

Case No. S274943

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE N.R., Minor

LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND
HUMAN SERVICES,
Plaintiff and Respondent,

v.

O.R.,
Defendant and Appellant

From an Unpublished Decision by the Court of Appeal
Second Appellate District, Division Five, Case No. B312001
On Appeal from the Los Angeles Superior Court,
Case Nos. 20CCJP06523, 20CCJP06523A
The Honorable Martha Matthews

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF
IN SUPPORT OF APPELLANT, O.R.

and

[PROPOSED] BRIEF *AMICI CURIAE* IN SUPPORT OF
APPELLANT, O.R., BY *AMICI DRUG POLICY ALLIANCE, ANY
POSITIVE CHANGE, THE BEYOND DO NO HARM
NETWORK, ET AL.*

Kellen Russoniello, SBN 295148
krussoniello@drugpolicy.org
(510) 679-2311
DRUG POLICY ALLIANCE
P.O. Box 811
San Leandro, CA 94577
Attorney for Amici Curiae

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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 5, 2023

/s/ Kellen Russoniello

Kellen Russoniello

krussoniello@drugpolicy.org

(510) 679-2311

DRUG POLICY ALLIANCE

P.O. Box 811

San Leandro, CA 94577

Attorney for Amici Curiae

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APPLICATION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* IN SUPPORT OF APPELLANT

I. INTRODUCTION

Pursuant to Rule 8.200(c) of the California Rules of Court, proposed *amici* Drug Policy Alliance, Any Positive Change, the Beyond Do No Harm Network, the California Coalition for Women Prisoners, Children’s Defense Fund-California, CLARE Matrix, Community Legal Services in East Palo Alto, Elephant Circle, The Immigrant Legal Resource Center, JMACforFamilies, Law For Black Lives, Legal Action Center, Legal Momentum, the Women’s Legal Defense and Education Fund, Legal Services for Prisoners with Children, National Harm Reduction Coalition, National Health Law Program, A New Path (Parent for Addiction Treatment & Healing), Pregnancy Justice, the San Francisco AIDS Foundation, and the Sidewalk Project respectfully request leave to file a brief *amici curiae* in support of the Appellant, O.R.

The Court has broad authority to determine if and when to permit the filing of *amicus* briefs. Although Rule 8.487(e) of the California Rules of Court governs *amici* participation after the court has issued an alternative writ or order to show cause, the advisory committee comment to this rule clarifies that it does not alter the Court’s authority “to request or permit the filing of *amicus* briefs or *amicus* letters in writ proceedings in circumstances not covered by these subdivisions, *such as before the court has determined whether to issue an alternative writ or order to show cause*” (emphasis added).

II. NATURE OF THE *AMICI*'S INTEREST

Amici are national and state non-profit policy advocacy organizations with recognized expertise and longstanding concern in the areas of drug policy, healthcare, child welfare, and economic equality. *Amici* are well-versed in the oversized role that substance use plays in family separations and the ill effects these separations cause, especially to families of color.

Amici seek to help the Court understand how strong societal interests of protecting the health and safety of children and families are undermined by the lower court's decision to uphold the finding of jurisdiction and subsequent separation of a child from his father based on stigmatizing views of parental substance use without evidence of risk of harm to the child. *Amici* further seek to explain how continuing to allow unfettered judicial discretion with regards to defining "substance abuse" for purposes of exercising jurisdiction over minor children will lead to unnecessary family separations and all the associated harms, particularly for families of color.

Amici agree that allowing judges to determine when a parent has engaged in "drug abuse," rather than qualified clinicians, and the government's problematic equivocation of substance use with substance use disorder and substance use disorder with risk to the child undermines our collective objectives of protecting children and preventing family separation.

Amici have a substantial interest in the issue before this Court and believe that their expertise can help the Court assess

more fully the merits of this case.¹ The proposed *amici curiae* brief provides background on the stigmatizing, racial history behind the war on drugs and its contribution to unnecessary family separation. The proposed brief further establishes the rationale for the adoption of an objective definition of “substance abuse” that will help curb harmful and unnecessary family separations.

The proposed brief provides *amici*’s professional expertise and knowledge of relevant medical and scientific research and practices. *Amici* will make it known that the medical and scientific literature on substance use do not support the Appellate Court’s reasoning. Most importantly, *Amici* write to correct the false assumptions underlying the Appellate Court’s decision and elucidate the resulting ramifications: lasting harm to children through unnecessary separation from their families.

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.

¹ Additional details regarding *amici* and the interests of *amici* are included in Appendix A.

Pursuant to Rule 8.520(f) of the California Rules of Court, *amici* respectfully request that they be granted leave to file the accompanying *amici curiae* brief.

DATED: April 5, 2023

Respectfully submitted,

/s/ Kellen Russoniello
Kellen Russoniello,
SBN 295148
Drug Policy Alliance
krussoniello@drugpolicy.org
(510) 679-2311
P.O. Box 811
San Leandro, CA 94577

Attorney for *Amici*

Document received by the CA Supreme Court.

BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLANT O.R.

I. INTRODUCTION

In the present case, the lower court took jurisdiction over a small child, N.R., and removed him from Father without any evidence of actual or imminent harm. The Department of Children and Family Services removed N.R. based on vague and subjective assessments that rely upon unfair, inaccurate, and discriminatory assumptions regarding drug use. Although accepted clinical standards corroborate that Father's single, positive drug test is not sufficient to support a finding of "substance abuse," the courts upheld N.R.'s removal based on a judicially-created presumption that drug "abuse" constitutes "substantial risk of harm" to a child under the age of 6.

California Welfare and Institutions Code § 300(b) authorizes the juvenile court to take jurisdiction over a child when the "child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of ... [t]he inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's ... substance abuse."² The term "substance abuse" is not defined in statute. This case presents the question whether "substance abuse" should be determined by objective criteria applied by qualified professionals or by subjective, undisclosed criteria susceptible to stigma and bias. Given the law's preference for keeping families

² CAL. WELF. & INST. CODE § 300(b)(1)(D).

together and the harms caused by family separation, the answer must be the former.

Based on their professional expertise and knowledge of relevant medical and scientific research and practices, *amici curiae* seek to assist this Court by making known the medical and scientific literature on substance use that explicitly contradict the reasoning of the lower courts. *Amici* write to correct the false assumptions underlying the Appellate Court's decision, and to elucidate the ramifications of these assumptions in causing unnecessary family separations that cause lasting harm to children.

First, as discussed in Part I, the Appellate Court erroneously conflated substance use with a substance use disorder, contrary to accepted scientific standards, and then further conflated substance use with substantial risk to the child.

Second, as discussed in Part II, the Appellate Court's stigma-driven, unfair, and inaccurate conclusions about substance use contradict the medical and scientific communities' recognition that parental drug use by itself does not pose a risk of harm to children.

