



**David A. Hansell, Commissioner  
Testimony to the New York City Council  
Committee on General Welfare  
June 14, 2021**

**“Oversight—The Child Welfare System During COVID-19”**

Good morning Chair Levin, and members of the Committee on General Welfare. I am David Hansell, the Commissioner of the New York City Administration for Children's Services (ACS). With me today are my colleagues who have worked tirelessly to keep children safe and families supported throughout the pandemic: Julie Farber, Deputy Commissioner for Family Permanency Services; William Fletcher, Deputy Commissioner for Child Protection; Dr. Jacqueline Martin, Deputy Commissioner for Prevention Services; Alan Sputz, Deputy Commissioner for Family Court Legal Services; and Dr. Angel Mendoza, our agency Chief Medical Officer.

We are deeply grateful to all of the ACS and contracted provider staff who have worked tirelessly throughout the pandemic, during times of fear, uncertainty, and personal challenge, to carry out ACS's mission. I would also like to take this moment to thank Chair Levin and the Committee members for your steadfast leadership and partnership during this trying time. And I hope you will join me in recognizing and honoring the contributions of our dedicated ACS and provider agency staff who have persevered throughout the pandemic to meet the needs of children and families—often in new and innovative ways.

I am very pleased to be here today to be able to speak to you about how ACS and our child welfare providers have and continue to respond to the COVID-19 pandemic, as well as the long-term lessons we have been able to learn from this challenging and unpredictable time. In my testimony today, I will first discuss how the pandemic has impacted our work quantitatively and then focus on how we adapted our policies and practices to meet the health and safety needs of families and staff. Finally, I will discuss some of the ways in which ACS and our partners are excited to contribute to

the City's long-term recovery and share some of my thoughts on how I believe the pandemic may change the future of child welfare.

### **Impact of COVID-19 on Child Welfare**

While it is impossible to truly quantify the impact of the pandemic, we have been carefully monitoring our data in order to guide our work. Some of the key metrics that ACS monitors changed dramatically during the pandemic, including reports of alleged abuse or maltreatment to the Statewide Central Register (SCR); Family Court filings; removals and placements of children into foster care; and discharges of children from foster care.

At the start of the pandemic, in March and April 2020, reports to the state child abuse hotline dropped 50% compared to similar spring reporting levels from prior years. The initial drop in reporting in late March and April was largely due to reductions in reports by mandated reporters such as school personnel, health care personnel and law enforcement during the early days of the pandemic. Reports to the state child abuse hotline are now closer to the levels we have typically seen in prior years. In March and April 2021, we received 17% fewer reports than in March and April 2019, and the difference continues to narrow.

Throughout the pandemic, we have received a larger proportion of reports from non-mandated reporters, such as friends, neighbors and relatives. When comparing the COVID-19 period of March 23, 2020 through February 28, 2021, to the same period the prior year, March 23, 2019 to February 28, 2020, we find that pre-COVID-19 about one-third of reports came from non-mandated reporters while during the COVID-19 period

almost 50% of reports have come from non-mandated reporters. This tells us that New Yorkers are looking out for children who may be at risk of harm and taking steps to protect their safety.

As I will discuss in greater detail, the pandemic also drastically altered our operations in Family Court. New York City has invested in a strong portfolio of prevention programs for families that help keep children safe at home, and through our new contracts in 2020, we scaled up successful practices to connect families with services early in a case and divert them from Family Court involvement. Prior to the current crisis in which the Family Court limited its operations, ACS had been reducing its utilization of court-ordered supervision, with a 23% decrease from CY2017 to CY2019. In CY2020 ACS filed 33% fewer cases seeking court-ordered supervision than in CY2019. While this drop is partially attributable to pandemic-related court limitations, it also reflects significant changes in practice – in particular, the new model of early engagement of families in prevention services, which we piloted prior to the pandemic and brought to scale last year in our new prevention programs.

Since the start of the pandemic, we have also seen the number of children entering foster care decline 38% compared to the 12-month period prior to COVID-19. With the significantly decreased Family Court operations, we also saw discharges from foster care decline 35% during the pandemic.<sup>1</sup> In response, we developed new protocols to review cases of thousands of children in foster care to identify those that could progress toward reunification, even with the limited court operations. Through these efforts, the foster care census has continued to decrease. Just prior to the

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<sup>1</sup> These data are comparing the period of March 2019 to February 2020 with March 2020 to February 2021.

pandemic, ACS announced that the foster care census was at an all-time low of fewer than 8,000 NYC children in foster care. This number has continued to decline, and there are now fewer than 7,600 children in foster care.

As I will discuss in the next section of the testimony, this data helped ACS to guide our work as we took many proactive steps to promote child safety and to provide families and communities with the services and supports that keep children safe.

### **Policies and Practices Modified to Adapt to the Pandemic—and Beyond**

While our mission and critical child safety timelines never changed, the COVID-19 pandemic required us to rethink the ways in which we carried out our core jobs of keeping children safe and families supported. This work occurred rapidly across all fronts including the implementation of health and safety protocols, redoubling of our efforts to connect families with concrete information and resources, and adapting our support for families receiving prevention services, as well as families with children in foster care. Significantly, the pandemic also impacted our work in Family Court, and I will talk in more detail about our intensive and ongoing efforts to move cases and permanency planning efforts forward, despite limited court availability due to COVID-19 health and safety measures.

#### *Implementation of Health and Safety Protocols*

As always, the health and safety of staff, and the children and families we serve, has continued to be our top priority. ACS implemented targeted measures based on guidance from national, state, and city health experts, as well as the support and guidance of our own agency Chief Medical Officer, Dr. Angel Mendoza. I cannot

overstate how incredibly valuable it has been during this pandemic to rely on someone inside the agency for credible health information and guidance.

Throughout the pandemic, we have implemented protocols that aim to minimize COVID-19 transmission in our congregate care facilities, including increasing the frequency of cleaning, maintaining social distancing, and providing PPE for residents, ACS and provider agency staff, and the families who we serve. We also adjusted our work to minimize health risks to children, families, and frontline staff, while continuing to ensure that children are safe from abuse and neglect, and families supported. For example, while our immediate child protective response for every reported case of suspected abuse or maltreatment since the start of the pandemic never stopped, we modified procedures for health reasons. Child protective staff ask health screening questions before entering homes, and we observe social distancing precautions when we meet with parents and observe children. We may also ask to see children outside of the home and use remote technology to speak with parents and other resources when these methods are sufficient to conduct our child safety assessments.

ACS also leveraged our communications team to continuously maintain frequent, clear communication to assist our workforce and the families we serve. During this time, we enhanced our internal and external websites to create a repository of information for ACS and provider agency staff and other stakeholders to easily access, which has helped reinforce the continuing health and safety protocols that we have in place. We also used these tools to disseminate important information to New Yorkers, such as the importance of social distancing measures and face covering (and beginning this year,

COVID-19 vaccinations), and information about the resources that were available to assist families throughout the pandemic.

### *Concrete Resources and Supports*

ACS has long been committed to earlier and better ways to keep children safe while keeping families together, and we continue to believe that the best way to do this is to provide families with the services and support that they need. For many families, COVID-19 has further highlighted the economic and social disparities in our city. Job loss, isolation, trauma, housing instability, health impacts and other crises faced by families have compounded the need for social services to meet families' concrete needs. The movement toward a greater emphasis on prevention, and especially primary prevention, is more crucial than ever.

Currently, ACS has three Family Enrichment Centers that have been co-created with families and community members, so that they truly represent responses to community-identified needs. True to the program's purpose and the grassroots infrastructure of each center, the Family Enrichment Centers have remained operational throughout the pandemic and continue to be trusted and reliable hubs of support, connections, and resources for families and children. During the pandemic, our Family Enrichment Centers have offered virtual support to community members and have provided food, clothing, and homework help to families.

Additionally, many of our neighborhoods are rich in services and resources, but these supports may not be well-known or easy for families to access. Our Community Partnership Programs in 11 high-need neighborhoods around the city have historically provided supports to families involved in the child welfare system. The partnerships

have helped to connect all of the dots of service that exist, so that families can learn about and gain access to the full continuum of supports available in their neighborhoods.

Because of this existing mix of programs, ACS was able to quickly mobilize our network to reach families hit hardest by the pandemic: those who got sick, lost their jobs, were in need of child care and experiencing other challenges. These programs have helped deliver food; provided clothing and diapers; helped families enroll in public benefits; offered transportation; helped keep families morale high by texting and calling to check in; offered virtual exercise classes and parent cafes; and hosted virtual events including for holidays and summer camp.

All of our core programs shifted to provide even more concrete resources to help families in need, including food, clothing, diapers, formula, pack and plays and more. In 2020, New Yorkers for Children and ACS established the COVID-19 Emergency Response Fund to address urgent needs arising from the COVID-19 pandemic among children, youth and families involved with ACS. The Fund's strategic partnership with philanthropy and individuals has helped raise and disperse more than \$1.5 million in support of vulnerable youth and families, reaching more than 3,000 youth, parents, foster parents, and other caregivers since April 2020. ACS also collected more than \$3 million in in-kind donations to distribute to families and youth, including clothing, winter coats, diapers and wipes, essential care items, backpacks, and more.

As part of ACS's early and ongoing efforts to help families and youth impacted by the pandemic, we launched campaigns through social media and radio advertisements to communicate a variety of information and resources to all New Yorkers. "Coping



Through COVID” ([nyc.gov/acs/covidhelp](https://nyc.gov/acs/covidhelp)) is our resource page aimed at supporting families through the pandemic and “Teens Take on COVID,” ([nyc.gov/acs/covidteen](https://nyc.gov/acs/covidteen)) is targeted to provide resources for teens, many of whom are struggling with social isolation, and some of whom may be experiencing violence at home. Considering the extended amounts of time that families have remained at home, ACS’s child safety campaigns have focused on helping parents avoid tragic accidents and create safer home environments, for example by learning about infant safe sleep practices, how to store medications and cleaning supplies out of reach of children, and the importance of installing window guards. Our current and most recent child safety campaign “Look Before You Lock,” is aimed at reminding parents to never leave a child alone in a hot car.

### *Supporting Families with Prevention Services*

We believe that the best way to keep children safe is to provide families with the services and supports that they need. We do this through both the primary prevention services I discussed, as well as through our nationally recognized prevention services continuum. We serve approximately 20,000 families with roughly 41,000 children annually through prevention services to support and strengthen families and keep safely children at home.

Whenever possible, and following COVID-19 health and safety protocols, our prevention and home-making providers have continued to deliver in-person services to families during the pandemic. Providers make family-specific determinations about whether to meet with families in person, based on assessed risks to child safety and well-being that the service is targeted to address, balanced with any current COVID-19

related health risks. Providers have used personal protective equipment and consistent screening to manage health risks to both families and staff. Providers have also leveraged televisits to conduct ongoing and regular contacts with families and children, particularly when COVID-19 health risks existed for families. In addition to routine contacts, ACS has encouraged providers to have frequent interim contact with families by telephone or other electronic communication to combat isolation and offer additional support. ACS also launched a “Telehealth Tips” website for families, providers, and advocates to guide and support the use of telehealth services. For many families, particularly those who may be especially isolated in this stressful time, and who may be experiencing serious mental health challenges or are survivors of intimate partner violence, the reassurance of hearing regularly from a supportive case planner cannot be overstated.

Despite the many unprecedented emergency demands last spring, through the perseverance of ACS staff and our contracted provide partners, we were able to launch our redesigned prevention services system with 119 new contracts in place on July 1, 2020. Our new system is now in place and is continuing to grow and thrive, increasing families served by 33% in just the last 10 months.

#### *Supporting Families when Children are in Foster Care*

From the start of the pandemic, ACS recognized how challenging it was for both children and their parents when children were in foster care during the pandemic. Fears for each other’s health and safety, and the restrictions on seeing loved ones in person during the height of the pandemic, which created a difficult time for all New Yorkers, were compounded for parents and children and youth in foster care.

Placement of children with foster caregivers who are relatives, friends, or other trusted adults is known to reduce trauma and help speed permanency. We have seen the percentage of placements with family members and close family friends increase even during the pandemic, with more than half of the children who have entered foster care during this past fiscal year being placed with kinship caregivers. By continuously strengthening our work to identify and support kinship caregivers, we have been able to achieve an overall increase in the proportion of the city's foster children who are with kinship caregivers from 30% in 2017 to more than 42% in 2020.

We have consistently emphasized that family time and communication between children in foster care and their parents are essential to support the child's well-being, minimize trauma, and speed the timeline toward reunification. ACS collaborated with our providers to ensure that all children, youth and parents had access to electronic devices that would allow for virtual visits, including that foster care agencies have purchased phones and phone plans for youth, parents, and foster parents when needed. We provided detailed guidance to our providers about how to carefully review and weigh child safety needs and the family's potential health risks when determining if contacts should be held in person or virtually. Furthermore, the guidance makes clear that agencies cannot have "blanket" visitation policies, but rather that decisions must be made on a case-by-case basis. The vast majority of visits are now occurring in person. Moving forward, there is opportunity for virtual visits to supplement and enhance the time that children in foster care can have to connect in person with their families, further strengthening communication and relationships.

