UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 14-71742
Agency No. 074-112-169

MARCELO MARINTEZ-CEDILLO
aka MARCELO MARTINEZ,
Petitioner,
v.

JEFFERSON B. SESSIONS, III, Attorney
Defendant-Appellant.

On Petition for Review Of An Order Of The Board Of Immigration Appeals

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BRIEF OF *AMICI CURIAE* IMMIGRATION LAW PROFESSORS, EXPERTS, AND CLINICIANS IN SUPPORT OF PETITIONER'S EN BANC REHEARING REQUEST

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CORPORATE DISCLOSURE STATEMENT

Amici Curiae immigration law professors, experts, and clinicians state that they, their subsidiaries and any corporate interests involved in this matter, do not have any monetary interest in the outcome of this case.

FRAP RULE 29 STATEMENT OF CONSENT

Counsel for Amici Curiae have secured the consent of both parties to file this amicus brief.

No counsel for a party authored this brief in whole or in part, and no party, party's counsel, or person or entity other than Amici and their counsel contributed money that was intended to fund the preparing or submitting of the brief.

Dated: November 1, 2018 Respectfully submitted,

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INTEREST OF AMICI CURIAE

Amici include law professors, experts, and clinicians with an expertise in immigration law or experience defending noncitizens in immigration proceedings. This case is of critical interest to Amici because the interpretation of the crime of child abuse, neglect, or child abandonment removal ground impacts noncitizens throughout the immigration law and criminal justice systems.

INTRODUCTION

"Children have a very special place in life which law should reflect." *May v. Anderson*, 345 U.S. 528, 536, 73 S. Ct. 840, 844, 97 L. Ed. 1221 (1953) (Jackson, J., dissenting). There is no doubt that every child should grow up, at a minimum, with food, shelter, medical care, educations, and loving caretakers. Those who prey on children, ideally, will face criminal sanctions, social stigma, and be removed from society until rehabilitated. But the laws in several states have evolved over the past two decades to pursue the protection of children with increasing rigor, which, at times, has been excessive. As a result, there are now a number of less serious offenses—civil and criminal—that require no injury to a child, no intent to harm, and no persistent neglect of a child's basic needs. These "endangerment" and neglect offenses should not be confused with the crimes of child abuse, child neglect, and child abandonment that Congress intended to punish with removability.

Today, states often have much more expanded definitions of what constitutes child abuse and, in particular, child neglect. In the civil context, neglect can trigger child protective services investigations and remedial parenting interventions, rather than jail time. But even criminal definitions of neglect have expanded well-past prior iterations. In contemporary civil and criminal statutes, terms like child neglect often refer not only to demonstrably poor parenting but even responsible parenting decisions that fall under the "free-range" child-rearing philosophy.

In recent years, parents who permit their child to walk outside alone or play without supervision have been investigated by child services for and criminally charged with child neglect and endangerment. In Maryland, for instance, a family engaged in "free-range parenting" was twice investigated for civil neglect when they permitted their ten- and six-year-old to walk home from a park. In Montana, a mother who dropped off her children at the mall was criminally charged with child endangerment. In Florida, a woman who permitted her seven-year-old to walk half a mile home from a park was arrested and charged with felony neglect.

In 1996, when enacting the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, § 350, 110 Stat. 3009-546, 3009-640 (Sept. 30, 1996), Congress made a policy choice to eschew individualized hearings for the rigid application of the categorical approach when

assigning immigration consequences to criminal convictions. As a result, under existing immigration policy, minor crimes and rehabilitated individuals often may be assigned the same dire, lasting consequences that is afforded to serious offenses and dangerous offenders. Because of the potential—and real-world impact—of over-inclusive error, the Supreme Court presumes that a non-citizen has committed of the "least of the acts" necessary for a conviction. *See Moncrieffe v. Holder,* 569 U.S. 184, 190–91, 205, 133 S. Ct. 1678, 185 L. Ed. 2d 727 (2013) ("[W]e err on the side of underinclusiveness because ambiguity in criminal statutes referenced by the INA must be construed in the noncitizen's favor."). But this presumption does not, by itself, correct for all over-inclusive error that arises from crime-based removals.

