

No. 19-1910

In The United States Court of Appeals
For The
Fourth Circuit

JOHN DOE 4, BY AND THROUGH HIS NEXT FRIEND NELSON LOPEZ, ON
BEHALF OF HIMSELF AND ALL PERSONS SIMILARLY SITUATED
PLAINTIFFS-APPELLANTS,

vs.

SHENANDOAH VALLEY JUVENILE CENTER COMMISSION,
DEFENDANT-APPELLEE

On Appeal from the United States District Court, W.D. Virginia
Honorable Elizabeth K. Dillon D.C. No. 5:17-cv-00097-EKD-JCH

**BRIEF OF *AMICI CURIAE* CURRENT AND FORMER STATE
ATTORNEYS GENERAL, ELECTED PROSECUTORS,
CORRECTIONS LEADERS, CRIMINAL JUSTICE LEADERS,
AND DISABILITY RIGHTS LEADERS IN SUPPORT OF
PLAINTIFFS-APPELLANTS**

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INTEREST OF AMICI CURIAE

Amici curiae are 57 current and former District and State's Attorneys, state Attorneys General and corrections leaders, as well as former United States Attorneys and Department of Justice officials, representing 30 states and the District of Columbia. Amici also include Virginia's federally mandated protection and advocacy agency, the disAbility Law Center of Virginia. Amici are respected leaders in their professional communities at the federal and state levels, with diverse backgrounds. As current and former criminal justice, corrections, youth detention, and disability rights leaders, they share a strong interest in conditions of confinement for young people that are appropriate, constitutionally sufficient, and that promote trust and confidence in the integrity of the justice system. Amici are well aware that when trust in the justice system is eroded, public safety also suffers.

Amici have all been or are currently responsible for the safety and well-being of children in their respective jurisdictions, and some amici have had a particular responsibility for the conditions of confinement of children. Amici firmly believe that the conditions in which children are detained must account for, and not exacerbate, their trauma. It is well

settled that trauma-informed practices reduce the risk of future harm to young people themselves as well as to the community. And these practices are the appropriate way to oversee the care of children in our charge, including those detained in our nation's facilities. Accordingly, amici are committed to policies and practices that promote this critical starting point.

This case is particularly important because community trust, which is integral to effective law enforcement, depends on the system being viewed by the public as legitimate. A failure to engage in trauma-informed care in juvenile detention facilities destroys that legitimacy, offends the Constitution, and inures to the detriment of the individual as well as the broader community. It also fails to promote safer and stronger communities. (A complete list of the amici is set forth in the Appendix to this brief.¹)

¹ No party's counsel authored this brief in whole or in part, and no person, other than amici curiae's counsel, funded the preparation or submission of this brief. All parties have consented to the filing of this brief.

SUMMARY OF ARGUMENT

The district court erred in concluding that a trauma-informed approach to mental health care for detained children is merely aspirational, rather than reflecting the constitutionally required standard of professional care. In fact, a trauma-informed approach has been widely accepted and adopted as the standard of care in this setting. A trauma-informed approach is critical for child detainees, and failing to implement such an approach can both permanently injure the children who are in the states' care and erode the public's trust in the legitimacy and integrity of the legal system, thereby harming public safety.

Plaintiffs in this case have been harmed in numerous ways because Shenandoah Valley Juvenile Center ("SVJC") has egregiously and repeatedly departed from accepted professional norms—including failing to provide adequate mental health treatment to children in its care with known mental health issues and using punitive measures including lengthy solitary confinement. Yet the district court erroneously rejected Plaintiffs' claim that they failed to receive adequate mental health care by applying the wrong constitutional

standard. Rather than using the “deliberate indifference” standard, the court should have applied the professional judgment standard set forth in *Youngberg v. Romeo*, 457 U.S. 307 (1982). A trauma-informed approach represents the accepted standard of professional judgment under *Youngberg*, and the SVJC violated Plaintiffs’ rights by failing to adopt it. Under the correct constitutional standard, there are clearly genuine issues of material fact, and this Court should remand the case to the district court.