Ensuring that the children and youth in ACS's care have access to high-quality education services is always a crucial priority for ACS, and it required extra attention and partnership during the pandemic. Starting in Spring 2020, we partnered with the DOE to provide thousands of young people in foster care with remote learning devices. Continuing into this school year, ACS has worked closely with DOE staff to expedite delivery for children and youth newly entering care who require devices. ACS and providers have also furnished students with tablets and desktop computers when needed while students are awaiting arrival of their DOE devices. In addition, ACS and DOE have collaborated to enhance the capacity of foster care agency staff to support students in foster care with remote and hybrid learning, offering a series of provider trainings on how to assist families in navigating remote learning technology. We have also partnered on a series of successful information sessions about remote and hybrid learning for foster parents and parents of students in foster care.

As we approach the end of a school year like no other, I want to commend and congratulate every student and caregiver for the dedication and perseverance it has required to achieve educational goals during this challenging time.

During this difficult period when youth and families lost jobs due to the pandemic and economic downturn, ACS ensured that more than 1,300 paid internships and jobs were available to youth in the foster care system. We also helped youth build their skills through a variety of certified industry-specific trainings linked to immediate jobs in professional services, building trades, and social services sectors. ACS developed these opportunities in collaboration with DYCD, the Center for Youth Employment in the Mayor's Office, the Robin Hood Foundation, and the Pinkerton Foundation. Our

programs serve youth ages 16-24 in foster care or formerly in care, including youth attending college and those who are disconnected from school or work. Since April 2020 when ACS first launched our highly successful series of Virtual Career Fairs, over 300 youth have attended, and we have helped connect many youth who are in foster care or transitioning out of care to meaningful private sector jobs that have great training programs, college tuition reimbursement programs, and strong career pathway opportunities.

Additionally, through Fair Futures, thousands of young people in foster care ages 11-21 are receiving coaching, tutoring, educational advocacy and support, assistance with planning for housing, and access to regular supportive guidance as they achieve important life milestones. We know that Fair Futures coaches and tutors have been tremendous supports to young people throughout the pandemic. The Mayor and ACS remain committed to the Fair Futures program as an important model to promote well-being and good outcomes for youth in foster care.

#### *Family Court and Permanency*

On March 18, 2020, the New York State Court system essentially suspended in-person operations when the Governor issued an Executive Order that closed most offices and buildings, and suspended speedy trial laws in the state. Much of this Executive Order remains in place today. On March 25, 2020, the New York City Family Courts began very limited virtual court proceedings. Since that time, the Court system has taken incremental steps to first expand virtual proceedings and then to begin very limited in-person proceedings for pro se litigants. With some exceptions, the courts have been hearing cases described as “essential and emergency court matters,” including

applications where ACS seeks immediate safety interventions for children who are at risk of harm, such as court-ordered removal and/or an order of protection.

When the Family Court moved to a virtual platform in March 2020, our Family Court lawyers and support staff adapted to telework almost overnight. Fortunately, we already had a system in place to file our petitions electronically with the court. Additionally, we had already made a significant investment in technology before COVID-19 so that every Family Court lawyer already had an ACS laptop with cellular service. This was instrumental for our attorneys to seamlessly gather information and appear in virtual courts.

There have been many challenges to resolving more cases through virtual court processes, including: technology for parties and witnesses; the need for more clerical staff for the Family Court; and initially, a need for more court reporters for the virtual courts, as pre-pandemic, much of the court reporting work was handled by digital tape recorders. While we have seen modest steps to increase the capacity and capability to hear cases virtually, there is a significant backlog from when the court stopped hearing its calendar of regularly scheduled matters on March 18, 2020, and was not able to begin rescheduling many of these matters until Fall 2020. Since January 2021, the Family Court began providing increased court access by creating dedicated virtual links for every courtroom citywide, and it enhanced capabilities for these courtrooms by implementing a recording system for proceedings. With these two developments, we have experienced increasing virtual court activity, although it remains well below pre-pandemic levels.

Given the limited operations of the Family Court during the pandemic, ACS was extremely concerned about the impact this would have on the pace of family reunification. As a result, ACS took aggressive action to implement strategies outside of the normal court process. Since the pandemic began, ACS and our foster care providers have proactively reviewed the cases of 4,000 children and worked with parents' and children's attorneys to determine if cases could move forward with increased and/or unsupervised visiting, pre-disposition release, trial discharge or final discharge. In cases where all parties agreed that the case should proceed, our Family Court attorneys worked with the parent's attorney and children's attorney where necessary to sign stipulations and submitted these agreements to the court for approval. This process has helped to move reunification cases forward even without the Court holding hearings. We have also worked with our foster care agencies so that adoption and kinship guardianship cases are ready to proceed as soon as the Court calendars these matters.

We have found these proactive reviews to be beneficial in expediting the reunification process, so ongoing, we will be working with our providers to incorporate this into their regular case practice.

Last week, ACS issued its RFP to reprocur and redesign foster care services, including both family foster care and residential care. These RFPs are the result of extensive research and input from youth, parents, foster parents, advocates, provider agencies, child welfare experts, and other stakeholders. The vision for the redesigned foster care system builds upon the progress already made to strengthen New York City's foster care system, including reducing the number of children in foster care to a

historic low; reducing the length of time children stay in foster care; reducing the use of residential care; placing a greater proportion of children in foster care with family and friends; and expanding services for children and youth in care. The redesigned system will strengthen foster care services in a number of key ways. First, the new system will require and fund foster care agencies to hire parent advocates with lived experience of the child welfare system, to help parents safely reunify with their children more quickly and to improve race equity outcomes. Every parent working towards reunifying with their children will have an assigned parent advocate to partner with them throughout the process. Second, the redesigned system will significantly increase therapeutic and evidence-based supports to better meet children's needs while they are in foster care. Third, the redesigned system increases resources and expands the use of proven practices across the system in key areas, including visiting; continuing to increase the proportion of children placed with family and friends; expediting reunification; and providing services and supports to youth in care such as coaching, tutoring.

### **Recovery**

Like so much of our City's recovery, ACS's next phases critically depend on the COVID-19 vaccine, and we have actively encouraged our workforce and the children and families we serve to be vaccinated. As soon as vaccines became available to New Yorkers, ACS successfully advocated to the State and the City for essential, direct service staff at ACS and our contracted provider agencies to be prioritized for vaccination in early January.

ACS has taken a number of steps to encourage and help staff to get vaccinated. We regularly share important health-related information about the vaccine in staff emails



and on our agency intranet site. We created a weekly “Ask Dr. Mendoza” column where our Chief Medical Officer answers staff questions about vaccines. This information is also on our web site for our providers. Dr. Mendoza, as well as other prominent leaders, such as Anthony Wells from Local 371 participated in a town hall to answer questions and share experiences about the choice to become vaccinated. Earlier this spring, we also operated a vaccine POD (point of distribution) at 150 William Street, where nearly 1,000 staff and their family members were vaccinated.

As young people—now age 12 and up—have become eligible to be vaccinated, ACS and our provider agencies are working to obtain the necessary parental consents and vaccine appointments for the eligible youth in our care. ACS developed detailed guidance for providers on how to approach the various and sometimes complex consent situations for youth in foster care. We also disseminated fact sheets to the providers to aid their efforts to educate youth about the vaccines. We are creating and promoting educational materials for youth so that they can learn about the vaccine and make informed decisions about getting vaccinated. This spring, we also hosted an Instagram Live event with Ericka Francois from the Fair Futures Youth Board!

In addition to focusing on vaccines for all eligible New Yorkers who want one, including those who we work with and serve, it is critical that we focus recovery efforts on the communities that have been disproportionately impacted by the pandemic. Families in these communities have particularly felt the economic and social impacts of COVID-19 including devastating job loss, trauma, housing instability, health impacts and other crises. We know these same communities have long been burdened by the pernicious effects of direct and systemic racism, and this is the moment to confront and

address that painful legacy while meeting current family needs to connect to concrete services and supports. In this regard, the movement toward greater emphasis on prevention, and especially primary prevention, is more crucial than ever.

Just last month, Mayor de Blasio announced we will be expanding from three Family Enrichment Centers to thirty FECs over the next four years. The FECs will be located in neighborhoods that the Mayor's Task Force on Racial Inclusion and Equity (TRIE) has identified as those hardest hit by COVID-19 and that have historically experienced other service, health, and social disparities. The new FECs will build on the success of the initial three, as community hubs co-administered by non-profit organizations and the communities themselves. Just like the initial three FECs, the new FECs will be specifically tailored to provide the services, supports and social connections that each individual community feels they want and need.

Additionally, as I testified in ACS's Executive Budget hearing, ACS is implementing a bold new plan to increase access to low-cost, federally-funded child care vouchers for thousands of additional families, with a number of measures to expand access. We are prioritizing child care access for families who are experiencing homelessness, families who have recently participated in ACS's child welfare programs, and families who need post-transitional child care as they are transitioning off other public assistance benefits. ACS is also seeking state approval for a demonstration project to target high need families in the TRIE communities. When families and communities build their protective factors and have access to needed resources, children will be safe and families will be stable without traditional child protection system interventions.

## Child Welfare After COVID-19

There is no question that this pandemic will have a profound impact on all of our lives. There are many lessons that we have learned and reflections on a pre-COVID-19 time that now seems so distant, which I believe will change the future of child welfare.

Some of these include:

- Increasing opportunities to proactively resolve cases outside the court process:

The success of our proactive reviews of Family Court cases suggests that we pursue future opportunities to collaborate with providers and attorneys to resolve cases and move families towards reunification without a court appearance.

- Increasing opportunities to address safety issues without court intervention, by continuing to reduce the use of court-ordered supervision: During the pandemic, when our ability to file court-ordered supervision cases in Family Court has been limited by the Court's emergency restrictions, we expanded upon our model of early engagement in prevention services to provide families with services and promote child safety. As we move forward, we are committed to continuing this and other strategies to reduce utilization of court-ordered supervision.

- Determining whether and how best to make use of virtual visits, casework contacts and court appearances: While video will never replace in-person interactions, there are clearly some benefits. For families involved in the court system, for example, fewer in-person court experiences on ACS cases, as well as other family matters such as child support, might benefit parties who would not need to take time off from work or find child care for the day in court. In addition, video visits can be a good supplement—but not a replacement—for

parent/child visiting or family time, as it can allow more frequent and flexible communication.

- Maintaining access to telehealth: We have heard positive feedback, particularly from youth, about telehealth for health and mental health services. While not all services can or should be virtual, this is something with potential to build on—which will require more permanent approvals of Medicaid reimbursement.
- Addressing the digital divide: COVID-19 also shows the clear impact of the digital divide and the need to ensure all families have access to the internet and the technology so many of us now rely on. And from a system's perspective, COVID-19 lays bare the need for government agencies, nonprofits, social service providers, lawyers, courts and families to have access to and be able to leverage technology.
- Addressing economic stability: For many families, COVID-19 has further highlighted the economic and social disparities in our city. Job loss, isolation, trauma, housing instability, health impacts and other crises faced by families have compounded the need for social services to meet families' concrete needs. The full impact here has not yet been fully realized and is something for which we all need to prepare. In this regard, our movement toward greater emphasis on prevention, and especially primary prevention, is more crucial than ever.
- Addressing racial disproportionality: And finally, COVID-19 has brought to the forefront of our attention the systemic inequities families and children of color face. The pandemic has disproportionately impacted these communities, and we

must galvanize to both address the systemic racism in this country and meet the needs of families.

### **Conclusion**

As we look forward to the day when COVID-19 is behind us, there are important lessons learned that will continue to inform and improve our child welfare policies and practices. We appreciate the Council's continued support as we carried out our work under challenging circumstances. Thank you again to all of the ACS staff, prevention staff, and foster care staff, who selflessly supported the children and families of New York City this past year.

We are happy to take your questions.



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**Center for Court Innovation  
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Good morning Chair Levin and esteemed councilmembers of the General Welfare Committee. Since its inception, the Center for Court Innovation has maintained a vision to reduce unnecessary and harmful involvement in the justice system wherever possible and to build public safety through sustainable solutions. The Center's longstanding partnership with Council has helped bring this vision to life through evidence-based and racially just programming. Among the issues we focus on in the justice system, is the welfare of infants and parents involved in family court child neglect and separation proceedings.