Even though IIRIRA intended to assign immigration consequences to more crimes, the most reasonable interpretation of the "crime of child abuse, child neglect, or child abandonment" removal ground[1]—codified at 8 U.S.C. § 1227(a)(2)(E)(i)—is a narrow one, which requires both a criminal conviction and an injury to a child. Specifically, the text of the amendment, as well as remarks by the amendment's co-sponsors, establish that the "crime of child abuse" removal

[1] This amicus brief uses the phrase "crime of child abuse" to refer to the "crime of child abuse, child neglect, or child abandonment" removal ground.

ground was intended to target individuals whose criminal acts necessarily resulted in injury to a child's physical, mental, or emotional wellbeing.

Amici, therefore, request that this Court reconsider its decision in *Martinez-Cedillo v. Sessions*, 896 F.3d 979 (9th Cir. 2018), reject the BIA's expansive interpretation of the crime of child abuse removal ground in *Matter of Soram*, 25 I. & N. Dec. 378 (BIA 2010), and adopt a more-narrow definition of the crime of child abuse removal ground limited to criminal offenses that require an actual injury—physical, mental, or emotional—to a child.

ARGUMENT

In *Ibarra v. Holder*, the Tenth Circuit held that the generic definition of a "crime of child abuse" involves only crimes—not civil offenses—of child abuse, neglect, and abandonment. 736 F.3d 903, 910–11 (10th Cir. 2013). *Matter of Soram*, by contrast, found that the removal ground "denotes a unitary concept" and defined that concept by reference to ***civil*** laws extant in 2009. 25 I. & N. Dec. at 381.

Amici concurs with Judge Wardlaw's dissenting opinion that "*Soram* is overbroad and an unreasonable interpretation of congressional intent." *Martinez-Cedillo*, 896 F.3d at 996 (Wardlaw, J., dissenting). If the full Court disagrees, and accepts *Soram's* expansive definition of a "crime of child abuse," such a definition would sweep in a number of contemporary endangerment and neglect statutes—

criminal and civil—that do not target child abuse that results in injury to a child. The contemporary definitions of what constitutes neglect and endangerment was unforeseeable to the 1996 Congress that enacted the "crime of child abuse" removal ground, and as set forth in Section II, conflicts with the Congressional intent with respect to its enactment.

I. A NARROW DEFINTION OF A "CRIME OF CHILD ABUSE" AVOIDS SWEEPING IN CONTEMPORARY NEGLECT AND ENDANGERMENT OFFENSES THAT ARE NOT LIMITED TO SERIOUS AND CRIMINAL MISCONDUCT

Unlike criminal sentences, which are imposed based on the seriousness of a crime and depravity of an offender, civil collateral consequences for prior criminal offenses are not tailored to the criminal justice goals of retribution or rehabilitation. The sanction of removal—which often for long-term residents means the loss of family, community, and country—is often disproportionate for past criminal offenses that the prosecutors and sentencing courts did not deem serious or meriting of even prison terms.

If the "crime of child abuse" removal ground is not limited to crimes that result in injury, the breadth of contemporary neglect and endangerment statues—civil and criminal—do not reach just bad parenting decisions but arguably good parenting decisions, advocated by "free-range" parents who encourage children to engage in self-reliant conduct of playing and walking home unsupervised. A review of contemporary civil and criminal statues support a narrow definition of

the "crime of child abuse" removal ground to include only criminal offenses that necessarily involve injury to a child.

A. Collateral Consequences, Including Removal, Are Not Related To The Goals Of Criminal Justice

Criminal statutes target a bad act for sanction, and by design, capture a range of conduct—from predatory serious injuries to near-misses arising from understandable mistakes. The criminal codes use the various mental states—intentional, knowing, reckless, and negligence—to grade certain offenses. The prosecutors are empowered with discretion to charge and offer appropriate pleas. The judges are tasked with imposing appropriate sentences, usually ranging from probation to multi-year prison terms. The criminal justice system then is able to tailor the appropriate charge and sentence to fit the offense and offender, resulting in lengthy sanctions for predators and second chances to those who show potential for rehabilitation.

A dysfunction with immigration law—and all other forms of civil law that attach collateral consequences to criminal convictions—arises because civil law was never meant to protect the public. It cannot, it does not, and it need not. The truly dangerous people are swept up by the criminal justice system, either through incarceration or rigorous post-release supervision. Collateral consequences do not police truly dangerous individuals.

