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ARTICLE

ENDING THE FAMILY DEATH PENALTY AND BUILDING A WORLD WE DESERVE

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U.S. history is rooted in the rationalization of family separation to benefit white supremacy, capitalism and mainstream U.S. values. Because of this dark history, the U.S. history has become the world's leader of legal destruction of families through termination of parental rights. It is the only country in the world that routinely pays people to adopt children whose parents, often women, very much want to be their parent. The Adoption and Safe Families Act, enacted in 1997, wildly changed the legal landscape of the family regulation system. At that time 47% of the children in the system were Black, and the drug war had

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been targeting Black men for low level offenses, and labeling Black mothers as “crack moms”. The result was an extreme attack on Black families, for which we have yet to recover.

Abolition teaches us to unroot oppressive structures, disrupt and dismantle them while simultaneously supporting a praxis of imagination, healing, and building. In this paper, we encourage people not only to work to repeal ASFA, but to interrogate the imagination which entrenched the legitimacy of ASFA. Part I centers the discussion in our imaginations—the world we want to build, and the demands we are making. Part II moves into a discussion about the counter imagination, the ideas and mythology that created ASFA—the legal framework. In this section, we isolate ASFA as a target for abolition and organizing. Part III moves into a practical discussion about ethical ways to mobilize around ASFA. This section is intended to invite the reader to learn, and question, together. It invites questions, thinking, and problem solving in lieu of providing a recommendation.

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*“It doesn’t interest me
who you know
or how you came to be here.
I want to know if you will stand
in the center of the fire
with me
and not shrink back.”*

—*The Invitation*, by Oriah¹



Jahmel Reynolds, Illustration of White Hands Destroying a Black Family Tree. Produced in collaboration with the authors. Reynolds’s other work can be found on Instagram, using the handle @jahmelr.

¹ Oriah, *The Invitation* (1994), in *ORIAH, THE INVITATION 1* (2006).

I. INTRODUCTION

We are directly impacted mothers, community organizations, and allied advocates across the country. We fight for family liberation. Many of us met for the first time in 2019 in Philadelphia. We participated in a convening called, “Fighting for Family,” co-hosted by The National Council for Incarcerated and Formerly Incarcerated Women and Girls. Together, about 50 people—predominantly women, mothers and people of color—decided to deepen our relationships, leverage our expertise, gain momentum, develop coalitions, and build out solidarity against family separation tactics.

We understood, even before most mainstream institutions believed, that the criminal and foster systems work together to oppress marginalized genders, and that people who have been impacted by these systems are best positioned to lead change. That racism, capitalism, colonialism, ableism, sexism, classism, heteronormativity, etc., are just some of the dark forces which deprive us of the world we deserve, and that all forms of cages—physical, political, and spiritual—must be dismantled. That calling the system a “child welfare” system is disingenuous, because it is actually a family regulation and destruction device.²

In Philadelphia, we collaborated and brainstormed. We agreed that there were many ways to end the reliance on family policing, regulation, and destruction as a political tactic; even though few people were taking on the violence enacted by Adoptions and Safe Families Act (ASFA)—a law that dramatically changed the State’s obligations to work with families, created financial incentives for adoptions, but not reunifications, and outlined strict timelines to terminate

² We give gratitude to Professor Dorothy Roberts, who built enormous scholarship and framing around the regulation of families and bodies through the child welfare system. This framing is not only seen in her foundational books, *SHATTERED BONDS, THE COLOR OF CHILD WELFARE* (2002), *KILLING THE BLACK BODY* (1997), but also in a wealth of scholarly articles, one of which became a foundational text for our convening in Philadelphia: Dorothy Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 *UCLA L. REV.* 1474 (2012). We also appreciate the language development and framing in Emma Payton Williams, *Dreaming of Abolitionist Futures, Reconceptualizing Child Welfare: Keeping Kids Safe in the Age of Abolition* (2020) (B.A. thesis, Oberlin College), <https://digitalcommons.oberlin.edu/cgi/viewcontent.cgi?article=1711&context=honors> [<https://perma.cc/58GC-92J5>].

parental rights (TPRs).³ Far too many of us had known or witnessed the pain of TPRs—better known as the civil death penalty,⁴ and agreed that it is not an exaggeration to liken them to family death. TPRs erased families, children’s names were changed, and many parents were left wondering if they would ever get to hear the voices of their babies.⁵ It was clear that we had to end this violent cycle of family destruction.

In building out the work, we grounded ourselves in abolition as a theory of change, because we understood abolition as a political home that asks us not to acquiesce to a narrow understanding of the future, but to stretch, twist, and wring out all the permutations of possibility, and fully embrace the capacity of potential. As students and curators of abolition, it would be our duty not only to disrupt ASFA as a policy, but to unroot the underlying oppressive ideologies which gave rise to its violence. We would have to engage in a praxis of imagination, healing, and building so that we could move away from subtle reform, and into a world of transformative solidarity.

Nearly two years later, we publish this Article about what we have done since meeting in Philadelphia, and how we are thinking about change. Our mission is to dismantle ASFA *and* to build a new world. We are asking for both ideas to exist simultaneously within the consciousness of the reader, as we argue that freedom must be our North Star, and as a consequence, ASFA will be dismantled.

Our Article’s thesis is fluid and future leaning, because our work is fluid and future leaning. We wrote this Article in a voice and structure that we hope invites the reader to feel the culture of our work, which is as hopeful as it is urgent. We start with our demand and vision of the future instead of a history of the law. We then move on to a discussion of ASFA as an

³ See *infra* Part II.

⁴ In re Smith, 77 Ohio App. 3d 1, 16, 601 N.E.2d 45, 54 (Ohio Ct. App. Aug. 30, 1991) (“The rights to conceive and to raise one’s children have been deemed ‘essential, basic civil rights of man,’ and ‘[r]ights far more precious than property rights.’”) (internal citations omitted). Stanley v. Illinois, 92 S.Ct. 1208, 1212 (1972). A termination of parental rights is the family law equivalent of the death penalty in a criminal case. See also, Elizabeth Brico, *The Civil Death Penalty Makes Hungry Ghosts of Mothers and Children*, BETTY’S BATTLEGROUND BLOG (Mar. 13, 2019), <https://www.bettysbattleground.com/2019/03/13/the-civil-death-penalty> [https://perma.cc/JSP9-43LY].

⁵ Brico, *supra* note 4.

antagonist to our story of liberation, focusing on its stifling impact to political imagination and making clear that ASFA is a driver of white supremacy, family separation, and community destruction. We end the Article with invitations to build, learn, and create in lieu of recommendations. We end this way purposefully, because this Article is not prescriptive, but rather a memorialization of a time of thinking between a group of women envisioning and embodying change. We invite questions, community, and continued thinking. We do not have all the answers, but provide guiding questions and principles to find them.

We also write this Article at a time when our movement has suffered from isolation, the overwhelming oppressive reach of carceral systems, lack of funding and political access, racism and many more afflictions. We sit in a cold winter of activism, desperately awaiting a summer of change, reckoning and uprising. We implore you to struggle with us, be in community with us, and read the words that we have written with care and time. Let this Article sit deep in your soul—talk about it, disagree with it, agree with it, picture it, paint it, dance about it. Imagine and build freedom. We bare our lacerated hearts to you, and to anyone who cares to meaningfully share this vision and dream. We will be free, as will our children, and our children's children.

II. THE WORLD WE DESERVE: OUR VISION AND OUR DEMAND

“Do we get to live our life? That has been the fight for Black people for so long. Will we be able to express ourselves the way we want to express ourselves without demonization, without having to succumb to violence. Do we get to live our life?”

