Case No. S285759

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE S.R., Minor

LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND HUMAN SERVICES,
Petitioner and Respondent,
v.

S.F.,
Objector and Appellant.

After the Dismissal Order by the Court of Appeal
Second Appellate District, Division Eight, Case No. B326812
On Appeal from the Los Angeles Superior Court
Case Nos. 22CCJP03750A/B
The Honorable Lisa Brackelmanns

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF OBJECTOR & APPELLANT, S.F.

and

[PROPOSED] BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA, AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, CHILDREN'S RIGHTS, & NATIONAL CENTER FOR YOUTH LAW

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Certificate of Interested Parties

Pursuant to Rule 8.208(e) of the California Rules of Court, Amici certify that they know of no other person or entity that has a financial or other interest in this case.

Dated: April 25, 2025

By: */s/ Minouche Kandel*
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AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA

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Application for Leave to File Amici Curiae Brief In Support of Objector and Appellant Mother, S.F.

Pursuant to California Rules of Court, Rule 8.520(f), proposed amici curiae American Civil Liberties Union ("ACLU") of Southern California, ACLU of Northern California, ACLU of San Diego & Imperial Counties, (collectively "ACLU Affiliates"), the American Civil Liberties Union (ACLU), Children's Rights, and the National Center for Youth Law respectfully request leave to file the accompanying [Proposed] Amici Curiae Brief in Support of Objector and Appellant S.F.

The American Civil Liberties Union ("ACLU") 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 has 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, including due process and privacy rights.

The ACLU Affiliates are regional affiliates of the ACLU. The ACLU Affiliates work to advance the civil rights and civil liberties of Californians in the courts, in legislative and policy arenas, and in the

community. The ACLU Affiliates have participated in numerous prior cases, both as direct counsel and as amicus, which involve enforcing the state and federal constitutions' guarantees of due process and privacy, as well as statutory substantive civil rights protections and procedural safeguards.

The ACLU and ACLU Affiliates recognize that the family regulation system in the United States, otherwise known as the child welfare system, was built on a foundation of white supremacy and attempted cultural genocide. The organizations have an interest in protecting the due process rights of parents, guardians, and children who are Black, Indigenous, immigrants, LGBTQ, and people with disabilities as they navigate the family regulation system. The ACLU and ACLU Affiliates present this brief to provide analysis regarding the privacy and due process concerns raised under the U.S. and California Constitutions by the Child Abuse Central Index.

Children's Rights, Inc. ("Children's Rights") is a national advocacy organization dedicated to improving the lives of children in and impacted by government systems. Through relentless strategic advocacy and legal action, Children's Rights holds governments accountable for keeping kids safe and healthy. It uses civil rights impact litigation, advocacy and policy expertise, and public education to create lasting systemic change. Its work challenges

racist, discriminatory laws, policies, and practices that punish parents experiencing poverty by taking their children and unnecessarily placing them in foster care. Children's Rights' advocacy centers on building solutions that will advance the rights of children for generations.

The National Center for Youth Law ("NCYL") is a private, non-profit law firm that uses the law to help children achieve their potential by transforming the public agencies that serve them. NCYL's priorities include ensuring that children and youth have the resources, support, and opportunities they need to live safely with their families in their communities and that public agencies promote their safety and well-being. NCYL represents youth in cases that have broad impact and has extensive experience using litigation to enforce the rights of young people in foster care.

This application is timely under Rule 8.520(f)(2) of the California Rules of Court.

In accordance with California Rules of Court, Rule 8.520(f)(4), no party or counsel for any party in the pending appeal authored this brief in whole or in part, and no party or counsel for any party in the pending appeal made a monetary contribution intended to fund the brief's preparation or submission. No person or entity other than

counsel for the proposed amici made a monetary contribution intended to fund the preparation or submission of this brief.

Pursuant to Rule 8.520(f) of the California Rules of Court, the ACLU, ACLU Affiliates, Children's Rights, Inc., and National Center for Youth Law, respectfully request that they be granted leave to file the accompanying amicus curiae brief.

Dated: April 25, 2025

ACLU Foundation of Southern California

ACLU Foundation of Northern California

American Civil Liberties Union

ACLU of San Diego & Imperial Counties

By: */s/ Minouche Kandel*
Minouche Kandel

Attorneys for Amici Curiae

I. Introduction

The right of family integrity is a fundamental right under the U.S. and California Constitutions. Government actions that interfere with the relationship between parents and children require meaningful due process protections. Nowhere is this interference more direct than in the "family regulation system," also known as the "child welfare system."[1] The family regulation system maintains wide latitude to surveil families, remove children from their homes, and terminate parental rights, producing real and devastating outcomes for parents and children alike. Given the significance of these outcomes, due process for parents in this system is essential.

One harmful outcome for families involved in the family regulation system is the possibility of a child welfare agency listing a parent on California's Child Abuse Central Index (CACI), a government database containing information about child abuse and

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[1] Amici use the term "family regulation system" to refer to the "child welfare system" because it more accurately describes a system meant to "*regulate and punish black and other marginalized people*." (Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, The Imprint (June 16, 2020) <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>. See also Polikoff & Spinak, *Forward: Strengthening Bonds: Abolishing the Child Welfare System and Re-Envisioning Child Well-Being*, 11 Colum. J. Race & L. 427, 431 (2021) <https://journals.library.columbia.edu/index.php/cjrl/issue/view/78 9/188>.)

neglect reports. Once listed, a person remains on the CACI until they turn 100 years old, making their placement on the Index essentially *permanent*. A CACI listing leads to severe consequences, such as limiting the parent's employment, ability to participate in their children's school and extracurricular activities, and access to certain professional licenses. (Pen. Code, §§ 11170, subds. (b)(4)-(5), (8)-(11).) At issue in this case is the ability of a parent to appeal a CACI listing.

In many cases, like Mother's, appeal of a jurisdictional order finding abuse is the only effective way to challenge placement on the CACI. The current administrative process available to challenge CACI placement is woefully inadequate because parents with jurisdictional orders finding abuse or severe neglect cannot obtain a grievance hearing. Indeed, parents cannot determine with certainty whether they are or will be placed on the Index. Without permitting appeal of the underlying finding that requires CACI placement, many parents do not have a meaningful avenue to contest the placement at all and prevent its many consequences.

In *In re D.P.* (2023) 14 Cal.5th 266, this Court held that a father's appeal of a jurisdictional finding of neglect was moot after the father's underlying case was dismissed and he failed to show that the neglect allegation was reportable or that it had actually been

reported to the CACI. (*Id.* at p. 280.) The case at hand differs in one dispositive respect: The dependency court found that Mother's acts of self-defense amounted to abuse of her child. In short, the risk of placement on CACI in Mother's case is much greater than the father's in *D.P.*, if not certain, because by law, this finding of abuse requires a CACI listing. (Pen. Code, § 11169, subd. (a).)