The child welfare system can be a point of entry to services and supports that strengthens families and mitigates systemic involvement of multiple generations of individuals largely of color. Instead, it too often makes unrealistic demands on strained parents, relies on interventions of questionable efficacy, and then punishes parents for non-compliance or negative reactions to demands and ongoing scrutiny. The Center for Court Innovation is committed to working in partnership with systems to create transformative change, reduce intergenerational cycles of trauma and system involvement, and respond to racism and its impacts. The Center proudly models a strength-based approach to parents, assuring that families are connected to high quality and evidence-backed interventions, and works tenaciously to ensure that services are actually received and that parents find them to be meaningful and helpful.

**Strong Starts Court Initiative**

The Center for Court Innovation's Strong Starts Court Initiative ("Strong Starts") serves children from birth age to three years old, who are subjects of child protection cases in the NYC Family Courts, and their parents and families. Strong Starts is an important program that lessens these disparities and harmful cycles. With more than 90% of the population we serve identifying as persons of color, Strong Starts is uniquely positioned as a witness to, and advocate against, the racial disparities in the child welfare system as well as addressing the structural inequities that frequently lead to family court involvement.

Strong Starts serves a population which present multi-system involvements that result in an individual becoming quickly entangled with the child welfare system. According to data we collected in 2019, among our participants, these involvements vary, and often co-occur. This includes previously being the minor subject in a prior child welfare case (48%), to criminal

justice involvement (39%), to housing insecurity (65%), to untreated mental health (63%), etc. In certain instances, such as substance use resulting in arrest, one government actor's actions and enforcement policies can trigger the case for removal from a family. Research shows Black parents are two times more likely to have their parental rights terminated than white parents.<sup>1</sup> The Center recognizes racial disparities are not isolated to the child welfare system; this is only one of many systems in which people of color are disproportionately represented. The effects of this disproportionate representation are often amplified by a lack of coordinated support for involved individuals.

Strong Starts convenes monthly conferences between parents, attorneys, case workers and clinical service providers so that parents have a voice in determining and deciding what their family needs in order to recover from the crises in which they find themselves. This contrasts with the current standard in typical proceedings of inconsistent durations of adjournments between convenings of all parties. Critically, Strong Starts clinicians help families' court teams understand inter-generational histories of trauma and systemic oppression that are characteristic in these families, and the pain and despair that often underlies uncooperative or otherwise confusing parental responses to child welfare system practitioners and demands.

Strong Starts utilizes monthly case conferences to consistently respond to the unique needs of children during their most receptive and formative stage of development. This ensures these children are not further harmed by systems-imposed adversities such as separation from parents or other disruptions of a child's attachments to important people in their lives. The program's model addresses intergenerational system involvement through a consistent, collaborative, and clinical approach. This is accomplished by:

- clinically evaluating the complex problems faced by parents who become involved in the child welfare system;
- recommending clinical and family support services that are targeted to specific problems that brought the family to the attention of the system;
- integrating modern, evidence-based interventions that strengthen parenting and repair parent-child relational problems that result from exposure to trauma, systemic oppression, parental mental health and substance use disorders, and family violence, in order to avoid any recurrence of maltreatment.

Strong Starts focuses on children during their first three years so that their development can maintain, or be quickly restored to, a healthy trajectory, and to prevent the multiple problems that compound over time when addressed too late. When we invest strongly in infants and very young children and support the attachment relationships that promote growth and change in both children and parents, we bring protection to that child, to their siblings, and even to the children who will ultimately be born to the child we are currently serving.

There is a return on investment at this stage of development that is very unique in the lifespan. With over 10,000 infants and toddlers currently on the dockets of the NYC Family Courts, this is a responsibility, and an opportunity, that needs to be taken seriously. Strong Starts is a systems-change and community engagement approach that rallies the resources of a range of high-quality community-based services and coordinates the involvement of multiple city

agencies including the Early Intervention Program, the Department of Health and Mental Hygiene, the Department of Corrections, and the Department of Homeless Services, in both case-based and systems-wide considerations. Strong Starts brings ongoing training and consultation to judges, attorneys and case workers in topics related to early development, infant mental health, and effective interventions for infants and families. Preliminary findings of an ongoing program evaluation indicate that Strong Starts has educated child welfare and court personnel about the importance of children's early relationships to their healthy development that can then be applied to all cases.

### **Child Welfare During Covid 19: Strong Starts Response**

As the Family Court faces the monumental challenge of opening up the courthouses following a global pandemic, and NYC copes with the economic and emotional fallout of a fraught reopening, our dedicated staff have noted that families have faced exacerbated challenges in meeting their basic needs, and maintaining employment while accessing critical services, such as child care, supports for children with special needs, drug and alcohol treatment, mental health and access to prescription medication. Strong Starts Coordinators have been working hard throughout the pandemic to adapt to these rapidly changing circumstances and continue to provide critical support for vulnerable families.

Throughout the pandemic our Coordinators found innovative ways to engage with families to help them navigate a judicial process that has been strained, which has delayed reunification and hindered case progress during the ongoing crisis. Strong Starts Coordinators facilitate contact between parents and children who were removed in ways that minimize trauma from the separation and ultimately plan for reunification. Our Coordinators virtually bring attorneys and parties together with interdisciplinary and cross-systems conferences to problem solve and find supports for parents to be able to safely care for their children. They also provide critical information in detailed clinical reports about parental capacity and risk to children to assist judges in making the decision whether to remove a child from their home. This has ensured that families remain connected to services and are able to engage with them. This work results in the scheduling of court conferences that may not have otherwise transpired, which have moved cases along to resolution, and have resulted in the return of children and family reunification in a significant number of cases.

There were many additional challenges throughout COVID-19, including how to coordinate visits when families were under quarantine, or restricted from traveling, how to identify and maintain placements for children when they were removed, and how to handle potential foster parents with fears about exposure to the virus. All of this placed children at increased risk of ending up in congregate care facilities, which we know can compound trauma, create further attachment issues, and result in worse outcomes for these already vulnerable children. Strong Starts works hard to prevent this from happening with every family we serve.

Strong Starts Coordinators also helped families contend with disruptions in services and barriers to access, such as lack of resources, technology, or internet access required to participate in services remotely. In some cases, supports for special needs children may be the only thing holding a placement together, and our Coordinators have been doing whatever they can to ensure



continuity for children and families during this crisis. They have also brought COVID-19 related relief to families via clinical support and through the provision of, or arrangement for, families' concrete needs such as shelter and housing, food, diapers, and more.

Strong Starts began as a pilot program in the Bronx in 2015, expanded to Queens in 2016, Staten Island in 2018, and was able to launch in Brooklyn at the height of the pandemic in February 2021. The Family Court enthusiastically supported this latest expansion despite the challenges of operating during a pandemic because it recognized how the model—with its collaborative and science-informed approach—was even more critical to supporting families and enhancing system responses during a crisis. For these reasons, we are now asking Council to bring Strong Starts to every borough in New York City by funding implementation in Manhattan with a \$220,000 budget request, so that we may provide these critical services to more families.

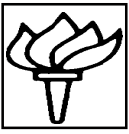
## **Conclusion**

In closing, Strong Starts recognizes that parents have a unique commitment to their children, and that break-downs in the provision of safe and nurturing parenting often reflect the effects of a parents' own childhood adversities, intergenerational trauma, and structural inequalities. Strong Starts understands that much of this is reparable with intensive and focused effort. Strong Starts works to maintain child and family stability and to create a system in which parents can reach out when they need help without fear of punishment. Strong Starts is a means to increased access and equity for families, and a way to mitigate racial disparities in the child welfare system during a crisis and beyond.

The Center for Court Innovation thanks City Council for its longstanding partnership and stands ready to continue implementing its programming toward the goal of improving the welfare of all New Yorkers, improving public safety by addressing racial disparities and histories of trauma and structural inequities, strengthening families, and reducing intergenerational cycles of system involvement. We welcome any questions Council may have.

## **Notes**

<sup>1</sup>Roberts, D. & Sangoi, L. (2018). Black Families Matter: How the Child Welfare System Punishes Poor Families of Color. The Appeal. Available at: <https://theappeal.org/black-families-matter-how-the-child-welfare-system-punishes-poor-families-of-color-33ad20e2882e/>



## **New York University**

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New York City Council  
Justice System Joint Committee Hearing  
Oversight - Oversight: The Child Welfare System During COVID-19

June 14, 2021

Chair Levin and  
Members of the General Welfare Committee:

I am pleased to provide testimony at this hearing on The Child Welfare System During COVID-19. With all the sorrow the pandemic has caused, we must take from it the opportunity that our greatest challenges offer: to see where and how we can do better and be motivated by tragedy to come together at our best to transcend the worst. COVID-19 has shown us vividly that the inequities in our society are vast and intolerable. We have seen this in healthcare and employment and access to services, and we have seen it in our child welfare system. While one could focus at length on what ACS might have done better in these past fifteen months, it is time to look forward to how we might reimagine what it should have been doing differently all along.

It is an exciting time when principles of equity – striving to create a world in which individuals and families living in poverty are treated indistinguishably from families living in the tonier parts of town – are on the minds of progressive legislators. I will address my remarks to the single most important step the Council could take right now to ensure greater equity, justice, and fairness when state employees come to the homes concentrated in certain zip codes in the city and terrorize families. That step would be the simple, yet critical one of requiring ACS employees to tell parents what their rights are when they knock on their door as part of an investigation to determine if a child has been abused. This long overdue step has been proposed in the pending bills numbered 1718-2019 and 1736-2019 (as modified by proposed amendments).

The family defenders, with whom my clinic at NYU School of Law maintains a very close working relationship, have called for a law requiring ACS caseworkers to inform parents of their rights, clarifying that these investigators may not, just because they would like to, enter someone's apartment, rummage at will through every room and cranny, and strip search their children. Our laws have long insisted that the police tell individuals their rights before attempting to search them or interrogate them in non-emergencies. Many familiar with the awesome power of ACS consider their destructive reach to be even greater. As Justice John Paul Stevens famously said in a Supreme Court decision forty years ago, many consider the loss of their children as a greater deprivation of their liberty than a term of

imprisonment.<sup>1</sup> Despite this, we constrain the police and require them to tell the people with whom they interact what their rights are even as we allow child welfare investigators to lie to parents and falsely tell them they must comply with the investigator's demand to allow them into their apartment and even to strip search their child.

When I last testified before this Committee, high level officials from ACS acknowledged the regularity with which their employees seize children from their homes without a court order in the evenings and wee hours of the morning.<sup>2</sup> It was a candid admission, despite a clarion explanation by the New York Court of Appeals in 2004 that such seizures are illegal under New York law except in extremely limited circumstances.<sup>3</sup> Only the courts could do something about that.

But this august body can take a giant step towards achieving equity in this city by insisting that caseworkers simply inform parents of their rights when caseworkers knock on apartment doors. What could possibly be objectionable about this? Both the New York Post and various officials within ACS with whom I've spoken over the years give the same answer: They say if parents possessed this knowledge, it would impede investigations and would make children less safe.

What's crucial to grasp about this objection is that it is a blatant effort to maintain inequity in this system. It serves no other purpose than to take advantage of the community least likely to know its rights. This is because we already live in a city where a substantial percentage of parents—privileged parents—already do know their rights. I have spoken to perhaps 100 parents over the past decade who had the wherewithal or the connections to contact a law professor knowledgeable in the field. The parent was invariably frightened and interested in knowing whether, and to what degree, they were required to comply with the request of the caseworker to enter their home, interrogate and strip search their child. Invariably I told them that, absent an emergency, they did not have to cooperate and they have the right to force the investigator to go to court first and secure a court order before they may do anything the parent isn't comfortable with. By law, unless there are exigent circumstances, the government must make an evidentiary showing before it intrudes on families' lives, and that is what parents who know lawyers or can afford to retain them are told.

But the vast majority of parents upon whose door ACS knocks do not have that access and are denied that information. Often, they are actively misled by ACS investigators about the extent of their legal authority. That's the reality of the city in which we live. Everyone knows the shocking disproportionality of ACS's reach. People living in many zip codes in this city never met someone who has ever been investigated by ACS. In other communities, there's no one who doesn't know dozens of families whose children are in foster care and who have been routinely investigated by ACS.

So we are not talking about whether telling parents what their rights are may impede ACS's efforts. All we are talking about is equity. Do we want to maintain the status quo and take advantage of a community's lack of access to power and knowledge or do we want to create an evenhanded justice system in which the rich and poor are treated equally? That is the question before you when you consider requiring ACS to tell parents living in the communities it surveils what their rights are.

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<sup>1</sup> *Lassiter v. Department of Social Services*, 452 U.S. 18, 75 (1981) ("Although both deprivations are serious, often the deprivation of parental rights will be the more grievous of the two.") (dissenting opinion).

<sup>2</sup> New York City Council, Justice System Joint Committee Hearing. Oversight - Parent-Child Separation in Family Court (November 27, 2018).

<sup>3</sup> See *Nicholson v. Scopetta*, 3 N.Y.3d 357 (2004).

I trust that framing the question in this manner provides the answer without further discussion.  
Thank you for the opportunity to offer these remarks.