—Bishop Marcia Dinkins

Our demand:

We write this as mothers who have suffered the ineffable pain of losing a child to a system that came to us calling itself a savior. Mothers who had to silently watch—some of whom are still watching—as our children are raised by others under a set of values and principles different than our own. Mothers who could not watch our children grow up at all. We write this as children who were stolen from our families and told we were made from junk-genetics; the product of so-called broken mothers

and failed fathers, but who still had the courage to become mothers—only to have our motherhood terminated before it could bloom. We write this as survivors of physical and sexual violence who were punished for surviving; whom the system chose to teach the cruel lesson that surviving such violence made us unworthy of motherhood. We write this as mothers who used drugs, but still loved our babies. Mothers who used drugs, but still cared for our babies. Mothers who were incarcerated, but still loved, cared, and yearned for our babies. We write this as mothers who made mistakes. Mothers who asked for help without knowing our babies were the cost of our asking. We write this as Black mothers, Latina mothers, poor mothers, queer mothers, disabled mothers, single mothers, abused mothers, addicted mothers, loud mothers, and loving mothers. We write this as the allies of mothers and fathers and parents who are targeted by this system of family destruction. We write this as allies, defenders, and advocates who have witnessed the endless torment that results from child loss; who have tried to stop families from being separated forever, and who sometimes succeeded but many times failed. Not because we didn't try or care enough, but because the system is rigged against families. We write this as fighters for the sanctity of family integrity—and *we are no longer asking*.

We demand a world where the integrity of all families is valued and family ancestry is held sacred. In this world, families are supported and given the resources they need to thrive, and the family death penalty, or termination of parental rights, no longer exists. In this world, we are building healing space for families who have been forcibly separated, and we are collectively building a vision of how to hold families together through all our complexities and experiences. Our village resurrects, and the sound of communal joy resonates from home to home, person to person.

The world we demand is a world built for us. Black children can be children, and Black, Brown, and poor birthing people are trusted with decisions for the care of their bodies and families. It is filled with love, understanding, joy, and peace. It has fields of sunflowers, lilies and other flowers giving fragrance to the world. It feels like freedom and it tastes like *abuelita's congri*, my sister's fried chicken, fresh mango, and mama's macaroni and cheese. It tastes like home. When we look at

people's faces, they are happy, because for once, Black people are living without fear. They are not worrying about who is knocking on their door, or feeling a panic when they get a call from an unknown number, and they rest easy knowing their children are safe. Black daughters are safe.

We demand a world where people have time to spend with their family, going to museums, parks, vacations. It is a world without war, poverty, racism, hatred, or mayhem. Language is not a barrier, but a thread of understanding. This world utilizes a true barter system, without capitalism, with adequate housing for everyone, employment that suits all skill sets, and an education system where we are taught the truth about our heritage and about other people's heritage, not a colonized fantasy.

We demand a world where we are recognized for our actions and the substance of our beings—not judged for the substances that may sometimes be in our bodies; substances that we all use.⁶ In this world, it is understood that healing is non-linear, and that old injuries can resurface afresh many years after the original wounding. The passage of time does not efface a person's need or deserving of care. The way someone copes with their pain is not a commentary on their love for their children. Asking for help is not an admission of incompetence, nor does it grant permission for the helper to take what is not offered. In this world, substance use is recognized as a normal part of human existence, and it does not transform into harm when it is done by a person of color or a poor person. In this world, those of us who live with addiction, or trauma are afforded the space, time, and support necessary to heal, and our children are allowed to be participants in that healing. In this world, our children learn that adversity can be overcome, that mistakes can be forgiven, and that the experience of suffering does not make permanent outcasts of us. In this world, we are not always perfect. We are not always liked. We do not always make good choices, but we still have the right to come home to our babies each and every day.

⁶ See German Lopez, *Black and White Americans Use Drugs at Similar Rates. One Group is Punished More for It*, VOX (Oct. 1, 2015), <https://www.vox.com/2015/3/17/8227569/war-on-drugs-racism> [<https://perma.cc/PMH2-H4HT>] (demonstrating how both Black and white Americans use illicit drugs at similar rates).

We demand a world where systems do not dictate the futures of families, nor are the complexities of human pain, love and need, reduced to checklists and algorithms; where there are numerous community-based alternatives to provide the rites of passage for healing. For example, when a person gives birth, there is a community member that can stay with the parent and children if so desired. Families stand together: babysitting each other's kids, giving each other breaks, honoring the need for time apart and together. We have eliminated the fatigue, grief, and death that are constantly imposed on Black women, birthing people, and caretakers. Neighbors become aunties, and strangers are now our extended families.

In this world, we govern our own communities, and have participatory policy making. Parents and community leaders support each other. We come together with our children, eat food, make decisions, and watch the babies play. Hate is buried. Love is a verb, and we see it in action. Our differences are no longer weapons used to divide us, but rather kindle for curiosity and unity. We build, and practice building, with the understanding that our liberation is intertwined. All top-down systems are eradicated. Instead, grassroots efforts anchor us and lead the fight for the health and well-being of families.

In the future there will be mistakes. But those mistakes will be allowed to fuel growth instead of being held over us as perpetual bludgeons named "shame" and "humiliation." We would be living in a world where practicing the skills to end harm, mediate conflict is an imperative. We would generate stamina to endure the ebbs and flows of disagreement, and understand this as a practice of joy, not a necessity born out of fear. It will be our duty to eliminate the pathology of anger. It will be our duty to develop and normalize the reflex to "step up" and "step in." What is now considered hard, will be considered routine.

We hear our world as clearly as we can see it. It sounds like flowing water, waves clapping against rocks, the crescendo of a waterfall, a breeze strumming its gentle tune through the autumn leaves. It sounds like birds chirping in the distance, their melodic banter a symbol of the peace we have achieved. But most of all, it sounds like the voices of our children.

In this world, all of us would wake up and hear our kids in the morning. We would call out to them and hear them answer,

“mom.” Our grandparents, mothers, and children would be chattering, and laughing. Sometimes the words would be hard, and sometimes the words would be soft. We hear bickering in this future, over things like what to eat for breakfast, or what games to play, and what clothes are okay to wear. We reminisce about hard times—when we battled together and battled each other. Then we hear silence, sighs, laughter, and silence again. In this future, our days end with our eyes closing, and deep rest. We wake up and hear each other’s voices again. There is a repetition in hearing each other; our families are the soundtrack of our future.

And if we must live in a world where we battle, it will be with an army united. Millions upon millions of people of all backgrounds, races, nationalities, professions, generations, orientations, and inclinations will stand together with the clarity, strategies and power necessary to dismantle the systems that once kept us apart, down to the very rubble of their foundations. When we fight, we will do so with the confidence and knowledge of our collective experience, with the power and endurance that comes from knowing we will accept no other outcome than to win. Then, when it is all over, we will breathe, we will rest, we will rejoice—and then keep building.

This is our demand. We are no longer asking.

III. THE VIOLENT ANTAGONIST: WHITE SUPREMACY AND ITS IMAGINED REALITY

*“I often feel I am trapped inside someone else’s
imagination, and I must engage my own
imagination in order to break free.”*

—Adrienne Maree Brown⁷

Our opportunities to grow and nurture our world vision have been suffocated by the imagination of others. These imaginations have built oppressive systems that have sucked nourishment from our world and traded domination for liberation, and personal responsibility for cooperative

⁷ ADRIENNE MAREE BROWN, *EMERGENT STRATEGY: SHAPING CHANGE, CHANGING WORLDS* (2017).

interdependence. They build and manipulate massive, faceless institutions—the prison, family regulation, immigration, and public assistance systems, to name a few. And they make them seem like the inevitable result of existence. They are not. They are the manifestation of white, colonial fantasies that become laws, that create smoke screens of noble purpose, and that cover dark realities of manipulation, oppression, and inequity.