Here, Mother sought to appeal the dependency court's jurisdictional order finding abuse and the accompanying dispositional order removing her children from her custody. The Court of Appeal below held that Mother's appeal was moot. (Order Dismissing Appeal filed May 31, 2024 in *In re N.R.*, No. B326812, (Cal. Ct. App.) (hereafter Dismissal Order).) The court presumed that the outcome of her appeal was functionally useless because her children had been returned to her, and because whether the jurisdictional finding would be prejudicial to Mother in the future was too speculative. (*Id.* at pp. 3-4.) The Court of Appeal refused to consider the possible harms to Mother of being reported to the CACI without evidence in the record that the Agency had already filed a CACI report. (*Id.* at p. 4, fn. 1.)

Requiring Mother to prove her placement on the CACI in order to appeal the jurisdictional order puts too great a burden on Mother, and deprives her of an opportunity to challenge a listing that

creates lifelong harm for her and her daughters. A jurisdictional finding of abuse acts as a total bar to challenging a CACI listing. If she is unable to appeal the jurisdictional finding, Mother will be permanently included in the CACI without ever having a chance to challenge that decision. A decision in her favor as the result of an appeal could remove her from CACI, thereby unlocking employment opportunities, preserving adoption and fostering options, and limiting further government surveillance of her family.

The jurisdictional finding is thus ripe for a challenge. The allegation of physical abuse confirmed in the jurisdictional order is the type of abuse that child welfare agencies "shall forward" to the CACI. (Pen. Code, § 11169, subd. (a).) Appealing the jurisdictional order is Mother's *only* way to challenge the abuse finding and CACI placement. (Pen. Code, § 11169, subd. (e).) By terminating jurisdiction, the Court of Appeal eliminated Mother's only avenue for appealing the finding. And because there is no statute of limitations on CACI reports, Mother remains *permanently* at risk for CACI placement because the child welfare agency can report the incident at *any time*.

The fundamental right of family integrity under the California Constitution requires that parents be able to challenge their CACI listings. Additionally, California's constitutional right to privacy

confers upon parents the right to petition for accuracy in their CACI listing, especially where the state and county child welfare agencies can disseminate the sensitive information to other parties. The risk of an erroneous placement on the CACI is high, given only one social worker makes the determination, notice to persons placed on the CACI is inconsistent, and the CACI is demonstrably over-inclusive. Furthermore, the risk of error is disproportionately faced by poor families, especially mothers of color.

Because CACI implicates serious constitutional rights and practical harms for parents and children, it is crucial for this Court to decide the question left unanswered in *In re D.P.* This Court should clarify that if a parent is at risk of being included on the CACI because of a juvenile dependency court's finding, the parent *must* be provided an opportunity to challenge that inclusion. As this Court said in *People v. Ramirez* (1979) 25 Cal.3d 260 (hereafter *Ramirez*):

> For government to dispose of a person's significant interests without offering [them] a chance to be heard is to risk treating [them] as a nonperson, an object, rather than a respected, participating citizen.

(*Id.* at pp. 267-68.)

Amici ACLU, ACLU of Northern California, ACLU of Southern California, ACLU of San Diego & Imperial Counties, Children's Rights, and National Center for Youth Law ask the Court to hold that

where a child welfare agency is required by law to refer an individual to CACI, a parent must be permitted to appeal jurisdictional findings against them of abuse or severe neglect, even after a dependency case has been dismissed. *Present or future* CACI inclusion due to the same alleged conduct contained in a challenged jurisdictional finding is a harm sufficient to defeat a claim of mootness. Furthermore, because of the relative imbalance in access to CACI information between the state and parents, the Court should place the burden on the state to show that a parent will not be referred to the CACI.

II. Factual Summary

S.F. ("Mother") has three daughters — Sierra (aged 22), Saniyah (aged 16), and Saleah (aged 12) — who are involved in this case. (1CT 185.) In 2022, Mother had a physical altercation involving Sierra and Saniyah. (1CT 24-26.) As a result, Los Angeles County Department of Children and Family Services (DCFS) filed a juvenile dependency petition in September 2022. (1CT 6-14.) One month later, the juvenile court sustained the petition, including a charge of physical violence under Welfare and Institutions Code section 300, subdivision (a), and ordered that the children be removed from Mother's custody. (1CT 120-21, 125-26, 137-38, 140-41.) DCFS concedes that, by law, this finding of abuse by a juvenile court

requires reporting to CACI. (Pen. Code § 11169, subd. (a); Resp't Answer Br. on the Merits (hereafter ABM), pp. 17-18.)

During the DCFS investigation, Mother lost her job in food preparation services, and she believes that her termination was because of her CACI placement. (1CT 185.) DCFS has not been forthcoming on whether it reported Mother to CACI or not. (Appellant's Supplemental Letter Br. Concerning Mootness dated April 24, 2024 in *In re S.R.*, No. B326812, (Cal. Ct. App.) at p. 4, fn. 2.)

Mother appealed the juvenile court's orders as to both jurisdiction and disposition. While the appeal was pending, the juvenile court terminated jurisdiction and granted Mother sole physical custody. (Appellant's Opening Br. (hereafter AOB), pp. 19-20.) Mother continued her appeal, in part because she was concerned about her inclusion on the CACI. (AOB, p. 21.) The appellate court dismissed the appeal. (Dismissal Order, pp. 1-4.) It declined to act because Mother did not provide proof of her placement on CACI, and the court found she could not demonstrate ongoing harm. (Dismissal Order, p. 4, fn. 1.) Mother timely filed a petition for review, which was granted by this Court. (AOB, p. 22.)

III. CACI Placement Has Minimal Guardrails and Many Opportunities for Errors

CACI wrongly includes people due to three types of errors: (1) people are erroneously listed after a factually incorrect substantiation, (2) people's names are not removed after a successful challenge, and (3) clerical and administrative errors. CACI contains a list of all substantiated reports of child abuse and severe neglect submitted by child welfare agency workers to the California Department of Justice (DOJ), pursuant to Penal Code section 11169. From January 1965 to August 2021, child welfare workers referred over 713,000 individuals to the CACI. (Cal. State Auditor, *The Child Abuse Central Index: The Unreliability of This Database Puts Children at Risk and May Violate Individuals' Rights* (May 2022) p.37 <https://information.auditor.ca.gov/pdfs/reports/2021-112.pdf> (hereafter CACI Audit).) Of these, about 13% (approximately 101,000) were removed from the CACI upon the request of the reporting agency, demonstrating the Index's over-inclusiveness. (*Id.*)

A. The CACI Referral Process Makes Actual Notice to Listed Parents Difficult in Many Cases

The process of placing individuals on the CACI is rife with inefficiencies and inequities. (*Id.* at pp. 20-23.) The DOJ administers the CACI database, but county child welfare agencies are

"responsible for the accuracy, completeness, and retention of the reports" resulting in inclusion on the CACI. (Pen. Code, § 11170, subd. (a)(2).)

