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15
16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE DISTRICT OF ARIZONA**

18
19 Stephen C., a minor, by Frank C., guardian
ad litem, et al.,

20 Plaintiffs,

21 v.

22 Bureau of Indian Education, et al.,

23 Defendants.

Case NO. 3:17-cv-8004-SPL

**BRIEF OF SOCIETY OF INDIAN
PSYCHOLOGISTS AS
AMICUS CURIAE IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS**

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
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1 **INTRODUCTION**

2 The state of public education provided to Native children is dire. And this reality is
3 made all the more troubling because Native children “are living in a world far worse than
4 that of the typical non-[Native] child.” Ryan Seelau, *Regaining Control Over the*
5 *Children*, 37 AM. INDIAN L. REV. 63, 66, 72 (2012-2013).

6 As a group, Native children suffer one of the highest rates of psychological trauma
7 in the U.S. *Id.* This widespread and recurring trauma results in a greater prevalence of
8 emotional dysfunction and functional impairments, which in turn increases the need for
9 special accommodations in education. Yet despite this increased need, and despite the
10 Federal Government’s assumed responsibility for educating members of this historically
11 marginalized group, the Government has egregiously failed to meet the educational needs
12 of Native students, including the nine Havasupai children who are the Student Plaintiffs
13 in this action. The effects of the Government’s failure are independently devastating, and
14 often perpetuate the population’s preexisting trauma, resulting in troubling and persistent
15 injuries suffered by the Student Plaintiffs and others like them.

16 With this case, the Court has an opportunity to hold the Government accountable
17 for its longstanding failures. Native children embody the legacy and future of U.S. Native
18 nations. The Court should acknowledge both the unique needs of these children as well as
19 the very real and long-term effects of their having been deprived of a basic education.
20 Those who endure ongoing trauma suffer legitimate impairments, and a lack of education
21 leaves individuals ill-equipped to succeed in the workplace and in the world at large. For
22 Native children like the Student Plaintiffs to have any hope of overcoming adversity and
23 thriving, the government must be ordered to right these wrongs. Compensatory and
24 culturally responsive education, though imperfect, can remedy some of the educational
25 deprivations suffered by Native students, including the students of Havasupai Elementary
26 School.

27 The Society of Indian Psychologists (“SIP”) as amicus therefore urges the Court to
28 recognize two important facts. First, educational deficits have long-lasting, post-school-

1 age consequences. Second, repeated exposure to severe trauma, absent resiliency, impairs
2 an individual's ability learn, communicate, and participate in society. SIP therefore joins
3 Plaintiffs in opposing Defendants' motion to dismiss the Second Amended Complaint.

4 **INTEREST OF THE AMICUS**

5 Society of Indian Psychologists ("SIP") is a non-profit organization for Native
6 American indigenous people. SIP advocates for the mental well-being of Native peoples
7 by increasing the knowledge and awareness of issues impacting Native mental health.
8 SIP's main goal is to come together as Native psychologists who work in support of
9 professionals, researchers, graduate students, and undergraduate students. As a
10 community, SIP shares ideas, and disseminates knowledge and new information relevant
11 to Native People. United by a common core of values, it seeks to be a resource for Native
12 communities by increasing the knowledge and awareness of issues impacting Native
13 mental health. As community psychologists, members of SIP look for root causes of
14 problems in a community and, in turn, for ways to rehabilitate the health of the
15 community as a whole from the ground up.

16 The issues in this case are of particular importance to SIP. SIP has a vested interest
17 in supporting Native American people and in ensuring that Native American people
18 receive resources that are responsive to their unique needs, and to which they are entitled
19 by law. SIP also has a vested commitment to improving the mental well-being of Native
20 people, including by educating the public about the needs of the population and by
21 identifying and implementing solutions and responses to those needs. Public elementary
22 schools are a critical community resource for addressing these issues and delivering
23 appropriate accommodations. The Court's decision in this case has the potential to
24 dramatically improve not only the quality of education received by Native students, but
25 also their mental and emotional stability and, in turn, their ability to grow into thriving
26 and contributing members of their communities.

