

No. 19-73244

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

RUBI LAUREANO-VALDOVINOS,
Agency No. A208-197-645,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

On Petition for Review of Decision
of the Board of Immigration Appeals

**BRIEF OF *AMICI CURIAE* IMMIGRATION LAW PROFESSORS,
EXPERTS, AND CLINICIANS IN SUPPORT OF PETITIONER**

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INTEREST OF AMICI CURIAE

Amici curiae include law professors, experts, and clinicians with an expertise in immigration law and experience defending noncitizens in immigration proceedings.¹ 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 (1953) (Jackson, J., dissenting). Those who prey on children will face criminal sanctions, social stigma, and removal from society until rehabilitated. But the laws in many states have evolved over the past two decades to pursue the protection of children with increasing, and sometimes excessive, severity. 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.

¹ Counsel for petitioner and respondent consent to the timely filing of this brief. Pursuant to Fed. R. App. P. 29(a)(4)(E), neither party’s counsel authored this brief in whole or in part, and neither party’s counsel contributed money intended to fund the preparation or submission of this brief. Only counsel for amici curiae contributed to the preparation and submission of this brief.

Today, states often have much more expanded definitions of 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 encompass not only demonstrably poor parenting but even responsible and intentional parenting decisions, such as those that fall under the “free-range” child-rearing philosophy that has risen in response to the trend toward overbearing “helicopter” parenting.

In recent years, parents who permit their child to walk outside alone or play without supervision have been investigated by child services 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-year-old 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 determining the immigration consequences of criminal convictions, moving instead to a rigid application of the categorical approach. As a result, under existing immigration policy, minor crimes and rehabilitated individuals are often assigned the same dire, lasting consequences that are levied upon 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 the “least of the acts” necessary for a conviction. *See Moncrieffe v. Holder*, 569 U.S. 184, 190–91, 205 (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 errors that arise from crime-based removals.

Even though IIRIRA intended to assign immigration consequences to more crimes, the only reasonable interpretation of the “crime of child abuse, child neglect, or child abandonment” removal ground²—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

² 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.

The Board of Immigration Appeals (“BIA”) expanded the definition of a crime of child abuse far beyond any reasonable interpretation of the IIRIRA crime of child abuse ground of removal. *Matter of Soram*, 25 I. & N. Dec. 378 (BIA 2010). Specifically, the Board held that even acts that do not result in harm to a child can trigger removal. This Court recently granted an en banc rehearing of the panel’s split decision in *Martinez-Cedillo v. Sessions*, 896 F.3d 979 (9th Cir. 2018), which upheld the BIA’s decision in *Soram*. However, due to the untimely death of the petitioner, this Court vacated the decision and dismissed the en banc appeal as moot. Amici now request that this Court revisit and reject the BIA’s interpretation of the crime of child abuse removal ground in *Soram*. The Court should instead limit the crime of child abuse removal ground to criminal offenses that require an actual injury—physical, mental, or emotional—to a child, as Congress intended.

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) (examining the criminal laws of all fifty states and the District of Columbia at the time of IIRIRA

and finding that the majority of states did not criminalize child endangerment or neglect without a resulting injury). The BIA, conversely, found in *Matter of Soram* that the removal ground “denotes a unitary concept” and defined that concept by reference to *civil*—not criminal—child abuse laws extant in 2009. 25 I. & N. Dec. at 381. Many of those laws do not require actual harm to a child.

Amici agree with Judge Wardlaw’s dissenting opinion in *Martinez-Cedillo v. Sessions* that *Soram*’s “novel, and impermissible, approach” leads to “an overbroad definition . . . that does not reflect state criminal laws and is contrary to [congressional intent].” 896 F.3d 979, 996 (9th Cir. 2018) (Wardlaw, J., dissenting).

I. A NARROW DEFINITION OF A “CRIME OF CHILD ABUSE” AVOIDS SWEEPING IN MORE EXPANSIVE NEGLECT AND ENDANGERMENT OFFENSES USED BY CONTEMPORARY STATE STATUTES.

Unlike criminal sentences, which are imposed based on the seriousness of a crime and the 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 for long-term residents means the loss of family, community, and country—is often disproportionate to the criminal offense. That holds true especially in cases where prosecutors and sentencing courts did not deem the offense serious or meriting a prison term, yet still resulted in removal.

If the “crime of child abuse” removal ground is not limited to crimes that result in injury, the breadth of contemporary neglect and endangerment statutes—civil and criminal—will result in removal not just for bad parenting decisions but for arguably good parenting decisions. A review of contemporary civil and criminal statutes supports 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

Immigration law—like other forms of civil law that attach collateral consequences to criminal convictions—is not 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. Civil consequences do not police truly dangerous individuals.

Criminal law targets bad acts for sanction, and it is carefully designed to promote public safety. Criminal statutes intentionally 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 negligent—to grade certain offenses. Prosecutors are empowered with discretion to charge and offer appropriate pleas. Judges are tasked with imposing appropriate sentences, ranging from probation to multi-year prison terms.

The criminal justice system is thereby 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.

By definition, civil consequences attach additional sanctions in excess of the punishment that criminal courts have 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.) (discussing the “devastating” effects of 50,000 collateral consequences imposed by state and federal law which prevent people from getting housing, employment, student loans, and public assistance for disabilities or medical care, which amount to “civil death”); 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)—courts must ground their interpretation on the recognition that a number of non-serious offenses and non-dangerous offenders will be swept up into the “crime of child abuse” removal ground if it is broadly interpreted.