The first step in the CACI listing process involves referral. If a county child welfare agency staff substantiates a case of alleged abuse or severe neglect, as defined in the Child Abuse and Neglect Reporting Act, Section 11165.6, the Penal Code requires referral to the CACI. (Pen. Code, § 11169, subd. (a).)[2] No timeline or statute of limitations exists to place an end date on this reporting process. (Pen. Code, § 11169 [listing no timelines or dates for reporting].)

Counties must then provide notice to the listed person. Once the caseworker sends the substantiated report to the DOJ, the caseworker must, within five days, *manually* mail notice of the listing and grievance instructions to the listed person's last known address. (Cal. Dept. of Social Services Child Welfare Services Manual (hereafter CDSS Manual), § 31-501.5.) A recent state audit of the CACI found numerous opportunities for error in the notice process, with notices lost, delayed, or never sent at all. (CACI Audit, p. 23.) The audit faulted the multiple points of manual data entry, paper

[2] Substantiation exists when it is "more likely than not that child abuse or neglect ... occurred." (Pen. Code, § 11165.12, subd. (b).)

reports, and reliance on paper mail to communicate between agencies and with parents. (CACI Audit, p. 23.)

An individual can check if they are included in the CACI by submitting a *notarized* request to the DOJ. (Pen. Code, § 11170, subd. (f)(1).)[3] However, there is no deadline by which the DOJ must respond, and any response is a snapshot in time. (*Id.*) So, if the response states the individual is not on the CACI, the individual could be added the very next day for an incident that occurred prior to the request. (AOB, p. 59.) As evidence of this lag, an internal audit of the CACI process revealed that the CACI is missing 22,000 listings between 2017 to 2021 due to internal delays. (CACI Audit, p. 13.) Amici Legal Services for Prisoners with Children et al. note that they have seen parents getting notices of CACI listings from cases long after they have closed.

B. Parents Have Extremely Limited Recourse For Removal From CACI's Permanent Blacklist

A CACI listing is essentially forever. Unlike criminal records which may be expunged after a certain period of time or completion of probation, CACI records trail parents for their entire lives. A person can only have their name removed once they turn 100. (Pen. Code, § 11169, subd. (f).)

[3] Form available at https://oag.ca.gov/childabuse/selfinquiry.

Recognizing the stigma and practical harms of CACI placement, courts have required California to create a process for parents to challenge their inclusion in the CACI. (*Humphries v. Cnty. of Los Angeles* (9th Cir. 2009) 554 F.3d 1170, 1179-80, revd. and remanded on other grounds by *Los Angeles Cnty. v. Humphries* (2010) 562 U.S. 29 (hereafter *Humphries*).) Yet, the path to removal from CACI remains inaccessible to many parents and functionally impossible for those in Mother's situation.

When individuals do successfully receive their mailed notice, they must mail a hearing request back to the child welfare agency within 30 days of the date of the original notice. (CDSS Manual, § 31-021.21.) Only if no notice was ever mailed to the individual can they request, via a paper form, an appeal outside the 30-day window. (*Id.* at § 31-021.212.)[4]

The CACI appeals process, also known as the grievance process, is an administrative procedure conducted by the county child welfare agency. Upon timely request, a representative from the county child welfare agency evaluates the agency's investigative

[4] Parents who have a pending dependency petition must wait until their case is resolved to challenge a CACI listing, but neither regulations or statute provide guidance as to when they should submit their request for a grievance hearing in this situation. See CDSS Manual, § 31-021.21.

notes and any evidence the parent submits to determine whether the allegations of child abuse or severe neglect are supported by a preponderance of the evidence. (CDSS Manual, § 31-021.) The grievance officer issues a tentative decision which the county welfare director can then adopt or not. (CDSS Manual, §§ 31-021.82, 31-021.83.)

The outcome of the grievance hearing can be challenged via writ of mandamus within 90 days to the superior court. (Code Civ. Proc., § 1094.5.) If the court finds that the reason for the CACI report is unsubstantiated, the child welfare agency shall notify the DOJ, and the DOJ shall remove the listing from CACI. (Pen. Code, § 11169, subd. (h).)

If parents fail to exhaust their administrative remedies via the grievance process, they may not challenge a CACI listing in other contexts. (See *In re C.F.* (2011) 198 Cal.App.4th 454, 466.) Therefore, parents are left with only one option—challenge their listing during the traumatic aftermath of dependency proceedings. Importantly, parents have no right to a state-provided attorney for a challenge to their CACI listing. (CDSS Manual, § 31-021.42.) Additionally, California law prohibits grievance hearings for parents, like Mother, with a judicial finding of severe neglect or abuse. (Pen.

Code, § 11169, subd. (e); see also *Endy v. Cnty. of Los Angeles* (9th Cir. 2018) 716 F.App'x 700, 701.)

The combination of the absence of deadlines for counties to refer people to CACI, short timelines to appeal CACI listings, and heavy reliance on paper mail makes this process highly prone to error and leaves many unable to timely challenge their listing.

IV. CACI Placement Implicates Fundamental Rights to Family Integrity and Parents Must Have an Opportunity to Challenge Dependency Decisions That Would Affect Their Placement on the CACI

State and federal procedural due process rights and the state constitutional right to privacy are deeply implicated by CACI placement. If Mother is not permitted to appeal the jurisdictional order here, and she has already been or is later placed on CACI, the CACI listing will restrict her involvement with her children's activities while they are minors, and forever limit her access to certain employment or caregiving roles. Given these consequences, individuals must have access to courts when they have been or face the risk of being placed on the CACI.

A. Constitutional Due Process Requires That Parents Be Able To Challenge Findings of Child Abuse and Neglect

The Due Process Clauses of the California and U.S. Constitutions mandate parents be given the opportunity to challenge

state findings of child abuse and neglect. California's procedural due process protections as established in *People v. Ramirez* are generally broader than those in the federal Constitution. (Compare *Ramirez*, *supra*, 25 Cal.3d at p. 268 and *Mathews v. Eldridge* (1976) 424 U.S. 319, 332-33.)

California courts apply a four-factor balancing test to determine if a violation of constitutional due process rights has occurred: (1) the type of private interest that will be affected by the state action; (2) the dignitary interest in providing notice and a hearing to the individual; (3) the risk of an erroneous deprivation; and (4) the government's interest in the deprivation. (See, e.g., *Today's Fresh Start, Inc. v. Los Angeles Cnty. off. of Educ.* (2013) 57 Cal.4th 197, 213.) The California constitutional test includes the same three factors imposed by federal courts in determining due process violations under the U.S. Constitution and importantly adds an additional factor—dignitary interest—to the calculus. (Compare *Matthews v. Eldridge*, *supra*, 424 U.S. at p. 335.)