When we consider the Adoption and Safe Families Act, we situate our analysis not only in the elements of the law, but also the dominant imagination that allowed it to exist and survive with very little opposition. One starting point is looking at Senator John Chafee (R-RI), a lead Senate sponsor for the legislation, who on the eve of the passage of the ASFA told the *New York Times*, “[i]t’s time we recognize that some families simply cannot and should not be kept together.”⁸ He spoke these words when nearly half of the children in the family regulation system were Black, most were poor, and the federal government was rapidly draining social safety nets.

We believe that the families Chaffee imagined were not his own. He was from a family to which the entire power and might of the United States was dedicated to keeping together. In his direct ancestry were multiple governors, law professors, and senators. He attended the most elite institutions of the Northeast and went on to live the life he was predestined to live—ascending from congressperson to governor to secretary of the navy to senator.⁹ He had been bequeathed generational wealth and social status from the blood, sweat and tears of our families—literally achieving social and political capital from the backs of our ancestors. He would likely utter the words that “some families should not be kept together” with a strong sense that his would continue to accumulate wealth and status, while we would inherit a devastating history with the foster system.

Unfortunately, Chafee was not alone in his imagination of deserving families. His speech was a regurgitation of mainstream political rhetoric that was seeded in racism, misogyny and capitalism, long manufactured by the pushers of chattel slavery, political borders, and other vile story tellers. He

⁸ Katharine Q. Seelye, *Clinton to Approve Sweeping Shift in Adoption*, *N.Y. Times*, Nov. 17, 1997, at A20.

⁹ *E.g.*, *John Chafee*, WIKIPEDIA, https://en.wikipedia.org/wiki/John_Chafee (last visited Mar. 22, 2021).

did, however, add the additional layer of neoliberal storytelling that would promote a narrative of “personal responsibility” over our families.

This specific narrative had been brewing for many decades but really became a pillar of political propaganda in the 1970s. With the specter of the Black liberation movement squarely before it, the United States deliberately abandoned¹⁰ the belief that the government could, or should, play a role in leveling the playing field between the rich and poor, thereby making invisible decades of the U.S. government’s segregated aid-giving strategies like the New Deal, and 1944 GI Bill—strategies that built a gold plated escalator devoted to the accession of whites to the middle class.¹¹ This erasure, in part, created fertile ground for neoliberalism to fill the gap with the notion of a “free market”.

The “free market” would be the leading protagonist of the economic story told by the neoliberals. This “free market” would be color blind, race blind, gender blind, and class blind. It would enter the final act of the 20th century with a bold message about “personal accountability”—a message that venerated the market and justified the government’s abdication of its responsibilities to support their most marginalized members of society.

Many of us recall being told that the “free market” was the greatest arbiter of equality, and that we could leave access to basic life necessities in the hands of the “free market.” That those who worked hard would get what they worked for. That those who did not work hard—well, they would not get what they did not work for. We came to learn that for our communities, for Black folks, for Brown folks, social mobility was in our hands, and ours alone. The free market neither gave a hand up nor beat

¹⁰ See *The Powell Memo: A Call to Arms for Corporations*, MOYERS ON DEMOCRACY (Sept. 14, 2012), <https://billmoyers.com/content/the-powell-memo-a-call-to-arms-for-corporations/> [<https://perma.cc/38SQ-42HW>] (describing the United States’ increased focus on businesses in the 1970s).

¹¹ See, e.g., Darrick Hamilton, *Beyond Neoliberalism, Neoliberalism and Race*, DEMOCRACY: A JOURNAL OF IDEAS, Summer 2019, <https://democracyjournal.org/magazine/53/neoliberalism-and-race/> [<https://perma.cc/CM32-GSTG>]; IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA* (2006) (describing policies in the 1970s that were geared towards propelling white people out of the middle class).

a person down. If something bad happened in someone's life, the free market alleged that it was their fault. Glaringly absent from this grotesque fairy tale spun by racial capitalism were the inherited advantages and disadvantages of history, of decades of infusion of social and economic capital into white communities, and the political power that followed.¹²

From the 1970s on, the US would continue to privatize access to the basic life necessities—such as housing and higher education—the government provisions of which were otherwise the bedrock of the momentous buildup of wealth in white communities.¹³ They would use language to pathologize us for accessing what little government assistance was left, and blame us for the harms of living under centuries of oppression, calling Black, Brown, and low-income mothers “crackheads” and “welfare queens.” They would push them into systems, and turn their backs on families and communities. They would disappear adults into the prison system and children into the family regulation system.¹⁴ When they put mamas in cages, mamas would send their children to live with their parents only to be told that their children could not live with their grandparents. The free market, white institutions, governments, pundits, the medical establishment, academia, and others, placed the blame for the fallout in our community squarely on those of us who suffered the most harm.

With this history and with these lies, it is unsurprising that ASFA passed with little political controversy or fanfare. For all intents and purposes, it embodies the sentiment, imagination, and consciousness of the moment—that the government does not have an ongoing responsibility to support families, that if something bad happens to our families it is solely our fault, and

¹² Hamilton, *Beyond Neoliberalism*, *supra* note 11.

¹³ The U.S., of course, continues to support and subsidize the accumulation of white wealth through many means, such as the tax code but has managed to make the massive government assistance that white and wealthy people receive invisible. Jocelyn Harmon & Jeremie Greer, *How the US Tax Code Drives Inequality—And What We Can do to Fix it*, FORD FOUND. (Apr. 13, 2017), <https://www.fordfoundation.org/just-matters/equals-change-blog/posts/how-the-us-tax-code-drives-inequality-and-what-we-can-do-to-fix-it/> [<https://perma.cc/CE5C-J5JE>].

¹⁴ Ingrid Archie, *Address at the #StopStealingOurBabies Virtual Town Hall of the Time for Change*, TIME FOR CHANGE FOUND., (Aug. 25, 2020), https://www.facebook.com/watch/live/?v=942945716197667&ref=watch_permalink).

that we—alone—are responsible for centuries of political neglect. The Adoption and Safe Families Act reflected these ideas by:¹⁵

1. Demanding that every child welfare system across the country move toward termination of parental rights proceedings after a child has been in foster care for fifteen of the past twenty-two months;¹⁶
2. Insisting that every child welfare system skip efforts to keep families together and move directly to termination of parental rights as soon as a child enters the foster system, if “aggravated circumstances” exist;¹⁷
3. Establishing unprecedented federal incentives to states to permanently separate families and terminate their legal ties, with no comparable financial incentive to reunify or keep families together.

The adoption of this law was swift. By July 1999, all states had laws that mirrored the federal legislation or were more stringent than the federal law.¹⁸ A formerly incarcerated mother and ASFA activist in New York State, Christina Voight, reflects that at the time of the law’s passage, everyone, from the mothers caged to the family regulation agents to the agencies themselves had no idea how ASFA would actually unfold.¹⁹ The law was literally written on the backs of families.

Since ASFA was enacted, more than one million children have been permanently separated from their parents.²⁰ That is about the population of Rhode Island. It is more than the entire city of Boston. The annual number of family dissolution and

¹⁵ Adoption and Safe Families Act, 42 U.S.C. § 1305 (1997).

