



INVISIBLE FAMILIES:

Parents rights, children's rights, and the right to preserve family bonds

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Executive Summary

This report is a guide to fully inform readers about the human rights crisis happening in California's courts. The forcible removal of children by child protection agencies is an underacknowledged form of state sanctioned violence. It is the duty of the California legislature to act in the interest of the people and serve as a check and balance for the judiciary.

KEY HIGHLIGHTS

- **Problem:** Black, Brown, Indigenous, Disabled and Poor families are disproportionately harmed.
- **Problem:** If parents are unable to reunify within a designated time frame, they face termination of parental rights (TPR). The odds are stacked against parents from start to finish, and courts have little discretion to choose an alternate plan.
- **Problem:** Parents' rights as well as children's rights are too often overlooked, which can lead to TPRs which are not in the child's best interest.
- **Solution:** In re Caden C.- the California Supreme Court recognized no parent is perfect by setting precedent that the parental benefit exception to termination of parental rights applies regardless if a parent continues to struggle with the issues leading to child welfare involvement. We propose to codify this precedent.
- **Supporting Argument:** If a young child has a healthy and secure attachment to a parent, it becomes essential for healthy brain development in children to maintain that bond. Family separation in young children who are strongly bonded to their parents leads to long-term, negative psychological and physiological problems (Bowlby, 1982).
- **Supporting Argument:** The prevailing perspective that parents' rights are antithetical to children's rights is a false narrative created as pro-system propaganda as a tool to protect the interests of certain groups
- **Parent Stories:** Michelle D. Chan, Benjamin and Carolyn Winger, and Michelle Peterson share their stories of hope, healing, and the beautiful, ineffable, parent-child bond.



Photo by: Momii Palapaz

Classism, Racism, and the War on Parenting

The child “welfare” or child “protection” system in America is not the supportive and helping system its name suggests. It is a system of oppression that yields almost absolute power over the children and families under its jurisdiction. Therefore, it is more accurately defined as an extension of the police state. Rather than providing support and making sincere efforts to improve outcomes for children, it scrutinizes, terrorizes, and permanently severs vulnerable families through the enforcement of unforgiving family separation policies.

It is at the intersection of parenting, poverty, and racism that the family policing system inflicts the most tragic harm. The classist, racist roots of family policing are still blatantly evident today in the federally delineated California statutes that govern child removals and forced adoption, as evidenced by the overrepresentation in the system of Black, Indigenous, and poor families (Children’s Bureau, Afcars Report; Wildeman and Emanuel, 2013). It is time for California to divest from these harmful policies that perpetuate destruction and devastation.

Invisible families
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“You’re nobody, son.
You don’t exist- can’t
you see that?
The white folk tell
everybody what to
think- except men like
me.”