Respectfully yours,

*Martin Guggenheim*

Martin Guggenheim



**New York City Council  
Committee on General Welfare  
June 14, 2021**

**Oversight: The Child Welfare System During COVID-19**

**Testimony of The Legal Aid Society**

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The Legal Aid Society thanks Chair Levin and the members of the Committee on General Welfare for holding this hearing on the Child Welfare System during the COVID-19 pandemic. As it has with so many aspects of our lives, the pandemic has had a profound effect on the Family Court process and introduced further impediments to the reunification of children with their families. We commend the Council for continuing to shine a light on this important intersection.

The Legal Aid Society's Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Courts in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, Juvenile Rights staff represented approximately 34,000 children. The Legal Aid Society represents the majority of children and youth placed in to foster care through New York City's Family Courts. The Legal Aid Society has dedicated teams of lawyers, social workers, paralegals and investigators devoted to serving the unique needs of children and youth removed from their homes and placed in the custody of the Administration of Children's Services (ACS). Our perspective comes from daily contact with children and their families, and from our interactions with the courts, social service providers, and City and State agencies. In addition to representing our clients in trial and appellate courts, we also pursue impact litigation and other law reform initiatives.

### **COVID and the Child Welfare System**

COVID-19 has had a profound impact on children across the City, exacerbating previously existing mental health concerns and racial disparities as well as creating entirely new challenges that negatively impact health and wellbeing. Children have been cut off from family, friends, teachers, counselors and routines, and denied any sense that life is orderly or predictable.<sup>1</sup> The

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<sup>1</sup> Kids and COVID-19: A Mental Health Crisis Looms, by Abigail Kramer. The Center for New York City Affairs, June 9, 2020, available at [https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5ee07134376c567f89648295/1591767360121/Kramer\\_June10.pdf](https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5ee07134376c567f89648295/1591767360121/Kramer_June10.pdf).

trauma and disruption of the pandemic has led mental health professionals to predict a “looming mental health crisis among children and adolescents, as fallout from the COVID-19 pandemic continues to rain down across New York.”<sup>2</sup>

Even prior to the paradigm-altering pandemic, children in foster care were among the most vulnerable children in the City, dislocated and often suffering from the loss of significant relationships.<sup>3</sup> By definition, children in foster care are subject to the trauma of being removed from a parent or guardian. In addition, children in foster care suffer higher rates of trauma prior to their removal, and experience higher rates of mental health issues than other children. Not surprisingly, the COVID-19 pandemic has presented additional extreme stressors which have had a severe and negative impact on children in foster care.

At the outset, it is worth noting that indigent children of color are disproportionately involved in the foster care system. The pandemic, striking Black and Latinx families with particular ferocity, exacerbated the underlying racial and socioeconomic disproportionalities of the child welfare system.<sup>4</sup> Some children in foster care suffered the loss of caretakers, friends, and family members, with this loss at times being the basis for their placement in foster care.

The Center for Disease Control (“CDC”) reports that children and teens, as well as people with pre-existing mental health conditions, may respond more strongly to the stress and anxiety

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<sup>2</sup> Id.

<sup>3</sup> See, e.g., National Resource Center for Permanency and Family Connections, “Post Traumatic Stress Disorder and Children in Foster Care,” (December 2012) available at [http://www.nrcpfc.org/is/downloads/info\\_packets/PTSDandChildren\\_in\\_FC.pdf](http://www.nrcpfc.org/is/downloads/info_packets/PTSDandChildren_in_FC.pdf) (citing multiple studies, which show that children experience trauma similar to people with Post Traumatic Stress Disorder).

<sup>4</sup> American Academy of Pediatrics, Guidance for Children and Families Involved with the Child Welfare System During the COVID-19 Pandemic, <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/guidance-for-children-and-families-involved-with-the-child-welfare-system-during-the-covid-19-pandemic/> (January 25, 2021).

surrounding the COVID-19 outbreak.<sup>5</sup> Children who have intellectual disabilities and those who suffer from mental illness need extra support and monitoring due to the stress of isolation.<sup>6</sup> In addition, children in foster care are uniquely vulnerable to the negative emotional harms of social distancing as “social distancing can re-awaken feelings of loneliness and isolation that many children in foster care have experienced.”<sup>7</sup>

Throughout the pandemic, children removed by ACS from their families have experienced the trauma of removal and in some cases the loss of a caretaker to COVID. While removal numbers dipped in the early months of the pandemic, we are now seeing emergency removal numbers trending back up towards pre-pandemic levels.<sup>8</sup> Other children already in the system have had to be moved back to a pre-placement congregate shelter after their foster home closed, as foster parents across the City battled with the virus, lost their lives, or feared for their safety. And children in foster care have fallen ill with the virus themselves and been required to quarantine in isolation wards, left sick and terrified in the care of rotating shifts of strangers.

### **Children Languishing in Pre-Placement Shelter**

Even prior to the pandemic, there has been a crisis of inadequate foster home placements, particularly for older children and children with medical disabilities. Throughout the pandemic, this crisis has grown. ACS has housed children in pre-placement shelters for long periods, in some

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<sup>5</sup> Managing Anxiety & Stress, Centers for Disease Control and Prevention. 30 April 2020. Available at: <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/managing-stress-anxiety.html>

<sup>6</sup> Id.

<sup>7</sup> Douglas Waite and Anu Partap, Caring For Children In Foster Care During COVID-19, American Academy of Pediatrics, <https://www.healthychildren.org/English/family-life/family-dynamics/adoption-and-foster-care/Pages/Caring-for-Children-in-Foster-Care-During-COVID-19.aspx> (April 15, 2020).

<sup>8</sup> The Center for New York City Affairs, Watching the Numbers: Covid-19's Effects on Child Welfare System Assessed in CNYCA's Annual Report (February 2021), available at [https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/6022e617bc08751953d504b2/1612899865597/WTN\\_Data\\_020921.pdf](https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/6022e617bc08751953d504b2/1612899865597/WTN_Data_020921.pdf).



cases for months or even a year, due to a lack of an appropriate number and array of foster homes. Older children have been placed in congregate care facilities due to a lack of appropriate foster homes city-wide. Children belong in families.<sup>9</sup> Depriving children, many of whom have a history of trauma, of a family setting – either due to extended pre-placement stays or step-ups to congregate care – after removing them from their parents can be indelibly damaging to children and must be stopped.

## **Visitation**

Once in foster care, children have experienced the sudden and complete termination of in-person visitation with their parents and siblings. Over the course of the pandemic, several foster care agencies imposed months-long prohibitions on in-person visitation. Again, for these children, who have been removed from their families, this denial of in-person visitation with parents or siblings can be incredibly scary, isolating and traumatic. In pre-placement shelters and congregate care settings, the lack of contact with family has been more extreme. These congregate settings suspended in-person visitation for months at a time throughout the pandemic. During the holidays, children in multiple congregate care facilities underwent two weeks of lock-down prior to Christmas to reduce the risk of infection for Christmas visits. As a result, children were prevented from having in-person visits at the facility or in their community, prohibited from attending in-person off-site appointments, enriching activities, or trips to normalize their experience in foster care. Subsequently, they were locked-down for two more weeks after Christmas, prohibited from spending New Years Eve with their families.

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<sup>9</sup> American Academy of Pediatrics, Guidance for Children and Families Involved with the Child Welfare System During the COVID-19 Pandemic, <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/guidance-for-children-and-families-involved-with-the-child-welfare-system-during-the-covid-19-pandemic/> (January 25, 2021).

There has also been a lack of clarity regarding in-person visitation at the Children's Center. After a remand into foster care, some ACS caseworkers have told parents that children placed at the Children's Center are not able to visit with their families at all. In some circumstances, even when in-person visitation has been court ordered, ACS has resisted scheduling the visitation and children and their attorneys have to fight to ensure the contact happens.

The lack of in-person visitation not only has re-traumatized children and created an atmosphere of volatile instability, it also has significantly delayed reunification between children and their families. Expanding visitation often forms the basis for family reunification. The lack of in-person visitation has directly contributed to children remaining in foster care and being unable to reunify with family as quickly as they should. **Indeed, ACS has acknowledged that the number of reunifications over the past fiscal year was “significantly lower” than it was prior to the pandemic** – 1,834 in fiscal year 2020, versus 2,244 in fiscal year 2019.<sup>10</sup> Rates of discharge from care overall have dropped sharply as well, from 4,100 children down to 3,102 in 2020.<sup>11</sup>

### **Failure to Provide Appropriate Care in Isolation and Quarantine**

Children who have been placed in pre-placement shelters and congregate care settings have been required to isolate and quarantine more frequently, sometimes repeatedly, as they are more vulnerable due to their exposure to large numbers of residents and rotating shifts of staff. Much like jails, pre-placement shelters and congregate care facilities house multiple youth in close quarters, with shared dining rooms, common recreational areas, and communal bathrooms and

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<sup>10</sup> Administration for Children's Services, *Foster Care Strategic Blueprint Progress Report: FY 2020*, p. 11, (January 2021) available at <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2020/FosterCareBluePrintFY2020.pdf>.

<sup>11</sup> The Center for New York City Affairs, *Watching the Numbers: Covid-19's Effects on Child Welfare System* Assessed in CNYCA's Annual Report (February 2021), available at [https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/6022e617bc08751953d504b2/1612899865597/WTN\\_Data\\_020921.pdf](https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/6022e617bc08751953d504b2/1612899865597/WTN_Data_020921.pdf).

showers, elevating the risk to youth forced to live in such conditions. Youth in pre-placement shelters, group facilities, and isolation and quarantine wards have also been exposed to violations of mask and social distancing requirements by children and staff.

Children held in isolation or quarantine by ACS have been subjected to extremely difficult conditions. Children (including children as young as three years old) have been required to isolate, sometimes for weeks at a time. In one case, a 17 year old autistic boy was left for days without bedsheets, pillows, or blankets when he was forced to quarantine at the Children's Center. Children too young to understand what is going on are deprived of in person family contact and cared for by a rotating shift of strangers with no one to dote on them if they are sick with the virus. And children who are placed in isolation or quarantine do not receive services – triggering some children's PTSD, depression, or tendency towards self-harm without providing needed mental health services to alleviate those conditions.

### **Lack of Foster Homes & Sibling Separation**

The lack of appropriate foster homes, along with inadequate case planning practices, has at times placed the burden on children themselves to find and recruit their own foster parents in the middle of the pandemic. In some instances, when a child has located and recruited a foster home for themselves, ACS has resisted certifying certain homes, throwing up bureaucratic red tape. For example, ACS has rejected proposed homes for inappropriate reasons: because the child met or formed a relationship with the prospective foster parent after being placed in care, the foster parent had de minimis contact with the criminal or family court system from decades prior, or a parent did not agree with the placement. Even when ACS agrees to certify a home, emergency certification takes a long time, when families are strapped for cash due to the COVID fall-out.

ACS is supposed to place sibling groups together unless separation is in the best interests of the children. However, throughout the pandemic, siblings have often been split up between separate pre-placement shelters, required to quarantine in separate facilities, placed in separate foster homes, and denied visitation. For example, a three year old child was required to quarantine separately from four of their siblings, who were also in quarantine. This toddler was left without physical contact with family for two and a half weeks. In another example, four young siblings were placed in four foster homes across the City, and then prevented from visiting each other in person for months. The critical bonds between siblings, which ACS has repeatedly recognized increases stability and makes children feel safer, have been torn apart during the pandemic.

### **Children's Center Lock-outs**

We are extremely concerned about a practice that involves children "refusing" placement and being forced out of the Children's Center, often with nowhere to go. When ACS Office of Placement Administration identifies a placement option for a child, that child is usually transported to the placement. However, if a child believes that the placement is unsafe or otherwise inappropriate and refuses to go, we understand that staff pack up the child's belongings and place them at the front entrance of the Children's Center. Children are then instructed that they may either go to placement or leave, but they cannot stay at the Children's Center. We have firsthand accounts of children being stuck in the vestibule of the Children's Center – denied entry into the Children's Center but refusing to go to placement – for hours until (usually) the youth gives in and goes AWOL. These children often become homeless, some resorting to couch surfing or sleeping on the train. They are incredibly vulnerable, particularly to sex trafficking. Some youth have returned to the Children's Center in need of a shower or a place to sleep and been denied entry.

We learned of this practice prior to the pandemic but know it continues today. For example, this winter a 16 year old client was placed in the Children's Center as ACS attempted to find her a non-kinship foster home. After being in the Children's Center for almost a month, ACS notified our client that her new placement was in Euphrasian – a congregate care facility and rapid intervention center – as opposed to a foster home. In mid-February, in the middle of not only the pandemic but also a winter snow-storm, our client attempted to return to the Children's Center after a family gathering. When she arrived, she was told that she was not permitted to enter the Children's Center, that she had to leave and go to Euphrasian. All her worldly possessions were at the Children's Center, and when our client begged to grab a fresh set of clothing, she was not allowed into the building. She was panicked and called our staff frantically, worried that she would be out on the street for the night in a snowstorm. Luckily, she was able to arrange to stay with a friend for the night.