Third, as discussed in Part III, the scientifically unsound and discriminatory assumptions of the war on drugs reflected in the Appellate Court's decision will continue to justify unnecessary and harmful family separations unless this Court intervenes.

Amici therefore respectfully request this Court reject the assumption that parental drug use alone poses a risk of harm

that justifies state jurisdiction, and instead instruct the courts to rely on evidence-based and objective criteria that will combat the harms created by unnecessary family separation.

II. SUBSTANCE USE IS NOT EQUIVALENT TO “SUBSTANCE ABUSE” OR TO A SUBSTANCE USE DISORDER, THE LATTER OF WHICH IS A CLINICAL DIAGNOSIS MADE BY A QUALIFIED PROFESSIONAL.

The war on drugs has propagated the erroneous belief that any use of a prohibited substance is problematic and tantamount to “substance abuse.” The reality is that substance use is common, and the vast majority of use does not progress to a substance use disorder (SUD). Specialized addiction professionals are the most qualified to assess for and diagnose SUDs and identify whether SUDs have manifested distinctive interferences in the social, financial, or physiologic aspects of peoples’ lives.

Although drug use is relatively common across the United States, SUDs are less common. According to the Substance Abuse and Mental Health Services Administration, half of all people above the age of twelve years in the United States have used “illicit drugs” within their lifetimes.³ More than one-fifth have used an illicit drug in the past year, representing about 60

³ SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., 2021 NSDUH DETAILED TABLES: ILLICIT DRUG USE/MISUSE TABLES, TABLE 1.1B, *available at* <https://www.samhsa.gov/data/sites/default/files/reports/rpt39441/NSDUHDetailedTabs2021/NSDUHDetailedTabs2021/NSDUHDetailedTabsSect1pe2021.htm>.

million people.⁴ Regarding cocaine specifically, 14.6 percent of people have used it within their lifetimes, 1.7 percent have used it within the past year, and 0.7 percent have used it within the past month.⁵ By contrast, nearly 9 percent of people experienced a SUD involving an illicit drug in the last year, of which 0.5 percent had a cocaine use disorder.⁶

The vast majority of people who use drugs, including cocaine, do not develop a SUD.⁷ Research has shown only about 15-20 percent of people who use cocaine develop a diagnosable stimulant use disorder.⁸ In general, “the majority of drug use is episodic, transient and generally non-problematic.”⁹

The critical distinctions between substance use and SUDs are recognized by the American Psychiatric Association’s current clinical diagnostic guidelines. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), describes

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*, TABLE 5.1B, *available at* <https://www.samhsa.gov/data/sites/default/files/reports/rpt39441/NSDUHDetailedTabs2021/NSDUHDetailedTabs2021/NSDUHDetailedTabsSect5pe2021.htm>.

⁷ Anne Katrin Schlag, *Percentages of problem drug use and their implications for policy making: A review of the literature*, 6 DRUG SCI., POL’Y & L. 1, 1 (2020).

⁸ *Id.* at 5.

⁹ *Id.* at 7.

stimulant use disorder, for example, as “[a] pattern of amphetamine-type substance, cocaine, or other stimulant use leading to clinically significant impairment or distress, as manifested by at least 2 of the following, occurring within a 12-month period.”¹⁰ The definition then lists eleven social, physiological, and use-related considerations, with an increasing number of positive indications connoting increasing SUD severity.¹¹ All of these criteria exceed cocaine use alone, an

¹⁰ AM. PSYCHOL. ASS’N, THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 561 (5th ed. 2013) [hereinafter DSM-5].

¹¹ *Id.* (including the following criteria for stimulant use disorder:

1. The stimulant is often taken in larger amounts or over a longer period than was intended.
2. There is a persistent desire or unsuccessful efforts to cut down or control stimulant use.
3. A great deal of time is spent in activities necessary to obtain the stimulant, use the stimulant, or recover from its effects.
4. Craving, or a strong desire or urge to use the stimulant.
5. Recurrent stimulant use resulting in a failure to fulfill major role obligations at work, school, or home.
6. Continued stimulant use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the stimulant.
7. Important social, occupational, or recreational activities are given up or reduced because of stimulant use.
8. Recurrent stimulant use in situations in which it is physically hazardous.
9. Stimulant use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the stimulant.
10. Tolerance, as defined by either of the following:

implicit acknowledgment that cocaine use itself does not constitute a clinically diagnosable condition.¹² Moreover, the current definition of SUD demonstrates the evolving addiction landscape. In the prior edition, the DSM-IV differentiated between “substance abuse” and “substance dependence.”¹³ The distinction was abandoned in the DSM-5 in favor of SUD due to the logistical difficulties it created and lack of therapeutic usefulness.¹⁴ The adoption of SUD demonstrates an evidence-based evolution of an objective definition of problematic substance use.¹⁵

-
- a. A need for markedly increased amounts of the stimulant to achieve intoxication or desired effect.
 - b. A markedly diminished effect with continued use of the same amount of the stimulant.
11. Withdrawal, as manifested by either of the following:
- a. The characteristic withdrawal syndrome for the stimulant (refer to Criteria A and B of the criteria set for stimulant withdrawal, p. 569).
 - b. The stimulant (or a closely related substance) is taken to relieve or avoid withdrawal symptoms.)

¹² *Id.*

¹³ SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., IMPACT OF THE DSM-IV TO DSM-5 CHANGES ON THE NATIONAL SURVEY ON DRUG USE AND HEALTH (2016), *available at* <https://www.ncbi.nlm.nih.gov/books/NBK519702/>.

¹⁴ *Id.*

¹⁵ See Appellant’s Opening Brief on the Merits at 31-36 (describing the efforts the legislature undertook to adopt uniform, objective, and evidence-based criteria to prevent improper court intervention).

SUD cannot be diagnosed by only testing biospecimens, such as urine, for drugs or their metabolites.¹⁶ “Urine testing for cocaine assesses the presence or absence of cocaine’s primary metabolite, benzoylecgonine.”¹⁷ A positive urine test for cocaine metabolite indicates use within approximately the last two to four days.¹⁸ “[Drug tests] cannot tell how much of a drug was consumed, how intoxicated the person became, or whether the person has a substance use disorder.”¹⁹

As a clinical condition, SUDs can only be diagnosed by qualified professionals. Developing the expertise necessary to

¹⁶ U.S. DEP’T OF HEALTH & HUM. SERVS., NAT’L CTR. ON SUBSTANCE ABUSE & CHILD WELFARE, DRUG TESTING FOR PARENTS INVOLVED IN CHILD WELFARE: THREE KEY PRACTICE POINTS 3 (2021), *available at* <https://ncsacw.acf.hhs.gov/files/drug-testing-brief-2-508.pdf> (“The results of a single drug test cannot determine, or rule out, a SUD. While a series of tests can establish a pattern of use, they do not alone provide information on the severity of an individual’s substance use, the effects on parenting capacity, or an individual’s progress in recovery.”).