By definition, collateral consequences attach a more serious sanction than the level of punishment that the criminal court deemed appropriate. When this occurs, collateral consequences become over-inclusive and arbitrary. *See United States v. Nesbeth*, 188 F. Supp. 3d 179, 180 (E.D.N.Y. 2016) (Block, J.) (when sentencing a woman convicted of a drug offense, rejecting an advisory sentence of 33–41 months for a one-year term of probation to avoid what he called a "civil death," arising from the 50,000 collateral consequences imposed by state and federal law on those who committed a felony, which prevents people from getting housing, employment, student loans for education, and public assistance for disabilities or medical care); Eisha Jain, *Prosecuting Collateral Consequences*, 104 GEO. L.J. 1197, 1209–10 (2016) (discussing how collateral consequences may be arbitrary when "[t]he underlying criminal record is used as a proxy, even though it may not correlate in a meaningful way to risk assessment or to the relevant regulatory priority."); Kari Hong, *The Absurdity of Crime-Based Deportation*, 50 U.C. DAVIS L. REV. 2067, 2139–45 (2017) (criticizing IIRIRA's repeal of remedies that had permitted an individual immigration judge to assess the seriousness of the crime and dangerousness of an offender for IIRIRA's directive to instead apply crime-based deportation grounds in a categorical manner).

When construing the reach of categories of crimes—and in this instance, the meaning of a "crime of child abuse" codified at 8 U.S.C. § 1227(a)(2)(E)(i)—their

interpretation must be grounded on the recognition that a number of non-serious offenses and non-dangerous offenders will be swept up if the "crime of child abuse" removal ground is broadly interpreted.

B. Civil And Criminal Schemes That Respond To Child Abuse, Neglect, And Endangerment Evolved And Expanded Over Time

Contemporary definitions of "child neglect", "child endangerment", and even "child abuse" have expanded over time. Even though "the vast majority of child sex abusers are either members of the child's family or family friends and acquaintances," it took many years and cultural shifts to convince the public that it was not strangers who were most likely to harm children. Steven Grossman, *Hot Crimes: A Study in Excess*, 45 CREIGHTON L. REV. 33, 40 & n.48 (2011).

Child neglect statutes also mirrored shifts in parenting trends. For example, the rise and influence of "helicopter-parenting", a parenting style now criticized for being over-protective, ushered in a number of state statutes that defined "abuse", "neglect", "abandonment", and "endangerment" without regard to injury or intent. *See generally* Deena Prichep, *To Raise Confident, Independent Kids, Some Parents Are Trying To "Let Grow,"* NPR (Sep. 3, 2018), https://www.npr.org/sections/health-shots/2018/09/03/641256596/to-raise-confident-independent-kids-some-parents-are-trying-to-let-grow. Because much of this shift occurred after IIRIRA's enactment, *Matter of Soram* fails to appreciate

how contemporary civil and criminal laws evolved from earlier iterations in effect in 1996.

C. Expansive Contemporary Definitions Of Child Abuse, Neglect, and Endangerment Reach Both Unintended Consequences And "Free-Range" Parenting Decisions

Contemporary state statutes aimed at preventing child abuse and neglect are not limited to punishing serious misconduct. Many states, for example, have mandatory reporting statutes designed to alert (often, civil) authorities to both outright abuse and more general, dangerous situations within a home. Accordingly, many states now have "more expansive definitions of the conduct that legally constitutes child abuse and neglect for purposes of mandatory reporting." Anne C. Peterson, Joshua Joseph, and Monica Feit, eds, *New Directions in Child Abuse and Neglect Research,* Institute of Medicine and National Research Council of the National the Academies 32–33 (2014) (hereinafter "National Research Council Report"), https://www.nap.edu/read/18331/chapter/1.

There are downsides to the expanded definitions. For example, in 1999, Minnesota enacted legislation to require that a child's exposure and proximity to domestic violence become "a statutorily specified form of reportable child abuse and neglect." *Id.* at 33. The result, however, was "a dramatic increase in the number of referrals, emanating mainly from law enforcement officials who responded to reports of domestic violence and, as mandated, reported the family to

child protective services." *Id*. "Parents, primarily mothers, who themselves were victims of domestic violence thus became the subjects of neglect reports based on their alleged failure to protect their children from exposure to the violence." *Id*. Because that was not the intent of the law, Minnesota repealed that provision. National Research Council Report, at 33.

But similar convictions under now-existing laws remain. The *Matter of Soram* rule—interpreting "crimes of child abuse" without regard to injury, and looking to definitions like Minnesota's above—will sweep in mothers of children who are the ***victims*** of domestic violence alongside an irredeemable predator of children. *See* Jacqueline Mabatah, *Blaming the Victim? The Intersections of Race, Domestic Violence, and Child Neglect Laws*, 8 GEO. J.L. & MOD. CRITICAL RACE PERSP. 355, 355–56, 361–64 (2016) (discussing Texas' prosecution of battered women for child neglect); Adam Banner, "*Failure to Protect" Laws Punish Victims of Domestic Violence,* HUFF POST (Feb 3, 2015) (discussing Oklahoma's policy to prosecute battered women for child neglect), https://www.huffingtonpost.com/adam-banner/do-failure-to-protect-law_b_6237346.html.

