

I. TALKING POINTS FOR TRIAL AND APPELLATE LAWYERS

Set forth below is a list of key talking points intended for potential use in oral argument before a trial or appellate court to encourage the court to consider how separating children from their family causes them significant trauma. Lawyers can use this research to encourage courts to weigh the risks of remaining at home with the proven harm from separation from family.

- Although the courts, at the time of initial removal, must focus on harm, risk, and the best interests of the child in the home, they cannot properly assess those factors without considering the scientifically established damage caused by removal from primary caretakers. (Gambriel & Shlonsky 2001).
- Several cases, relying on the scientific research and expert testimony, acknowledge that children’s physical and mental health are seriously damaged by separation from primary caretakers. See, e.g., Ms. L. v. U.S. Immigration & Customs Enforcement, 310 F.Supp. 3d 1133, 1147 (S.D.Cal. 2018); Nolasco v. U.S. Immigration & Customs Enforcement, 319 F.Supp. 3d 491, 503 (D.D.C. 2018); M.G.U. v. Nielsen, 325 F.Supp. 3d 111, 122 (D.D.C.2018); Nicholson v. Williams, 203 F.Supp. 2d 153, 198-99 (E.D.N.Y. 2002).

A. **Harm from Removal**

Clinical research shows that:

- Children who are removed are “overwhelmed with feelings of abandonment, rejection, worthlessness, guilt, and helplessness.” (Folman, 1998).
- Separation floods stress hormones throughout the child’s brain and body, leading to:
 - difficulty sleeping, developmental regression, heart disease, hypertension, obesity, diabetes, and decreased longevity. (Goydarzi 2018; Eck 2018; Carnes 2018)
 - permanent architectural changes in the brain, including lower IQs. (Wan 2018)
 - depression, more suicide attempts, and more problems with alcohol abuse and gambling. (Wan 2018; Goydarzi 2018; Eck 2018; Carnes 2018).
- Children generally suffer worse outcomes when removed than if they had been allowed to remain in marginal homes. In studies of similarly situated children (those with social services involvement facing possible removal), children who were, in fact, removed (compared to those remaining at home):
 - have two to three times higher delinquency rates. (Ryan & Testa 2005; Doyle 2007; Doyle 2008; Lowenstein 2018)
 - have higher teen birth rates. (Doyle 2007)
 - have lower earnings as adults. (Doyle 2007)
 - are two to three times more likely to enter the criminal justice system as adults. (Doyle 2008)
 - are twice as likely to have learning disabilities and developmental delays. (Lowenstein 2018)

- are six times more likely to have behavioral problems. (Lowenstein 2018)
- as adults, are more likely to have substance-related disorders, psychotic or bipolar disorders, and depression and anxiety disorders. (Côté et al. 2018)
- as adults, have arrest rates two to three times higher, and are more likely to have criminal convictions for violent offenses. (Doyle 2008; Côté et al. 2018)
- Studies of youth and children who have experienced maltreatment found that:
 - maltreated youth who are placed in out-of-home care had a higher risk of criminal behavior (as both juveniles or adults) compared to maltreated youth who remain at home. (Yoon, Bender & Park 2018)
 - children who experience out-of-home placement due to maltreatment have an over 1.5 times higher risk of mortality between the ages of 20-56 compared to children who experience maltreatment but remain at home. (Gao, Brannstrom & Almquist 2017)
- Studies examining the outcomes for individuals placed in foster care as children found that:
 - more than half of the individuals in one of the studies had clinical levels of at least one mental health problem, and 20% of the individuals in that study had three or more mental health problems, both of which are substantially higher than those of the general population in the same age range as the sample. (Northwest Foster Care Alumni Study 2005)
 - foster children have been shown to have higher rates of health problems than other poor children receiving Medicaid. (Trivedi 2019)
 - 68% of the studied children had not been vaccinated for mumps; 36% had not received vaccination for measles; and 23% had not received protection from diphtheria, tetanus and pertussis. (Trivedi 2019)
 - an estimated 12% received no routine healthcare, 34% received no immunizations, and 32% had at least some identified health needs that were not met. (Trivedi 2019)
 - foster children experience poorer sexual health outcomes, engage in sexual behavior at a younger age, and are more likely to engage in riskier sexual behavior than their peers in the general population (Trivedi 2019)
 - post-traumatic stress disorder (PTSD) rates for individuals in one of the studies was up to twice as high as for U.S. war veterans. (Northwest Foster Care Alumni Study 2005)
 - completion rates for post-secondary education among foster care alumni were dramatically lower than the general population. (Northwest Foster Care Alumni Study 2005)