ARGUMENT

I. THE DEPRIVATION OF ADEQUATE EDUCATION IS DEVASTATING BUT CAN BE IMPROVED OVER TIME

Defendants contend in their motion to dismiss that five of the Student Plaintiffs cannot show an impending injury that can be remedied by the Court because they are no longer students at Havasupai Elementary School. See ECF No. 67 at 4-7. As explained below, this unfounded argument profoundly misunderstands the ongoing and self-perpetuating nature of the injuries that result from an educational deficit and overlooks compensatory education solutions that have been proven to successfully, if partially, correct these injuries.

A. Individuals Suffer Ongoing Injuries When Deprived Of An Adequate Education

[Education] is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954). Those words are as true today as they were more than sixty years ago. Indeed, it is elemental that some “degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence.” *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972). As a result, when individuals do not receive the education to which they are entitled (see 25 U.S.C. § 2000 (promising Native Americans education that meets their “unique educational and cultural needs”), they have no foundation upon which to succeed in life.

The advantages of an adequate education are so fundamental that they almost elude identification and quantification. However, psychologists and social scientists understand that primary education serves two critical purposes: First, and most immediately, it teaches academic fundamentals, such as how to read and how to solve

1 basic mathematical problems. Second, perhaps less evidently, primary education
2 engenders an understanding of how one fits into society. It encourages civic participation
3 and “shape[s] life chances.” Catherine E. Ross & Marieke Van Willigen, *Education and*
4 *the Subjective Quality of Life*, 38 J. HEALTH & SOC. BEHAV. 275, 292 (1997). Students
5 who receive deficient primary instruction therefore suffer from an education deficit that
6 leaves them unprepared to contribute to society and compromises their subjective quality
7 of life. See Human Rights Watch, *The Education Deficit*, June 2016,
8 <https://tinyurl.com/ycqaj7lg>. This deficit, in turn, has seemingly countless lifelong
9 consequences that persist and compound one another throughout an individual’s life.
10 Sociologists have identified a number of distinct injuries that are suffered by individuals
11 without an adequate education:

12 • Low unemployment rates. See Bureau of Labor Statistics: Employment
13 Projections, <https://tinyurl.com/ln9p4pk> (last visited Aug. 22, 2017);

14 • Low incomes. *Id.*, see also Eduardo Porter, *A Simple Equation: More*
15 *Education = More Income*, N.Y. TIMES, Sept. 10, 2014, <https://tinyurl.com/yc8g3zz4>;

16 • High incarceration rates. See, e.g., Caroline Wolf Harlow, U.S. Dep’t of
17 Justice, *Bureau of Justice Statistics Special Report: Education and Correctional*
18 *Populations*, (Jan. 2003), <https://tinyurl.com/kpsgzx4>. The majority of prison inmates do
19 not complete high school. Alliance for Excellent Education, *Saving Futures, Saving*
20 *Dollars*, <https://tinyurl.com/kx5sw9k>;

21 • High rates of depression and other mental illnesses. Ross & Van Willigen,
22 *supra* p. 4, at 286; and

23 • High risk for physical disease. See David M. Cutler & Adriana Lleras-
24 Muney, Nat’l Bureau of Econ. Research, *Education and Health: Evaluating Theories and*
25 *Evidence*, at 1 (2006), <https://tinyurl.com/y8mezbcq> (“in 1999, the age adjusted mortality
26 rate of high school dropouts ages 25 to 64 was more than twice as large as the mortality
27 rate of those with some college”).
28

1 Of course, these consequences are interrelated. For example, the ability to get a
2 job depends on one's education level. Those who fail to complete high school have little
3 employment opportunity long after they're school enrollment ends. By 2020, it is
4 estimated that 86% of jobs will be out of reach to the majority of the Havasupai
5 population because they lack a high school degree. See SAC ¶ 185; Anthony P.
6 Carnevale, Nicole Smith & Jeff Strohl, Georgetown Pub. Policy Inst., *Recovery: Job*
7 *Growth and Economic Requirements Through 2020*, <https://tinyurl.com/jdzfyx9>.