¹⁶ There are limited exceptions to this timeline. One such exception is that the court can use its discretion when it serves the best interests of the child, to extend the timeline. As authors who have practiced for years in New York, and people who have directly experienced ASFA, we have not observed use of this provision.

¹⁷ Aggravated circumstances range from past criminal convictions to the mere fact that a parent has lost their termination trial in the past.

¹⁸ Foster Care: States’ Early Experiences Implementing the Adoption and Safe Families Act, U.S. GOV’T ACCOUNTABILITY OFF. (Dec 22, 1999), <https://www.gao.gov/products/hehs-00-1> [<https://perma.cc/SUU3-RB6K>].

¹⁹ Interview with Christina Voight, Movement for Family Power (Dec. 21, 2020) (on file with author).

²⁰ Kim Phagan-Hansell, *One Million Adoptions Later: Adoption and Safe Families Act at 20*, IMPRINT (Nov. 28, 2018), <https://imprintnews.org/adoption/one-million-adoptions-later-adoption-safe-families-act-at-20/32582> [<https://perma.cc/VWM5-5BKQ>].

adoptions have increased by 57 percent from the time ASFA was enacted through fiscal year 2004.²¹ Moreover, between 1997 and 2019, because of ASFA, at least 121,000 more children aged out of the family regulation system with no permanent home than would have aged out had there been no ASFA, giving America the distinction of having the largest number of legal orphans out of anywhere in the world.²²

Too many of us have believed what they told us about the system—the myth of personal responsibility creates false paths of redemption. Many of us were told that we were being selfless and doing something good if we gave up on our case, our children, and relinquished them to the system. Yet some of us have since found our children, spoken with our children who are adults now, and we have learned that this system was not good for them. It was not as some of us perceived it to be. It was not as the system described. It was certainly not redemption.

We publish this Article over 20 years after the passage of ASFA, 20 years into surviving and thriving in spite of the horror it has inflicted on children, families and communities. We write this and continue to be stunned by the amount of money this law has funneled into family regulation systems across the country. Money that was stolen from communities. In 2017 alone, states were projected to receive \$2.658 billion in federal Title IV-E adoption assistance budget to fund other families to care for our children.²³ From 1999 to 2014 the federal government projected that it gave states \$423,754,125 as an award for dissolving our families and adopting out our children.²⁴ Over the course of 20 years, the federal government (not including state governments) has spent tens of billions of dollars on paying other families to permanently raise our children and the children of the families

²¹ U.S. GOV'T ACCOUNTABILITY OFF., GAO-03-626T, FOSTER CARE: STATES FOCUSING ON FINDING PERMANENT HOMES FOR CHILDREN, BUT LONG-STANDING BARRIERS REMAIN 2 (2003).

²² *ASFA: The Racist Child Welfare Law From the 1990s that Almost No One Talks About*, NAT'L COAL. CHILD PROTECTION REFORM, CHILD WELFARE BLOG (Nov. 8, 2020), <https://www.nccprblog.org/2020/11/asfa-racist-child-welfare-law-from.html> [<https://perma.cc/9RDC-CKZC>].

²³ CONG. RSCH SERV., R43458, CHILD WELFARE: AN OVERVIEW OF FEDERAL PROGRAMS AND THEIR CURRENT FUNDING 19 (Jan. 2, 2018).

²⁴ CONG. RSCH SERV., R43025, CHILD WELFARE: THE ADOPTION INCENTIVE PROGRAM AND ITS REAUTHORIZATION 19 (July 15, 2014).

we support.²⁵ These numbers far outpace the money or energy that as invested in us, our families, our communities, and our advocacy. Can you imagine what we could be doing for our families if we had that type of investment?

ASFA is a continuation of many troubling histories in the United States where normative judgements around who were worthy families and who were not, who were worthy communities and who were not. It used considerable resources and wreaked and continues to wreak havoc on so many communities.²⁶ It has trapped so many people's perspective of what is possible, and it must end.

IV. AN INVITATION FOR TRANSFORMATION

"The ending of one story is just the beginning of another. This has happened before, after all Old orders pass. New societies are born. When we say, "the world has ended," it's usually a lie, because the planet, is just fine. But this is the way the world ends. This is the way the world ends. This is the way the world ends. For the last time."

—N.K. Jemison²⁷

We build a new world, not just by repealing laws, but through transforming and undoing oppressive social orders, actions and interactions. ASFA is a symptom of centuries of family separation policies that have relied on the degradation of Black, Brown, and poor bodies to legitimize their existence. It is kin to the Violent Crime Bill, cousin to the Personal Responsibility and Work Opportunity Act, sibling to the Illegal Immigration Reform and Immigration Responsibility Act, and heir apparent to all the laws that built up racial capitalism, chattel slavery, segregation, border control, reproductive injustice and U.S. war strategies. Its relationship to the history of punitive policies is a rationale for both its full repeal, and also

²⁵ We estimate the total cost to be much higher, as these numbers do not include the cost of family investigation and child removal that proceed permanent dissolution.

²⁶ Latagia Copeland Tyronce, *Yes, the Adoption and Safe Families Act (ASFA) Can and Should Be Repealed!*, MEDIUM (Dec. 24, 2018), <https://medium.com/latagia-copeland-tyronces-tagi-s-world/yes-the-adoption-and-safe-families-act-asfa-can-and-should-be-repealed-9c18ac391997> [<https://perma.cc/CM35-BYDM>].

²⁷ N.K. JEMISON, *THE FIFTH SEASON* (2015).

a reason why a traditional legal/policy strategy, alone, will not bring us closer to our world vision.

We want to build transformative and lasting change. We believe there should be no termination of parental rights, no fast-tracked adoptions, no stringent timelines for reunification, and no financial incentives for separations and adoptions. We insist on the end of terminating parental rights during a global pandemic, because of parental incarceration or simply because someone has not achieved remission from a complex medical condition. We require a full repeal of ASFA. These are our demands, and they can be enacted immediately. However, even if we were to achieve these policy shifts, our work would not be done. We aim not only to eliminate ASFA but to uproot the culture of family policing and forced family separation. Our success will be measured by the shift in political alignment, imagination and transformation of our community, not by the legislative session.

We are building in collective struggle. We are learning together, and offer this final section as a glimpse into what that process looks like for us. We urge you to read this section not as a blueprint for organizing but rather a description of our time together. Maybe this will inspire imagination or invite accountability, regardless we share this space with you and hope to:

1. Invite movement building;
2. Invite memory sharing, imagination, and community building;
3. Invite learning from other movements;
4. Invite principled organizing strategies; and
5. Invite healing and reparations.

In each subsection, we have tried to cite some of our resources in the footnotes in each section and hope that it will serve as a conversation starter as we all work to build a new world.

A. An Invitation to Movement Building to End the Culture of Forced Family Separation

When we met in Philadelphia in 2019, we had the opportunity to work with AYNi Institute. AYNi is a small grassroots organization that, among many things, has studied

hundreds of movements over the last two centuries.²⁸ In Philadelphia, they learned from us and also taught us about the work they have been doing, especially as it pertained to thinking about the importance of social movements,²⁹ and their life cycles.