¹⁷ Karen E. Moeller et al., *Clinical Interpretation of Urine Drug Tests: What Clinicians Need to Know About Urine Drug Screens*, 92 MAYO CLIN. PROC. 774, 786 (2017).

¹⁸ *Id.* at 777.

¹⁹ LOREN SIEGEL, DRUG POL’Y ALLIANCE, REPORT: THE WAR ON DRUGS MEETS CHILD WELFARE 4 (2021), *available at* https://uprootingthedrugwar.org/wp-content/uploads/2021/02/uprooting_report_PDF_childwelfare_02.04.21.pdf.

diagnosis and treat SUDs requires specialized training and support.²⁰ This training and education is critical for addressing stigmatizing beliefs towards people with SUDs.²¹ Moreover, the legislature has acknowledged the need for trained professionals to use objective, evidence-based criteria when diagnosing SUDs.²²

In this case, Father's reported prior cocaine use and positive cocaine metabolite test do not necessitate a diagnosis of cocaine use disorder. Father's positive test aligns with Father's assertion that he used cocaine over the previous weekend, when

²⁰ Soteri Polydorou, Erik W. Gunderson & Frances R. Levin, *Training Physicians to Treat Substance Use Disorders*, 10 CURR. PSYCHIATRY REP. 399, 399 (2008); *see also* Edward V. Nunes et al., *Addiction Psychiatry and Addiction Medicine: The Evolution of Addiction Physician Specialists*, 29 AM. J. ADDICTION 390 (2020) (describing the addiction medicine and addiction psychiatry subspecialties); Kevin Kunz & Timothy Wiegand, *Addiction Medicine: Current Status of Certification, Maintenance of Certification, Training, and Practice*, 12 J. MED. TOXICICOL. 76, 77-78 (2016) (describing the specialized training completed by physicians in addiction fellowship programs).

²¹ *See* Mary K. Morreale et al., *Substance Use Disorders Education: Are We Heeding the Call?*, 44 ACAD. PSYCHIATRY 119, 119-20 (2020) (noting the pervasiveness of stigma against people who use drugs among clinicians and the necessity for training).

²² Appellant's Pet. for Review at 14 ("The Task Force recognized that extensive training was necessary to accomplish its goal of objective and uniform enforcement.") (citing Sen. Select Com. on Children & Youth, Rep. on Child Abuse Reporting Laws, Juvenile Court Dependency Statutes, and Child Welfare Services (Jan. 1988)).

he was not caring for his child.²³ No evidence was presented to support a clinical diagnosis of a SUD. The fact that Father used cocaine, not in the presence of his child and not in any way that impacted care for his child, is not sufficient to support a finding of “substance abuse.” Contrary to the scientific evidence underscoring the differences between substance use and substance use disorders, the Court of Appeal conflated them, then further conflated substance use and SUD with substantial risk to the child. The definition of “substance abuse” should align with current addiction science, which acknowledges SUD as a clinical diagnosis and establishes evidence-based criteria for determining SUD.

III. PLACING JUDGES IN THE ROLE OF QUASI-DIAGNOSTICIAN ALLOWS FOR STIGMATIZED DECISION-MAKING THAT EQUATES OCCASIONAL SUBSTANCE USE WITH SUD AND SUD WITH A SUBSTANTIAL RISK OF HARM, DESPITE NO ARTICULATED RISK PRESENT.

Science does not support the assumption that parental drug use by itself poses a risk of harm to children. Despite the lack of scientific evidence and the requirement of an actual substantial risk of harm arising from “substance abuse,” the Court of Appeal relied on unfair, inaccurate, and discriminatory assumptions

²³ See *In re N.R.*, No. B312001, 2022 WL 1284250, at 4 (Cal. Ct. App. Apr. 29, 2022), *reh’g denied* (May 13, 2022), *review granted* (Aug. 24, 2022) (noting Father’s description of his cocaine use the weekend before he supervised his child).

regarding parents who use drugs and equated occasional substance use with a SUD that poses a substantial risk of harm.

The assumption that substance use creates an inability to parent is not supported by the evidence.²⁴ No direct tie between drug use by a parent and a child's well-being has been established.²⁵ The relationship between parental substance use and child wellbeing is inconclusive due to potentially confounding factors that significantly influence childhood outcomes, such as poverty, drug criminalization, mental health disorders, and domestic violence.²⁶ Nevertheless, the Court of Appeal assumed a substantial risk of harm posed by Father's occasional drug use, which the court assumed was equal to "substance abuse," despite the absence of a specific inquiry considering articulable risks arising from "substance abuse."²⁷ The Appellate Court's decision

²⁴ Michele Staton-Tindall et al., *Caregiver Substance Use and Child Outcomes: A Systematic Review*, 13 J. OF SOCIAL WORK PRACTICE IN THE ADDICTIONS 6, 23 (2013).

²⁵ MOVEMENT FOR FAM. POWER, "WHATEVER THEY DO, I'M HER COMFORT, I'M HER PROTECTOR": HOW THE FOSTER SYSTEM HAS BECOME GROUND ZERO FOR THE U.S. DRUG WAR 21 (2020), *available at* <https://static1.squarespace.com/static/5be5ed0fd274cb7c8a5d0cba/t/5eead939ca509d4e36a89277/1592449422870/MFP+Drug+War+Foster+System+Report.pdf> ("[T]he social cognitive literature has not been able to conclusively draw any causal connection between drug use and inferior parenting).

²⁶ Michele Staton-Tindall, *supra* note 24, at 23-24.

²⁷ *See In re J.A.*, 47 Cal.App.5th 1036, 1046 (Ct. App. 2020), as modified (Apr. 20, 2020) ("The finding of dependency cannot be

provides an example of the stigma-driven, unfair, and inaccurate conclusions that are made when judges rely on criteria that are neither objective nor evidence-based.

First, the Court of Appeal assumed Father's part-time work status and his decision to live with his mother were the result of his cocaine use, essentially elevating the perceived risk of harm to the child by assuming cocaine has caused life interferences. The Court of Appeal provided no rationale for this conclusion. There are many reasons people work part-time, including to care for young children. Moreover, people live with family or roommates to help with caring for young children, as well as to save money to pay for children's needs.²⁸ Multigenerational living patterns also vary by race and ethnicity, with Black, Latinx, and Asian people more likely to live in homes with other family

based on substance abuse alone; jurisdiction requires a substantial risk of harm to the child arising from the substance abuse.”).