8 In some cases, an education deficit has employment consequences wholly separate
9 and apart from employment mobility. For example, without a proper education, an
10 individual may not even be able to complete an employment application or use the
11 Internet to search for employment or training opportunities. Moreover, an individual who
12 has been neglected by his community and an adequate education is more likely to be
13 conditioned to give up at the first obstacle. Again, these outcomes take hold and endure
14 long after one has left school.

15 Lower educational success also correlates with higher rates of crime. See
16 *generally* Alliance for Excellent Education, *supra* p. 4. When a person lacks control or
17 agency over his life, he is led to riskier behaviors than others and higher risks of
18 incarceration and exposure to violence. Individuals who attain higher levels of education
19 are less likely to use crime to achieve a particular means, and each additional year of
20 school reduces the chance of ending up in jail. *Id.* This is because: (1) for steady income
21 earners, the opportunity cost of committing a crime increases, (2) incarceration removes
22 an individual from the labor market, and (3) education may positively affect an
23 individual's patience or risk aversion. *Id.* Simply put, higher education can help an
24 individual appreciate the "costs" associated with engaging in criminal activity.

25 Beyond these disadvantages in education and incarceration, many more are not as
26 apparent or well understood. For example, educational attainment also is inversely
27 correlated to levels of distress. Ross & Van Willigen, *supra*, p. 4, at 290. "Education
28 correlates positively with [a] sense of control, and the sense of personal control mediates

1 a large part of the negative association between education and distress.” *Id.* at 278.
2 Distress, or the effects of deprivation, manifests itself as “depression, anxiety, anger,
3 aches and pains, and malaise.” *Id.* at 276. These health problems are compounded by
4 other medical issues that plague low-income communities, where the life expectancy is
5 shorter than that of the general population and access to health care and health insurance
6 is limited. Emily B. Zimmerman, Steven H. Woolf, & Amber Haley, U.S. Dep’t of
7 Health & Human Servs., *Understanding the Relationship between Education and Health*
8 (Sept. 2015), <https://tinyurl.com/kf8lyuw>.

9 In sum, failing to provide a child with a primary education is like taking a backhoe
10 and digging a trench through a trees’ roots. The effects of being deprived of a basic
11 education persist throughout a child’s life. Without any foundation, children have no
12 hope to grow, much less to thrive.

13 **B. The Injuries And Effects Of An Education Deficit Are Widespread**
14 **Among Native American Children**

15 Native American communities feel the effects of their education deficit
16 particularly acutely. Lauren Camera, *Native American Students Left Behind*, U.S. NEWS
17 & WORLD REPORT, Nov. 6, 2015, <https://tinyurl.com/ybmdgwpo>. As a group, Native
18 Americans “attain the lowest level of education of any racial or ethnic group in the
19 United States,” Center for Native American Youth at the Aspen Institute, *Native*
20 *American Youth 101*, at 6, and are more than twice as likely as Caucasian students to
21 score at the lowest levels on standardized tests. Angelina E. Castagno & Bryan McKinley
22 Jones Brayboy, *Culturally Responsive Schooling for Indigenous Youth: A Review of the*
23 *Literature, Review of Educational Research*, at 942 (2009), <https://tinyurl.com/ycymvppr>.
24 Drop-out rates among Native children are over 30%. Robert Stillwell & Jennifer Sable,
25 U.S. Dep’t of Educ., *Public School Graduates and Dropouts from the Common Core of*
26 *Data: School Year 2009-10* (Jan. 2013), <https://tinyurl.com/yb345jpc>; *see also* Exec.
27 Office of the President, *2014 Native Youth Report*, at 5, 15 (Dec. 2014),
28 <https://tinyurl.com/m2v8l2p>; Susan C. Faircloth et al., *The Dropout/Graduation Crisis*

1 *Among American Indian and Alaska Native Students*, at 3 (Jan. 2010), <https://tinyurl.com/yblbvwp>. And their reading levels are well below grade level. Heather J. Chapman,
2 *Factors Affecting Reading Outcomes Across Time in Bureau of Indian Education*
3 *Reading First School*, Doctoral Dissertation – Utah State University, at 5-6 (2010),
4 <https://tinyurl.com/ybkuvfkg>. It is evident that this education deficit has long-lasting
5 effects on Native communities:
6