One of our main takeaways from AYNI is that we are all connected to the earth, and as a consequence we are all connected by universal laws of nature.³⁰ One example is that we all go through the cycle of life and death in various ways, and this cycle is not confined to a human experience, but is also seen in activism, social justice trends, organizations and movements.³¹ This framing is a shift from the traditional linear trajectory that often directs legal, non-profit or traditional legal and policy strategies, and creates a circular pattern of planning that helps us orient our work, define our success and create stamina for the inevitable retrenchment.³²

AYNI uses the metaphor of seasons to explain that social movements go through a winter, spring, summer and fall, and this cycle takes approximately 5–15 years.³³ We learned that in each season there are different opportunities.³⁴ In the winter of a movement, the work is internal; among other things it is a time of low activity and planning, which is the opposite of the

²⁸ AYNI INSTITUTE, <https://ayni.institute/> [<https://perma.cc/4YC2-592B>] (last visited Jan 8, 2021).

²⁹ There are many activists, scholars etc. that have been teaching and explaining about the importance of social movements which include but are certainly not limited to: Ella Baker, Black Panthers, Black Liberation Movement, Civil Rights Movement, Marsha P. Johnson, Dolores Huerta, adrienne maree brown, Law for Black Lives, Movement Law Lab, Black Organizing for Leadership and Dignity, New Georgia Project, ConMijente, Combahee River Collective, the Black feminists who proclaimed the need for Reproductive Justice, formations like Survived and Punished, No New Jails, and the countless international movement builders, activists, and theorists. We are humbled by so many before us and raise AYNI institute as they were a specific partner in the support of this work, and we learned a lot from their guidance and especially the specific support of Fhatima Paulino.

³⁰ Ayni Institute, *Movement Ecology Introduction Webinar*, YOUTUBE (Sept. 6, 2016), <https://www.youtube.com/watch?v=pGWYaw3he2w&feature=youtu.be> (last visited Mar. 23, 2021).

³¹ *Id.*

³² *Id.* See also, Jennifer Ching et al., *A Few Interventions and Offerings from Five Movement Lawyers to the Access to Justice Movement*, 87 FORDHAM L. REV. 186 (2018) (discussing strategies for building sustainable movements).

³³ Ayni institute, *3. Movement Seasons*, YOUTUBE (Apr. 16, 2019), <https://www.youtube.com/watch?v=KSwnVINjYgI> (last visited Jan 8, 2021).

³⁴ *Id.*

summer—an external, high activity time that may allow for large scale policy changes that can be supported by an accountable movement infrastructure and lead by people more directly impacted by social change.³⁵ They reminded us that many movements get stuck in the winter and never move to spring, explaining that this is because everyone wants to be in an eternal summer.³⁶ That there is a dominant summer culture of “do do do,” that is projected by many organizations, institutions, and even ourselves, and that organizations do not respect people’s winter.³⁷ They also said that we often get stuck in a “winter” because we lose sight of what is needed during a winter, retreating, deep thinking, learning, and relationship building.³⁸

When we learned about the different traits of each season, we almost universally agreed that the abolition of the family regulation and destruction system was squarely situated in a winter. We saw the traits of isolation and low or little funding for activist leadership. We saw the blank stares when we told people we should end the child welfare system and questioned its efficacy.³⁹ We felt the frustration that many of our comrades and progressive colleagues confused our demands with one that asked for abuse and harm for children.⁴⁰ We observed the layers of shame, stigma, and oppression that surrounded communities, parents, and families resisting and activating.⁴¹ We certainly were not in a summer.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Many activists and directly impacted people have been arguing for a swift change with little to know support, funding or even serious consideration by mainstream media/lobbying efforts. *See, e.g.*, Latagia Copeland Tyronce, *supra* note 26. The resistance in Contra Costa County, some of which is captured in writing by Michelle Chan. *Michelle Chan*, SAN FRANCISCO BAY VIEW (2021), <https://sfbayview.com/tag/michelle-chan/> (last visited Mar. 24, 2021).

⁴⁰ One representative example, is the fight by Elizabeth Brico for her daughters. She created her own petition to convince stakeholders that she should be with her child, exposing the very clear and real evidence that despite allegations of substance use there were no connections that her children were ever neglected. *See* Elizabeth Sparenberg-Brico, *Reunite the Brico Babies with their Mama*, CHANGE.ORG, <https://www.change.org/p/florida-department-of-children-and-families-reunite-the-brico-girls-ages-5-and-6-with-their-mama> (last visited Mar. 24, 2021).

⁴¹ VOICES Keston Jones, *Episode 3 Dinah Ortiz: #Family, #Women’s and #CriminalJusticeReform #Advocate. #VOICESKJ*, YOUTUBE (Nov. 25,

The opportunities during winter center on decreasing isolation around those most impacted, activism and organizations that are looking to direct their resources at the same target and deepening alignment around the political understanding of the target issue.⁴² This means creating regular practices around meeting and creating community, developing coalitions with sustainable infrastructure, discussing how we want to be in relationship with each other, developing aligned targets and talking points, and sharing and building political education around the issues we want to tackle. It also means ensuring that resources do not consolidate and congeal within funded non-profits or carceral systems, but rather move towards community, leadership development, idea generation and innovation.

In the last year, our work around repealing ASFA was focused on the strategies we believe will pull our work from winter to spring. We organized a convening in Philadelphia, engaged in horizontal learning and political education and then isolated a particular element of the law we believe we can tackle, ASFA. From that Philadelphia convening, we started a steering committee that has now been meeting regularly for approximately a year. We were hoping to have another, smaller in-person convening in March of 2020—though COVID has impacted our ability to physically be with one another. We are hoping to invite people into working groups in 2021, and we want to take time to think through how to bring people together, how to organize and how our time together can be meaningful, healing, creative and generative.

Most importantly, we have built relationships with each other during this winter. We have learned together, deepened our value alignment and trust, and hopefully also built resiliency. This is the work of the winter, that we hope evokes a spring. We will have to change the outputs of our work as our movement shifts. This is a part of our strategy and what we believe it takes to truly support liberated policy demands.

2018), <https://www.youtube.com/watch?feature=youtu.be&v=5Zz9Ku67Y-U&app=desktop> (last visited Mar. 24, 2021).

⁴² Ayni Institute, *supra* note 29.

B. An Invitation to Reimagine and Build Resilient Communities and Family Structures by Learning from Shared Memories

We aspire to center the experience, expertise, leadership and voice of the most directly impacted by ASFA. We strive to be accountable to both those within our movements and those in adjacent movements and be in constant practice of sustained community building. This intentional work is difficult and has proved even more difficult this year where a global pandemic shut down our ability to be in physical contact with each other. Nevertheless, we are reminded by the words of Adrienne Maree Brown, that we must “[m]ove at the speed of trust” and that, “[t]here is always enough time for the right work. There is a conversation in the room that only these people at this moment can have. Find it.”⁴³

One of the conversations we have started building is with indigenous communities, who, in response to the devastating impacts of the removal of their children, have pushed back on the family destruction system and the dissolution of their families. This has included fighting for tribal sovereignty and jurisdiction over child welfare cases to bring them into tribal courts, and implementing alternatives to termination of parental rights. Judge Bill Thorne, who is Pomo Coast Miwok, a former State of Utah Court of Appeals Judge and former tribal court judge, describes these efforts as “not just about reimagining, but about remembering how we used to do it in our communities.”⁴⁴

We have learned a lot, and have a lot more to learn. Professor Priscilla Day, an Anishinaabe tribal member enrolled at the Leech Lake reservation and a professor of social work at the University of Minnesota Duluth, explained to us that there is a belief among many tribes that children choose their parents, and that the parent-child bond cannot be severed.⁴⁵ Jeri Jasken, who has worked as the former Director of Child Welfare and Director of Behavioral Health for White Earth Nation tribe,

⁴³ ADRIENNE M. BROWN, *EMERGENT STRATEGY: SHAPING CHANGE, CHANGING WORLDS* 20 (2017).