ARGUMENT

I. CHILDREN AND YOUNG PEOPLE ARE DIFFERENT FROM ADULTS AS A BIOLOGICAL AND LEGAL MATTER

As leaders in the fields of criminal justice, corrections, youth detention, and disability rights, amici recognize a fundamental principle that underpins this case – namely, that children are biologically, developmentally, and legally different from adults. This is especially apparent in how children respond to and are shaped by trauma.

The adolescent’s brain is in a critical stage of development; it is growing in a range of areas, such as relationship skills, emotional regulation, and executive function. These areas impact children’s

abilities to associate decisions and behavior with long-term consequences.² Legal doctrines have increasingly come to reflect this irrefutable starting point and to recognize the unique attributes of young people. *See Miller v. Alabama*, 567 U.S. 460, 471–72 (2012) (“[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”) (citing *Graham v. Florida*, 560 U.S. 48, 68 (2010)); *Roper v. Simmons*, 543 U.S. 551, 570 (2005) (“The character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.”) (citing E. Erikson, *Identity: Youth and Crisis* (1968)).

Of particular pertinence to this case, children are different from adults in the ways in which trauma impacts them. “Trauma” is defined as the result of “an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual’s

² *See* Tim Decker, Ctr. for Juvenile Justice Reform, *A Roadmap to the Ideal Juvenile Justice System*, at 9 (July 2019), <https://cjjr.georgetown.edu/wp-content/uploads/2019/07/A-Roadmap-to-the-Ideal-Juvenile-Justice-System-Digital-Release.pdf>

functioning and mental, physical, social, emotional, or spiritual well-being.”³ The more traumatic events a person—any person—suffers, especially if the trauma is not promptly and appropriately addressed, the more likely they will exhibit health and behavioral problems, and loss in life potential.⁴

When children experience repeated traumatic events, their developmental trajectory is significantly altered on several domains, including attachment, biology, affect regulation, dissociation, behavioral control, cognition, and self-concept. This developmental impact, in turn, potentially damages the child’s ability to form trusting social bonds, regulate their emotions, and understand rules, among other

³ See Substance Abuse & Mental Health Servs. Admin., *SAMHSA’s Concept of Trauma and Guidance for a Trauma-Informed Approach*, at 7 (July 2014), <http://store.samhsa.gov/shin/content/SMA14-4884/SMA14-4884.pdf>.

⁴ See Ctrs. for Disease Control, *Association Between ACEs and Negative Outcomes*, <https://www.cdc.gov/violenceprevention/childabuseandneglect/acestudy/ace-graphics.html> (last visited Dec. 27, 2019).

long-term consequences.⁵ In addition, traumatized young people often misread social cues and interpret others as hostile, feel a lack of control, can be re-traumatized by otherwise modestly stressful situations, and become either hyper-aroused or numbed and dissociated during stressful events.⁶

Unaccompanied minors seeking safe haven in the United States are particularly likely to have experienced trauma. They commonly have experienced traumatic events in their countries of origin, during their difficult journeys to the United States, while they are confined in the United States and, when applicable, throughout the challenging process of resettlement.⁷

⁵ See Alexandra Cook et al. *Complex Trauma in Children and Adolescents* 35 *Psychiatric Annals*. 390 (2005), <http://psychrights.org/research/Digest/CriticalThinkRxCites/cook.pdf>.

⁶ See Fair & Just Prosecution, *Juvenile Justice and Young Adult Issues: Promoting Trauma-Informed Practices* (2017), <https://fairandjustprosecution.org/wp-content/uploads/2017/09/FJPBrief.TraumaPractices.9.25.pdf>

⁷ For example, 29 percent of foreign-born adolescents, and 34 percent of foreign-born parents experience trauma during the migration process. Among those that experienced trauma, nine percent of adolescents and 21 percent of their parents were at risk for PTSD. See Julie M. Linton, Marsha Griffin & Alan J. Shapiro, *Am. Acad. Of Pediatrics, Detention of*

Detention can function as an additional source of trauma.