7 • incomes are low, *see, e.g.*, Nat'l Educ. Ass'n, *Voices of Native Educators:*
8 *Strategies that Support Success of Native High School Students*, at 15 (June 2011),
9 <https://tinyurl.com/y9gntfmt>; Faircloth et al., *supra* p. 6, at 4;

10 • unemployment is close to 10%, Bureau of Labor Statistics, *Labor Force*
11 *Characteristics by Race and Ethnicity, 2015* (Sept. 2016), <https://tinyurl.com/jc9tjye>;

12 • incarceration rates are high, *see, e.g.*, Lakota People's Law Project, *Natives*
13 *Live Matter*, at 7 (Feb. 2015), <https://tinyurl.com/ycel3zvc>; Nat'l Educ. Ass'n, *supra*, at
14 15, including within the Havasupai community, *see, e.g.*, Press Release, U.S. Dep't of
15 Justice, *Supai Man Sentenced to 5 Years in Prison for Robbery* (Dec. 13, 2016),
16 <https://tinyurl.com/y7nhcvba>; Press Release, U.S. Dep't of Justice, *Supai Village Man*
17 *Sentenced to 37 Months for Assaulting Federal Officer* (Apr. 14, 2017),
18 <https://tinyurl.com/y82jyrg6>; and

19 • health is poor, with death rates nearly 40% more than the general
20 population, Michelle Sarche & Paul Spicer, *Poverty and Health Disparities for American*
21 *Indian and Alaska Native Children: Current Knowledge and Future Prospects*, 1136
22 *ANNALS N.Y. ACAD. SCI.* 126, 128 (2008), and high incidences of chronic diseases.
23 Indian Health Service: *Disparities*, <https://tinyurl.com/hdxu54m> (last visited Aug. 22,
24 2017). In addition, over 20% of the Native American population lacks health insurance.
25 U.S. Census Bureau, *FFF: American Indian and Alaska Native Heritage Month:*
26 *November 2016*, (Nov. 2, 2016), <https://tinyurl.com/yckktc3f>.

27 The Office of the President of the United States summed up the education deficit
28 crisis succinctly in 2014:

1 Low rates of educational attainment perpetuate a cycle of limited
2 opportunity for higher education or economic success for American Indians
3 and Alaska Natives. This crisis has grave consequences for Native nations,
4 who need an educated citizenry to lead their governments, develop
5 reservation economies, contribute to the social well-being of Native
6 communities, and sustain Indian cultures.

7 Exec. Office of the President, *supra* p. 6, at 14, 19.

8 In sum, the effects of the education deficit in the Native community continue to
9 snowball, leaving tribes without a generation in the pipeline to take over leadership roles.
10 Thus, contrary to Defendants’ arguments, all of the Student Plaintiffs have shown they
11 are likely to suffer ongoing and impending injuries as a result of the deficiencies in
12 education received at the in Havasupai Elementary School.

13 **C. Compensatory Education Can Remedy The Ongoing Effects Of An
14 Education Deficient**

15 Defendants are also incorrect in their assertion that compensatory education will
16 not assist those Student Plaintiffs who are no longer enrolled at Havasupai Elementary
17 School. *See* ECF No. 67 at 5-6. Education deficits are frequently remedied with culturally
18 responsive schooling (“CRS”) compensatory education programs. “Compensatory
19 education involves discretionary, prospective, injunctive relief crafted by a court to
20 remedy what might be termed an educational deficit” *G. v. Fort Bragg Dependent
21 Schs.*, 343 F.3d 295, 309 (4th Cir. 2003)); *see also Parents of Student W. v. Puyallup Sch.
22 Dist. No. 3*, 31 F.3d 1489, 1497 (9th Cir. 1994) (it is a “rare case when compensatory
23 education is not appropriate”). Relatedly, students benefit from CRS that is responsive to
24 their communities’ needs and values. Castagno & Brayboy, *supra* p. 6, at 941, 949. It is
25 clear why this remedy is often awarded—students perform better when education is
26 delivered in a culturally tailored manner. *Id.* at 955.