Classifying these contemporary, domestic-violence based endangerment and neglect statutes as a removable "crime of child abuse"—as *Soram* would do—is of great concern. Not only does it trigger removal proceedings, but it will make some

victims of domestic violence ineligible for relief—such as the special-rule of cancellation of removal—that is designed to protect certain battered spouses. *See generally Garcia-Mendez v. Lynch*, 788 F.3d 1058, 1064 (9th Cir. 2015) (upholding agency rule that finds otherwise eligible battered spouses ineligible for relief based on certain criminal convictions).

As another example, in 2015, a white, middle-class Maryland couple that made the conscious choice to teach their children self-reliance by letting them play in a park and walk home without supervision were twice investigated for violating Maryland's civil child neglect law. *See* Donna St. George, "*Free Range" Parents Cleared In Second Neglect Case After Kids Walked Alone*, WASH POST (Jun 22, 2015), https://www.washingtonpost.com/local/education/free-range-parents-cleared-in-second-neglect-case-after-children-walked-alone/2015/06/22/82283c24-188c-11e5-bd7f-4611a60dd8e5_story.html?utm_term=.6fdb1e73be81. The public outcry led to the state agency issuing a clarification memo that their existing child neglect law should be interpreted more narrowly than the language suggests. *Id*. But that clarification was not codified. *Id*.

In addition, other states criminally prosecute parents who make similar parenting decisions. In Montana, in 2009, a mother was criminally charged with endangerment after dropping off her children "for a few hours at the local mall." Nicole Vota, *Keeping the Free-Range Parent Immune From Child Neglect: You*

Cannot Tell Me How to Raise My Children, 55 FAM. CT. REV. 152, 155 n.76 (2017). The youngest child was three, but the child was under the supervision of two twelve-year old children who had taken certified babysitting classes. *Id*; *see also* Emily Cohen, M*om Charged with Child Endangerment For Letting Kids Go To Mall Alone,* ABC NEWS (July 20, 2009), https://abcnews.go.com/US/story?id=8113294&page=1.

In Florida, in 2014, a mother was arrested and charged with felony neglect for letting her seven-year-old walk home from a park, which was half-a-mile away. *See* Caitlin Schmidt, *Florida Mom Arrested After Letting 7-Year-Old Walk To The Park Alone,* CNN (Aug 1, 2014), https://www.cnn.com/2014/07/31/living/florida-mom-arrested-son-park.

Because Florida has no minimum age for a child to be left alone, in 2015, two parents were charged for felony neglect when their 11-year-old was locked outside the house for 90 minutes before the parents returned home. *See Parents Charged With "Neglect" After 11-Year-Old Plays In Yard For 90 Minutes*, FOX NEWS (July 14, 2015), http://insider.foxnews.com/2015/06/14/florida-parents-charged-felony-neglect-after-11-year-old-son-plays-backyard-90-minutes.

Indeed, only one state—Utah in May 2018—has decriminalized "free-range parenting," by changing their definition of child neglect to exclude decisions by parents to "let[] their child walk outside alone, play without supervision or allow[]

them to wait in the car without an adult." Nicole Pelletiera, *Utah's 'Free-Range Parenting' Law Is Now Official,* ABC NEWS (May 8, 2018), https://abcnews.go.com/GMA/Family/utahs-free-range-parenting-law-now-officially-effect/story?id=55021088.

In addition, the working poor who engage in "free range" parenting out of necessity are also subject to civil and criminal consequences based on statutes that lack an injury or mens rea element. An example of this was discussed in the facts of *Ibarra*, in which the non-citizen was a mother who was prosecuted for abuse when she went to work and left her children in the care of an adult, who unbeknownst to the mother, left the children unattended. 736 F.3d at 905 n.3.

In 2014, a mother in South Carolina was charged with felony statute sounding in abandonment and endangerment when she let her nine-year-old daughter play in a nearby park while she worked her shift at McDonald's. *See S.C. Mom's Arrest Over Leaving Daughter Alone In Park Sparks Debate*, CBS NEWS (July 28, 2014), https://www.cbsnews.com/news/south-carolina-moms-arrest-over-daughter-alone-in-park-sparks-debate/.