²⁸ See Jennifer Reid Keene & Christie D. Batson, *Under One Roof: A Review of Research on Intergenerational Coresidence and Multigenerational Households in the United States*, 4 SOC. COMPASS 643, 655 (2010) (noting the influence of economic and interpersonal struggles on the decision whether to live in a coresidence).

members.²⁹ Additionally, the COVID-19 pandemic changed many work and living arrangements. The pandemic caused millions of people to lose their jobs,³⁰ like Father temporarily did,³¹ and contributed to a significant increase in the number of people living with three or more generations.³² Blindly assuming that occasional drug use is solely responsible for Father’s employment and living situations, without any consideration of cultural, economic, health, or other factors, is stigma-driven, devoid of evidence, and discriminatory.

Second, the Court of Appeal identified Father’s “inability to recognize the problematic nature of his drug abuse and his early declination of additional services [as indications that] there was a

²⁹ D’vera Cohn & Jeffrey S. Passel, *A Record 64 Million Americans Live in Multigenerational Households*, PEW RES. CTR. (Apr. 5, 2018), <https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/>.

³⁰ Kim Parker, Rachel Minkin & Jesse Bennett, *Economic Fallout From COVID-19 Continues to Hit Lower-Income Americans the Hardest*, PEW RES. CTR. (Sep. 24, 2020), <https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/>.

³¹ *In re N.R.*, No. B312001 at 6, n. 1 (describing father as “an out-of-work barber”).

³² GENERATIONS UNITED, FAMILY MATTERS: MULTIGENERATIONAL LIVING IS ON THE RISE AND HERE TO STAY 4 (2021), *available at* <https://www.gu.org/app/uploads/2021/04/21-MG-Family-Report-WEB.pdf>.

risk of harm” to the child.³³ Using the denial of additional services as evidence of “substance abuse” mistakenly relies on a fundamental assumption: Father’s occasional drug use actually presents a substantial risk of harm. No such finding was ever made. Father was never inebriated while supervising the child. Father never used drugs in the presence of the child. There is no evidence Father was actually unable to care for his child and needed to “recognize the problematic nature of his drug abuse.”³⁴ The Court of Appeal’s logic is also circular. Whether Father admits he has a SUD and accepts program services or denies he has a SUD, the Court of Appeal would view his behavior as indicative of “substance abuse.” This logic effectively equates any substance use with a SUD that presents a substantial risk of harm. Thus, the notion that Father’s denial of services posed a substantial risk of harm is logically unsound and not based in the science of SUDs.

Third, the opinion focused on Father’s initial denial of his cocaine use, even though he eventually disclosed his drug use, as an indicator of the severity of his “substance abuse.”³⁵ In addition to this factor not being relevant to clinical diagnoses, it ignores the harm that occurs from drug criminalization. For many people who use drugs, disclosure of drug use may lead to discrimination

³³ *In re N.R.*, No. B312001 at 13.

³⁴ *Id.*

³⁵ *Id.* at 10, 15.

and negative effects on health care, housing, or employment, or as was the fear in the present case, child removal.³⁶ Disclosure of drug use to health professionals is associated with lower quality health care.³⁷ Fear of facing this stigma and discrimination influences many individuals' decision to disclose.³⁸ Indeed, Father

³⁶ See DeAnna Y. Smith & Alexis Roane, *Child Removal Fears and Black Mothers' Medical Decision-Making*, 22 CONTEXTS 18 (2023), available at <https://journals.sagepub.com/doi/epub/10.1177/15365042221142834>; Leonieke C. van Boekel et al., *Stigma among Health Professionals Towards Patients with Substance Use Disorders and its Consequences for Healthcare Delivery: Systematic Review*, 131 DRUG ALCOHOL DEPENDENCE 23, 33 (observing that stigmatized attitudes towards people who use drugs creates suboptimal health outcomes); Marah A. Curtis, Sarah Garlington & Lisa S. Schottenfeld, *Alcohol, Drug, and Criminal History Restrictions in Public Housing*, 15 CITYSCAPE: A J. OF POL'Y DEV. & RES. 37 (2013) (describing drug use restrictions in housing assistance programs).

³⁷ Lindsay A. Pearce et al., *Non-disclosure of Drug Use in Outpatient Health Care Settings: Findings from a Prospective Cohort Study in Vancouver, Canada*, 84 INT'L J. DRUG POL'Y at 7 (2020) (finding low rates of disclosure in health care setting and an association between disclosure and patient-reported poorer health care quality).

³⁸ Dea L. Biancarelli et al., *Strategies used by people who inject drugs to avoid stigma in healthcare settings*, 198 DRUG & ALCOHOL DEPENDENCE 80, 83 (2019) (noting people who use drugs often do not disclose drug use or full extent of drug use to healthcare providers due to fear of discrimination); Catherine E. Paquette et al., *Stigma at every turn: Health services experiences among people who inject drugs*, 57 INT. J. DRUG POL'Y 104, 107-08 (2018) (studying people who use drugs in California and describing how fear of discrimination deters access to sterile syringes).

mentioned that “he had been scared to tell the social worker he used cocaine.”³⁹ Father’s behavior may have been intended to protect his child from the harms caused by legal and social interventions that may follow an admission of parental drug use, even if that use does not impact the ability of the parent to care for a child.⁴⁰ As such, nondisclosure may reveal only an understanding of these severe consequences, not the severity of alleged “substance abuse.”

Fourth, the Court of Appeal draws scientifically unsound conclusions from Father’s positive drug test, using it as evidence of “substance abuse” and a substantial risk of harm to the child. The single test result cannot confirm a “substance abuse” diagnosis.⁴¹ While “it was undisputed Father was responsible for taking care of [the child] at the time of the November 2020 positive test,”⁴² the positive result aligns with Father’s description of his cocaine use over the previous weekend. Father used outside of the presence of the child, when he was not expecting to care for the child.⁴³ No evidence indicates Father

³⁹ *In re N.R.*, No. B312001 at 4.

⁴⁰ *See infra* Section III for a discussion of such harms.

⁴¹ U.S. DEP’T OF HEALTH & HUM. SERVS., *supra* note 16, at 3.

⁴² *In re N.R.*, No. B312001 at 9.

⁴³ *Id.* at 4.

was impaired while he was supervising his child.⁴⁴ “Equating a positive urine test for cocaine metabolites to the presence of impairment at a particular time prior to the urine collection is without scientific merit.”⁴⁵ Moreover, drug testing cannot identify child safety concerns nor evaluate parenting capacity.⁴⁶ The conclusions made by the Court of Appeal using the trial court’s facts were not based on scientific evidence; instead, they were derived from stigma-driven assumptions regarding substance use by parents.

Lastly, the Court of Appeal employs stigmatizing language, which heightens the perceived risk associated with Father’s cocaine use. Terms that position people with SUD in the role of abuser evoke prejudicial attitudes and further stigmatize.⁴⁷ Use

⁴⁴ Appellant’s Pet. for Review at 32-33.

⁴⁵ Am. C. of Med. Toxic., *Interpretation of Urine Analysis for Cocaine Metabolites*, 11 J. MED. TOXICOL. 153, 153 (2015).

⁴⁶ U.S. DEP’T OF HEALTH & HUM. SERVS., *supra* note 16, at 3.