Research shows that even a short amount of time in detention is seriously harmful to children, particularly those who have already experienced trauma in their home countries or during their journey to the United States. This harm sometimes presents as regression in child development, high levels of anxiety and depression, and suicide attempts.⁸ Children in detention are ten times more likely to develop post-traumatic stress disorder than adults, and these symptoms become increasingly common the longer a child is in detention.⁹

Immigrant Children (Apr. 2017), <https://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full-text.pdf>; Krista M. Perreira & India Ornelas, *Painful Passages: Traumatic Experiences And Post-Traumatic Stress Among Immigrant Latino Adolescents And Their Primary Caregivers*, *Int Migr Rev.* (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3875301/>.

⁸ See Linton, *supra* note 7, at 6; Jessica Chicco et al., *Policy Statement on the Incarceration of Undocumented Migrant Families*, 57 *Am. J. Community Psychol.* 255 (2016); see also Gillian Triggs, Australian Human Rights Comm'n, *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014* (June 15, 2015).

⁹ See Australian Human Rights Comm'n, *National Inquiry into Children in Immigration Detention 2014: Discussion Paper* (Feb. 3,

II. A TRAUMA-INFORMED APPROACH TO MENTAL HEALTH CARE IS THE PROFESSIONAL STANDARD OF CARE FOR CHILD DETAINEES

Due to these issues, appropriate detention practices are necessary for children who have suffered trauma, and a punitive approach to youth mental health issues is unacceptable and counterproductive.¹⁰ Given the high likelihood of a traumatic history among detained immigrant youth, a trauma-informed approach to their mental health care is of paramount importance.¹¹ Such care is already a well-established practice in youth detention.

2014), <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/national-inquiry-children-immigration-detention>.

¹⁰ See Sue Burrell, Nat'l Child Traumatic Stress Network, *Trauma and the Environment of Care in Juvenile Institutions*, at 5 n.25 (Aug. 2013), https://www.nctsn.org/sites/default/files/resources/trauma_and_environment_of_care_in_juvenile_institutions.pdf (“In *Roper v. Simmons*, 543 U. S. 551, 577 (2005), the Court recognized that, because of their lack of maturity and underdeveloped sense of responsibility, juveniles make ‘impetuous and ill-considered actions and decisions,’ and are unlikely to consider the possible punishment before acting.”).

¹¹ See Shantel D. Crosby, *Trauma-Informed Approaches to Juvenile Justice: A Critical Race Perspective*, 67 *Juv. Fam. Ct. J.* 1, 5-18 (2016) (citing Day et al., 2013).

At the most basic level, trauma-informed care involves the provision of services and interventions that do not inflict further trauma on the individual and take into account past traumatic experiences.¹² Of particular importance to the juvenile detention setting, a trauma-informed approach considers the impact of detention itself.¹³ For example, in agencies using trauma-informed practices, staff who interact with youth are trained to recognize and respond to manifestations of trauma such as acting out behaviors.¹⁴ Rather than

¹² See Gordon R. Hodas, Pa. Office of Mental, Health & Substance Abuse Servs., *Responding to Childhood Trauma: The Promise and Practice of Trauma Informed Care*, (Feb. 2006), <https://www.dhs.pa.gov/docs/For-Providers/Documents/Behavioral%20Health%20Services/Responding%20to%20Childhood%20Trauma.pdf>; Nancy Kusmaul et al., Humane Servs. Orgs., *The Infusion of Trauma-Informed Care in Organizations: Experience of Agency Staff*, 25-37 (2015).

¹³ See e.g., Burrell, *supra* note 10, at 3-4 (describing a trauma-informed approach to avoiding retraumatization in the custodial setting).