⁴⁴ University of Houston Graduate College of Social Work, *UpEnding the Child Welfare System: The Road to Abolition*, YOUTUBE (Oct. 21, 2020), <https://www.youtube.com/watch?v=t7iZch9P504>, at 13:01.

⁴⁵ Interview with Priscilla Day, Professor of Social Work, University of Minnesota, Duluth (Oct. 20, 2020) (on file with author).

described telling social workers in their training, “it’s not your tie to break, not your right to break it.”⁴⁶ Similarly, Judge Thorne explained that many tribal communities believe that to cut off a child from their family is an act of abuse, because it not only severs the parent-child relationship, but also severs the child’s relationship with their extended family and relatives.⁴⁷ He said, “kids are not property, you don’t cut them off. It’s not like a car where you have a bill of sale and you can only belong to one person. Kids belong to the whole community and the extended family.”⁴⁸

Professor Day, Judge Thorn, and Jeri Jasken were all in leadership at the time ASFA passed. Jeri Jasken, the former Director of Child Welfare at White Earth Nation, described a deeply uncertain and scary period for her community, where the tribe was faced with an overwhelming number of fast-tracked TPR petitions occurring in state courts. Judge Fineday describes hearing two clear messages from the tribal elders. First, the elders described that the tribe had always had practices that involved taking in other people’s children and there is no word for “orphan” in the Ojibwe language.⁴⁹ Second, the elders opposed the concept of termination of parental rights and believed that parents should always be able to have their children returned when they are ready.⁵⁰

We learned that leaders had to rapidly respond to the cultural clash inflicted by ASFA on tribal customs. One form of

⁴⁶ Interview with Jeri Jasken, Former Director, White Earth Nation Child Welfare and Behavior (Dec. 2, 2020) (on file with author).

⁴⁷ Interview with Judge Bill Thorne, Utah Court of Appeals, at 26:16 (Nov. 25, 2020) (on file with author).

⁴⁸ University of Houston Graduate College of Social Works, *supra* note 44, at 54:20.

⁴⁹ *History of White Earth*, WHITE EARTH NATION, <https://whiteearth.com/history> (last visited Mar. 24, 2021) (“All Indian tribes have names for themselves. The largest Indian group in Minnesota calls itself Anishinaabe, which means ‘the original people.’ Europeans named them Ojibwe. No one is exactly sure how this name developed. Perhaps it came from the Anishinaabe word ‘ojib,’ which describes the puckered moccasins worn by the people. Some Europeans had trouble saying Ojibwe, pronouncing it instead as Chippewa. But both these names refer to the same people. In Canada, the Anishinaabe call themselves Ojibwe. In the United States, many tribal members prefer the name Chippewa. So that is the name we will use in this history of White Earth Reservation.”).

⁵⁰ Interview with Anita Fineday, Managing Director, Casey Family Programs’ Indian Child Welfare Program (on file with author).

resistance included the use of traditional law in child welfare practice, such as “tribal customary adoptions,” (TCAs)⁵¹ which allows for a child to be adopted, with all of the legal recognitions that adoption entails, but without terminating the parental rights.⁵² Traditional adoptions, or the making of relatives, is not new to tribal communities, in that it has been practiced for centuries. But what is unique is how this traditional practice is applied to a child welfare proceeding, and allows parents to continue contact with their children, as well as possible return of their children in the future. TCAs were developed in response to the specific harms created by ASFA and is based on historic and traditional practices held by many indigenous communities in which children were raised by extended family and by community.⁵³ TCAs have allowed tribes to prevent parental rights from being terminated, maintain contact and connections between children and parents.

Faced with the violence and swift nature of ASFA, the White Earth Nation tribe recognized the need to take rapid action for their community’s survival.⁵⁴ When Anita Fineday became Chief Tribal Judge in 1997, she, along with Jasken and other leaders, embarked on a process to re-write their tribal code to include a child welfare code, in order to address the large numbers of White Earth children in foster care facing a TPR

⁵¹ Initially, the tribe relied on their traditional law and custom to practice TCAs in the context of child welfare cases in tribal court and refused to codify the practice. As Jeri Jasken explained, the tribe initially refused codifying it because “it’s traditional law. It’s a verbal, traditional, tradition and practice and shouldn’t have to be written down. Any time you force a tribal nation to write those things down, you’re expecting something that’s not reasonable, that’s more westernized . . . but we ultimately decided to put it in our own code because it was of benefit to our families.” However, when the tribe lobbied for TCAs to be recognized by the federal government to make adoptive parents eligible for adoption assistance funding, the Social Security Administration demanded that TCAs be codified for it to be recognized for Title IV-E assistance. As a result, TCAs were written into the White Earth code in the early 2000s. White Earth has also been able to receive additional financial assistance from the state of Minnesota for their TCA adoptive families. Interview with Jeri Jasken, Former Director, White Earth Nation Child Welfare and Behavior, at 21:30 (Dec. 2, 2020) (on file with author).

⁵² CALIFORNIA INDIAN LEGAL SERVICES, TRIBAL CUSTOMARY ADOPTION HANDBOOK 17 (2017) <https://www.calindian.org/wp-content/uploads/2017/06/TCA-Handbook.-Final.pdf> [<https://perma.cc/62EG-TMU3>].

⁵³ Interview with Jeri Jasken, Former Director, White Earth Nation Child Welfare and Behavior (Dec. 2, 2020) (on file with author).

⁵⁴ *Id.*

proceeding. They created a tribal family court for resolving child welfare cases in their own community, rather than in state court, where TPRs were filed at an alarming rate.⁵⁵ The process was done in consultation with tribal elders, who warned that the community would not accept the White Earth court if it terminated parental rights the way the state courts did.⁵⁶ They worked together to create a suspension of parental rights, which allowed parents to maintain a path back to their families.

We know these are not the only forms of resistance, and we have a long way to go to learn about, and contribute to, building our collective memory around how communities have resisted ASF. However, these conversations are instructive in many ways. First, they are a reminder that we are not alone in seeing this culture of parental destruction as an affront to our culture. That demanding a repeal of ASFA is not a demand for harm to children, and that people who hear our demand in that manner are likely centering their analysis in dominant white culture norms. It also reminds us that our communities have so much capacity to organize, and reorganize for the sake of family survival. That we have, for so long, taken care of each other, responded to harm, supported and nurtured each other. That we can build on the resiliency of relationship, hold nuance, and care for one another—and that we have to remember as much as we reimagine.

C. An Invitation to Learn from Movements Outside of the Family Regulation System

TPRs have disappeared so many parents from their children. Elizabeth Brico writes that “[e]quating this action to the death penalty is not hyperbole, in fact . . . it’s not a strong enough comparison.”⁵⁷

As far as I can tell, the dead don’t wander among
the living, constantly inundated with images of
the lives and experiences they don’t get to have.

⁵⁵ Anita Fineday, *Customary Adoption at White Earth Nation*, in CW360: A COMPREHENSIVE LOOK AT PREVALENT CHILD WELFARE, 28 (Traci LaLiberte et al. eds., 2015).

⁵⁶ *Id.* Jeri Jasken said that TPRs are simply “not allowable” in White Earth’s practices, unless there has been some absolutely egregious harm, which is rare. Interview with Jeri Jasken, Former Director, White Earth Nation Child Welfare and Behavior, at 5:00 (Dec. 2, 2020) (on file with author).

⁵⁷ Brico, *supra* note 4.