27 In contrast, simply sending students to other public schools off the reservation is
28 unlikely to remedy their collective, historically low levels of success. This is in part
because public schools are unlikely to be staffed with instructors versed in Indigenous
culture and the issues commonly faced by Native American youth outside of the school.
If students understand academia in the context of their own culture, they are more likely

1 to perform better. Angela A. A. Willetto, *Navajo Culture and Family Influences on*
2 *Academic Success: Traditionalism is not a Significant Predictor of Achievement Among*
3 *Young Navajos*, 38 J. AM.INDIAN EDUC. 1, 4 (1999).

4 CRS has proven successful in Native American communities. In Chickaloon
5 Village, elders have initiated a weekend program to teach tribal culture, which is now the
6 Ya Ne Dah Ah (“Ancient Teachings”) school with a full-time teacher and many
7 volunteers. At this school, where “culture practices have been revived,” test scores are
8 higher than state and national averages and students are no longer drop-out risks. Seelau,
9 *supra* p.1, at 100-01.

10 As another example, the Coeur d’Alene tribe is tracking at-risk youth to monitor
11 them for risk of “drop[ping]-out, suicide and substance abuse.” This program “is
12 community based, and various organizations come together to collaborate and focus on
13 tribal youth, sharing data and information. As a result, the tribe reports no drop-outs, no
14 gangs, and no suicides.” Eric Holder, Jr., Karol Mason & Robert L. Listenbee Jr., U.S.
15 Dep’t of Justice, *Ending Violence so Children Can Thrive*, at 102 (2014).

16 These examples may serve as useful models for designing an effective
17 compensatory education program for students who have been deprived of a deficient
18 education. “Education is a key component in improving the life trajectories in Native
19 youth and ultimately rebuilding strong tribal nations.” Exec. Office of the President,
20 *supra* p. 6, at 28. An education that speaks directly to students’ own, shared experiences,
21 and which understands and addresses students’ values and upbringing, can do much to
22 remedy the persistent consequences of a deficient education.

1 **II. WITHOUT RESILIENCY, EXPOSURE TO TRAUMA RESULTS IN**
2 **DISABILITY**

3 Defendants mistakenly argue that exposure to adversity and trauma does not result
4 in disability. This position disregards well-documented evidence that repeated exposure
5 to trauma impairs individuals' ability to perform major life activities where, as here,
6 individuals have been deprived of adequate education and meaningful community
7 support, leaving them without the resiliency necessary to recover from severe and
8 recurring trauma.

9 **A. Native Children are at a Greater Risk of Exposure to Trauma**

10 Not only do Native children collectively receive a primary education that is
11 exponentially worse than the education received by their non-Native peers, Native
12 children also are 2.5 times more likely to experience trauma. Janice L. Cooper, Nat'l Ctr.
13 for Children in Poverty, *Facts About Trauma for Policymakers: Children's Mental*
14 *Health* (July 2007), <https://tinyurl.com/yagd43t4>. The definition of trauma is complex
15 and multilayered. Generally, trauma is defined as a single event, or a series of events, that
16 causes moderate to severe stress reaction, often involving injury, threat, death or other
17 loss. Nat'l Indian Child Welfare Ass'n, *Trauma-Informed Care Fact Sheet*, at 1 (Apr.
18 2014), <https://tinyurl.com/ycrrey7n>. Trauma can be experienced via a unique personal
19 event, but can also be collective, communal, and generational. *Id.* Multiple different
20 forms of trauma have been identified in Native communities through centuries of
21 exposure to racism, discrimination, violence, and poverty.