¹⁴ See Victoria L. Hummer et al., *Innovations in Implementation of Trauma-Informed Care Practices in Youth Residential Treatment: A Curriculum for Organizational Change*, 89 Child Welfare 79 (2010), https://pdfs.semanticscholar.org/3833/ef3554ccfd5daa83239e09318f417b96fa3b.pdf?_ga=2.213766932.1836973554.1577738062-1942936495.1577738062.

simply punishing a young person who acts out, staff coordinate with mental health professionals to determine whether the behavior demonstrates a need for additional mental health care, and to avoid “punishment” that will further damage the child’s mental health.¹⁵ A program, organization, or system that is trauma-informed recognizes the signs and symptoms of trauma and understands potential paths for recovery, while seeking to avoid re-traumatization.¹⁶

Trauma-informed services within a juvenile detention setting include: training regarding the prevalence and impact of psychological trauma; screening to identify potential psychiatric conditions that require further assessment; assessment for youth who “screen in”; and

¹⁵ See e.g., Burrell, *supra* note 10, at 2 (warning against “the failure to recognize and properly address complex behavior stemming from trauma, create an environment in which some youth are punished, isolated, or restrained for behavior that is trauma-related.”)

¹⁶ See Decker, *supra* note 2, at 17-18; Roger D. Fallot & Maxine Harris, Cmty. Connections, *Creating Cultures of Trauma-Informed Care (CCTIC): A Self-Assessment and Planning Protocol*, at 2 (Apr. 2009), <https://www.theannainstitute.org/CCTICSELFASSPP.pdf>.

access to evidence-based interventions to treat and address trauma disorders.¹⁷

Trauma-informed care is already in widespread use in juvenile detention systems and is considered the accepted standard of professional care.¹⁸ Indeed, more recent “cutting edge” or “aspirational” practices have built on foundational trauma-informed practices. They include newer and more ambitious methods of professional care, such as healing-center engagement, which is aimed at addressing “culture, spirituality, civic action and collective healing.”¹⁹

¹⁷ See Crosby, *supra* note 11, at 5-18; SAMHSA’s *Concept of Trauma*, *supra* note 3, at 6-7; Christopher E. Branson et al., *Trauma-Informed Juvenile Justice Systems: A Systematic Review Of Definitions And Core Components*, 9 *Psychol. Trauma* 635 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664165/pdf/nihms841184.pdf>.

¹⁸ See Carly B. Dierkhising et al., Nat’l Ctr. for Child Traumatic Stress, *Trauma-Informed Juvenile Justice Roundtable: Current Issues and New Directions in Creating Trauma-Informed Juvenile Justice Systems* (2013), https://www.nctsn.org/sites/default/files/resources//trauma_informed_juvenile_justice_roundtable_current_issues_new_directions_in_creating_trauma-informed_juvenile_justice_systems.pdf.

¹⁹ See Nat’l Guild for Cmty. Arts Educ., *Shawn Ginwright on the Future of Healing*, <https://nationalguild.org/news/field-news/shawn-ginwright-on-the-future-of-healing> (last visited Dec. 30, 2019) (“A healing centered approach is holistic involving culture, spirituality, civic action and

State and county juvenile justice systems, departments of children and families, and children's advocates are embracing trauma initiatives across the country, in states such as California, Florida, Massachusetts, Connecticut, Pennsylvania, New York, and Missouri.²⁰ The United States Department of Justice has called for the implementation of trauma-informed juvenile justice systems in order to combat the negative impact of trauma on youth offenders and front-line staff.²¹

collective healing.”); *see also* Aboriginal and Torres Strait Islander Healing Found., *Healing Informed Organisations*, at 4 (Feb. 2015) <https://healingfoundation.org.au/app/uploads/2017/02/Healing-Informed-Organisations-FINAL-SCREEN-INTERACTIVE.pdf> (“The notion of a healing informed organisation is relatively new.”).