As far as we know, the dead don't miss themselves, don't mourn their lives; the dead don't remember the aspirations they never achieved. The dead are, if not at peace, then at least null. Mothers without their babies are neither at peace nor null. Mothers without their babies are Hungry Ghosts . . . The civil death penalty looks like hating Facebook because you post photos of your kids there. The civil death penalty sounds like shoving headphones deep into my earlobes so I don't have to hear the mom downstairs shout at her kid in a way I never would, but don't have the opportunity to do better than. The civil death penalty feels like the recirculated air of my apartment because going outside means seeing families walking together. Going to the grocery store means not buying goldfish and juice for my daughters while you buy snacks for yours. Going to the beach means the terrible freedom to swim without worrying about kids and wave and water and drowning. The civil death penalty means hating the mirror, where my belly will never be flat again and that was only okay because it gave me you and you but you're not here anymore. The civil death penalty means being conscripted to irreparable loneliness. It means living the mangled reality of mother without her children. The civil death penalty means hating everyone I know for having the audacity to live forward and move on while I remain dead and stuck for the rest of my life. I'd give anything to be granted clemency.⁵⁸

TPRs are a violent legal mechanism that kill families, and ASFA is the civil death penalty that enacts the execution. As we learn more about how to repeal ASFA, we must think critically about how the family and criminal death penalties interact. Both purport to build safety at the expense of human life. Both normalize state violence as response to social concerns. Both politically justify their existence as a way to eliminate serious harm, and yet have disproportionately eliminated the existence

⁵⁸ *Id.*

of Black and brown people. When determining our best path towards dismantling the family death penalty, we believe we can learn from activists who have worked to abolish the criminal death penalty. We have worked over the past two years to learn from comrades in all abolition movements, because learning from other connects our liberation to a longer freedom struggle.

We have learned a great deal from the movement to abolish the criminal death penalty. This movement is in many ways more mature than ours, in that it has gone through several life cycles. The longevity of this activism helps us understand both successes and struggles of the work and can provide context for how we may want to envision political strategies for our movement, and prepare for retrenchment. For example, there was a period of time when death penalty abolitionists advocated for Life without Parole (LWOP)⁵⁹ as a replacement to the death penalty, with devastating consequences. At the time there was a sense that this was a more humane option, and potentially a more moral option. However, it did not fundamentally challenge the callous disregard for life, or the culture of punishment that ultimately drives our reliance on the death penalty. Moreover, advocates have argued that the rhetoric used to win support of LWOP as a replacement to the death penalty, particularly tough-on-crime and cost-saving rhetoric, served only to reinforce the values underlying not only the death penalty, but the entire penal system.⁶⁰ By focusing on substituting one draconian policy for another, and by failing to put forth a narrative and vision that centers the dignity of people facing capital punishment, death penalty abolitionists failed to fundamentally alter the framework undergirding both LWOP and the death penalty. This leaves the

⁵⁹ *Miller v. Alabama*, 567 U.S. 460 (2012).

⁶⁰ Ross Kleinstuber et al., *Into the Abyss: The Unintended Consequences of Death Penalty Abolition*, 19 U. PA. J.L. & SOC. CHANGE 185, 194 (2016). In addition, arguments about the fiscal savings of LWOP were similarly misguided, not only because these arguments reduced the value of human life to a dollar amount, but also because the costs “saved” by LWOP are actually the result of weakened legal protections and diminished procedural rights. The death penalty is more expensive because people receiving death sentences are afforded more legal protections than those who receive a sentence of life without parole; any argument relying on cost-savings is an implicit endorsement of reduced legal protections. *Id.* at 190–93. See also Rebecca Burns, *Is Life Without Parole Any Better Than the Death Penalty?*, IN THESE TIMES (Mar. 22, 2013), <https://inthesetimes.com/article/death-penalty-abolition-life-without-parole> [<https://perma.cc/JP7F-VRB8>].

movement with “nowhere left . . . to turn.”⁶¹ Once LWOP replaces the death penalty; the result is little more than a “Pyrrhic victory.”⁶²

In the winter of our work especially, we must wrestle with these difficult and often competing realities, and generate movement wide conversation to create alignment on how we remain faithful to the horizon of abolition. This is difficult. TPR abolitionists may consider the impact of alternatives to TPR, such as an indefinite suspension of parental rights, that prolong the uncertainty of reunification or the trauma of family separation just as the LWOP prolonged the trauma of death in prison. Any alternative that prolongs the process and ordeal of family separation may result in parents “volunteering” to have their parental rights terminated solely to find closure and put an end to their family’s uncertainty and suffering just as people on death row will sometimes ‘volunteer’ for their execution to put an end to their uncertainty and suffering.⁶³ Moreover, powerful entities, such as judges and child welfare prosecutors, may use these ostensibly “humane options” to coerce families into separations and settle their termination trials.⁶⁴ It will be a struggle, but the ultimate goal must be to make the idea of killing a family through a TPR so offensive, that it is no longer an option for lawmakers, communities, or individuals.

We can also learn death penalty abolitionists about the importance of being faithful to language and narrative shift. In

⁶¹ Ross Kleinstuber et al., *supra* note 60 at 195.

⁶² *Id.* at 195.

⁶³ For example, following the Supreme Court Decision in *Adoptive Couple v. Baby Girl*, Dusten Brown dropped his appeals to regain custody of his daughter. He said, “I cannot bear to continue it any longer . . . I love her too much to continue to have her in the spotlight.” Bethany R. Berger, *In the Name of the Child: Race, Gender, and Economics in Adoptive Couple v. Baby Girl*, 67 FLA. L. REV. 295, 360 (2015).

⁶⁴ This is not an abstract concern. Litigants facing TPR proceedings are often threatened with a termination conviction if they do not “volunteer” their rights. We see this occur often in New York termination proceedings where agencies “offer” conditional surrenders that purportedly allow for visitation between parents and children. These provisions are often unenforceable. These conditional surrenders offer parents a glimmer of hope, but no legal rights to their children. They give the foster – now adoptive – parent enormous power to determine whether the parent can visit, even though they are supposed to be in an agreement. They are often used to force settlements for parents that wish to litigate their termination trial and do little to actually substantively preserve the parent/child relationship.

the context of LWOP, we see the dominant narrative culture creates “humanity” around caging people for life versus state sanctioned murders. We can learn from our colleagues, about the pitfalls of adopting a narrative that prefers one inhumane treatment and disguises it as progress. We can also learn from our colleagues about the pitfalls of creating categories of deserving and undeserving people to justify reform, and how creating these types of exceptions do not eliminate the violent tactics of the government, but further helps legitimize and justify cycles of oppression. We absorb these lessons and work to end TPR for all families, not just the ones that society deems worthy.

Our analysis of the LWOP movement does not negate the humble awe and gratitude we also give to the many people who resisted the criminal death penalty. To the contrary, it is a reminder to learn from others, and help us be open to accountability of our own work. The inevitable cycle of movement means that new activists will be able to see our vulnerable mistakes, we accept this challenge and hope we will not do more harm than good.

D. An Invitation to Build Principled Organizing Strategies that Bring Us Closer to Our Goal of Liberation and Transformation

To analyze as to whether we are doing more harm than good, we think about different frameworks around abolitionist demands that are either “non-reformist reforms” or “abolitionist steps.”⁶⁵ Abolitionists recognize that the world may not change tomorrow; however, we also reject incrementalism that reinforces the status quo and entrenches oppressive cultures. Longstanding organizations like Critical Resistance⁶⁶ and among many other liberation activists,⁶⁷ have collected and facilitated questions to help encourage pro-abolitionist policy changes that resist the tendency to tweak the system, but instead tug at the root of the policy. In the context of ending policing, and abolishing the prison

⁶⁵ *If You're New to Abolition: Study Group Guide: Reformist Reforms vs. Abolitionist Steps*, ABOLITION J. (June 25, 2020), <https://abolitionjournal.org/studyguide/#weekfour> [<https://perma.cc/8FTJ-532Y>].