22 In particular, Native communities face higher rates of violence, poverty, and child
23 neglect. Violence alone accounts for 75 percent of deaths of Native American Indian and
24 Alaska Native (AI/AN) youth ages twelve to twenty. The prevalence of violence is so
25 high that service providers and policy makers are advised by the Department of Justice to
26 assume that *all* AI/AN children have been exposed to violence. Byron L. Dorgan et al.,
27 *Ending Violence So Children Can Thrive*, at 36 (Nov. 2014),
28 <https://tinyurl.com/ya4dm5ur>. Compounding this epidemic violence is a 27% poverty rate

1 for Native families with children, a rate that doubles the national average, and a family
2 unemployment rate ranging from 14.4% overall to 35% in some reservation communities.
3 Sarche & Spicer, *supra* p. 7, at 127. Both violence and poverty contribute to a high rate
4 of child neglect and abuse. Native children are more likely to have a parent incarcerated
5 for violence or to be victims of family violence themselves. Approximately sixteen per
6 one thousand Native youth have experienced child abuse compared to less than eleven
7 per one thousand for Caucasian youth. Dorgan et al., *supra* p. 10, at 38.

8 Native children also are disproportionately exposed to the current risk factors of
9 trauma within the larger context of massive historical trauma. Studies have shown that
10 Native Americans suffer “pervasive and cataclysmic collective, intergenerational massive
11 group trauma and compounding discrimination, racism, and oppression.” See Maria
12 Yellow Horse Brave Heart et al., *Historical Trauma Among Indigenous Peoples of the*
13 *Americas: Concepts, Research, and Clinical Considerations*, 43 J. Psychoactive Drugs
14 282 (2011). The disparate treatment of Native populations by federal and state
15 governments lingers and harms the generations of Native people. As recognized in 2014
16 by the Executive Office of the President, “[t]he trauma of shame, fear and anger has
17 passed from one generation to the next.” Exec. Office of the President, *supra* p. 6, at 13
18 (quoting former Assistant-Secretary of Indian Affairs Kevin Gover (Pawnee)). The
19 unresolved group trauma poses greater risk for further complications and risk for
20 additional individual trauma, which further explains the dismal statistics relating to
21 AI/AN well-being. Indian Law & Order Comm’n, *Chapter 6: Juvenile Justice: Failing*
22 *the Next Generation, A Roadmap for Making America Safer*, at 153
23 (2015), <https://tinyurl.com/yafwy2wj>. Native children are juggling both traumatic events
24 on an individual and chronic, historical traumatic experience shared by the community.
25 Relatedly, because their families and communities often fail to provide the support
26 children need to develop resiliency and cope with trauma, Native children also are more
27 vulnerable to suffering the effects that trauma.

1 **B. The Impairments That Result From Repeated Exposure to Trauma**
2 **Qualify As Disabilities.**

3 Trauma can result in long- and short-term problems, including physical and
4 emotional health conditions, difficulties with learning, impair relationships, behavioral
5 and mood-related problems, and poor social and emotional competence. Nat'l Center for
6 Children in Poverty, Columbia University, *Facts About Trauma for Policymakers:*
7 *Children's Mental Health* (July 2007), <https://tinyurl.com/yagd43t4>. Repeated exposure
8 to severe trauma in many cases will result in both mental impairments that limit life
9 activities such as “learning, reading, concentrating, thinking, communication, and
10 working,” as well as physical impairments that affects “major bodily functions,”
11 including but not limited to functions of the immune system, neurological system, or
12 brain. 42 U.S.C. §§ 12102(2)(A) & (2)(B). In turn, physiological and psychological
13 impairments induced by trauma often “substantially limits one or more major life
14 activities.” *Id.* § 12102(1)(A).

15 **1. Trauma Can Induce A Range Of Mental Disorders That Limits**
16 **Activities Including Learning, Reading, Communicating, And**
17 **Self-Regulating**

18 The current psychiatric diagnostic system does not have an adequate category that
19 fully captures the possible psychological consequences of severe trauma. Some common
20 diagnoses in abused or traumatized children include Post-Traumatic Stress Disorder
21 (PTSD), Depression, Attention Deficit Hyperactivity Disorder (ADHD), Oppositional
22 Defiant Disorder (ODD), Generalized Anxiety Disorder, Separation Anxiety Disorder,
23 and Reactive Attachment Disorder. Alexandra Cook et al., Nat'l Child Traumatic Stress
24 Network Complex Trauma Task Force, *Complex Trauma in Children and Adolescents*, at
25 6 (2003), <https://tinyurl.com/p2k3gry>. Native youth experience Major Depression at a
26 rate of 14% and PTSD at a rate of 22%—the same rate as veterans served in the latest
27 wars in Iraq and Afghanistan. Dorgan et al., *supra* p. 10, at 38; *see also* Nat'l Indian
28 Child Welfare Ass'n, *supra* p. 10. Children with a prolonged trauma history often
struggle with self-regulation and impulse control, because they were unable to seek
security and develop a sense of agency through safe attachment. Claire Gregorowski &