²⁰ *See* Jason M. Lang et al., *Building Capacity for Trauma-Informed Care in the Child Welfare System: Initial Results of a Statewide Implementation*, 21 *Child Maltreatment* 21, 113 (2016); *See* S.J. Ko et al., *Creating Trauma-Informed Systems: Child Welfare, Education, First Responders, Health Care, Juvenile Justice*, 39 *Prof. Psychol. Res. & Prac.* 396, 400-01 (2008); Decker, *supra* note 2, at 16.

²¹ *See* U.S. Dep't of Justice, *Report of the Attorney General's National Task Force on Children Exposed to Violence* (Dec. 12, 2012), <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>. (Recommendations include to “[i]ncorporate evidence-based trauma-informed principles in all applicable federal agency grant requirements.”; “[p]rovide all children exposed to violence access to trauma-informed services and evidence-based trauma-specific treatment.”; “[e]nsure that every professional and advocate serving children exposed to violence and psychological trauma learns and

Similarly, the National Institute of Justice is funding policy and clinical research studies designed to develop evidence-based models for trauma services in juvenile justice.²² District attorneys across the country are also utilizing a trauma-informed approach in the way they treat juveniles, communicate with victims of crimes, and structure their offices.²³ In sum, for amici in the criminal justice, youth detention, and disability rights professions, trauma-informed care is a well recognized starting point.

III. ENSURING YOUTH DETAINEES RECEIVE TRAUMA-INFORMED CARE PROMOTES PUBLIC SAFETY AND PUBLIC TRUST IN THE JUSTICE SYSTEM

Amici recognize that one of the greatest responsibilities in the legal system is the duty to protect those who are confined in our nation's detention facilities. This certainly includes the responsibility to keep child and adult detainees physically safe, but we also have a

provides trauma-informed care and trauma-focused services.”; and “[m]ake trauma-informed screening, assessment, and care the standard in juvenile justice services.”).

²² See *Ko*, *supra* note 20, at 397-98.

²³ See *Juvenile Justice and Young Adult Issues*, *supra* note 6, at 1-5.

responsibility to care for the mental health of detainees. A trauma-informed approach is a core component of that mental health care.

As leaders who are now or were previously involved with administering the criminal justice system in our respective jurisdictions, amici have learned that conditions of confinement—whether for adults or young people—have a direct effect on public safety, the integrity of the criminal justice system, and our communities’ perception of that system. In the civil confinement context, such as at SVJC, these effects are equally important where the state holds the same responsibility to safely detain children when exercising its interest as *parens patriae*.²⁴ As such, the disturbing conditions at SVJC will directly impact not only the young people housed there, but also the community at large.

Insights from the criminal context inform amici’s understanding of the public safety implications for civil detention. For example, in the

²⁴ “[T]he parent’s right to custody is subject to the child’s interest in his personal health and safety and the state’s interest as *parens patriae* in protecting that interest.” *Beltran v. Cardall*, 222 F. Supp. 3d 476, 488 (E.D. Va. 2016) (quoting *White ex rel. White v. Chambliss*, 112 F.3d 731, 735 (4th Cir. 1997)).

criminal context, prosecutor amici rely on the cooperation of crime victims and witnesses in solving crimes and bringing responsible parties to justice. This cooperation depends on building trust between law enforcement and the community it seeks to protect, which in turn requires that people view the legal system as legitimate and fair.²⁵

It is clear that the public believes a legitimate and fair legal system is one that recognizes that young people are, and must be treated as, “different from adults.” *See Miller*, 567 U.S. at 471. For example, when juveniles are detained in the criminal context, the overwhelming majority of the public agree that the purpose of the juvenile system should be rehabilitative and thus the system should provide young people with services and treatment that they need to further that purpose.²⁶ The provision of trauma-informed care for

²⁵ In fact, research shows that people are more likely to obey the law when they see authority as legitimate. *See, e.g.*, Tom R. Tyler, *Why People Obey the Law* 31, 64-68 (1990) (“These studies suggest that those who view authority as legitimate are more likely to comply with legal authority . . .”).