INVISIBLE MAN

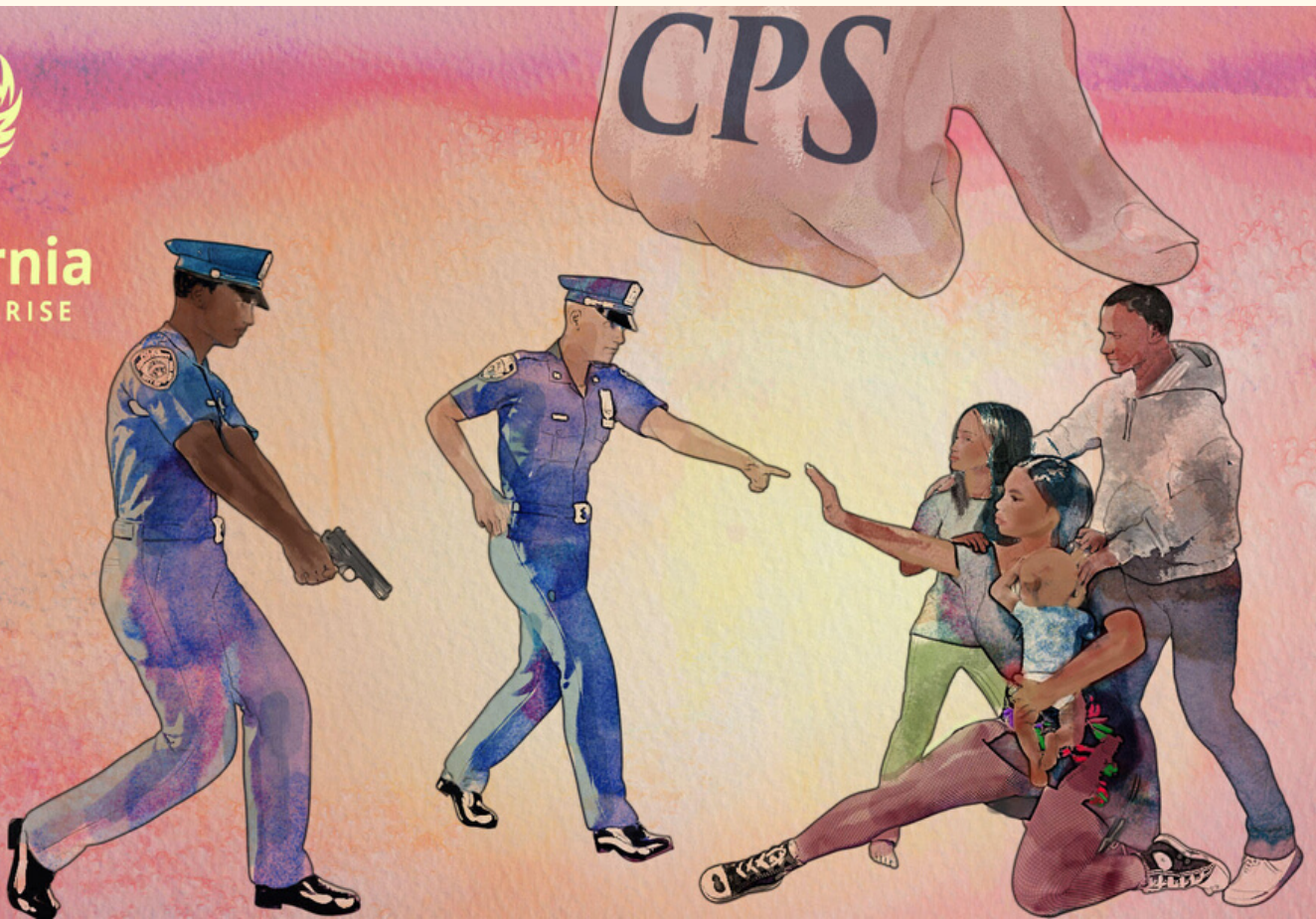
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INVISIBLE MAN is the classic novel about racism in the South in the 1920s and the invisibility of the black man's plight and struggles. The world preferred to turn a blind eye. The narrator is talented and educated, and yet he could not get the chance he deserves in life because he was black and he was a nobody.

In many ways, victims of family policing are California's **INVISIBLE FAMILIES.**

In many ways, victims of family policing are California's invisible families.



California Families Rise (CFR) is a parents' rights organization with a large membership of system-involved families, that is exclusively led and operated by system-involved volunteers. CFR's all-volunteer membership and leadership brings boundless energy, passion, excitement, and sincerity to the legislative reform process. CFR is committed to systems change led by and to the benefit of those impacted by family policing. We invite you to take a chance and come on this journey with us.

The purpose of this report is to support CFR's proposed bill to codify the California Supreme Court ruling, *In Re Caden C.*, that set precedent establishing that the beneficial parental relationship supersedes the termination of parental rights.