Here, Mother's private interest in family integrity and association as well as her dignitary interests are high, and there is a substantial risk of erroneous deprivation, while the government's interest in maintaining false records is low. Therefore, due process

requires that Mother have a mechanism to challenge her listing on the CACI, to protect her and her family's interests.

i. A State's Determination of Abuse or Neglect That May Result in a CACI Listing Affects a Parent's and Child's Liberty Interests

A California court's determination that a parent engaged in child abuse affects the parent's and their child's liberty interests, including when the determination requires the parent to be placed on the CACI. A CACI listing impacts the ability of parents and children to spend time together in certain settings, can limit employment options, thereby reducing the family's income, and hinders the ability of parents to foster or adopt other children, including extended family. These results of the CACI implicate familial liberty interests including: (1) the right to raise one's children, (2) the right to family association, and (3) the right to privacy.

a. CACI Placement Affects a Parent's Right to Raise Children

A parent's right to raise their children is one of the most fundamental liberty interests protected by both the state and federal constitutions. (See *Troxel v. Granville* (2000) 530 U.S. 57, 65-66; *In re M.S.* (2019) 41 Cal.App.5th 568, 590, disapproved on another ground in *Michael G. v. Superior Ct.* (2023) 14 Cal.5th 609.) Raising

one's children is a core civil right, as recognized by the U.S. Supreme Court in *Stanley v. Illinois* (1972) 405 U.S. 645. (*Id.* at p. 651. ["The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment."].)

When protected liberty interests, such as the right to raise children, "are implicated, the right to some kind of prior hearing is paramount." (*Bd. of Regents of State Colleges v. Roth* (1972) 408 U.S. 564, 569-70.) This Court has held that "a parent's interest in the care, custody and companionship of a child is a liberty interest that may not be interfered with in the absence of a compelling state interest." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.)

A CACI listing can burden the ability to care for family members who are minors. CACI inclusion may also impede a parent's ability to participate in school events or extracurricular activities of one's children. (See Pen. Code, §§ 11105.3, 11167.5, subd. (b); Bus. & Prof. Code § 18975, subd. (b)(1).) Indeed, California has recognized the importance of parental involvement in school activities by enacting employment protections for parents who take time from work to participate in activities at their child's school. (Lab. Code, § 230.8.)

Additionally, childrearing requires parents to provide financially for their children, and CACI placement limits

employment opportunities. Information in the CACI is available upon request by employers in law enforcement, child welfare, childcare, and elder care. (See Pen. Code, §§ 11170 subds. (b)(4), (5), (8)-(11).) Employers in these industries may be reluctant to hire, or could have policies that prevent hiring, someone listed in the CACI. (*In re D.P.*, *supra*, 14 Cal.5th at p. 279; see also *Saraswati v. Cnty. of San Diego* (2011) 202 Cal.App.4th 917, 922-23 (hereafter *Saraswati*) [Saraswati was afraid to apply for a teaching job because his potential employer could learn about the CACI listing during a background check]; Gupta-Kagan, *Confronting Indeterminacy and Bias in Child Protection Law* (2022) 33 Stan. L. & Pol'y Rev. 217, 238-239 [child abuse registries deprive parents of job opportunities and harm children by limiting their parents' employment opportunities].)

CACI information is available to agencies in connection with persons applying for a license for community care or day care, or for a job having supervision over children or in a residential care home for children. (Pen. Code, §§ 11170, subds. (b)(4), (8), (10)-(11).) Based on a CACI listing, any existing license the person earned to work in those fields may be suspended, and licensing agencies may deny a new license. (Pen. Code, § 11170, subd. (b)(11).)

b. CACI Placement Affects Family Members' Rights to Associate With One Another

The federal and California constitutions augment the right to parent one's children by protecting the broad liberty interest of family association. (See *Troxel v. Granville*, *supra*, 530 U.S. at p. 65; *Wallis v. Spencer* (9th Cir. 2000) 202 F.3d 1126, 1136.) Steeped in the Due Process Clause and the First Amendment, the right to family association protects the interest of both parent and child in family integrity and preservation of the family unit. In *Overton v. Bazzetta* (2003) 539 U.S. 126, the U.S. Supreme Court discusses the "right to maintain certain familial relationships, including association among members of an immediate family and association between grandchildren and grandparents." (*Id.* at p. 131.)

The Ninth Circuit has explicitly held that children and parents have a reciprocal right to family integrity. (*Smith v. City of Fontana* (9th Cir. 1987) 818 F.2d 1411, 1418, overruled on other grounds by *Hodgers–Durgin v. de la Vina* (9th Cir. 1999) 199 F.3d 1037 (en banc)) ["[The] constitutional interest in familial companionship and society logically extends to protect children from unwarranted state interference with their relationships with their parents."].) California courts similarly extend the rights of family association to both children and their parents. This Court recognized the opportunity to

establish and share a family as a "core" substantive right included in the fundamental interest in liberty and personal autonomy secured by the California Constitution. (*In Re Marriage Cases* (2008) 43 Cal.4th 757, 781-782; see *In re Marilyn H.* (1993) 5 Cal.4th 295, 306 [parents and children have independent interests in being part of a family unit].)

Child abuse findings and resulting CACI placement can and have damaged families' abilities to associate with one another. Parents on the CACI can be restricted from volunteering at their children's schools, sports teams, or other extracurricular activities. (Pen. Code, §§ 11105.3, 11167.5, subd. (b); Bus. & Prof. Code, § 18975, subd. (b)(1).) These consequences harm children as well as the family unit, by constraining parents' abilities to engage with their children. (Barber, et al., *Volunteering as purpose: Examining the long-term predictors of continued community engagement,* 33(3) Educational Psychology: An International Journal of Experimentation Education Psychology (2013) p. 6. <https://coa.gse.stanford.edu/sites/default/files/barber_mueller_ogata_2013.pdf>.) Children themselves lose opportunities for formative experiences when their parents are unable to participate in their activities. (*Id.* at 16.)