²⁶ *See* Pew Charitable Trusts, *Public Opinion on Juvenile Justice in America*, at 1-2 (Nov. 2014), https://www-aws.pewtrusts.org/-/media/assets/2015/08/pspp_juvenile_poll_web.pdf?la=en&hash=F9CF56293FE1837F8D13A5DC6CB6CA2B4B7205EB.

children in detention aligns with these beliefs, and any failure to provide compassionate, trauma-informed care for the youth under amici's supervision not only causes harm to those children—it also harms amici's ability to build the trust necessary to carry out amici's mission to protect public safety.

The professional consensus that trauma-informed care is essential in the juvenile setting is also due, in part, to findings that trauma-informed environments have direct positive impacts on public safety. A trauma-informed detention system contributes to the restoration of order and safety by enabling staff to effectively participate in a youth's recovery from trauma. In the criminal context, amici have observed this benefit as reducing juvenile recidivism, thereby promoting the public's safety and welfare.²⁷ It also includes significant long-term economic

²⁷ For example, this approach drastically reduced recidivism rates in the largest juvenile court in Georgia (Fulton County Juvenile Court) after its application in 2012 and 2013. See Nat'l Ctr. for Mental Health & Juvenile Justice, *Trauma-Informed Policy and Practice: Implementing Research-based, Cross-systems Reforms to Improve Outcomes for Children, and Youth*, at 1-49 (2016), https://ncyoj.policyresearchinc.org/img/resources/Trauma-Informed_Policy_and_Practice-172050.pdf. In a youth residential treatment facility that applied trauma-informed care, the average

and social cost savings, by increasing the ability of detained children to become productive and beneficial members of society as adults.

IV. SVJC'S DISTURBING PRACTICES STRAY FROM THE TRAUMA-INFORMED APPROACH ACCEPTED AS STANDARD PRACTICE IN THE FIELD AND THE COURT ERRED IN REJECTING PLAINTIFF'S CLAIMS

The district court erroneously rejected Plaintiffs' claim that SVJC was required to provide trauma-informed care. In so doing, it allowed a facility where children with mental health conditions are met with physical restraints and draconian punishment—rather than needed treatment—to continue to operate in a manner that exacerbated harm.

The court's decision failed to consider the circumstances of the detained young people or the purpose of their detention. Because the

improvement in presenting problems was increased by 34%, time to discharge was reduced by 39%, and rate of discharge to lower level of care was doubled. *See* Ricky Greenwald et al., *Implementing Trauma-Informed Treatment for Youth in a Residential Facility: First-Year Outcomes*, 29 *Residential Treatment for Children & Youth* 141, 151 (2012). *See also* Nat'l Ctr. for Mental Health & Juvenile Justice, *Trauma Among Youth in the Juvenile Justice System*, (2016) <https://www.ncmhjj.com/wp-content/uploads/2016/09/Trauma-Among-Youth-in-the-Juvenile-Justice-System-for-WEBSITE.pdf> (describing a reduction in recidivism following implementation of trauma-informed care).

purpose of the detention of these unaccompanied children is non-punitive in nature, the *Youngberg* professional judgment applies and the requested relief should not have been summarily denied.²⁸ Under the *Youngberg* standard, “liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a [professional] judgment.” 457 U.S. at 323. The conditions at SVJC described by Plaintiffs certainly depart from professional judgment and the district court’s refusal to allow these claims to proceed should be reversed.

A. The Purpose of Detention at SVJC is Non-Punitive.

Plaintiffs are children, and have not been adjudicated delinquent or convicted of any offense. The purpose of their detention is protective, not punitive – i.e., to protect them from harm, not to punish them.²⁹

²⁸ Amici agree with and adopt Plaintiff’s arguments regarding the application of *Youngberg* as explained in Appellants’ Br. at 25-33.