In 2015, an Arizona homeless mother was prosecuted for child abuse and sentenced to 18 years probation for leaving her children in the car while she interviewed for a job. Sarah Jarvis, *Mom Who Left Kids In Car Sentenced To 18 Years Probation,* USA TODAY (May 15, 2015),

https://www.usatoday.com/story/news/nation/2015/05/15/shanesha-taylor-kids-in-car/27375405/.

A number of states have now defined child abuse and, in particular, child neglect and endangerment, to encompass conduct that does not cause injury or endanger the welfare of a child. Some neglect offenses do not just reach poor parenting but also responsible parenting decisions that fall under the "free-range" child-rearing philosophy. The reach of these civil and criminal offenses reach parenting decisions that are unrecognizable to what Congress deemed as child abuse more than two decades ago. The broad reach of many contemporary state definitions of abuse, neglect, and endangerment support rejecting *Matter of Soram's* expansive definition of a "crime of child abuse" that does not require injury. Understanding the breadth of state definitions also explains why Congress intended the child abuse removal ground to apply to only the most serious offenders who inflicted injury upon a child.

II. CONGRESS DID NOT INTEND THE "CRIME OF CHILD ABUSE" REMOVAL GROUND TO INCLUDE CRIMES THAT DO NOT RESULT IN INJURY TO A CHILD

IIRIRA amended the Immigration and Nationality Act by introducing several new crime-based grounds of removal, including a removal ground for individuals "convicted of . . . a crime of child abuse, child neglect, or child abandonment." Some Courts have relied on Congress's concerted effort to expand

the crime-based grounds of removal to interpret the "crime of child abuse" provision to include "'infliction on a child of physical harm, even if slight and mental or emotional harm, including acts injurious to morals.'" *Fregozo v. Holder*, 576 F.3d 1030, 1037 (9th Cir. 2009) (quoting *Matter of Velazquez-Herrera*, 24 I. & N. Dec. 503, 509 (BIA 2008)) (internal modifications omitted).

But Congress did not intend the provision to be stretched so broadly as to encompass crimes that do not require any injury to a child. As the BIA has previously noted, "[b]y enacting section 237(a)(2)(E)(i) . . . Congress clearly intended to single out those who have been convicted of *maltreating or preying upon children*." *Velazquez-Herrera*, 24 I. & N. Dec. at 509 (emphasis added).

Indeed, this Court previously determined that Congress enacted the provision to "'facilitat[e] the removal of child abusers.'" *Fregozo*, 576 F.3d at 1036–38 (quoting *Velazquez-Herrera*, 24 I. & N. Dec. at 509). Legislative history elucidates that purpose. *Matter of Soram* departed from this definition by interpreting "crime of child abuse" to include criminal offenses that do not require injury to a child. 25 I. & N. Dec. at 384. As set forth below, this expansive definition is contrary to legislative history and renders the BIA's interpretation unreasonable. *See Martinez-Cedillo*, 896 F.3d at 1002 (Wardlaw, J., dissenting); *see also Ibarra*, 736 F.3d at 912 n.12 (noting that the BIA's expansive

interpretation of the "crime of child abuse" removal ground is unsupported by the provision's legislative history).

A. The Senate Amendment Creating the "Crime of Child Abuse" Provision Was Narrowly Worded

In April 1996, the House bill that was later enacted as the IIRIRA was amended by the Senate to include the "crime of child abuse" removal ground. 104 H.R. 2202 Engrossed Amendment Senate, § 218 (May 2, 1996) (enacted). Section 218 of the Senate amendment authored by Senators Paul Coverdell and Robert Dole was entitled "Exclusion Grounds for Offenses of Domestic Violence, Stalking, Crimes *Against* Children, and Crimes of Sexual Violence." *Id.* (emphasis added).

The term "against" is defined by Merriam-Webster as "in opposition or hostility to." *Merriam-Webster*, merriam-webster.com, https://www.merriam-webster.com/dictionary/against (last visited Aug. 30, 2018). The term "crimes against children" must reasonably interpreted to require some criminal conduct in opposition to or hostility toward a child. *Cf. Leocal v. Ashcroft*, 543 U.S. 1, 11, 125 S. Ct. 377, 160 L. Ed. 2d 271 (2004) (holding that driving under the influence and causing serious bodily harm was not a "crime of violence" because it does not require either active employment of force against another).