⁴⁷ John F. Kelly, Richard Saitz & Sarah Wakeman, *Language, substance use disorders, and policy: The need to reach consensus on an “addiction-ary,”* 34 ALCOHOLISM TREATMENT Q. 116, 121 (2016) (finding the word “abuse” was associated with punishment and negative emotions); John F. Kelly & Cassandra M. Westerhoff, *Does it matter how we refer to individuals with substance-related conditions? A randomized study of two commonly used terms*, 21 INT. J. OF DRUG POL’Y 202, 205-06 (2010) (clinicians exposed to the term “substance abuser” were more likely to assign moral culpability and recommend punitive approaches, whereas those exposed to the term “having a SUD” were more likely to endorse treatment).

of “abuse” or “abuser” and similar language has been denounced as perpetuating stereotypes and health inequities and has provoked the White House Office of National Drug Control Policy and organizations, such as the American Medical Association and the International Society of Addiction Journal Editors, to urge clinical professionals and others to modify their language.⁴⁸ The continued use of “substance abuse” also runs directly counter to the diagnostic guidelines, which have abandoned the term.⁴⁹

These unfair and inaccurate conclusions by the Court of Appeal are made possible through the court’s stigma-driven analysis of “substance abuse.” Courts should follow evidence-based criteria for SUD and leave clinical diagnoses to qualified health professionals. Judicial use of nebulous, unobjective criteria in the family regulation system “is an invitation for implicit bias

⁴⁸ OFF. OF NAT’L DRUG CONTROL POL’Y, MEMORANDUM TO HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, CHANGING FEDERAL TERMINOLOGY REGARDING SUBSTANCE USE AND SUBSTANCE USE DISORDERS 3 (2017), *available at* <https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/images/Memo%20-%20Changing%20Federal%20Terminology%20Regrading%20Substance%20Use%20and%20Substance%20Use%20Disorders.pdf>; AM. MED. ASS’N, LANGUAGE MATTERS TO THE AMERICAN MEDICAL ASSOCIATION 2 (2020), https://end-overdose-epidemic.org/wp-content/uploads/2020/07/Language-Matters_Template-1.pdf; *Statements and Guidelines: Addiction Terminology*, Int’l Soc. of Addiction J. Eds. (Sept. 2, 2015), <https://www.isaje.net/addiction-terminology.html#:~:text=%E2%80%8BAddiction%20Terminology,who%20have%20an%20addictive%20behavior>.

⁴⁹ SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., *supra* note 13.

and discrimination based on race, class, religion, country of origin, sexual orientation, and gender identity” that disproportionately results in harms for Black families and other families of color.⁵⁰ Even where “substance abuse” is indicated, courts must engage in a case-specific inquiry to determine whether there are articulable risks of harm to the child that rise to a level sufficient to justify jurisdiction. Such standards are imperative to avoid the harms created by unnecessary family separation.

IV. THE WAR ON DRUGS HAS USED STIGMATIZING NARRATIVES TO TARGET PARENTS OF COLOR BASED ON ALLEGED SUBSTANCE USE AND HAS CAUSED LASTING DAMAGE THROUGH FAMILY SEPARATIONS.

The war on drugs and its racist underpinnings and narratives have fueled family separation. This has resulted in significant increases in the number of children within the foster care system, exposing greater numbers of children to its harmful effects. These significant and long-lasting harms are particularly burdensome for young children and have been disproportionately borne by children of color.

⁵⁰ Angela Olivia Burton & Joyce McMillan, *How judges can use their discretion to combat Anti-Black racism in the United States family policing system*, 2023 FAMILY CT. REV. 1, 9 (2023).

A. The war on drugs has perpetuated racist narratives about parents who use drugs.

The war on drugs has long relied on stigmatizing narratives regarding the capacity of parents. In addition to establishing harsh criminal penalties for possession and distribution of substances, the war on drugs infiltrated the family regulation system (also known as the child welfare system), resulting in the separation of families based on the perceived risks associated with parental drug use.⁵¹ These actions were partly spurred by racist stereotypes regarding low-income communities of color that took root in the 1980s.⁵² Specifically, media coverage around the so-called “crack baby” epidemic constructed an exaggerated view of Black mothers poisoning

⁵¹ LOREN SIEGEL, *supra* note 19, at 1-3; *see also* Loren Siegel, *The Pregnancy Police Fight the War on Drugs*, in *CRACK IN AMERICA: DEMON DRUGS AND SOCIAL JUSTICE* 249 (Craig Reinerman & Harry G. Levine, eds., 1997) (noting that penalties have extended beyond civil child welfare cases, with more than 200 pregnant people, predominantly people of color, being prosecuted for charges related to parental drug use in the years following the start of the war on drugs).

⁵² Editorial Board, *Slandering the Unborn*, N.Y. TIMES (Dec. 28, 2018), <https://www.nytimes.com/interactive/2018/12/28/opinion/crack-babies-racism.html>.

their children and provided justification for punitive state intervention.⁵³

In the decades that followed, these sensationalized depictions contributed to the rapid growth of the number of children, particularly Black children, in foster care.⁵⁴ These narratives coincided with increases in federal funding for family separation and decreases in funding for basic health and social services, such as drug treatment, housing, and childcare.⁵⁵

Removals from parental custody have become commonplace and continue to disparately affect communities of color. In fiscal year 2020, 216,838 children entered the foster care system, which totaled 407,493 children.⁵⁶ Despite representing 14 percent of the child population, Black children comprised 23 percent of the total

⁵³ *Id.*; Dorothy Roberts, *Torn Apart, How the Child Welfare System Destroys Black Families--and How Abolition Can Build a Safer World* 2 (2022).

⁵⁴ Kathi L. H. Harp & Amanda M. Bunting, *The Racialized Nature of Child Welfare Policies and the Social Control of Black Bodies*, 27 SOC. POL. 258, 260-73 (2020).

⁵⁵ Dorothy Roberts, *Shattered Bonds* 174-177 (2002); Leroy Pelton, *For Reason of Poverty: A Critical Analysis of the Public Child Welfare System in the United States* 6–7, 10–13 (1989); *A Child Welfare Timeline*, NAT'L COAL. FOR CHILD PROT. REFORM (Nov. 2021) <https://nccpr.org/a-child-welfare-timeline/>.

⁵⁶ U.S. DEP'T OF HEALTH & HUM. SERVS., ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN'S BUREAU, THE AFCARS REPORT 1 (2021), *available at* <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport28.pdf>.

foster child population.⁵⁷ Between 2000 and 2011, one out of every 17 white children, one out of every nine Black children, and one out of every seven Indigenous children were taken from their parents' custody.⁵⁸ Many family regulation system inquiries are associated with parental drug use, with nearly 80 percent of foster system cases involving allegations of drug use by caretakers.⁵⁹ As in the present case, these inquiries are often initiated by positive drug test alone, rather than any articulated harm to a child.⁶⁰ Parental substance use has become the “second most common circumstance associated with child removal.”⁶¹

⁵⁷ *Id.* at 2; FED. INTERAGENCY FORUM ON CHILD & FAM. STATS., AMERICA'S CHILDREN: KEY NATIONAL INDICATORS OF WELL-BEING, 2021 xiv-xv (2021), *available at* https://www.childstats.gov/pdf/ac2021/ac_21.pdf.