²⁹ Even cases considering juveniles who have been found delinquent have concluded that the “law clearly establishes that the purpose of confining juveniles who violate the law is not to punish them, but to

Under federal law, Plaintiffs are “unaccompanied alien children” (UACs) ³⁰ who are categorized separate and apart from other immigrant detainees and given specialized treatment under federal law. *See, e.g.*, 8 U.S.C. § 1232 (providing special procedures for the care of and rights to UACs). The statute emphasizes that the primary purpose of detention is to serve “the best interest of the child,” *id.* § 1232(c)(2)(A), and “provid[e] for the child’s physical and mental wellbeing,” *id.* § 1232(c)(3)(A).

Plaintiffs are detained at SVJC by virtue of a contract between SVJC and the Office of Refugee Resettlement (“ORR”). The contractual arrangement reflects ORR’s expectation that ORR-funded care provider staff treat the medical and behavioral health needs of UACs. Such

provide training and services to correct their delinquent behavior—that is to say, to rehabilitate them.” *Alexander S. ex rel. Bowers v. Boyd*, 876 F. Supp. 773, 796 (D.S.C. 1995). It is even clearer here that plaintiffs are detained by the state *solely* due to their *status* as UACs and not to punish them for any crime.

³⁰ Federal law defines a UAC as a child who has no lawful immigration status in the United States, is under 18 years of age, and either (i) lacks a parent or legal guardian in the United States or (ii) no parent or legal guardian in the United States is available to provide care and physical custody. 6 U.S.C. § 279(g).

contractual expectations include providing weekly counseling sessions, proper physical care and maintenance, and appropriate mental health interventions. *See* Appellants' Br. at 8, 30.

The contractual arrangement reflects ORR's stated practice in fulfilling its regulatory responsibilities to care for UACs under federal law. This arrangement is also consistent with SVJC's self-identification as "a secure residential facility for juveniles" with a mission to "provide an environment with an emphasis on continuing and expanding the youth's education and providing proper physical and mental health services and support."³¹

B. The District Court Erred in Granting Summary Judgment because Record Evidence Supports the Conclusion that SVJC Failed to Meet the Mental Health Needs of Traumatized Child Detainees Under the Professional Judgment Standard.

The district court failed to conduct any analysis under the professional judgment standard after summarily concluding that the deliberate indifference standard applies. The record makes clear that

³¹ *See* Shenandoah Valley Juvenile Ctr., *Secure Detention*, <https://www.svjc.org/secure-detention> (last visited Dec. 30, 2019); Shenandoah Valley Juvenile Ctr., *SVJC Mission Statement*, <https://www.svjc.org/svjc-mission-statement> (last visited Dec. 30, 2019).

Plaintiffs—at a minimum—raised material issues of fact regarding SVJC’s failure to provide the trauma-informed care mandated by the professional judgment standard, and therefore the district court erred in granting summary judgment.

Under the professional judgment standard, plaintiffs must demonstrate that the mental health care at SVJC represented “such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment.” *Youngberg*, 457 U.S. at 323. For the reasons outlined in detail in Section II, *supra*, the professional judgment standard requires an approach that recognizes and responds with appropriately tailored treatment to the impact of trauma on detained children and avoids exacerbating that prior trauma. Here, it is clear that SVJC did not apply a trauma-informed approach. To the contrary, SVJC’s choices about the methods it and its staff would employ to control the immigrant children in its care were antithetical to a trauma-informed approach and caused additional harm to those children.

There is no dispute in this case that numerous Plaintiffs suffered from mental illness on arrival at SVJC – including depression, conduct disorders, anxiety disorders, explosive anger, impulsivity, suicidal ideation, and post-traumatic stress disorder. *See, e.g.*, Appellants’ Br. at 9-11, 16-22. There is also no dispute that numerous plaintiff children were engaging in self-harm, including, in some cases, suicide attempts. *See, e.g.*, Appellants’ Br. at 11, 17-19.