A CACI listing can also restrict other kinds of familial association as it may prevent individuals from fostering or adopting other children, including their own relatives. (*In re N.V.* (2010) 189 Cal.App.4th 25, 30 [agency must complete a CACI check before placing a child with a relative]; Pen. Code, § 11170, subd. (b)(7) [CACI information available to agencies placing children in foster home]; Cal. Code. Regs., tit. 22, § 89219.2 [requiring the Department of Social Services to consult CACI prior to licensing a foster family home]; Pen. Code, § 11170.5 [requiring adoption agencies to review CACI].)

c. CACI Placement Deprives Parents of a Closely Held Right to Privacy

California's constitutional privacy amendment was enacted in part to address unnecessary collection and dissemination of private information about its residents. (*Cent. Valley Ch. 7th Step Found. v. Younger* (1989) 214 Cal.App.3d 145, 161 (hereafter *Younger*).) The amendment was meant to curtail government overreach including: the "overbroad collection and retention of unnecessary personal information;" misuse or spreading of information for purposes other than which it was obtained; and the "lack of a reasonable check on the accuracy of existing records." (*Id.*)

When the state records a determination of child abuse or neglect, parental privacy rights enshrined in the federal and state constitution are immediately implicated. California courts have already recognized that a listing on the CACI is an invasion of familial privacy under both the U.S. and California Constitutions. (*Burt v. Cnty. of Orange* (2004) 120 Cal.App.4th 273, 283-286 (hereafter *Burt*).) California's right to informational privacy is a "class of legally recognized privacy interests" which "includes 'interests in precluding the dissemination or misuse of sensitive and confidential information.'" (*Id.* at p. 285.) Parents listed on databases like the CACI have "a reasonable expectation of privacy and the County's inclusion of [a parent] in a database where the information therein is disseminated to multiple agencies amounts to a serious invasion of [their] privacy." (*Castillo v. Cnty. of Los* Angeles (C.D. Cal. 2013) 959 F. Supp. 2d 1255, 1262 (hereafter *Castillo*).)

ii. Parents Have a Dignitary Interest in Challenging State Determinations of Abuse and Neglect

Under the California Constitution, courts must also weigh individuals' dignitary rights when a government action would deprive them of an important interest. (*Ramirez*, *supra*, 25 Cal.3d at pp. 267-268.) When the Ninth Circuit mandated California create a

grievance process for people placed on the CACI, it found that being labeled a child abuser or child neglecter by placement on the CACI is "'unquestionably stigmatizing.'" (*Humphries*, *supra*, 554 F.3d at p. 1186.) This reputational harm combined with the practical effects of a CACI listing discussed above implicates the dignitary interests of people placed on the CACI.

If this Court affirms the lower court finding of mootness, then Mother will be permanently marked with the scarlet letter of a child abuser, even though her children have returned to her care. She will never have an opportunity to rid herself of this CACI stigma because of a past judicial finding of abuse. (Pen. Code, § 11169, subd. (e).) She will be barred from pursuing certain employment opportunities that would benefit herself and her children. (Pen. Code, §§ 11167.5 subd. (b)(6), 11170 subds. (b)(4), (5), (8)-(11).) Being labeled a child abuser for life, and being placed on a blacklist prohibiting certain kinds of employment and kinship care, thus places severe and enduring burdens on Mother's fundamental dignitary rights.

iii. The Risk of Erroneous Deprivation of Liberty Interests is High in State Determinations of Abuse or Neglect

The third prong of the California Due Process analysis weighs the risk of erroneous deprivation of the liberty interests implicated by the state action. To weigh the risk of error against the important

interests at stake, courts compare the current procedures with the "probable value, if any, of additional or substitute procedural safeguards." (*Ramirez*, *supra*, 25 Cal.3d at p. 269; see also *People v. Davis* (1984) 160 Cal.App.3d 970, 981.)

Risk of erroneous deprivation is low if the individual receives adequate notice of the state action along with a meaningful opportunity to be heard. (See, e.g., *Stevens v. Workers' Comp. Appeals Bd.* (2015) 241 Cal.App.4th 1074, 1099 ["[A]s a result of the multiple layers of review, the risks of erroneous deprivations . . . appear to be fewer."].) Conversely, the risk of error is high when the notice is inadequate and there is no hearing to ensure that the state action was based on accurate information. (See, e.g., *Naidu v. Superior Ct.* (2018) 20 Cal.App.5th 300, 314, disapproved on other grounds by *In re Harris* (2024) 16 Cal.5th 292 [significant risk of erroneous deprivation where no actual evidence presented of petitioners' dangerousness before suspending business licenses].)

Here, the risk of erroneous deprivation is high if this Court affirms the Court of Appeal's conclusion that Mother's appeal is moot. There would be no hearing to ensure the CACI listing was based on accurate information, since Mother would be unable to challenge the accuracy of that determination through any other means. The Court should permit the appeal to move forward,

thereby providing an additional procedural safeguard of access to a judicial forum. (See, e.g., *People v. Sanchez* (2017) 18 Cal.App.5th 727, 748-49 [where there is no process for individual to challenge their prosecution for allegedly violating the injunction, a risk of erroneous deprivation would be substantially mitigated by additional procedural protections].)

a. Reports of Child Abuse and Neglect with No Judicial Finding Can Lead to CACI Registration

In order to place a person on the CACI, the agency social worker must "substantiate" a finding of abuse or severe neglect, meaning it is "more likely than not that child abuse or neglect . . . occurred." (Pen. Code, § 11165.12, subd. (b).) Notably, the determination for listing on the CACI is made by a single social worker and does not require any judicial finding. (*Id.*) Persons are only able to challenge their inclusion *after* they have been added to the database. (See Pen. Code, § 11169, subd. (d).) And since the welfare agency only provides notice by mail to a last known address, many parents never even receive the notice they have been added to the CACI.

b. CACI is Demonstrably Overinclusive

Courts often use the likelihood of false positives to determine the risk of erroneous placement on databases. (See *Valmonte v.*

Bane (2d Cir. 1994) 18 F.3d 992, 1004 (holding that the "some credible evidence" standard did not offer sufficient protection from erroneous deprivation to individuals listed on a state child abuse registry in part because roughly one-third of cases in which the Department found that abuse had occurred were ultimately removed from the registry following a hearing); see also *Jamison v. State* (Mo. 2007) 218 S.W.3d 399, 409 [finding that placement on that state's child abuse and neglect registry had a high risk of erroneous deprivation where the Board reversed the determination 35-40 percent of the time].)

CACI erroneously includes many individuals. The California State Auditor in 2022 "found numerous errors in nearly every phase of the CACI process" including DOJ reporting unsubstantiated individuals to employers and agencies and thousands of individuals remaining on the CACI after counties requested deletions. (CACI Audit, pp. 20-23.) Moreover, there is no right to an attorney for a CACI grievance hearing, and only about 13 percent of parents ever request a grievance hearing, further increasing the likelihood of erroneous entries.[5]

[5] Amicus ACLU of Southern California has analyzed Public Record Act responses provided by the Lounsbery Law Office, PC from 32 California counties, and determined that in 2019, of the 2,206 people

When parents do manage to challenge their CACI listing, they are often successful. In responses to the ACLU of Southern California's Public Records Act requests, the California Department of Social Services reported that between 2015 and 2019, 29-36 percent of CACI hearings resulted in removal from the CACI, suggesting that had these individuals not requested a hearing, at least one-third of the CACI listings would be inaccurate. Moreover, in its 2004 investigation, the CANRA Task Force determined that San Diego should purge ***50 percent*** of its initial CACI listings because they were erroneous. (Child Abuse and Neglect Reporting Act Task Force Report (2004) p. 24 <http://www.ossh.com/firearms/caag.state.ca.us/publications/childabuse.pdf>.)