Termination of Parental Rights

A termination of parental rights (TPR) finding forever severs children from their parents. For countless parents it is the end of the line after an extended period of profound suffering. And, if the child is securely attached to the severed parent, TPR marks the beginning of a lifetime of intense hurt in which the child will forever feel as if a part of themselves is missing. For those of you that have never endured such pain and loss, try to imagine what it feels like to lose an arm or a leg. It is a common phenomenon in amputees to be plagued with “phantom pain”. The pain is real and feels as if it is occurring in the missing body part. The limb is gone but the mind doesn’t know and cannot accept that the limb is gone (YIMU Vasantachart, Andrew, et. al 2022). If the amputee’s mind cannot accept the loss of limb, then certainly a child’s heart and soul cannot accept the loss of a beloved parent, whose womb they were sowed and from which they sprung from, or from whose embrace they have known since birth.



Moreover, TPRs in California are inherently unfair to system-involved parents. Parents facing TPR often struggle with complex issues that act as stressors and impede their ability to engage in services and/or make progress on the issues that led to the child welfare intervention. Parents struggling with co-existing issues such as homelessness, poverty, substance abuse, mental health, or incarceration are at high risk of TPR. This is due to the demanding requirements placed on them and the restrictive timelines parents have to reunify.

In California, courts can move to TPR in six months if the dependent child is under three years of age and 12 months for older children- which is often not enough time. The current system creates barriers and DCFS policies, procedures and protocols have been established for economic agenda and incentives versus what is in the best interest of children (Allison, 2023).

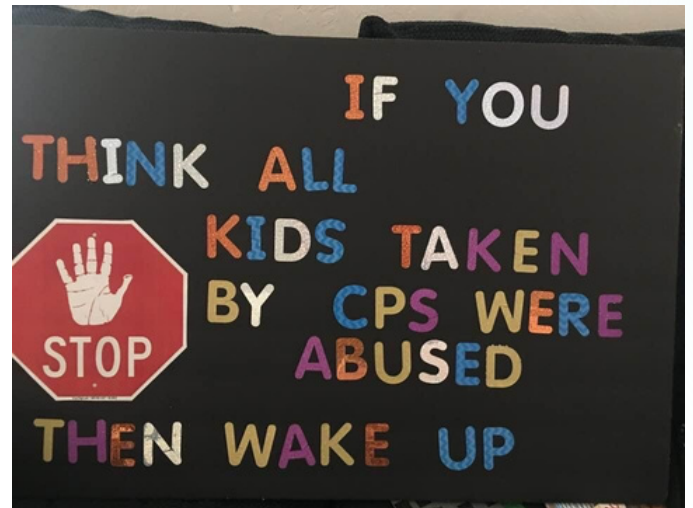


Photo by: Momii Palapaz

And finally, TPRs lead to the erasure of race, culture and identity. According to the School of Social Work at University of Nevada, Reno: between 2017-2019, transracial adoptions make up roughly 28% of all adoptions, with 90% of these children being raised by white families. Roemer (2022) states that the invisibility of Native Americans in our country today is the intentional consequence of racism and oppression. This racism had been woven into our society through policies, practices and procedures, and removing Native children to place them with white families was part of this practice (p. 7).

Parents' Rights

Parents' trauma is often compounded by the perceived injustice and senselessness of the system. This is the system with the lowest burden of proof requirements out of all the court systems in the nation. In the juvenile dependency system, parents are guilty until proven innocent. Children are often removed and placed in state care before parents have had the chance to defend themselves in court, before parents have consulted with an attorney, before parents can come to terms with the fact that their lives may never be the same.



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The right to parenting refers to the biological parents right to make decisions about the care and wellbeing of the child and if considered a fundamental constitutional right (e.g., Cashmore, 2014; Choate & Engstrom, 2014; Wattenberg, Kelley, & Kim, 2001). And yet, that right and the rights of children are so frequently violated.

There is a direct correlation with recognizing parents' rights and parent cooperation, services engagement and family reunification. Vern-David(2020) discusses the legal marginalization of biological parents as a form of implicit bias against parents' social marginalization. When the right to parenting was considered, the legal discussion referred to other important rights and interests of both the child and the parents, and was more balanced. When rights were acknowledged, Vern-David (2020), In only 25% of the sample was there any discussion on parents' rights. It was mostly only in those cases that things such as the importance of the parent-child bond were discussed.