Testimony of SVJC staff reflects that there are, at the very least, genuinely contested issues of material fact regarding whether SVJC provided mental health treatment for these highly traumatized children. For example, the lead clinician at SVJC admitted that clinicians at SVJC do not treat or even discuss the trauma underlying a child’s mental health issues, justifying this practice with the assertion that “it would be unethical and inappropriate” for SVJC clinicians to “treat trauma.” Appellants’ Br. at 12. The clinician also conceded that, even when SVJC clinicians do receive diagnoses or treatment recommendations from a child detainee’s psychological evaluation, they do not provide counseling specific to individual diagnoses or are

unqualified to provide the therapeutic services recommended by the psychologist. *Id.*

The record also illustrates that SVJC routinely responded to the Plaintiffs' acting out with physical abuse and punitive imposition of restraints and solitary confinement.³² Specifically, the record reveals that the *predominant* approach utilized to manage child detainees at SVJC is punishment and behavioral control through methods such as solitary confinement and physical restraint, including strapping children to a restraint chair for extended periods. *See, e.g.,* Appellants' Br. at 20-22 n. 11. SVJC's punitive behavioral techniques, restrictions on the movement of juvenile detainees, and revocation of basic privileges flagrantly contradict the consensus professional standard of trauma-informed practices.³³ It is well established that these approaches can cause or exacerbate existing mental health problems,

³² *See* Burrell, *supra* note 10, at 4 & n.17.

³³ *See generally* Burrell, *supra* note 10; Branson, *supra* note 17, at 635-46.

including panic attacks, suicidal and self-injurious behavior, psychotic symptoms, paranoia, and hopelessness.³⁴

This is particularly acute where a detention center, such as SVJC, is housing children known to be suffering from mental health conditions. Evidence in the record, including expert testimony, indicates that SVJC's approach to these children was unresponsive to and worsened their trauma. *See, e.g.,* Appellants' Br. at 7 n. 4. Thus, the district court's holding that there was no triable issue of fact as to whether SVJC provided constitutionally inadequate mental health care for these children should be reversed.

The amici's firm belief is that all children detained in our nation's facilities must be treated in a way that recognizes, and does not further exacerbate, the trauma they have already suffered. Such a standard not only redounds to the benefit of the children themselves, but also to the broader community. A failure to implement trauma-informed methods

³⁴ *See* Andrew B. Clark, *Juvenile Solitary Confinement as a Form of Child Abuse*, 45 J. Am. Acad. Psychiatry & L. Online 350, 350-56 (2017), <http://jaapl.org/content/45/3/350#sec-6>.

of care to juvenile detainees violates their rights, contrary to the proper constitutional standard.

CONCLUSION

For all these reasons, as well as the reasons stated in Appellants' brief, amici submit that this Court should remand the case to the district court.

Dated: January 13, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Under Federal Rule of Appellate Procedure 29(a)(4)(g), I certify that:

This brief complies with Rule 29(a)(5)'s type-volume limitation because it contains 4,569 words, as determined by the Microsoft Word 2016 word-processing system used to prepare the brief, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii).

This brief complies with Rule 32(a)(5)'s typeface requirements and Rule 32(a)(6)'s type-style requirements because it has been prepared in a proportionately spaced typeface using the 2016 version of Microsoft Word in 14-point Century Schoolbook font.

/s/ Neil R. Ellis
Neil R. Ellis

CERTIFICATE OF SERVICE

I certify that I caused this document to be electronically filed with the Clerk of the Court using the appellate CM/ECF system on January 13, 2020. All participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

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The disAbility Law Center of Virginia (dLCV) is the designated Protection and Advocacy agency for the Commonwealth of Virginia, Va. Code § 51.5-39.13, and has the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure

the protection of, and advocacy for, the rights of people with disabilities. 29 U.S.C. § 794e(f)(3). dLCV is specifically granted authority to investigate incidents of abuse and neglect, and to have independent access to facilities in Virginia providing care or treatment to people with disabilities, including Shenandoah Valley Juvenile Center and other juvenile detention facilities. 42 U.S.C. §10805(a)(3). dLCV shares the concerns of the other amici regarding the severe negative consequences to children with mental illness or other disabilities who are denied constitutionally required standards of care, including a trauma-informed approach to mental health care, while in the custody of the state.