Faulty state procedures also result in listings remaining on the CACI which should have been removed or never listed in the first place. In the CACI Audit conducted by the California state auditor, between June 2018 to June 2021, 298 reports of child abuse in the CACI were not supported by corresponding county records. (CACI Audit, p. 24.) In 25 cases, DOJ informed an agency or employer conducting a background check that an individual was a perpetrator

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referred to the CACI in those counties, only 285 people had a grievance hearing.

of child abuse, even though they had no associated report of substantiated child abuse. (CACI Audit, p. 20.) Moreover, state law requires the DOJ to remove people from the CACI when they turn 100 or if they were minors during the incident. However, 36,000 listings on the CACI are missing birthdates, so the DOJ does not know whether those listings should have been removed from the system. (CACI Audit, p. 22.) Further, although counties have submitted requests that the DOJ remove 8,000 entries, the DOJ cannot demonstrate those entries were ultimately deleted because it lacks proper deletion procedures and documentation. (CACI Audit, p. 22.)

c. The Risk of Erroneous Deprivation Faced by Women of Color is Disproportionately High

Poor, Black, Latinx, and Native parents, specifically mothers, disproportionately shoulder the risk of erroneous deprivation given the racial and gender bias in the child welfare system. In the U.S. and in California, state-sponsored family separation has long been a tool of white supremacy. During chattel slavery in the 1600s to 1800s, separating Black enslaved families was commonly a condition of bondage, weaponized to threaten parents and prevent familial bonds. (Greenesmith, *Best Interests: How Child Welfare Serves as a Tool of White Supremacy*, Political Research Associates (Nov. 2019)

<https://politicalresearch.org/2019/11/26/best-interests-how-child-welfare-serves-tool-white-supremacy>.) The practice of separating children from their parents was similarly used against Native families during the Spanish mission era in California in the late 1700s. (Castillo, *Californian Indian History*, Cal. Native American Heritage Commission <https://nahc.ca.gov/native-americans/california-indian-history/> (as of Apr. 23, 2025).)

California's white settlers also used family separation to exert cultural and economic control over Native peoples in the mid to late 1800s. One of the laws the first California Legislature passed, euphemistically called "An Act for the Government and Protection of Indians," permitted a white person to indenture a Native child and remove them from their parents if the child's parents or "friends" agreed. (Johnston-Dodds, *Early California Laws and Policies Related to California Indians* (2002) pp. 5-6 <https://digitalcommons.csumb.edu/cgi/viewcontent.cgi?article=1033&context=hornbeck_usa_3_d>; 1850 Stat. Ch. 133 § 3.) In 1861, the Superintendent of Indian Affairs in California reported that a gang of men was kidnapping and selling Native children into slavery. (Johnston-Dodds & Supahan, *Involuntary Servitude, Apprenticeship, and Slavery of Native Americans in California*, California Indian History (2022)

<https://calindianhistory.org/involuntary-servitude-apprenticeship-slavery-native-americans-california/#_ednref38>.)

In the mid-1800s to the mid-1900s, government agents stole or strong-armed Native children from their families and forced them into boarding schools with assimilationist policies. (Newland, *Federal Indian Boarding School Initiative Investigative Report*, U.S. Dep't of the Interior (2022) pp. 35-38 <https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf>.) In the mid twentieth century, the Bureau of Indian Affairs funded the Indian Adoption Project, with the explicit goal of assimilating Indigenous children into white America through adoption into white families. (Roberts, Torn Apart (2022) p. 105.)

The child welfare system in its current form emerged from successful civil rights challenges by Black mothers to public assistance programs that excluded Black families. (Roberts, Torn Apart (2022) pp. 115-116.) Once Black mothers were eligible for public assistance, states passed "suitable home" laws that denied public assistance to families with unwed parents (defined to include common law marriages). (*Id.* at pp. 116-117.) After refusing to provide aid, social workers then removed children from those

"unsuitable" homes and placed them in foster care. (*Id.* at pp. 117-118.) Black families were most affected by these laws. (*Id.* at p. 116.)

This racialized history of family separation has led to the current family regulation system that targets Black and Native children. In California, Black and Native children are more than twice as likely as white children to be referred to the child welfare system, to have the report substantiated, and to be placed in foster care by age five. (Putnam-Hornstein, et al., *Racial and Ethnic Disparities: A Population-Based Examination of Risk Factors for Involvement with Child Protective Services*, 37 Child Abuse & Neglect (2013) p. 33 <https://www.ojp.gov/ncjrs/virtual-library/abstracts/racial-and-ethnic-disparities-population-based-examination-risk>.) In Los Angeles County, over 50 percent of all Black children will be subjected to a child abuse investigation by the time they are 18. (Edwards, et al., *Child Protective Services is pervasive but unequally distributed by race and ethnicity in large US counties*, 118(30) Proceedings of the National Academy of Sciences (Oct. 2021) <https://doi.org/10.1073/pnas.2106272118>.)

The use of child abuse registries similarly "falls most heavily along the fault lines of race, class, and gender," and a listing on the registry has consequences that perpetuate gender- and race-based disadvantages, employment prospects, and economic insecurity.

(Henry & Lens, *Marginalizing Mothers: Child Maltreatment Registries, Statutory Schemes, and Reduced Opportunities for Employment* (2021) 24 CUNY L. Rev. 1, 3.) Registries harm Black women in particular. (*Id*. at 13-14.) The overinclusion of Black women in the family regulation system overall leads some to label this system as the new "Jane Crow." (Clifford & Silver-Greenberg, *Foster Care as Punishment: The New Reality of 'Jane Crow,'* N.Y. Times (July 21, 2017) <https://www.nytimes.com/2017/07/21/nyregion/foster-care-nyc-jane-crow.html>.) The racial disparities in child abuse registry reports indicate that the risk of erroneous deprivation of liberty interests has a disproportionate impact on families of color.

iv. The Government Has No Legitimate Interest in Inaccurate Findings of Abuse and Neglect

It is undisputed that California has a compelling state interest in preventing child abuse and neglect. (See *Santosky v. Kramer* (1982) 455 U.S. 745, 766 (hereafter *Santosky*); *People ex rel. Eichenberger v. Stockton Pregnancy Control Med. Clinic, Inc.* (1988) 203 Cal.App.3d 225, 241-243, [detecting and preventing child abuse are a "compelling" government interest].) But the operative question is not whether California has a significant interest in making determinations of child abuse and neglect or in maintaining

the CACI, but whether California has a significant interest in limiting the avenues by which parents can challenge state determinations of child abuse and neglect. (See *Humphries, supra*, 554 F.3d at p. 1194 [applicable inquiry was narrow question of whether California has an interest in limiting the ability of individuals to challenge their CACI listing].)