Criminal conduct that is in opposition to or hostile toward a child would likely result in physical, mental, or emotional harm to the targeted child.

Conversely, an offense that may hypothetically result in a child's harm, but does not actually require a child to be injured cannot logically be considered an offense ***against*** a child. *See Fregozo*, 576 F.3d at 1037 (holding that misdemeanor child endangerment pursuant to California law is not a "crime of child abuse" because the "statutory language clearly reaches conduct that creates only ***potential*** harm to a child; no actual injury to a child is required for conviction.") (emphasis added).

B. Senators Who Drafted The "Crime Of Child Abuse" Removal Ground Stated That Its Purpose Is To Remove Those Who Inflict Actual Injury On A Child

Senate floor remarks from Senators Paul Coverdell and Robert Dole, co-sponsors of the Coverdell-Dole Amendment that created the "crime of child abuse" provision, underscore the provision's goal to facilitate the removal of individuals who have been convicted of crimes involving injury to a child. The senators' carefully chosen words demonstrate that the provision's purpose is to protect children by deporting individuals who have been convicted of crimes resulting in physical, emotional, or mental harm to a child.

In support of his amendment, Senator Coverdell stated on the Senate floor that the "crime of child abuse" removal ground and its accompanying removal provisions concerning crimes of domestic violence and stalking was necessary to "protect women and children." 104 Cong. Rec. S4059 (daily ed. Apr. 24, 1996) (statement of Sen. Coverdell). He explained that "[i]nvestigations by State child

protective service agencies in 48 States determined that 1.12 million children were victims of child abuse and negligence in 1994." *Id.* The figure represented a 27 percent increase since 1990 in the number of children "found to be victims of maltreatment" according to Senator Coverdell. *Id.* He further explained that "[a]mong the children . . . for whom maltreatment was substantiated or indicated in 1994, 53 percent suffered negligence, 26 percent physical abuse, 14 percent sexual abuse, 5 percent emotional abuse, and 3 percent medical negligence." *Id.*

Senator Robert Dole, then-Senate Majority Leader, echoed his co-sponsor's comments while further elaborating on the purpose of the Coverdell-Dole Amendment:

> The amendment offered by Senator Coverdell and myself seeks to . . . mak[e] clear that our society will not tolerate crimes against women and children. The criminal law should be a reflection of the best of our values, and it is important that we not only send a message that we will protect our citizens against these assaults, but that we back it up as well. . . . When someone is an alien and has already shown a predisposition toward violence against women and children, we should get rid of them the first time.

104 Cong. Rec. S4059 (daily ed. Apr. 24, 1996) (statement of Sen. Dole). After the amendment passed, Senator Dole praised his colleagues for adopting the legislation that he considered critical to "stop[ping] the *vicious acts* of stalking, child abuse, and sexual abuse." 142 Cong. Rec. 10,067 (daily ed. May, 2, 1996) (statement of Sen. Dole) (emphasis added).

The remarks of Senators Coverdell and Dole do not support the BIA's interpretation of the "crime of child abuse" removal ground as one that includes criminal acts that do not result in injury to a child. *Martinez-Cedillo*, 896 F.3d at 1002 (Wardlaw, J., dissenting) ("[S]ection 1227(a)(2)(E)(i)'s limited legislative history and purpose support the government's position that a crime of child abuse, child neglect, or child abandonment should include convictions that do not result in injury to the child."). Conduct that does not result in any harm to a child can hardly be described as a "vicious act" or an "assault." It is clear that the "crime of child abuse" removal ground was intended to encompass only harmful acts against children that result in injury.

CONCLUSION

For the foregoing reasons, Amici respectfully request that this Court grant the petition for rehearing en banc and hold that the "crime of child abuse" removal ground be limited to criminal offenses in which there is an injury to a child.

Dated: November 1, 2018 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that: Pursuant to Fed. R. App. P., Rule 32(a)(7)(B) and (C), Rule (a)(5) and (6), and Ninth Circuit Rules 32-1 and 32-4, the attached brief is proportionally spaced, has a typeface of 14 points or more, and contains approximately 4,188 words, exclusive of the table of contents, table of authorities, corporate disclosure statement, certificates of counsel, and signature block, which is does not exceed the 4,200 word-limit for an amicus brief. The word count includes the FRAP RULE 29 Statement.

CERTIFICATE OF SERVICE

I, Kari Hong, hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: November 1, 2018 Respectfully submitted,

/s Kari Hong
KARI HONG