⁵⁸ Christopher Wildeman & Natalia Emanuel, *Cumulative Risks of Foster Care Placement by Age 18 for U.S. Children*, 9 PLOS ONE 1, 5 (2014).

⁵⁹ Nancy K. Young, Sharon M. Boles & Cathleen Otero, *Parental Substance Use Disorders and Child Maltreatment: Overlap, Gaps, and Opportunities*, 12 CHILD MALTREATMENT 137, 145 (2007).

⁶⁰ MOVEMENT FOR FAM. POWER, *supra* note 25, at 30-33, 88; *see* Margaret H. Lloyd & Jody Brook, *Drug testing in child welfare: A systematic review*, 104 CHILDREN & YOUTH SERVS. REV. (2019), at 7-11 (suggesting that drug testing is incredibly common, is unlikely to be done in accordance with evidence-based principles, and affects case outcomes).

⁶¹ Brittany Paige Mihalec-Adkins et al., NAT'L COUNCIL ON FAM. RELATIONS, JUGGLING CHILD PROTECTION AND THE OPIOID EPIDEMIC: LESSONS FROM FAMILY IMPACT SEMINARS 2 (2020), *available at* <https://www.ncfr.org/policy/research-and-policy->

Over one-third of removals in 2016 involved caregiver alcohol or drug use, representing the largest increase in reason for removal in the five prior years and a 17 percent increase since 2000.⁶²

The war on drugs is a primary driver of family separations. Inaccurate assumptions about parents who use drugs routinely result in findings of jurisdiction and custody removals. As the current case demonstrates, without clear guidance, courts will continue to perpetuate family separations based on stigma born from the deleterious legacy of the war on drugs.

B. Removals cause significant damage to children and expose children to the negative effects of the foster system.

Separating children from their families causes long-lasting disruption and trauma.⁶³ Indeed, even children living in a house

briefs/juggling-child-protection-and-opioid-epidemic-lessons-family-impact-seminars.

⁶² *Child Welfare and Alcohol & Drug Use Statistics*, U.S. DEP'T OF HEALTH & HUM. SERVS., NAT'L CTR. ON SUBSTANCE ABUSE & CHILD WELFARE, <https://ncsacw.samhsa.gov/research/child-welfare-and-treatment-statistics.aspx> (last accessed July 14, 2022).

⁶³ Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523, 527-552 (2019); AM. BAR ASS'N SECTION OF LITIGATION, CHILDREN'S RIGHTS LITIGATION COMMITTEE, TRAUMA CAUSED BY SEPARATION OF CHILDREN FROM PARENTS 6-25 (2019), available at https://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/child-separation-memo/parent-child-separation-trauma-memo.pdf.

where articulable risks are present may benefit from remaining with their parents instead of being placed into foster care.⁶⁴ One study showed children at the margin of removal from their parents' custody and placement in foster care may have better life outcomes when they remain at home.⁶⁵ Even if young children are eventually reunified with their parents, they can experience traumatic stress and other lifelong consequences as a result of separation.⁶⁶

Many of these negative outcomes are connected to placement within the foster care system, to which more than 400,000 children are currently exposed.⁶⁷ Being in foster care is associated with significant and lasting negative effects, including

⁶⁴ *Accord In re Kieshia*, 23 Cal.Rptr.2d at 782 (observing “the law's strong support for preservation of the parent-child relationship, even in the face of dangerous parental misconduct”).

⁶⁵ Joseph J. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 AM. ECON. REV. 1583, 1584 (2007) (comparing young adults who had been in foster care to a group of adults who had been similarly neglected but remained with their families and finding that, compared to the group who stayed with their birth families, those placed in foster care were more likely to be arrested).

⁶⁶ Trivedi, *supra* note 63, at 527-28, 530-31.

⁶⁷ U.S. DEP'T OF HEALTH & HUM. SERVS., *supra* note 56, at 1.

increased behavioral problems,⁶⁸ criminal involvement,⁶⁹ and homelessness.⁷⁰ For example, a 2012 survey showed that children placed in foster care generally had more mental and physical conditions than children not placed in foster care.⁷¹ These children were approximately twice as likely to have asthma, speech problems, and learning disabilities, as well as three times as likely to have hearing and vision problems.⁷² Particularly for infants, foster care has significant lasting negative impacts on children's attachment with caregivers.⁷³ These issues with the foster care system have provoked scholars to proclaim, "[i]f a

⁶⁸ Catherine R. Lawrence, Elizabeth A. Carlson & Byron Egeland, *The Impact of Foster Care on Development*, 18 DEV. & PSYCHOPATHOLOGY 57, 71 (2006).

⁶⁹ Jennifer L. Hook & Mark E. Courtney, *Employment outcomes of former foster youth as young adults: The importance of human, personal, and social capital*, 33 CHILDREN & YOUTH SERVS. REV. 1855, 1863 (2010).

⁷⁰ M.H. Morton, A. Dworsky & G. M. Samuels, *Chapin Hall & Voices of Youth Count, Missed Opportunities: Youth Homelessness in America* 10 (2017), available at <https://voicesofyouthcount.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hall-2017.pdf>.

⁷¹ Kristin Turney & Christopher Wildeman, *Mental and Physical Health of Children in Foster Care*, 138 PEDIATRICS e20161118, at 8-10 (2016).

⁷² *Id.*

⁷³ K. Chase Stovall & Mary Dozier, *Infants in Foster Care: An Attachment Theory Perspective*, 2 ADOPTION Q. 55, 82-84 (1998).

child survives foster care it's not because of the system, it's despite the system.”⁷⁴

Furthermore, these outcomes are not evenly distributed. The foster care system disproportionately burdens children of color. The U.S. Government Accountability Office found that Black children were more than twice as likely to be foster children and stayed an average of nine months longer than white children.⁷⁵ It follows that Black children are disparately more exposed to the risks of harm from the foster care system.

In this case, N.R. was ordered removed from Father's custody without any articulable evidence of risk of harm. This removal actually places N.R. in harm's way due to the myriad of harms associated with severance of parental relationships. This is at odds with the law's intention of protecting the child and strong preference for family preservation.⁷⁶ Although N.R. was not placed in foster care, some courts will continue to utilize the arbitrary and stigmatizing approach adopted by the Court of Appeal and justify custody removals based solely on drug use, placing more children at risk of entering the foster care system, unless the Supreme Court provides clarity. If the Court does not intervene, these scientifically unsound and discriminatory

⁷⁴ Dorothy Roberts, *Shattered Bonds: The Color Of Child Welfare* 223 (2002) (quoting author Jennifer Toth).