California has *no* legitimate interest in maintaining a system of records that erroneously labels parents as child abusers or child neglectors. Erroneous listings nullify the effectiveness of a system for identifying individuals who pose a danger to children. In fact, California law requires agencies to "maintain all records to the maximum extent possible with accuracy, relevance, timeliness, and completeness" when these records will be used to make any determination about the individual. (Code Civ. Proc., § 1798.18.) The *Humphries* decision expounded with respect to the CACI that "the more false information included in a listing index such as the CACI, the less useful it becomes as an effective tool for protecting children from child abuse." (*Humphries*, *supra*, 554 F.3d at p. 1194; see also *Castillo*, *supra*, 959 F. Supp. 2d at p. 1263 [when government placed plaintiff on internal statewide database of child abuse perpetrators without opportunity to challenge inclusion, court found government has no interest in maintaining an inaccurate database].)

To the contrary, California has an affirmative interest in ensuring that its records contain accurate information, as the state has an interest in promoting the welfare of the child and preserving the family. (*In re Marriage Cases* (2008) 43 Cal.4th 757, 819 [under California constitution, state has obligation to take "some affirmative action to acknowledge and support the family unit"]; see also *Lassiter v. Dep't of Soc. Servs. of Durham Cnty. N.C.* (1981) 452 U.S. 18, 27 ["Since the State has an urgent interest in the welfare of the child, it shares the parent's interest in an accurate and just decision."]; *Santosky*, 455 U.S. at pp. 747-748 [state has an interest in family preservation].)

Finally, the government's burden in litigating child abuse allegations to maintain an accurate database is "precisely the sort of administrative costs we expect our government to shoulder." (*Humphries*, 554 F.3d at p. 1194 [dismissing the idea that it would be unduly burdensome on the government to provide a hearing].) In *Castillo*, the court found that the government must grant individuals listed in an internal government-only child abuse database "some sort of hearing," despite any administrative or fiscal burdens, as not doing so would be "inherently unjust." (959 F. Supp. 2d at 1263.)

The burden on parents of suffering the results of an erroneous determination of child abuse or neglect, and the state's interest in

child welfare, greatly outweigh the minimal additional burden to provide process in this context.

B. The Rights to Privacy and Access to Information Require Californians to be Able to Use Courts to Correct CACI Records

The California Constitution provides Californians a right to access information and records the government maintains about them. (Cal. Const., art. 1, § 3.) Californians also have a right to privacy which allows them to ensure the information the government maintains about them is accurate and appropriately safeguarded. (*Younger*, *supra*, 214 Cal.App.3d at p. 161 [explaining that part of the intention motivating California's constitutional privacy amendment was to create a reasonable check on the accuracy of records].) Yet Mother's situation reveals a gap in the ability of people to have an opportunity to correct inaccuracies in their CACI records that are shared with other public agencies and private employers.

i. The Right to Privacy Requires That People Be Able to Correct Public Records About Them

To prevent the spread of false or harmful information about private individuals, the California Constitution includes both a privacy provision and a right to ensure the accuracy of information collected and disseminated by the government. (Cal. Const., art. 1, §§ 1, 3.) As discussed in section IV.A.i.c. above, these privacy rights

apply to the CACI. (*Saraswati*, *supra*, 202 Cal.App.4th at p.928 ["familial and informational privacy rights …are sufficient to establish that there is substantial impact on fundamental vested rights when…a parent is listed on the CACI."].) Parents listed on databases like CACI have:

> …a reasonable expectation of privacy and the County's inclusion of [a parent] in a database where the information therein is disseminated to multiple agencies amounts to a serious invasion of [their] privacy.

(*Castillo*, *supra*, 959 F. Supp. 2d at p. 1262.)

Implicit in the privacy right is the right to prevent information about oneself from being misused and ensuring that what information is shared is accurate. (*Burt*, 120 Cal.App.4th at 285 ["[The] class of legally recognized privacy interests… includes 'interests in precluding the dissemination or misuse of sensitive and confidential information.'"].) California law also offers people a right of action against agencies which (a) refuse an individual's lawful request to inspect their information, or (b) "[f]ail[] to maintain any record concerning any individual with such accuracy, relevancy, timeliness, and completeness as is necessary to assure fairness in any determination" including their qualifications or character. (Civ. Code, § 1798.45, subds. (a-b).) Individuals also typically have the right to make corrections to public records about them or receive a

reason why the correction cannot be made by the agency. (Civ. Code, § 1798.35.)

Given that the CACI is demonstrably rife with inaccuracies, people are often improperly included in the state's database of child abusers and neglectors. In order for the privacy protections in the California Constitution to apply meaningfully, parents must have an opportunity to correct the information on the CACI. (See *Younger*, *supra*, 214 Cal.App.3d at p. 161.)

ii. To Correct CACI Information and Balance the Scales of Information Asymmetry, the Government Should Have the Burden of Providing Documents It Controls

Under the Court of Appeal's order, Mother is unable to dispute her CACI listing by appealing her jurisdictional order because she does not have possession of her CACI notice and DCFS has not confirmed whether she is on the CACI, although in the agency's brief, DCFS conceded that a CACI report can be presumed based on Mother's case. (ABM, pp. 17-18.) As a result, Mother is unable to prove she is harmed by the Juvenile Court's jurisdictional finding and has no route to correct her CACI records. This puts Mother in an untenable and unjust situation.

Given the current statutory scheme, county child welfare agencies hold all the power throughout the CACI process, from

investigation through judicial appeals such as this one. There is an information asymmetry between parents' severely limited ability to access information about themselves and agencies' ability to access their own databases and distribute that information. External agencies and employers possess the right and the obligation to access parents' information on CACI. (See Pen. Code, § 11170 subds. (b)(4)-(5), (8)-(11).) But state agencies have no required timeline to refer someone to the CACI, or to respond to parental requests for CACI information. (Code Civ. Proc., §§ 1798.32-35.) Nor, in proceedings such as the one at hand, do they have an obligation to inform the Court of whether they have, in fact, referred a parent to the CACI.

If an individual is listed on the CACI and does not receive the agency notice, they can verify their CACI record in two ways, both of which are ineffective. First, if they request a grievance hearing, they can request to review any case materials the agency plans to present against them. (CDSS Manual, § 31-021.62.) Second, individuals who suspect they are on the CACI can submit a request to DOJ to send them a record of their listing that includes their name, the alleged victim's name, the date, and a one-line description of the alleged incident. (Pen. Code, § 11170, subd. (f).) But there is no deadline by which DOJ must respond to such a request. (Pen. Code, § 11170,

subd. (f).) This means that a parent's short timeline to challenge a CACI listing may expire before they learn whether they are on the index. Similarly, people like Mother may be unable to access documentation of their CACI listing in a timely manner, when such proof would help them challenge dispositional orders, even while employers and child welfare agencies can access the information to the detriment of parents.

DCFS, as the agency that generated the CACI referral, and the DOJ as the recorder of CACI, are best situated to provide Mother with the information that she has a right to access and that would show proof of the harm Mother alleges – CACI registration. Yet the lower court put the burden on Mother to prove she had been placed on the CACI. (Dismissal Order, p. 4, fn. 1.)