B. Civil and Criminal Schemes That Respond to Child Abuse, Neglect, and Endangerment Have Expanded Over Time

Contemporary definitions of “child neglect,” “child endangerment,” and even “child abuse” have expanded over time, reaching conduct that does not result in injury to a child. The increase in such laws was a reaction to newly released data on child abuse and high-profile child sex abuse cases.

For many years, “the prevalence [of child abuse] in society was significantly underestimated” and underreported. Steven Grossman, *Hot Crimes: A Study in Excess*, 45 CREIGHTON L. REV. 33, 34 (2011). Then, in the 1970s and 1980s, a wave of highly publicized child sex abuse prosecutions, such as in Kern County, led many state legislatures to amend their civil and criminal statutes to better protect children from abuse. *Id.* at 73. Due to the nature of the crime, high profile cases, and irrational fears, “reaction turned into over-reaction and remedial measures became excessive.” *Id.* at 34. In particular, “the concept of over-prosecution arose both during the trials of those facing child abuse charges and later in statutes enacted by the legislature in response to infamous child sexual abuse tragedies that received media attention throughout the country.” *Id.*

In reaction to these heinous offenses, many states expanded their definitions of child abuse or neglect and used intentionally vague and overly broad language that facilitated more reporting and granted nearly unchecked discretion to child protection agencies. Kira Luciano, *The Myth of the Ever-Watchful Eye: The*

Inadequacy of Child Neglect Statutes in Illinois and Other States, 14 Nw. J. L. & Soc. Pol'y 293, 298 (2019). Some statutes were eventually struck down as being unconstitutional because they were too vague. *See e.g. State v. Downey*, 476 N.E.2d 121 (Ind. 1985); *Roe v. Conn*, 417 F. Supp. 769 (M.D. Ala. 1976).

The results of expanded statutes are mixed at best. Important tools now exist for prosecutors to charge and courts to sentence child predators, but there also is now a breadth of statutes and resulting convictions that reach conduct that does not injure a child or involve any intent to cause harm to a child.

In the immigration context, much of this shift occurred after IIRIRA's enactment. The BIA's further expansion of the crime of child abuse removal ground in light of expanding state criminal and civil statutes *Soram* fails to appreciate why Congress deliberately chose the terms "crimes," "abuse," "neglect," and "abandonment," rather than "civil" or "endangerment." Kari Hong and Philip Torrey, *What Matter of Soram Got Wrong: "Child Abuse" Crimes that May Trigger Deportation Are Constantly Evolving and Even Target Good Parents* 27 HARV. C.R.-C.L. REV. AMICUS 54 (2019).

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), <https://www.nap.edu/read/18331/chapter/1>.

There are significant drawbacks to the expanded definitions. For example, in 1999, Minnesota enacted legislation requiring 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. *Id.*

But similar convictions under existing laws remain. The *Matter of Soram* rule—interpreting “crimes of child abuse” without regard to injury—will sweep in mothers of children who are *victims* of domestic violence, alongside irredeemable

predators of children. *See Matthews v. Barr*, 927 F.3d 606, 636–37 (2d Cir. 2019) (Carney, J., dissenting) (“It seems extremely unlikely that Congress intended that domestic violence victims previously convicted of a minor child endangerment misdemeanor be barred from relief when it created VAWA’s immigration-related remedies, years before [*Soram*] reach[ed] its current capacious state.”); Jacqueline Mabatah, *Blaming the Victim? The Intersections of Race, Domestic Violence, and Child Neglect Laws*, 8 GEO. J.L. & MOD. CRITICAL RACE PERSP. 355 (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 removable “crimes of child abuse”—as *Soram* would do—is of great concern. Not only does it trigger removal proceedings, but it will make some battered spouses ineligible for relief—such as the special rule of cancellation of removal—that is designed to protect them. *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).

Overly broad child neglect and endangerment statutes have also penalized parents who embrace a commonsensical, widely accepted parenting approach, recently labeled “free-range parenting.” The new approach is a reaction to the parenting trend known as “helicopter parenting.”

There have been several high-profile examples of this overcriminalization. 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 (June 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.

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-years old, but the child was under the supervision of two twelve-year old children who had taken certified babysitting

classes. *Id*; see also Emily Cohen, *Mom 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 eleven-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 a non-citizen mother 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 under a felony statute criminalizing abandonment and endangerment when she let her nine-year old daughter play in a nearby park while she worked her shift at a 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 of 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*, USATODAY (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 motivated by the “free-range” child-rearing philosophy. These civil and criminal offenses reach parenting decisions that are unrecognizable compared 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 supports rejecting *Matter of Soram*’s expansive definition of the “crime of child abuse” removal ground that does not require injury of any kind to a child. 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)).

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*.” *Matter of 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 *Matter of 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 (10th Cir. 2013) (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 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 Sept. 21, 2020). The term “crimes against children” must reasonably be interpreted to require some criminal conduct in opposition to or hostility toward a child. *Cf. Leocal v. Ashcroft*, 543 U.S. 1, 11 (2004) (holding that driving under the influence and causing serious bodily harm was not a “crime of violence” because it does not require 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.

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 were necessary to “protect women and children.” 104 CONG. REC. S4059 (daily ed. Apr. 24, 1996) (statement of Sen. Coverdell). 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 contradict 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 [do not] 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.”). 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.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

On September 24, 2020, I certify that: Pursuant to Fed. R. App. P. 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 4,292 words, exclusive of the table of contents, table of authorities, and certificates of counsel, which does not exceed the 4,200 word-limit for an amicus brief.

/s/ Philip L. Torrey

Philip L. Torrey

CERTIFICATE OF SERVICE

I, Philip L. Torrey, 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: September 24, 2020

/s/ Philip L. Torrey

Philip L. Torrey

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