In many ways, child well-being is inextricable to parent well-being. To truly improve outcomes for children, we as a society must reprogram ourselves to stop thinking of child "protection" as parent punishment, but rather healing, hope, and family support.

Children's Rights

The United States Supreme Court, in 1967, recognized children as distinct persons, and as distinct persons they are entitled to the rights of United States citizens under the Constitution. The Court in *In re Gault* stated, “Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone, effectively applying the Due Process Clause of the Fourteenth Amendment to the children (Walker et. al., 1999).



Photo: Momii Palapaz

(Children's Rights cont.)



**Mural by: Rosalinda Castro, impacted-parent,
with assistance from other artists**

Invisible Child is a nonfiction Pulitzer Prize winning novel by Andrea Elliot. Dasani is a black homeless girl bouncing in and out of the ACS system. The book depicts the all too familiar story of a child shuffling through the system for years, and all those years never did the system stop to consider that maybe what they wanted for her wasn't what she wanted. When a caseworker called to share the wonderful news the Hershey school had accepted the application ACS put in for Dasani, again it never crossed their mind that that was not what Dasani wanted. Hersey is a private boarding school where Dasani would be able to live in luxury compared to the conditions she had known her whole life. But to Dasani, Hershey ultimately felt to her as just another institution. She missed her family and especially her siblings, and so she left.

(Children's Rights cont.)

307,000 children were permanently severed from their parents from 2010 - 2014. Even though a good sizable portion of this group were older children, very few go to court or to the TPR hearing. Moreover, a surprisingly significant amount of children severed from their parents without having an adoptive family waiting for them (Pattison, 2016).

With such high stakes, why aren't children given more opportunity to participate in their proceedings? This is the system with arguably the highest stakes of all. Children's lives and well-being are forever determined. If children are unseen and unheard, how does anyone know what they really want?

A child aged 12 and up can object to TPR, the objection is one of the handful of exceptions to TPR. With this in mind and understanding the finality of the findings, why do courts not ensure that every single child of age to speak for themselves does not wish to come? The math does not add up.

In the case, *In re Christopher L.* a parent appealed the trial court's TPR finding based on the argument that he appealed. After review of the case record, the court of appeal found that, although the child did not expressly object, he did say that if adoption meant he could not see his mother, then he did not want that. However, he had previously expressed a preference to be adopted. The court of appeals affirmed the trial court ruling. The court of appeal pointed out that the trial court never asked the children to clarify between which of the two statements was correct (Pattison, 2016).

Although evidence that the minor child in this case objected in this case, it is not far fetched to infer that the trial court did not sincerely want the child to voice his wants and needs. The objection to adoption came after the child agreed. Was the child voiceless? Invisible?

(Children's Rights cont.)

There is an increasing international trend toward open adoptions in which the child knows they are adoptees and the decision is theirs if they wish to contact their birth parents (Luu et. al., 2018). It is crucial for birth parents and adoptive parents to work together in order for open adoptions to work (Neil, Beek & Ward, 2013). In a study on identity formation in children and young people in Australia, Luu et. al, (2018) conducted semi-structured interviews. Adoptees reported feeling more secure and having a stronger sense of belonging having access to their histories and life stories. Relationships with birth parents varied within the group, but one thing that was unanimous is that the adoptees all felt more security being adopted compared to being in foster care.

Child voice is integral for meaningful participation and authentic representation of the child's wants and needs. An article published by Henderson, et. al. (2020), aimed to gather expertise from two groups of professionals that work with children to assess the capacity of children to participate and to possibly analyze that data further. One major theme that arose was the importance of creating a bridge within the practice of both legal and child development professionals. Moreover, it is apparent there needs to be a bridge between child specialists and legal specialists.



It is time to challenge the false narrative that children's rights are inverse to parents' rights. Children's rights should be recognized by courts as the right to be heard, the right to due process, and the right to have their birth parents in their life if they so choose.

Codifying In Re Caden C.

The Parental Benefit Exception to TPR