This practice is a heavy handed attempt to coerce children to comply with ACS decisions that ignores the nuanced demands of working with children and adolescents. It also violates ACS's duty to responsibly care for children in its custody and puts those children at an unconscionable risk of harm. We have continued to urge ACS to issue an explicit prohibition on this practice.

### **Communication at The Children's Center**

As lawyers for youth of all ages placed in the Children's Center, our staff need to be able to speak to our clients confidentially, and although ACS has created protocols to streamline communication, these protocols are not consistently followed by staff working on-site. At times, our attorneys have been told that a case worker must remain in the room during some conversations, or that our staff must come down to the Children's Center to interview the child in

person. This in person requirement creates an unnecessary COVID exposure risk not only to our staff, but to the child and other staff members as well.

Moreover, the Children's Center has a "cell-phone café" for the purpose of allowing children to use their phones in a designated space. ACS has informed us that they have expanded the hours of the "cell-phone café" in recognition of the fact that with no or limited in person visitation, cell phones provide a crucial lifeline. However, our clients' experience does not reflect an expansive policy – children report not being able to retrieve their cell phones, not being permitted to call their attorneys, and suffering through a lot of red tape just because they want to stay in touch with their families. For example, ACS placed one client, who is parenting a toddler, in the Children's Center because they have no appropriate placement for her. Parenting a toddler in a shelter, without consistent access to her phone, has been incredibly challenging. The lack of a phone impedes our client's ability to contact her child's pediatrician, order her clothing, or stay in touch with her own lawyer. Although her child is a picky eater, our client is not permitted to use her phone to order outside food and struggles with what to feed her daughter.

### **Lack of Transparency**

We recognize that the COVID-19 pandemic is an unprecedented event. While ACS has worked with our office to share information, exchange policies, and create protocols to address issues resulting from the pandemic, there is significant room for improvement. Our staff are frequently not notified when our own clients are transferred to quarantine and isolation wards, and we were not notified when there were COVID outbreaks in the Children's Center or other pre-placement shelters. Nor has there been critical data shared regarding the impact of the pandemic on children in foster care.

## **Students in the Child Welfare System**

In 2019 there were 7,804 children in foster care in New York City.<sup>12</sup> Approximately 6,000 of them were school aged. Children in foster care face unique challenges in accessing their education and this can make them a vulnerable group of learners. Nationally between 35% and 47 % of children and youth in foster care have been identified as students with disabilities who require special education services.<sup>13</sup> Seventeen- and eighteen-year-old students in foster care have an average 7<sup>th</sup> grade reading level.<sup>14</sup> In New York City only 42.2% of students in foster care graduated on time in 2020, the lowest graduation rate of any student group and 36.6 percentage points lower than the rate for students not in foster care.<sup>15</sup> During the pandemic, children in foster care struggled to maintain connection to what is often the single source of stability in their lives- their connection to their home school.

It is imperative that the City invest in children in the custody of ACS to ensure that they are able to engage in school and to obtain the educational and vocational services to which they are entitled and which will support successful outcomes of higher education and employment.

## **DOE Office for Children in Foster Care**

In March 2018, the City’s Interagency Foster Care Task Force, whose membership included the Commissioner of the Administration for Children’s Services and the DOE Chief

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<sup>12</sup> New York City Administration for Children's Services Division of Policy, Planning and Measurement, Office of Research and Analysis, Unpublished CCRS Data (2013 - 2018); Children in Foster Care by Borough/CD of Foster Care Placement (2019) <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2020/incarefostercare.pdf>.

<sup>13</sup> National Working Group on Foster Care and Education “Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care” April 2018 <http://fosteringchamps.org/wp-content/uploads/2018/04/NationalEducationDatasheet2018-2.pdf>; Courtney, M.E., Terao, S., & Bost, N. (2004). Midwest evaluation of the adult functioning of former foster youth: Conditions of youth preparing to leave state care. P 40 Chicago, IL: Chapin Hall Center for Children at the University of Chicago.

<sup>14</sup> *Id.* at 2.

<sup>15</sup> See New York State Education Department, NYC Public Schools Graduation Rate Data (4 Year Outcome as of August 2020) Available at <https://data.nysed.gov/gradrate.php?year=2020&instid=7889678368>

Operating Officer, recommended that the DOE establish an office to focus on the needs of students in foster care, similar to the DOE Office of Student's in Temporary Housing.<sup>16</sup>

Unfortunately this recommendation has not yet been acted upon. Advocates for Children and the Legal Aid Society recently released a joint report outlining the need for such an office.<sup>17</sup>

Currently, responsibility for children in foster care rests with a wide range of different DOE staff members and offices: enrollment, transportation, special education, guidance, office of legal services, and academic policy, to name a few. There is no central DOE resource that schools, foster care agencies or families can turn to when they have questions about students in foster care. There is also no central resource to assist in setting policies relating to school stability, transportation, parental rights and involvement, access to records, consent for special education evaluations and services, court orders, data sharing and analysis, or credit transfers for students in foster care who change schools. A DOE office for students in foster care would help provide accurate and authoritative information about the educational rights of students in foster care. At the very least, the DOE should establish a senior level position to focus on the needs of these vulnerable students.

### **Bus Service for Students in Foster Care**

As students return to in person instruction, the DOE must ensure that every child in foster care is able to get to their school, including for the Summer Rising program. More than just being the right thing to do for children in foster care, New York City has a legal obligation to ensure that children in foster care are able to get to school. The federal Fostering Connections to Success Act of 2008 and the Every Student Succeeds Act of 2015

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<sup>16</sup>See Report of the Interagency Foster Care Task Force, March 2018  
<https://www1.nyc.gov/assets/acs/pdf/testimony/2018/TaskForceReport.pdf>

<sup>17</sup> See Building a Network of Support: The Case for a DOE Office for Students in Foster Care, May 2021.  
<https://legalaidnyc.org/news/doe-support-students-foster-care/>



require school districts and child welfare systems to collaborate in preserving school stability for children in foster care and in providing adequate transportation.

Additionally, NYS Education Law § 3244, provides that the school district where the child attends school must provide transportation to and from the foster care placement and the child's school of origin. Despite these federal and state requirements, transportation remains a significant barrier to preserving school stability for students in foster care in New York City. In 2019 and 2020 the Administration agreed to use existing resources to ensure busing for students in foster care.<sup>18</sup> The City has failed to keep this promise.

Currently, the DOE permits students in foster care in preschool through 6<sup>th</sup> grade to submit an Emergency Evaluation Request for busing. The DOE approves such requests if, and only if, the foster child can easily be added to an existing route. The DOE will not create a new route or significantly alter an existing route to accommodate a child in foster care. Data provided by the DOE pursuant to Local Law 34 shows that during the period from January 2019 to June 2019, only 65% of students in foster care who applied for transportation received DOE bus service. Twenty percent received a MetroCard instead, which is entirely inadequate for this age group. Young children are unable to safely and comfortably travel alone on public transportation using a MetroCard. Foster parents often have other obligations, including employment and the care of other children that prevent them from accompanying a foster child during a long commute. Foster care case workers are also unable to accompany children to and from school due to their primary job responsibilities.

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<sup>18</sup> See FY 2020 Adopted Expense Budget Adjustment Summary, June 2019, available at <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2019/12/Fiscal-2020-Schedule-C-Final-Merge.pdf>

When DOE denies busing, ACS tries to piece together a transportation plan, which typically involves the use of expensive taxis, car services and paid chaperones. These ad hoc transportation arrangements are difficult to manage and costly to taxpayers.

When children in foster care are denied DOE busing, they are often effectively forced to change schools. This change compounds the trauma these children typically experience by being removed from their homes and placed in foster care, causing them to suffer further emotional, social, and academic harm. No student in foster care should be forced to change schools or foster home placements due to lack of transportation – students in foster care are entitled to stable foster homes and stable school placements.

### **Recommendations:**

We ask the City Council to take the following steps to address the issues laid out above:

- 1) There is a dearth of data from the Administration for Children's Services relating to critical areas. We ask the City Council to require ACS to report on the following data:

- Length of stay at the Children's Center and other pre-placement shelters broken out by age.
- The number of homes that have closed during the pandemic
- The number of children in foster care who have tested positive for the virus, broken out by the type of setting in which they reside

The number of children in foster care who have been required to isolate or quarantine The number of youth in foster care who are eligible for the vaccine, who have been offered the vaccine, who have been vaccinated, and who have not been vaccinated due to parental refusal or non-compliance. This data should be provided broken out by the type of placement of the youth (e.g. pre-placement center, foster home, group home, congregate care facility).

- 2) We additionally ask that City Council urge ACS to review and improve their internal process to notify attorneys for children when our clients are moved between foster care settings, including in and out of quarantine and isolation wards. If our staff are not notified of a placement change in advance, we are not able to advocate to preserve the placement

or ensure that the transition is handled in a way that respects our clients' emotional, physical, and educational needs.

- 3) City Council should call on ACS to end the practice of locking children out of the Children's Center – this is an unconscionable practice that violates ACS's duty to responsibly care for children in its custody and results in our clients being left vulnerable and in the streets.
- 4) We ask that the City Council provide funding and oversight to support the DOE in the creation of an Office for Children in Foster Care and the provision of school bus transportation to all children in foster care from K – 6 years old.

### **CONCLUSION**

We thank you for holding this hearing in order to address this important topic during this difficult time. We look forward to continuing to work with the City Council and are happy to answer any questions you have.

Contact:

Lisa Freeman

(914) 400 7429 (During COVID)

**Testimony of Bill Baccaglini  
CEO and President  
The New York Foundling**

**To the New York City Council Child Welfare Committee**

**June 14, 2021**

The New York Foundling is one of New York City's oldest and largest nonprofit providers of human services, protecting children, strengthening families, and supporting community needs. We touch the lives of nearly 30,000 people each year and are grateful for the Council's partnership, especially as the COVID-19 pandemic has left many children and families in the child welfare system facing increased hardship. As the City begins to recover, it is vital that the City continues to invest in the future of its community, especially those in underrepresented areas and communities.

When COVID-19 hit, The Foundling was a leader in our community's crisis response. We identified critical needs, particularly for children in foster care whose education was severely disrupted by this additional trauma in their lives. COVID-19 created new obstacles on an already difficult academic path for students, and it presented new challenges for foster parents, who often lacked technology and resources like a working internet connection, while trying to juggle their own jobs with their kids' schoolwork.

Without additional help, these students would have emerged from the COVID crisis further behind in their education than ever. Through tutoring programs, education advocacy efforts, coaching, and partnerships like Fair Futures—a coalition of child welfare agencies, nonprofits, foundations, and other advocates—we not just stopped the academic gap from widening, we began to close it for many children in foster care. And we did so by giving students in middle school through college a long-term, one-on-one tutor, which has proven to make a marked difference in students' performance.

Last year, 86% of ninth graders in the program advanced to the tenth grade on time, compared to 50% Citywide. On average, 84% of our students in foster care leave high school with a diploma, but last year, the rate was 94%, despite COVID. 61% of them went on to enroll in college. Citywide, however, only 43% of students in foster care graduated high school with a diploma.

For children in third and fourth grade, The Foundling's Child Abuse Prevention Program (CAPP) was also crucial. CAPP educates children and the adults in their lives about their right to safety and how to recognize, resist, and report abuse. Each CAPP workshop includes a presentation using life-sized puppets followed by an opportunity for children to speak to a trained counselor to ask questions, or to report abuse.

The pandemic placed tremendous stress on families and strained family relationships, and children were cut off from teachers and other mandated reporters on the front lines of detecting and reporting signs of abuse. Increased online activity also created a dangerous "opportunity" for internet predators.

We worked with educators, children, and families remotely and provided online safety tools and instructions, virtual Positive Parenting Workshops, and other resources to help families not only stay safe, but cope with anxiety and manage stress. We also created short video skits with Child Safety Workshop puppets, so that we could continue teaching children about their right to safety and remind them of who to go to for help whenever they feel unsafe.

We prioritized school-based crisis prevention, recognizing the toll that stress, isolation, and grief has taken on many of our children and families. Within the first month of the pandemic, we provided telehealth treatment to 212 students and families, 277 therapeutic sessions, and helped schools respond to six mental health crises.

Our Medical Clinics, like other pediatrician offices across the country, stayed open throughout the pandemic. We managed parent fears, kept kids up on their immunizations, and educated families about COVID-19, all while grappling with test shortages, PPE shortages, and adhering to the State's frequently changing guidelines.

When courts closed, we continued to provide crucial services and advocate for youth and families in the child welfare and juvenile justice systems. We provided clear masks and accessible communication technology for the Deaf members of our community. And our summer sleep-away camp, which is usually held in-person and something our children look forward to all year, was reimagined in virtual format—Camp Felix at Home—so that the kids wouldn't have yet another thing taken away from them—fun, camp magic.