1 Soraya Seedat, *Addressing Childhood Trauma in a Developmental Context*, 25 J. CHILD
2 & ADOLESC. MENTAL HEALTH 105 (Oct, 2013). Chronically traumatized children lack
3 the ability to identify or modulate their feelings, and often fail to communicate their
4 emotional needs. *Id.* The resulting helplessness leads to excessive clinginess, excessive
5 anxiety, internally or externally directed aggression and dissociation. *Id.* Affect
6 dysregulation therefore renders traumatized children more likely to engage in excessive
7 risk-taking behavior and even illegal activities. *See id.* As a result, children who cannot
8 resolve intense anger or grief resort to alcoholism, substance abuse, violence towards
9 others and themselves. Brave Heart et al., *supra* p. 11, at 284. Suicide has become the
10 second leading cause of death among Native youth, who report a higher suicide rate than
11 other any population in the U.S. Nat'l Indian Child Welfare Ass'n, *supra* p. 10, at 2.

12 In addition, exposure to trauma also hampers reasoning and analytical abilities,
13 particularly the ability to process cause-and-effect relationships. Sheryl Kataoka et al.,
14 *Violence Exposure and PTSD: The Role of English Language Fluency in Latino Youth*,
15 18 J. CHILD. FAM. STUD. 334, 335 (2009). Traumatic events are often unpredictable and
16 disordered. *Id.* Children growing up in an unstable and disordered environment are
17 deprived of adequate opportunities to appreciate causal relationships, which are the
18 building blocks of scientific inquiry, narrative forms, and elementary logic. *Id.* Trauma
19 is therefore associated with impaired academic performance, decreased IQ and reading
20 ability, increased school absenteeism, and decreased graduation rates. *Id.*

21 2. Traumatized Children Experience Palpable, Physiological Harm 22 To Their Developing Brain

23 Impairments that result from trauma can go beyond psychological or emotional
24 manifestations and become “hard-wired.” Bruce D. Perry & Ronnie Pollard,
25 *Homeostasis, Stress, Trauma, and Adaptation: A Neurodevelopmental View of Childhood*
26 *Trauma*, 7 CHILD ADOLESC. PSYCHIATRIC CLINICS N. AM. 33, 36 (1998). The human
27 brain is plastic and adaptable especially at the developing stage, allowing it to learn,
28 grow, and respond to various stimuli. *Id.* Traumatic stimuli can induce physiological

1 changes to the developing brain and in some sense rewire the neural connections in the
2 brain. *Id.*

3 Trauma is, by definition, an event that “dramatically and negatively disrupts
4 homeostasis”—that is, the brain’s base equilibrium state. *Id.* An individual enters into a
5 “flight or fight” state by engaging a set of nervous system, neuroendocrine, and immune
6 responses in reaction to stresses or threats, and returns to the state of calm when the threat
7 passes. Bruce D. Perry, The Child Trauma Acad., *Effects of Traumatic Events on*
8 *Children*, at 3 (2003), <https://tinyurl.com/y7a9ulao>. Repeated exposure to trauma evokes
9 the “flight or fight” response over and over again, making the over-activated brain harder
10 to return to homeostasis. Bruce D. Perry et. al., *Childhood Trauma, the Neurobiology of*
11 *Adaption, and “Use-Dependent” Development of the Brain: How “State” Becomes*
12 *“Traits,”* 16 *Infant Mental Health J.* 271, 279-80 (1995). Such hyperarousal changes a
13 child’s physical and mental development. *Id.*; Perry & Pollard, *supra* p. 13, at 36.
14 Traumatized children may be overly fearful, vigilant, or tense. Or, by contrast, they may
15 be too fatigued to respond to stress and develop another extreme state, appearing numb,
16 detached, or avoidant. *Id.*

