported that adults who were detained as children still showed symptoms of PTSD from their time in detention.¹²² Likewise, both Dr. Alan Shapiro and Dr. Luis Zayas, evaluating detainees in ICE family detention centers, observed signs of developmental regression and opined that detention “leads to ... serious long-term medical and mental health consequences.”¹²³ Immigration detention thus “has the potential to have lifelong negative impacts on [minors’] learning, emotional development, socialisation and attachment to family members and others.”¹²⁴

CONCLUSION

The *Flores* Settlement Agreement limits harm to immigrant children by mandating that they be detained in the least restrictive setting possible and released

¹²⁰ Burnett at A350, A384, A387; *The Forgotten Children* at A35, A119; IDC Submission at A1529; *Last Resort* at A975-82; Lorek at A1799.

¹²¹ *The Forgotten Children* at A204-05.

¹²² *Id.* at A205-08.

¹²³ Dkt. No. 187-7 (Shapiro Decl.) ¶ 16; *see also* SRE 76-77, 81 (Zayas Decl. ¶¶ 27, 35).

¹²⁴ *The Forgotten Children* at A121.

as expeditiously as possible. In light of the significant research demonstrating that detention, including family detention, poses a serious risk of harm to detained children, the Government should not be permitted to narrow the scope of the Agreement by excluding accompanied children from its scope. This is particularly true because the minors confined in ICE family detention facilities are predominantly refugees for whom detention is especially harmful. *Amici* respectfully request that this Court affirm the District Court's decision so that all immigrant children are protected from the harms posed by detention.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32 (a)(7)(C) and Ninth Circuit Rule 32-1, I certify that this brief is proportionately spaced, has a typeface of 14 points or more and contains 6,810 words.

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CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2016, 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 of this brief will be accomplished by the appellate CM/ECF system.

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