These are but some of the many ways in which The Foundling has supported the child welfare community's needs during the COVID-19 crisis.

We are so grateful for the Council's commitment to supporting the child welfare system through the COVID-19 crisis and recovery. We hope to continue our partnership in the coming year, ensuring, all children and families are equipped with the resources they need to heal and grow.



Leadership, voice and vision for child welfare in New York State

**Council of Family and Child Caring Agencies  
Testimony Submitted by Kathleen Brady-Stepien, President and CEO  
Committee on General Welfare Oversight Hearing:  
The Child Welfare System During COVID-19  
June 14, 2021  
via Videoconference**

Good day, Chairperson Levin, I am Kathleen Brady-Stepien and I am the President and CEO of the Council of Family and Child Caring Agencies (COFCCA). Our member agencies include over fifty not-for-profit organizations providing foster care, adoption, family preservation, and juvenile justice services in New York City and over 100 agencies providing the same services Statewide. On behalf of our member agencies, their thousands of employees, and mostly on behalf of the tens of thousands of children and families that our agencies serve, we thank you for the opportunity to testify before you today.

The word is overused, but only “unprecedented” accurately describes the actions of the nonprofit child welfare agencies when COVID-19 shut down the city. Suddenly what agencies needed to do for clients and staff expanded drastically – finding, along with the rest of the world, personal protective equipment; shifting the workforce to remote work; and identifying new ways to meet the new and increased needs of families. Our agencies’ staff were essential workers, certainly essential to those families who received food and diaper deliveries, assistance with technology for remote learning, and virtual therapy with clinical staff due to the hard work of our nonprofit child welfare heroes.

Now as we move towards a post-pandemic phase, our agencies are assessing what has been learned, what was helpful, and what innovations are worthwhile to continue. Some of the lessons learned and needs identified during the pandemic should be of interest to the General Welfare Committee and City Council.

### **Workforce Issues**

**Ask: City contracts and budget allowance allocations could be restructured and tailored to support the myriad of line item budget modifications that emerged during the pandemic.**

On July 1, 2020, Prevention programs were in the midst of closing out previous contracts and staffing up programs for new evidence-based contracts. Agencies struggled with recruiting, hiring, and sustaining a viable workforce of Prevention casework staff who were willing and able to engage families, conduct safety checks, and support a child welfare-involved population. In the Foster Care programs, casework staff were tasked with foster home visits, family engagement, assessing whether families could safely meet in-person, and providing technical support for family visits that had to be done remotely. In Residential programs, agencies had to arrange COVID-19 screening of on-site direct care staff, juggle coverage and pay overtime when direct care staff could not come to work because of illness or contact with an ill person, assist staff in getting overnight transportation when the subways closed, quarantine and care for youth who contracted COVID-19, and much more. A large percentage of child welfare staff are people of color and members of the population that was the hardest-hit by COVID-19 infections and fatalities. As essential workers, agency staff struggled with finding child care and

with obtaining and sustaining remote access to educational activities for their children, children in foster care, and the children under case management in prevention programs. It was a heavy lift for providers to assist clients with remote learning; to gain access to or to provide needed medical and mental health services; and to shift budget resources to acquire PPE, emergency food, and electronic devices for all remote activities. While ACS has been flexible with budget modifications to fund some purchases, we have learned a lot about how contract funding was not designed to support a remote workforce or work with families who were the least equipped to access services to various city services (DOE, HRA, HPD, and community-based services) from a virtual platform.

Going forward, the ability for people to meet virtually is something many have found beneficial in some, but not all, circumstances; for some activities, meeting virtually has allowed people to be more productive (e.g., eliminating travel time). We encourage the City, State, Family Court, and all stakeholders to identify those meetings, hearings, and other situations where technology could be used to replace some meetings that can be inconvenient or time-consuming for participants to attend, along with using technology to add more communication between those meetings and visits that should be face-to-face. Of course, once a case has been made for adopting more virtual meetings and contacts as appropriate, agencies will need funding and flexibility within contracts to supply and use different technology as appropriate for the staff and families involved.

**Ask: The Council needs to ensure contract agencies receive increased funding to pay their workforce on par with City employees, beginning with the Human Services Council's request to restore the 3% COLA.**

As mentioned above, child welfare provider agencies struggled to recruit and retain Prevention caseworkers while implementing the new contracts. Residential and Family Foster Care agencies also face regular and pandemic-heightened recruitment and retention needs. What makes recruitment and retention more difficult is the City's refusal to budget regular and meaningful Cost of Living Adjustments (COLAs) for child welfare provider agencies in particular, and human services agencies as a whole. The starting salary for an entry-level ACS Child Protective Specialist with a bachelor's degree is \$49,279 to start, with an increase to \$53,519 after six months. In contrast, the average starting salary for a NYC Prevention program entry-level caseworker working in one of our nonprofit agencies with a bachelor's degree is \$43,681, with no promise of a raise after six months – or perhaps even after a year, depending on what the City budget provides the contract agencies. Related to the next section, line workers in human service contract agencies are predominantly female, and predominantly Black and Latino. The City should ensure its contractors have the resources to provide pay that is equitable with the City's own workforce.

### **Racial Equity/Social Justice Supports**

**Ask: City Contracts need budget allowances and allocations that support the racial equity and social justice mandates outlined by the Mayor's Office and the Administration for Children's Services (ACS).**

NYC and ACS have imposed contractual mandates to address racial inequities and racial disparities in child welfare. We appreciate this direction and support of work that is ongoing in our provider agencies. The pandemic exposed the racial and social justice inequities that we have long suspected, and nonprofits carried the frontline burden of meeting the needs of the City's children and families. The intensive needs and gaps in resources of poor families, especially throughout the pandemic, have significantly stretched the budgets of child

welfare agencies. The Mayor’s Racial Justice Commission requires all agencies with city contracts to engage in activities that are designed to “dismantle structural racism for all New Yorkers.” Such requirements call for additional staff training on undoing structural racism, conducting racial equity scrubs of agency policies and practices, and hiring diversity, equity, and inclusion leaders to guide agency equity plans. We ask for the city’s support in providing agencies with the resources needed to be in compliance with these government requirements.

I am happy to answer any questions the Council members may have.

I thank you for allowing me to submit testimony.

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**BROOKLYN  
DEFENDER  
SERVICES**

**The Bronx  
Defenders**

**Redefining  
public  
defense**



**Testimony of the Article 10 family defense providers:**

**Brooklyn Defenders Service, The Bronx Defenders, Center for Family Representation, and  
Neighborhood Defender Service of Harlem**

**Presented before**

**The New York City Council Committee on General Welfare**

**Oversight hearing: The Child Welfare System During COVID-19**

**June 14, 2021**

This testimony is submitted jointly by Brooklyn Defender Services (BDS), the Bronx Defenders (BxD), Center for Family Representation (CFR) and the Neighborhood Defender Service of Harlem (NDS). Our offices are the primary providers of mandated legal representation to indigent parents in Article 10 cases filed in family court in each of our boroughs (collectively the “family defense providers”). Together, we have created a model of interdisciplinary representation for parents charged with abuse or neglect and at risk of losing their children to the foster system. Our model connects clients with attorneys, social workers, and parent advocates to provide comprehensive representation and advocacy both in and out of court. We thank the Committee on General Welfare for the opportunity to testify about the family regulation system<sup>1</sup> during the COVID-19 crisis.

The COVID-19 pandemic altered every aspect of city life and has brought into sharp relief race disparities and inequities in our social service systems, including in our health, education, employment, and legal systems. The harrowing cascade of physical and mental health consequences, economic devastation, the lack of access to desperately needed material resources, and social disruption have fallen disproportionately on the families we serve: low-income

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<sup>1</sup>Commonly referred to as the “child welfare system” or the “child protection system,” defenders and parent advocates have followed the leadership of directly impacted people and adopted “family regulation system” language to reflect the system’s prioritization of and roots in surveillance and control over genuine assistance to families living in poverty, who struggle to access quality health and mental health treatment, basic necessities, and appropriate education and services for children with disabilities. For more information about this language shift see, Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, The Imprint (June 16, 2020 5:26 a.m.), <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>.

communities and Black and Latine people. Already, New York City’s family regulation system is unequally applied, largely targeting poor families, the majority of which are Black<sup>2</sup> and Latine.<sup>3</sup> The COVID-19 crisis has exacerbated the harm of family separation for parents and children, created conditions ripe for families to be targeted by the family regulation system, and slowed the progress towards reunification for families already before the family court. It has also made the filing of termination of parental rights petitions—an attempt to dissolve a family—more likely because cases are pending longer and families are less able to fulfill service plan requirements mandated to regain custody of their children.

As public defenders, we bear witness to the racist, classist, and ableist forces restricting our clients’ access to resources and opportunity. Much of our time and effort as advocates is spent trying to mitigate the harm of these systems that are oppressive, structurally inequitable by design, and which bear down most heavily on Black, Latine, and low-income communities. These forces limit access to necessities such as affordable housing, food, education, and health care. They also interfere with our clients’ liberty and their ability to remain with their families. The pandemic has only increased economic inequality and the criminalization of poverty, exposing growing gaps in access to critical resources.

We join the growing chorus of voices calling for pronounced and sweeping changes to how our city responds to families in crisis and in need of material resources and support in order to raise healthy children and our future leaders. As we discuss in greater detail below, the Administration for Children’s Services (ACS) response to COVID-19 exacerbated the devastating effects and consequences of the crisis. Specifically we focus on the following areas:

- ACS’s continued intransigence, which has resulted in ongoing and protracted family surveillance and separation, and the need for the City Council to invest directly in families and divest from ACS;
- ACS’s perfunctory effort to follow its own policies with respect to families’ access to technology, which in turn curtailed our client’s parental and due process rights, as well as their ability to have meaningful and engaging contact with their children;
- ACS and foster agencies’ suspension of (and continued dramatic restriction of) in-person parenting time which devastated families’ efforts towards reunification;
- the unprecedented disruption in families’ access to mandated services and the subsequent and harmful delay in family reunification.

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<sup>2</sup> Forty-four percent of the children in foster care in New York are Black and 26% of the children in foster care in New York are Latine. *See* Child Trends, State-level data for understanding child welfare in the United States, Foster Care: Federal Fiscal Year 2017 (Feb. 26, 2019).

<sup>3</sup> We use the term “Latine” through our testimony as a non-gendered term that is more accessible and pronounceable in the Spanish-language. For more information about the use of this term, please *see* Andrea Merodeadora, Latino, Latinx, Latine: The Grammatical Gender Neutral in Spanish, *available at* <https://puentera.medium.com/latino-latinx-latine-a3b19e0dbc1c>.

## **I. The City Council Should Invest Directly in Families and Divest from ACS, Whose Failures Have Resulted in Ongoing and Protracted Family Surveillance and Separation**

When this pandemic began last year, no one knew what long- and short-term impacts New York City would experience. With budgets stripped and resources made fallow overnight, the existing system of family regulation and policing, like so many other systems, was forced to shift priorities. In conducting this triage, the system's values have been laid bare.

Despite breathless prognostications in major media outlets across the country last year, there are no indicators that there has been any decrease in child safety, even according to ACS's own analysis. In this rare interstitial moment between what was, what is, and what will be, when we have the opportunity to think about how to make the lives of New York City's most vulnerable families better, it behooves us to interrogate what we mean by "child safety" and ask why ACS positions "child safety" on a pole opposite from "parental rights" and family integrity.

Two decades ago, Professor Dorothy Roberts articulated this question with foresight that is unfortunate in its continued relevance:

The mission of state agencies is not to promote children's welfare. Rather, their purpose has become child protection: they try to protect children from the effects of society's colossal failure to care enough about children's welfare. The system is activated only after children have already experienced harm and puts all the blame on parents for their children's problems. This protective function falls heaviest on African American parents because they are most likely to suffer from poverty and institutional discrimination and to be blamed for the effects on their children.<sup>4</sup>

She goes on to say that "[i]t seems Orwellian to call what the child welfare system does 'serving' families, when the vast majority of its clients are 'served' against their will."<sup>5</sup> True public services positioned to help families without strings attached or the threat of punishment or surveillance looming do not exist because, "child protection has absorbed virtually all of the system's resources, leaving nothing for families who simply need help."<sup>6</sup> In other words, "[j]ust

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<sup>4</sup> Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* 74 (2002).

<sup>5</sup> *Id.* at 79.