17 Brain imaging of traumatized brains reveals smaller or abnormal prefrontal cortex
18 and a less active hippocampus. Victor G. Carrion & Shane S. Wong, *Can Traumatic*
19 *Stress Alter the Brain? Understanding the Implications of Early Trauma on Brain*
20 *Development and Learning*, 51 *J. ADOLESC. HEALTH* S23-S28 (2012). These structures
21 regulate a range of basic cognitive functions including memory, attention, and decision
22 making. *Id.* Children with deficits in their prefrontal cortex may have difficulty
23 associating stimuli with rewards, which is reflected in a lack of ability to guide their
24 actions with clear goals. *Id.* They may also react abnormally to emotional cues and fail to
25 process trauma therapeutically. *Id.* Children with an abnormal hippocampus may
26 process memories abnormally, because hippocampus plays a key role in storing and
27 retrieving information. *Id.* Trauma can increase cortisol levels in the hippocampus and
28

1 ultimately cause it to decrease in volume, leading to symptoms such as intrusive
2 thoughts, nightmares, or selective amnesia. *Id.*

3 These neurobiological deficits impinge on nearly all life activities and every aspect
4 of child development. For example, children living with chronic traumatic stress are less
5 efficient at processing verbal cues because they are constantly “consumed with a need to
6 monitor nonverbal cues for threat.” Child Welfare Info. Gateway, U.S. Dep’t of Health &
7 Human Servs., Children's Bureau, *Understanding the Effects of Maltreatment on Brain*
8 *Development* 8 (2015), [http://www.childwelfare.gov/pubs/issue-briefs/brain-](http://www.childwelfare.gov/pubs/issue-briefs/brain-development)
9 [development](http://www.childwelfare.gov/pubs/issue-briefs/brain-development). An alarmed, threatened student can rarely achieve “a state of attentive
10 calm,” and therefore fails to activate portions of her frontal and related cortical areas
11 necessary for verbal learning. Bruce D. Perry, The Child Trauma Acad., *Memories of*
12 *Fear: How the Brain Stores and Retrieves Physiologic States, Feelings, Behaviors and*
13 *Thoughts from Traumatic Events* (1999) [hereinafter *Memories of Fear*].

14 When a child’s facility to learn and use language is hampered, the child will be
15 less capable of understanding complex information or conveying abstract concepts.
16 Bruce D. Perry, *Neurodevelopmental Impact of Violence in Childhood*, in *Principles and*
17 *Practice of Child and Adolescent Forensic Psychiatry* 21 (D.H. Schetky and E.P. Benedek
18 eds., 2002). They will also encounter more barriers in building interpersonal relationships
19 as they cannot effectively express themselves. *Id.*; *Memories of Fear*.

20 These physiological effects of trauma are well documented and widely understood
21 among psychologists and social scientists. And they are all too familiar among those who
22 serve Native American communities in particular. *See, e.g.*, Brave Heart et al., *supra* p.
23 11, at 282-90; *see also* Maria Yellow Horse Brave Heart, *The Return to the Sacred Path*,
24 68 SMITH COLLEGE STUDIES IN SOCIAL WORK 287 (1998); William G. Demmert,
25 *Improving Academic Performance Among Native American Students*, at 5-7, 42 (Dec.
26 2001).

CONCLUSION

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2 The plaintiffs in this case are experiencing a dire emergency that is tragically
3 familiar among similarly situated Native American communities. In bringing this case,
4 they have presented the Court with the opportunity and ability to partially remedy
5 centuries of neglect by the United States government of the children of Havasupai tribe.
6 SIP urges the Court to recognize both that children exposed to traumatic environments
7 are impaired in their ability to learn, and that Native children who have been deprived of
8 an adequate education suffer enduring injury and hardship. The government’s motion to
9 dismiss should be denied.
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1 Dated: September 1, 2017

Respectfully submitted,

2 /s/ Steven Guggeheim

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ATTORNEY ATTESTATION

CERTIFICATE OF SERVICE