⁷⁵ U.S. GOV'T ACCOUNTABILITY OFF., GAO-07-816, AFRICAN AMERICAN CHILDREN IN FOSTER CARE 1, 26 (2007), *available at* <https://www.gao.gov/assets/gao-07-816.pdf>.

⁷⁶ *In re Kieshia*, 23 Cal.Rptr.2d at 782.

assumptions of the war on drugs will continue to separate families and cause lasting harm to children, particularly children of color.

V. CONCLUSION

The Appellate Court’s decision misunderstands the nature of the risk posed to a child by a parent’s substance use and ignores how failure to utilize criteria that are objective and evidence-based results in the inappropriate tearing of families apart. Parental substance use, or even substance use disorder, alone cannot provide sufficient evidence to warrant juvenile court jurisdiction. *Amici* request this Court provide guidance requiring courts adhere to the DSM or similarly rigorous diagnostic criteria to define “substance abuse,” and to require a determination that the specific parent’s substance use disorder creates an actual risk of specific harm before exercising jurisdiction over that child. Such objective standards are imperative to avoid the harms created by unnecessary family separation and to combat the disparate treatment of families. For the foregoing reasons, *amici curiae* respectfully request this Court decide in O.R.’s favor.

Dated: April 5, 2023

Respectfully submitted,

/s/ Kellen Russoniello
Kellen Russoniello,
SBN 295148

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CERTIFICATE OF WORD COUNT
CALIFORNIA RULE OF COURT, RULE 8.204(C)(1)

I hereby certify, pursuant to rule 8.204(c)(1) of the California Rules of Court, that relying on the word count of the computer program used to prepare this Amici Brief, Microsoft Word, counsel certifies that the text is proportionally spaced, and contains 8,714 words, including footnotes but excluding cover information, Certificate of Interested Entities or Persons, tables, signature blocks, and this certificate.

/s/ Kellen Russoniello
Kellen Russoniello
SBN 295148
krussoniello@drugpolicy.org
(510) 679-2311
DRUG POLICY ALLIANCE
P.O. Box 811
San Leandro, CA 94577

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DECLARATION OF SERVICE

I, Kellen Russoniello, declare that I am a citizen of the United States and over eighteen (18) years of age, employed in the County of Orange, and not a party to the within action; my mailing address is P.O. Box 811, San Leandro, CA 94577.

On April 5, 2023, I served the Proposed *Amici Curiae* Brief by electronic service via TrueFiling to:

David Michael Miller
Senior Deputy County Counsel
500 W Temple St., Suite 648
Los Angeles, CA 90012
dmiller@counsel.lacounty.gov
(Counsel for Respondent)

Sean Burleigh, Esq.
saborleigh@gmail.com
(Counsel for Appellant)

Andrew Tippin, Esq.
LADL 4
tippina@ladlinc.org
dca4@ladlinc.org
(Trial Counsel for Mother)

Samantha Bhuiyan, Esq.
Children's Law Center 3
bhuiyans@clcla.org
appeals3@clcla.org
(Trial Counsel for Minor)

Hon. Martha Matthews
Dept. 424
c/o Clerk of the Superior Court
Edelman Children's Court
JuvJoAppeals@lacourt.org

California Appellate Project
capdocs@lacap.com

Second District Court of Appeal
Division 5
300 S Spring St., North Tower
Los Angeles, CA 90013
(Service Copy filed w/TrueFiling)

Rob Bonta
CA Attorney General's Office
Post Office Box 944255
Sacramento, CA 94244
sacawttruefiling@doj.ca.gov

Executed on April 5, 2023, in Spokane, Washington.

/s/ Kellen Russoniello
Kellen Russoniello

Document received by the CA Supreme Court.

APPENDIX A: STATEMENTS OF INTEREST

Amicus Curiae **Drug Policy Alliance (DPA)** is a 501(c)(3) nonprofit organization that leads the nation in promoting drug policies that are grounded in science, compassion, health, and human rights. Established in 1994, DPA is a non-partisan organization with tens of thousands of members nationwide. DPA is dedicated to advancing policies that reduce the harms of drug use and drug prohibition, and seeking solutions that promote public health and public safety. DPA is actively involved in the legislative process across the country and strives to roll back the excesses of the drug war, block new, harmful initiatives, and promote sensible drug policy reforms. The organization also regularly files legal briefs as amicus curiae, including in other cases pertaining to pregnant women who use drugs.

Amicus Curiae **Any Positive Change Inc.** is a 501(c)(3) nonprofit organization whose focus is drug user health. As such we support drug policies that are grounded in science, compassion, health, and human rights. We have served Lake County, California since 1995 promoting health and wellness to the community. Any Positive Change is dedicated to advancing policies that reduce the harms of drug use and drug prohibition and seeking solutions that promote public health and public safety. Any Positive Change supports legislation across the country that rolls back the excesses of the drug war, block new, harmful initiatives, and promote sensible drug policy reforms.

Amicus Curiae **The Beyond Do No Harm Network** is a group of US-based health care providers, public health workers, impacted community members, advocates, and organizers working across racial, gender, reproductive, migrant and disability justice, drug policy, sex worker, and anti-HIV criminalization movements to address the harm caused when health care providers, public health researchers and institutions facilitate, participate in and support criminalization.

Amicus Curiae **The California Coalition for Women Prisoners (CCWP)** is a fiscally sponsored, non-profit organization that advocates on behalf of women, trans and non-binary people incarcerated in California women's prisons. Founded in 1995, CCWP monitors and challenges abusive conditions inside women's prisons, advocates to change discriminatory laws and policies, and supports people in the process of returning to the community after incarceration. We have long supported rolling back the harmful excesses of the drug war and have consistently advocated for protecting the parental rights of incarcerated people and the importance of maintaining family unity. Our support for this amici brief is aligned with all of these commitments.

Amicus Curiae **Children's Defense Fund-California** is a 501(c)(3) nonprofit organization and the western regional office of the Children's Defense Fund. Children's Defense Fund-California believes that California's long-term prosperity depends upon the world we create for our children. Children's Defense Fund-California is committed to building a better world for children,

which means giving both children and the adults in their lives the ability to live together in safe neighborhoods and receive comprehensive health care, quality education, and resources to thrive outside of systems of control, oppression, family regulation and surveillance.

Amicus Curiae **CLARE Matrix (CM)** is a 501(c)(3) nonprofit organization which combines CLARE Foundation's 50 years of expertise delivering an extensive continuum of residential services with the Matrix Institute on Addictions, which has 35+ years of experience in outpatient treatment, training and research, and worldwide recognition for its evidence-based Matrix Model.