The burden allocation upheld by the lower court creates an unfair system where a child welfare agency can place a parent on the CACI and simultaneously curtail the sole avenue that a parent has to seek judicial review of the underlying allegations which support that placement. In cases where a court has sustained an allegation of abuse or severe neglect, child welfare agencies can simply undercut parents' ability to challenge CACI listings when a parent appeals jurisdiction. The agency can withhold evidence of the listing or delay CACI placement until children are returned to a parent, thus

mooting jurisdictional appeals. This leaves parents with no recourse, because they are not entitled to a grievance hearing for placements on the CACI after a judicial finding of abuse or severe neglect. Parents will then be stuck on the blacklist functionally forever.

V. The Court Should Require Important Procedural Mechanisms to Protect Family Integrity

Because of the important rights to family integrity and individual constitutional rights at stake, we urge the Court to protect family cohesion and rights to parent. California has an *affirmative obligation* to support these rights. (*In re Marriage Cases* (2008) 43 Cal.4th 757, 819-820.) In the context of the CACI, parents must have a chance to access courts to challenge their inclusion in a government database that infringes on their fundamental rights to raise their children.

A. Parents Should Always be Able to Appeal a Jurisdictional Finding of Abuse or Severe Neglect if a CACI Listing is Possible

First, this Court should clarify that any time a court makes a jurisdictional finding that a parent has engaged in abuse or severe neglect, the parent has a right to appeal that decision of abuse or neglect, even if the county has returned the parents' children to them or closed their case against the parent. Because a court's jurisdictional finding is sufficient to bar a CACI hearing, parents

must maintain the right to appeal that finding. Unless the child welfare agency confirms it has not and will never refer this incident to the CACI, the only way parents in Mother's position can fully be rid of the risk of CACI placement is if they can appeal their jurisdictional findings.

If this Court permits Mother to appeal her jurisdictional order, she would have an opportunity to challenge her underlying finding of abuse and remove herself from the CACI. (Pen. Code, § 11169.) For example, when a Juvenile Court determines that child abuse allegations which prompted the submission of a CACI referral were not substantiated, the child welfare agency must notify the DOJ of a correction to the CACI. (Pen. Code, § 11169, subd. (a).) DOJ must then remove the name from the CACI. (*Id.*)

In addition to clarifying the ability of parents to appeal jurisdictional findings of physical abuse and severe neglect, the Court can ensure that parents have the ability to challenge their CACI listing in two other important ways. The Court should recognize a presumption that a child welfare agency will follow the law. A report of child abuse or severe neglect which requires a referral to the CACI, will be assumed to have been made in any case in which a parent challenges a dispositional order. Both Mother and DCFS agree that such a presumption should govern. (AOB, p. 50;

ABM, pp. 17-18.) Additionally, the Court should require a child welfare agency to provide information in its possession about whether it has made a referral to CACI.

For Mother's case, a presumption that the agency will follow the law and report the finding of abuse against her to the CACI *or* inform parties or the court about CACI placement will allow her to prove she is harmed by the underlying jurisdictional order and her appeal is not moot. Moreover, this mandatory transparency will conserve judicial resources and make adjudications proceed more efficiently.

B. The Court Should Also Consider Equitable Exceptions to Grievance Hearing Deadlines to Promote Access to Justice for Parents

Second, the Court could create an equitable exception to the 30-day grievance process window. Currently, CDSS regulations require that a parent's request for a grievance hearing must be received by the agency within 30 days of being mailed a notice of CACI placement. (CDSS Manual, § 31-021.21.) If that window expires, a parent is on the CACI permanently. The only exception to the 30-day window currently is if notice was never mailed to the parent at all. (*Id.*, § 31-021.212.) This is an impracticable standard because many parents fail to receive the notice or need more time to submit the appeal given that they are often at imminent risk of losing

their children. The CDSS regulations have not yet been tested in court, so it is unclear whether the system of notice and the strict 30-day deadline satisfy the due process required by the California Constitution and *Humphries*. (*Humphries*, *supra*, 554 F.3d at pp. 1179-80.)

An equitable exception would pause the appeals countdown until parents are harmed by their CACI placement, such as when a parent is denied a job because of a CACI placement. This exception can take the form of the appeals countdown window restarting when the parent receives actual notice, as in New York. (N.Y. Soc. Serv. Law, § 424-a.) Alternatively, California could develop an expungement process which can be commenced at any time, which many states offer. (Del. Code, tit. 10, § 929; N.H. Admin. Code § He-C 6430.07; Haw. Code R., § 17-1610-19 (3).)

C. The Court Can Urge the Legislature to Act to Protect Constitutional Rights to Family Integrity

Third, the court can encourage the Legislature to make changes to make CACI procedures consistent with justice and family integrity in the following ways:

- In instances where the initial investigation does not proceed to a case filing, or the child is returned to the

family, the Legislature should preclude the parent from being placed on the CACI.

- The Legislature should limit the number of days the agency has to report a parent to the CACI. For example, Delaware creates a 45-day time limit for placement on its Child Protective Registry. (Del. Code, tit. 16, § 925A, subd. (f).)

These proposed changes level the playing field of information, remove perverse incentives, conserve judicial resources, and provide a sense of closure to families whose lives have been upended by the family regulation system.

VI. Conclusion

For the aforementioned reasons, this Court should reverse the lower court's finding of mootness and remand Mother's appeal for consideration on the merits.

April 25, 2025

Respectfully submitted,

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Certificate of Word Count

Pursuant to Rule 8.520 (c) of the California Rules of Court and in reliance on the word count of the computer program used to prepare this Proposed Amici Curiae Brief, counsel certifies that the text of this brief (including footnotes) was produced using 13-point type and contains 8919 words. This includes footnotes but excludes the tables required under Rule 8.204(a)(1), the cover information required under Rule 8.204(b)(10), the Certificate of Interested Entities or Persons required under Rule 8.208, the Application to File Amici Curiae Brief required under Rule 8.520(f)(1-3), this certificate, and the signature blocks.

Dated: April 25, 2025 ACLU Foundation of Southern California

By: */s/ Minouche Kandel*
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Proof of Service

I, Dakota Bodell, declare that I am over the age of eighteen and not a party to the above action. My business address is 39 Drumm Street, San Francisco, CA 94111. My electronic service address is dbodell@aclunc.org. On April 25, 2025, I served the following documents,

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF OBJECTOR & APPELLANT, S.F.

and

[PROPOSED] BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA, AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO AND IMPERIAL COUNTIES, CHILDREN'S RIGHTS, INC. & NATIONAL CENTER FOR YOUTH LAW

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused to be transmitted to the following case participants a true electronic copy of the document via this Court's TrueFiling system:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 25, 2025 in Richmond, CA.

/s/ Dakota Bodell

Dakota Bodell

Declarant