<sup>6</sup> *Id.* at 85.

as police don't make communities safe, CPS affirmatively harms children and their families while failing to address the structural causes for their hardships.”<sup>7</sup>

Thankfully for New York City's families, the number of petitions filed in Family Court by ACS has reduced greatly during the pandemic, again without any measurable increase in harm to children. This fact directly counters the narrative that ACS makes our city's families and children safe. In thinking critically about the meaning of “child safety,” we must not only theorize about harm that we worry might go unnoticed, and instead focus on harm that is right under our noses: our universal and unequivocal experience is that in the overwhelming majority of cases, ACS does not approach families with compassion, empathy, openness or support, despite what they report to City Council. Instead, ACS approaches families with mistrust, disrespect, suspicion and punishment. ACS does not affirmatively seek the best outcomes for families or give parents any help or benefit of the doubt; instead, it reflexively defaults to assuming the worst-case scenario and makes determinations based on institutional self-preservation over the safety of a child or the strength of a family. Separating families always causes harm, intrusive surveillance causes harm, and that harm is rained down disproportionately on New York City's most vulnerable families, those that are already most impacted by the pandemic.

ACS's approach did not become more family-friendly or child-safety-oriented during the pandemic and in many cases became more lackadaisical and intransigent. For months at the beginning of the pandemic, parents that were on the path to reunification suddenly had no ability to see their children, no ability to comply with service plans, and no ability to petition the court to modify existing orders to bring their families together in those very frightening early days. With no way to advance their cases, families remained under so-called “supervision” of ACS, continually surveilled by this government agency, often without any legitimate basis to do so. Despite ACS's collective testimony at the June 14th hearing, we experienced no discernable increase of speed in resolution of cases. In fact, during the pandemic, the pace at which cases resolve has slowed to that of a snail. Contrary to ACS's presentation we received no communication from ACS, either collectively or at our individual agencies, identifying cases that ACS sought to resolve quickly. Quite to the contrary, each of our individual organizations took the initiative to schedule regular meetings with ACS leadership and went to great lengths to collect and present to ACS information on cases where family reunification and/or case resolution was imminent but for the limits created by pandemic. We have all done this with some success but not because we have experienced any comprehensive commitment by ACS to adjust its approach to ensure that families are reunified and cases are resolved as quickly as possible.

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<sup>7</sup> Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, The Imprint, June 16, 2020, *available at* <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>.

Before, during, and as we suspect will continue after the pandemic, ACS continues to commit the same easily resolvable failures -- not providing basic discovery for months into a case; not appearing in court or to provide accurate or thorough reports to the court regarding a family's progress towards reunification; threatening to call in new cases against families for discontinuing services after the legal case is concluded and where there are no safety concerns; lack of communication between ACS lawyers and caseworkers regarding settlement of cases. The list goes on. The impact is that ACS, with the imprimatur of the court, conducts extended surveillance over our clients, who are already struggling in a pandemic that is disproportionately affecting low-income Black and Latine communities.

Moreover, structural challenges inherent in the family courts were exacerbated by the COVID-19 crisis. Throughout the pandemic, judges have prioritized quick completion of hearings to terminate parental rights and the issuance of permanency hearing orders, even without conducting permanency hearings, while refusing to timely hold statutorily-required emergency hearings to reunify families. Given the disproportionate representation of non-white families in family regulation proceedings there is only one way to interpret these actions – as prioritizing the separation and destruction of Black families and families of color over their preservation and reunification. This phenomenon is not new, but the impact of the pandemic has made its existence that much more clear. New York City's courts are rife with racism. City Council should support efforts to create a robust and comprehensive review of how racism functions within New York City Family Courts and work with community members who are impacted by the family regulation system to develop a system for accountability.

ACS has presented its three current Family Enrichment Centers (FEC) and plan to dramatically expand the number of these centers as a successful effort to address “racial equity and inclusion in the communities that have suffered disproportionately during the COVID-19 pandemic” and “reduce . . . child welfare involvement.”<sup>8</sup> What ACS fails to address is that all three current centers are run by organizations that also run foster care agencies, that all are staffed by mandated reporters under ACS’ purview, and that independent of the massive funding needed for these centers, ACS already has the power to reduce its harmful impact on marginalized families by proactively reunifying families, agreeing to withdraw or dismiss court cases to end ACS surveillance, and actively providing families tangible resources rather than rote service referrals.

In addition it has repeatedly been found that simply providing funds to families—for shelter, clothing, food, and other basic necessities—reduces reports of neglect.<sup>9</sup> When the City removes children from their families, and places children in the foster system, foster parents are

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<sup>8</sup> NYC Children, *Request For Proposals Expansion of the Family Enrichment Center Expansion Overview*.

<sup>9</sup> Kim Eckart-Washington, *Fighting Poverty Reduced Child Neglect Cases*, Futurity, January 2021, <https://www.futurity.org/child-neglect-poverty-eitc-2508382-2/>.

given money to provide necessities for the children in their care. Those funds - along with these funds set aside for ACS run centers should be put directly into the hands of parents and community-based organizations engaged in mutual aid efforts. Families need resources, not surveillance and family separation. Beyond this straightforward investment in marginalized communities, parents should be able to access free, competent support when navigating opaque systems—including special education services and the Department of Education, the Office for People with Developmental Disabilities, affordable and public housing systems, and prenatal and labor and delivery support. Our offices have been able to connect families to these services, referrals, and supports, thanks to City Council initiatives and private foundation funding. It should not take an ACS investigation or court case, or for families to have to turn to ACS' centers, for parents to be connected to wrap-around services that help families meet their basic needs. We are committed to continuing to bridge this gap for the families we serve, but we urge the City to invest in support and resources for families and divest from surveillance and separation.

ACS is a bloated government bureaucracy and the City Council should support any effort to divert funding away from ACS and towards community organizations with a demonstrated track record of providing support and keeping families together, trusted community organizations that are not beholden to ACS. It cannot be overstated -- there is an inherent conflict for the government agency that is tasked with prosecuting parents and separating families to also be responsible for supporting them. New York City's families do not need more policing and surveillance by ACS. They need access to resources and support.

The same easily resolvable issues, banal incompetence, and indifference to human suffering that existed in the family regulation system before the pandemic now delay reunification and extend surveillance for the low-income Black and Latin families we serve, and does so in a time where family connections and the sacredness of the home space has become paramount for most people. We ask that the City Council move beyond ACS's self-congratulatory testimony on June 14, 2021 and work with impacted communities to create systems of accountability throughout the family regulation system.

## **II. ACS's Perfunctory Effort to Follow Its Own Policies With Respect to Families' Access to Technology Harshly Impeded Parental and Due Process Rights Hindering Their Ability to Have Meaningful and Engaging Contact With Their Children**

The COVID-19 crisis has exacerbated the striking inequality in access to technology faced by low-income people from ethnically and racially marginalized communities, and greatly compounded the already myriad harms of the family regulation system. For families trapped in the family regulation system, access to technology became critical to each and every aspect of the family court case and ultimately to family reunification—from maintaining contact with their

children, to accessing the courts and responding to the various demands required of parents under ACS and family court supervision.

Even before the COVID-19 crisis, many of our clients could not afford market-rate phones with data plans. But, with parts of the Bronx, Brooklyn, Manhattan, and Queens hit the hardest by the coronavirus<sup>10</sup> and all of the resulting collateral consequences,<sup>11</sup> including job loss, housing instability, food insecurity, and mental and emotional strain, access to necessary technology became simultaneously even more difficult to gain, yet even more critical to have. Again, as a practical matter, our clients often do not have the technology or the wireless capacity required to appear reliably on video with Microsoft Teams (previously Skype For Business), Zoom, and other video conferencing platforms. The lack of wireless capacity is due to a number of factors including multiple family members sharing the wireless for school and work or because the family lives in a New York City shelter - not all are fully equipped with strong reliable wireless capability. In addition to a widespread lack of wireless capacity, our clients are usually only able to access video conferencing platforms like Teams and Zoom on their cellphones; they do not have computers or iPads or tablets and so have more limited capacity on their device to accommodate the video stream. In multiple cases we have seen, the video strains a wireless connection on a cellphone to the point where the sound is inaudible. This impedes our client's ability to follow and participate effectively in their own proceedings, visit with their children, and engage in court and ACS mandated services. Parents and families are the experts of their own lives - without their meaningful input in court proceedings, judicial and ACS decision-making is undoubtedly hindered. Technology gaps greatly disadvantaged our clients forced to navigate a virtual family regulation system.

### **i. Visitation**

For the majority of families with children in the foster system, parent-child visitation was greatly curtailed or halted altogether throughout much of the pandemic, despite orders and guidance requiring that visitation be maintained with the least family regulation system intervention and monitoring possible.<sup>12</sup> For much of the COVID-19 health crisis, many families were limited to visitation by phone or video due to social distancing requirements. While social distancing mandates and the inability to gather with loved ones is inherently difficult and isolating, social distancing requirements wreak particularly acute harm on families with children

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<sup>10</sup> *Which Are The "Hardest-hit" COVID-19 Neighborhoods?*, NYC Neighborhood Opportunity Network, <https://www1.nyc.gov/site/neon/programs/covid-neighborhoods.page>.

<sup>11</sup> James Parrott, *Covid-Caused Economic Hardships Broadly Felt And Rising*, Center For New York City Affairs (Oct. 16, 2020), <http://www.centrernyc.org/reports-briefs/2020/10/16/cnycas-covid-19-economic-update>.

<sup>12</sup> See *ACS Emergency Guidance for Foster Care Providers: Casework, Contacts, Family Time and Family Team Conferences*, NYC Administration for Children's Services (last revised June 4, 2021), available at <https://www1.nyc.gov/assets/acs/pdf/covid19/guidancefostercarecontacts.pdf>; see also *Memorandum to Foster Care Provider Agencies*, NYC Administration for Children's Services (March 31, 2020), available at <https://www1.nyc.gov/assets/acs/pdf/covid19/casepractice.pdf>.

removed to the foster system. The effects of family separation are compounded by social distancing mandates and show up in trauma responses, in hopelessness, in increasing needs for clinical interventions, and in repeated cycles of difficulty.<sup>13</sup> In any context, virtual parent-child visitation is an unacceptable substitute for in-person visitation, but the issue is even worse for families lacking access to phones and data plans sufficient to conduct these visits.<sup>14</sup>

Restrictions on in-person visitation and the shift to virtual visitation, combined with our clients' lack of access to technology, also threatened parents with the loss of their parental rights, and dissolution of their families. For example, parents we represent who have been fighting to reunify with their children through participating in court ordered services and consistent visitation with their children, were thwarted in their efforts as in-person visitation was either curtailed or stopped altogether. As advocates we saw countless therapeutic visitation agencies to which ACS frequently referred parents, as well as ACS field offices and foster agencies, close their physical spaces to families across the city. Frequently ACS and foster agencies shifted the burden to parents to obtain, on their own, the resources necessary to remain in contact with their children. Without consistent visitation, children continued to languish in the foster system, and due to the 1997 federal statute, the Adoption and Safe Families Act (ASFA), which requires and indeed financially incentivizes states to file a petition seeking termination of parental rights (TPR) for most children who have been in the foster system for 15 of the previous 22 months, families are pushed perilously closer to TPR.

Just as family separation by way of incarceration or ICE detention is deeply harmful for families involved in the criminal legal or immigration system, family separation by way of family regulation system intervention causes long-lasting harm to children and their parents or caregivers that reverberates across generations.<sup>15</sup> The intense trauma can have lifelong repercussions in children's development. Visitation, even virtual, while far from ideal, can mitigate some of this harm.

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<sup>13</sup> Children's Bureau, Admin. Children & Families, Dept. Health & Human Servs., *Dear Child Welfare Legal and Judicial Leaders Letter* (Mar. 27, 2020), available at [https://www.americanbar.org/content/dam/aba/administrative/child\\_law/covid19-letter.pdf](https://www.americanbar.org/content/dam/aba/administrative/child_law/covid19-letter.pdf) (noting that, "Family time is important for children and parent well-being, as well as efforts toward reunification. Family time is especially important during times of crisis.").

<sup>14</sup> See Elizabeth Brico, *Limited Technology Access Prevents Kids in The Child Welfare System from Connecting With Parents*, Prism (May 28, 2020), <https://prismreports.org/2020/05/28/limited-technology-access-prevents-kids-in-the-child-welfare-system-from-connecting-with-parents/>.

<sup>15</sup> See Children's Bureau, Child Welfare Information Gateway, *In-Home Services in Child Welfare* (Mar. 2014), [https://www.childwelfare.gov/pubPDFs/inhome\\_services.pdf](https://www.childwelfare.gov/pubPDFs/inhome_services.pdf) (Research has shown that removing a child from his or her parent is disruptive, traumatic, and likely to have long lasting negative consequences on the child); see also Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. Rev. L. & Social Change 523, 527 (2019), available at [https://socialchangenyu.com/wp-content/uploads/2019/07/Shanta-Trivedi\\_RLSC\\_43.3.pdf](https://socialchangenyu.com/wp-content/uploads/2019/07/Shanta-Trivedi_RLSC_43.3.pdf) (noting that "Notably, while the term ['harm of removal'] is phrased in the singular—'harm'—there is no single 'harm' of removal, but rather numerous independent and overlapping 'harms.'").