Amicus Curiae **Community Legal Services in East Palo Alto (CLSEPA)** is a nonprofit organization that offers legal services that improve the lives of low-income families throughout the Bay Area region. CLSEPA is committed to pursuing multiple, innovative strategies, including community education, individual legal advice and representation, legal assistance to community groups, policy advocacy, and impact litigation.

Amicus Curiae **Elephant Circle** is a 501c3 organization, founded in 2009. We are inspired by how elephants give birth in the wild, the whole herd circles around the laboring elephant, remains for the duration, and offers connection and support and forming a circle of protection and defense. We know that people in the perinatal period need this kind of support and protection as well. We provide doula and legal support to people who are

impacted by substance use during pregnancy and postpartum, and work to change systems and policies so that they are more humane.

Amicus Curiae **The Immigrant Legal Resource Center (ILRC)** is a national nonprofit resource center based in San Francisco, California. Its mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Along with other work, the ILRC is recognized as a national expert in the intersection between immigration and criminal law, including the drastic penalties imposed for any use of or conviction for conduct relating to drugs, in immigration and other areas of civil law. The ILRC has a vital interest in ensuring that the law pertaining to the immigration consequences of crimes is interpreted as fairly, rationally, and consistently as possible, to better enable counsel to correctly advise their clients.

Amicus Curiae **JMACforFamilies (Just Making a Change or JMAC)** is a non-profit organization that works to abolish the current, punitive child welfare system while simultaneously strengthening and investing in supports that keep families and communities together. JMAC works towards accomplishing these goals through efforts including, but not limited to, legislative change; advocacy on local, state, national, and even international levels; and programming for people directly impacted, such as their innovative H.E.A.L program. JMAC also leads the Parent Legislative Action Network (PLAN), a coalition of people

impacted by the family policing/regulation system, advocates, attorneys, social workers, and academics working to push for legislative change to child welfare while changing the narrative regarding child welfare to reflect the truth of what families experience.

Amicus Curiae **Law For Black Lives** is a Black femme-led national network of over 6,000 radical lawyers and legal workers. Our network is deeply committed to supporting the leadership of directly impacted communities and transforming the legal field to represent the values of movement lawyering, which are centered in building community power and democratizing the law.

Amicus Curiae **Legal Action Center (LAC)** is a national, non-profit law and policy organization, with offices in New York and Washington, D.C., that fights discrimination against and promotes the privacy rights of individuals with criminal records, substance use disorders, and/or HIV/AIDS. LAC's work includes extensive policy advocacy to expand prevention and treatment opportunities for people with or at risk for substance use disorders and to oppose legislation and other measures that employ a punitive, rather than public health approach, to addiction. LAC has also represented individuals and substance use disorder treatment programs who face discrimination based on inaccurate stereotypes about the disease of addiction.

Amicus Curiae **Legal Momentum, the Women's Legal Defense and Education Fund** is the nation's first and longest-serving legal advocacy organization dedicated to advancing

women's rights and gender equality. Through impact litigation, public policy, and education initiatives, Legal Momentum works to advance reproductive justice, end gender-based violence, ensure economic equality, expand equal educational opportunities, and eradicate gender bias in our justice system. In particular, Legal Momentum works to end the practice of nonconsensual drug testing and governmental surveillance of prenatal patients and new parents and to restore bodily autonomy to pregnant persons.

Amicus Curiae **Legal Services for Prisoners with Children** organizes communities impacted by the criminal justice system and advocates to release incarcerated people, to restore human and civil rights, and to reunify families and communities. We build public awareness of structural racism in policing, the courts, and the prison system, and we advance racial and gender justice in all our work. LSPC is dedicated to advancing policies that reduce incarceration and seek solutions that promote public health and public safety. LSPC is actively involved in the legislative process and strives to roll back the excesses of a broken criminal justice system and promote sensible reforms and promote the reunification of families. The organization also regularly files legal briefs as amicus curiae.

Amicus Curiae **National Harm Reduction Coalition** is a national advocacy and capacity-building organization that promotes the wellbeing and dignity of people and communities affected by drug use. Our efforts advance harm reduction policies,

practices, and programs that address the adverse effects of drug use including incarceration.

Amicus Curiae **The National Health Law Program (NHeLP)** is a more than 50-year-old public interest law firm that works to advance access to quality health care and protect the legal rights of lower-income people and people with disabilities. NHeLP works to advance access to health care through education, policy analysis, administrative advocacy, and litigation.

Amicus Curiae **A New PATH (Parents for Addiction Treatment & Healing)** is a non-profit organization of parents, concerned citizens, individuals in recovery, healthcare professionals and community leaders working to educate the public and decision makers about the true nature of substance use disorders. Founded in 1999, our mission is to reduce the stigma associated with addictive illness through education and compassionate support and to advocate for therapeutic rather than punitive drug policies. Through our national collaborative campaign, Moms United to End the War on Drugs, started in 2009, we work to end the stigmatization and criminalization of people who use drugs or who have a substance use disorder. Through parent-driven advocacy, we promote strategies that reduce the harms associated with drug use.

Amicus Curiae **Pregnancy Justice** (formerly National Advocates for Pregnant Women) is a nonprofit organization that advocates for the rights, health, and dignity of all people, focusing particularly on pregnant and parenting women, and

those who are most likely to be targeted for state control and punishment—poor people, people of color, and people who use drugs. Through litigation, representation of leading medical and public health organizations and experts as amicus, and organizing and public education, Pregnancy Justice works to ensure that people do not lose their constitutional, civil, and human rights because of pregnancy or substance use. Pregnancy Justice believes that health and welfare problems, including substance use disorders, should be addressed as health issues not as crimes or reasons for state intervention, and promotes policies that actually protect maternal, child, and family health.

Amicus Curiae **The San Francisco AIDS Foundation (SFAF)** was founded in 1982 as a community response to the AIDS epidemic and its impact in San Francisco. Today with more than 200 staff and 2,500 volunteers, it is one of the most highly respected HIV service organizations in the United States, serving 25,000 clients annually through its direct service programs and more than 3,600,000 people via its public education efforts. Our mission is to promote health, wellness, and social justice for communities most impacted by HIV through sexual health and substance use services, advocacy, and community partnerships. SFAF envisions a future where health justice is achieved for all people living with or at risk for HIV. Ultimately, SFAF strives for a day when race is not a barrier to health and wellness and substance use is not stigmatized. To that end, we join this amicus brief.

Amicus Curiae **The Sidewalk Project (TSP)**, a lived-experience mobile harm reduction project, aids unhoused, drug-using, and sex worker populations, providing residents of Skid Row, Los Angeles with medical care linkages, system navigation services, job placement, medication-assisted treatment (MAT) and creative community resources for mental health. TSP links people directly to medical services including referrals and transportation to medical appointments. This includes coordinating medical care and other community services at a single location and developing ways to connect patients to resources more effectively.