⁶⁶ CRITICAL RESISTANCE, <http://criticalresistance.org/> [<https://perma.cc/AZS6-GLNZ>].

⁶⁷ We have been deeply influenced by the framings used by Law for Black Lives, Andrea Ritchie, and the Movement for Black Lives among many other teachings.

industrial complex (PIC), many activists think through questions like these before agreeing to a policy change:⁶⁸

1. Does it reduce funding to the police?
2. Does it challenge the notion that the police increase safety?
3. Does it reduce the tools and tactics that police have their disposal?
4. Does it reduce the scale of policing?
5. Is there a material resource gain for communities?

While this is not an exhaustive list, nor does it encompass the scale of expertise that PIC abolitionists consider in framing and making their demands, it is an enormously helpful organizing tool that creates practical guideposts for building steps towards our new future.

As we consider demands around ASFA, and abolishing the family death penalty, we are thinking about how to incorporate non-reformist reforms into our analysis. Before committing to a policy agenda we ask—are the changes that are being proposed reducing funding to the child welfare industrial complex,⁶⁹ and increasing the funds to communities? Is the narrative around the policy shift pushing the dominant narrative that the family regulation system is an arbiter of safety? Are we

⁶⁸ *Reformist Reforms vs. Abolitionist Steps in Policing*, CRITICAL RESISTANCE, https://static1.squarespace.com/static/59ead8f9692ebee25b72f17f/t/5b65cd58758d46d34254f22c/1533398363539/CR_NoCops_reform_vs_abolition_CRside.pdf [<https://perma.cc/AWN5-X3L7>].

⁶⁹ This framing and definition was presented at “Dream-mapping adoption and foster care Abolition,” Allied Media Conference 2020, and was created and presented by a collective of adopted and formerly fostered folks. *Welcome to the 21st Allied Media Conference*, SCHED, <https://amc2020.sched.com/event/d8En/dream-mapping-adoption-and-foster-care-abolition> [<https://perma.cc/2DUA-EBJH>]. They attribute this working definition of child welfare industrial complex (CWIC) to people who have offered analysis/ways of thinking about the prison industrial complex, military industrial complex, etc. acknowledging it as a working definition used explicitly to name the overlapping systems of public and private child welfare, across both foster care and adoption. A recognition that we noticed that some people have used the term, Child Welfare Industrial Complex, but mainly to reference one part of the system (e.g., public foster care system, foster care industrial complex, adoption industrial complex, orphan industrial complex). However, these have historically not included both public and private systems across foster care and adoption and the ways those systems overlap and function together.

supporting changes that decrease the size, power and scale of the family destruction system? Are we supporting a shift in material conditions and the politicization for our people? This is not an exhaustive list, but it is an important discipline in defining success, claiming victory, and keeping our focus on liberation. It is also an important process that must be convened with integrity, and ethical adherence to a liberatory framework, and a process that invites transparency and accountability.

We will not always have a perfect answer to each question, and we might agree to a policy change that is imperfect. These questions, however, help narrow where we must continue fighting. For example, on the one hand, if there were a change made to ASFA to end terminations for people who are incarcerated, that would be a victory, but it would not be the end of movement. It would be a victory because it would reduce funding to the family regulation system by ending the financial incentives that attach to those specific terminations and eliminate a tool that the family regulation system could rely upon. However, it still would leave out so many members of our community, the legal apparatus of ASFA still intact, and potentially entrench the legitimacy of ASFA as a valid idea. This does not mean we do not accept it as a victory, but we would know we still had more work to do.

On the other hand, it would not be considered an abolitionist step if we were asked to endorse a policy that funded agencies to do their own internal review of TPRs, and provide recommendations to the community. Here, we have vested more funding into the system, made the foster care agency the arbiter of success and the creator of the recommendations, and offered no guarantee to the material conditions of our people.

While these were two simple and short examples of how an abolitionist uses the framework of “non-reformist” reforms to make steps towards change—we hope this is constructive. We are continuing to learn, and are hopeful to build change.

E. An Invitation to Repair and Heal Histories of Harm

Abolitionists’ steps towards change also demand a transformative repair, not only as we heal as individuals but as society becomes accountable to the harms it inflicted on our communities. Those of us who have suffered the harms of these systems, and in particular Black mamas, Indigenous mamas, and

Latinx mamas are owed the truth. We are owed reparations. We demand that the lies that feed that ideologies of these systems that have devalued our families and communities be exposed as lies. We demand that our families be supported to heal and repair, with the force of law and financial, political, and social capital that was invested in these systems. We look to both U.S. liberatory frameworks of reparations as well as international reckonings with truth and reconciliation to help guide our demands and understanding.

We recognize that the United States is not the only place where a dominant political, economic, social, and racial order was established in part through family separation. We have many examples of this across history and across time, and we are in a space of learning about the justice community has demanded. For example, the “Las Abuelas de la Plaza de Mayo” movement that formed in Argentina in response to the mass disappearance of children from families deemed subversive by the military dictatorship, began as a group of grandmothers and grew into a movement that forced a truth telling around the disappearances and the development of a DNA database so that parents could find their children.⁷⁰

As we build momentum, we must also build a framework of reparations that exposes the centuries of violence inflicted on our families, and creates a pathway of true healing, shifts resources to our community, and builds accountable infrastructures to ensure that never again will any family be taken by the family death penalty.

V. CONCLUSION

“We are a people. A people do not throw their geniuses away. And if they are thrown away, it is our duty as artists and as witnesses for the future to collect them again for the sake of our children, and, if necessary, bone by bone.”

—Alice Walker⁷¹

⁷⁰ Michele Harvey-Blankenship & Rachel Shigekane, *Disappeared Children, Genetic Tracing, and Justice*, in CHILDREN AND TRANSITIONAL JUSTICE 293, 302–04 (Sharanjeet Parmar et al. eds., 2010).

⁷¹ ALICE WALKER, IN SEARCH OF OUR MOTHERS’ GARDENS: A WOMANIST PROSE (1983).

Stop investing in the imaginations of white supremacy. Every day we see powerful people, industries and philanthropy invest more in the child welfare industrial complex than communities. These industries are so faithful to technical surveys like “ACES” that are supposed to address adverse childhood experiences, rather than actually building up Black women and children. They spend more time building out family regulation apparatuses like “prevention models” than advocating for housing, baby bonds, and universal basic incomes for our communities. They are obsessed over the idea of “permanency” instead of confronting the messy reality that family is complex, full of contradictions, and ripe for healing and accountability.

We demand those with power, means, and resources to stop voicing caution and hesitancy when the most oppressed in our society build power. We demand that those individuals with privilege, give unyielding, unrestricted, and unencumbered support. That this support be financial, but also intellectual and in the form of patience and time. For centuries the United States has devoted trillions of dollars and political capital to the imaginations that gave us slavery, genocide, prisons, and housing insecurity. We are deserving of at least that time, and more. We need ample space for creativity, inconsistency, mistakes, and conversation. We need space to dream, think, strategize, and implement.

Build with us and exist in principled struggle. We do not expect this to be linear or simple, it will be uncomfortable, there will be contradictions, mistakes, and need for deeper learning. There will be setbacks, harm, and indecision. However, there is no better time than now.