## ii. Access to ACS And Court Mandated Services

In addition to many parents with children in the foster system being relegated to virtual parent-child visitation, cell phones and internet devices such as tablets became the primary vehicle through which parents could access ACS and court mandated services and ACS case planning meetings. The inability to participate in mandated services and case planning often results in prolonged family separation and puts families at grave risk of TPR. Again, when combined with ASFA's mandates and incentives, the impact of curtailed service engagement due to lack of access to technology is even more consequential.<sup>16</sup>

As noted above, we have clients who, though approaching the ASFA deadline, had been working tirelessly to complete ACS requirements and court mandated services in order to have their children returned to their care, only to be derailed and their family unity placed in jeopardy due to an inability to pay their cell phone bill. We have countless clients who live in New York City shelters without adequate access to WiFi and, but for free WiFi provided in certain public spaces (e.g. McDonalds and public libraries)—which during the worst days of the health crisis were inaccessible—would have been unable to engage in almost all aspects of their court mandated services. We also know that the most marginalized communities in our city are also the most surveilled by ACS.<sup>17</sup> Still, our clients were expected by ACS and the courts to show up in a timely and consistent way to their therapeutic appointments, parenting classes, and groups, without means to access those virtual spaces.

To be clear, so long as ACS continues to regulate and police families, ACS should both continue to accept parents' participation in virtual services, as virtual services have allowed many parents to meet ACS and court demands without derailing other critical aspects of their lives, including but not limited to obtaining and maintaining employment and engaging in their children's remote schooling. But for a shift to virtual services, without a concurrent commitment to providing parents with the technology needed to access those services simply reproduces and further exacerbates the structural inequalities inherent in the family regulation system.

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<sup>16</sup> See Andrew C. Brown & Chris Gottlieb, *Stop The Clock For Kids in Foster Care*, New York Daily News (Sept. 29, 2020 11:00 a.m.), <https://www.nydailynews.com/opinion/ny-oped-stop-the-clock-for-kids-in-foster-care-20200929-kroi47cj-m5arvgfftisphome-story.html>.

<sup>17</sup> A 2019 report examining New York City's Administration for Children's Services (ACS) found that rates of ACS investigations were four times higher in the community districts in New York City with the highest rates of child poverty, on average, than the 10 districts with the lowest child poverty rates. The data revealed what Black, Brown, and low-income parents have been living and demanding attention to for years: a striking overlay of high ACS intervention and surveillance, child poverty, and heavily Black and Latinx areas, supporting the conclusion that ACS system of regulation and criminalization of poverty. See Angela Butel, *Data Brief: Child Welfare Investigations And New York City Neighborhoods*, The New School Center for New York City Affairs (June 2019), available at <https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5d12746c3cd000017dfc2a/1561490541660/DataBrief.pdf>.

### iii. Access to Court

Unreliable access to technology also limited, and continues to limit, parents' ability to participate in their own defense in both family court, and ACS planning meetings, both of which have been held virtually since March 2020. From accessing court and participating in an emergency hearing requesting the return of your children to your care, to participating in child safety conferences and family team conferences all depend on access to a cell phone with a data plan or WiFi capability. Even obtaining legal counsel during the initial court intake appearance became a challenge during the COVID-19 health crisis.<sup>18</sup> While parent defense legal providers came together to create a flier with the contact information of each parent defender office so that parents would know how to get in touch with legal counsel when a case had been filed against them, throughout the COVID-19 crisis parents reported never receiving the flier from ACS. In many cases, legal providers were unable to contact parents who lacked access to technology. While as COVID wore on, ACS did improve in its distribution of the fliers, ACS remained (and continues to remain) resistant to providing parents with information on how to contact legal providers at the most critical moment: ACS's initial point of contact with a parent or caretaker. Despite ACS's arguments to the contrary, throughout COVID, and presently, ACS waits until after caseworkers have already questioned parents and caretakers and gathered valuable information that could and would be used against that parent in family court.

### **iv. ACS is an agency with immense resources, yet ACS fails to provide families with critically needed material resources including, but not limited to, necessary technology.**

Despite the critical importance of a parent's access to technology for every aspect of family regulation system involvement during the COVID-19 crisis, ACS, an agency with a multibillion dollar budget, has failed to adequately and in a timely and robust manner respond to this need. As early as March 2020, ACS issued guidance that encouraged ACS caseworkers and foster agency staff to provide phones to parents in order to facilitate necessary and court-ordered contact between parents and their children during the pandemic, and to facilitate parents' continued participation in programs and services. Moreover, the Federal Children's Bureau issued guidance clarifying that the purchase and operation of cell phones for children and youth in the foster system, and their parents, among others, is an allowable cost under certain federal funding streams made available to states.<sup>19</sup> Specifically, the Federal Children's Bureau advised, "[t]he purchase of a cell phone for a parent . . . can meet a title IV-B program purpose if it is determined that it will facilitate needed communications for case management purposes between

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<sup>18</sup> Prior to the COVID-19 crisis, most parents met their attorney on the day of intake in the physical courthouse, a practice that became impossible once the family court houses were shut down.

<sup>19</sup> See Children's Bureau, Admin. Children & Families, Dept. Health & Human Servs., *Letter From Children's Bureau Regarding The Use of Federal Funds For Cell Phones And Personal Protective Equipment* (Apr. 17, 2020), available at [https://www.acf.hhs.gov/sites/default/files/documents/cb/letter\\_on\\_federal\\_funds.pdf](https://www.acf.hhs.gov/sites/default/files/documents/cb/letter_on_federal_funds.pdf).

such individual and the agency case worker, or allow the parent to participate in a remotely-located court hearing or visitation with the child.”<sup>20</sup>

While the directives are clear, and while there have been some successes, implementation of the guidance has been uneven at best. Parents and our offices’ attorneys, advocates, have to intervene on a regular basis to ensure parents are equipped with the technology they need to stay in contact with their children, the courts, and their providers. We found that we had to push for these resources to be provided on a case-by-case basis, and that many caseworkers and caseplanners were unaware of the guidance and reluctant or unwilling to provide cell phones or other technology. Further exacerbating this issue was ACS’s lack of transparency around its guidelines. As recent as ACS’s June 4, 2021 emergency guidance, ACS failed to provide *any* transparency around the circumstances under which the agency should purchase technology, identify appropriate types of technology to be purchased (including smartphones, tablets, WiFi access and/or cell phone data plans), or provide tips for getting the technology to parents. Without clear guidance, many of our clients face protracted delays and sometimes, obstruction, when trying to obtain necessary technology from foster agencies.

The COVID-19 crisis has made clear that ACS is not a system of support. If the New York City Council is committed to supporting and investing in Black, Latine, and low-income communities then it should heed the call that those communities have long been making: invest in community based systems of support, entirely independent of ACS.

### **III. Suspension of In-Person Parenting Time by ACS and Agencies During the COVID-19 Pandemic Has Been Severely Damaging to Families and Has Had a Devastating Effect on Family Reunification**

The importance of frequent, high-quality, in-person parenting time while a child is separated from their parent cannot be overstated. Parenting time helps children and parents cope with separation and loss while they are in foster care and is essential to maintaining or, for very young children, building a strong parent-child bond. Frequent in-person family time reduces the trauma of removal and expedites reunification, allowing parents to participate in parenting responsibilities and demonstrate their parenting skills. With the start of the COVID-19 pandemic and Governor Cuomo’s NY Pause Executive Order issued on March 13, 2020, family time for the vast majority of children subject to the family regulation system came to a complete and immediate halt. ACS and foster agencies unilaterally restricted in-person parenting time, despite court orders from before the pandemic and despite ACS,<sup>21</sup> New York State Office for Children

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<sup>20</sup> *Id.*

<sup>21</sup> NYC Children, *ACS Emergency Guidance For Foster Care Providers: Casework Contacts, Family Time And Family Team Conferences*, April 16, 2020, Revised June 4, 2021, available at <https://www1.nyc.gov/assets/acs/pdf/covid19/guidancefostercarecontacts.pdf> (“Providers should attempt to continue visits according to current visiting plans and court orders, in person if consistent with the health and safety of the child, parent, case planner and foster parent.”).

and Family Services (OCFS),<sup>22</sup> and the federal Dept. of Health and Human Services Children's Bureau's<sup>23</sup> guidance encouraging foster agencies across the state to remain open and continue to facilitate in person visitation using necessary precautions.

CFR conducted an internal survey of families who were separated during the pandemic during May and June of 2020, comparing their parent/child visitation before and after the NY Pause Executive Order. After March 13, 2020, of the 753 families included in the survey, about 75% who had been having in-person parenting time with their children had their visits restricted to virtual visitation only. Alarming, of our clients whose children were in foster care and could only connect to them through virtual visits following March 13, 2020, 36% of the children were under the age of three and over 50% were under the age of five. Parents of any child at that young age recognize how difficult it is to engage meaningfully with them by phone or on a screen, no less to develop and grow a parent-child bond.

Many parents struggled to access even this minimal parenting time since virtual contact is dependent on access to technology and many parents did not have reliable phone service and WiFi. ACS' own guidelines recognized this problem and advised foster agencies to assess the technology needs of families and purchase technology necessary to facilitate virtual parenting time. But despite this guidance, many parents never received any such technological assistance. CFR's survey showed that by May 18, 2020, only 12 parents reported receiving financial assistance to facilitate virtual visitation.

Even today, as nearly 60% of adults in New York City are fully vaccinated, families continue to have limited in-person family time. ACS guidelines recommend "at least biweekly" in-person visitation.<sup>24</sup> While certainly not sufficient, prior to the pandemic families would typically have family time two times per week for two hours. Currently, many families continue to have in-person visits only once per week or even once every other week. For children at ACS' Children's Center, parents struggle to see their children at all. We work with one parent who has only been permitted two in-person visits in the last eight months. Agencies, and ACS, are not moving quickly enough back to pre-pandemic levels of visitation, and each agency has, and continues to handle, parenting time differently.

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<sup>22</sup>See New York State Office of Children and Family Services, Novel Coronavirus of 2019 Disease (COVID-19) Guidance for Foster Care and Preventive Staff, March 20, 2020, available at

<https://ocfs.ny.gov/main/news/2020/COVID-2020Mar20-Guidance-for-Foster-Care-and-Preventive-Staff.pdf>

<sup>23</sup> See Department of Health and Human Services Children's Bureau Letter (Mar. 27, 2020), available at [https://www.americanbar.org/content/dam/aba/administrative/child\\_law/covid19-letter.pdf](https://www.americanbar.org/content/dam/aba/administrative/child_law/covid19-letter.pdf); see also Children's Bureau, Admin. Children & Families, Dept. Health & Human Servs., *Ensuring Continuation of Critical Court Hearings*, (Dec. 4, 2020), available at

<https://www.acf.hhs.gov/sites/default/files/documents/cb/ensuring-continuation-critical-court-hearing.pdf>

<sup>24</sup> City of New York Administration for Children's Services, Policy and Procedure #2013/02, *Determining the Least Restrictive Level of Supervision Needed During Visits for Families with Children in Foster Care*, available at <https://www1.nyc.gov/assets/acs/policies/init/2013/C.pdf>.

While some agencies critically examined whether supervised agency visits were necessary or whether less restrictive community visits could occur safely during the pandemic, many others failed to consider creative alternatives to permit in-person family time to continue throughout the pandemic. Some agencies also thought more critically about facilitating virtual family time. While some permitted parents to visit virtually only at the allotted times that they would have had in-person visits, others recognized the limits of virtual parenting time and scheduled every-day contact for shorter periods of time, particularly with young children who are unable to engage for any significant length of time in virtual phone or video visits.

This failure to have in-person family time over the last fifteen months will have devastating and long-term effects on the reunification of the Black and Brown families most impacted by New York City's family regulation system, particularly for those families with young children who have had little in-person contact with their parents. Virtual visitation can not substitute for in-person family time and yet regular, frequent visits between parents and children is nearly always a prerequisite to children coming home. Federal law instructs agencies to seek to terminate a parent's rights to their children, permanently and forever, when they have been separated for 15 out of 22 months, absent a compelling reason not to do so.<sup>25</sup> This law was not suspended or modified during the pandemic, which means parents are at greater risk of losing their rights to raise their children through no fault of their own. Agencies should critically examine each case and find a compelling reason not to file termination proceedings when parents have been unable to visit and plan due to the pandemic.

City Council should hold ACS and foster care agencies accountable for the way they responded to the pandemic and the efforts they did, and did not make, to facilitate reunification, and should call on agencies not to file termination of parental rights proceedings against parents who were hindered in their ability to maintain or build strong bonds with their children due to the lack of in-person parenting time during the pandemic.

#### **IV. COVID-19 and the Subsequent Lockdown Severely Limited Access to Mandated Services and Has Had a Devastating Impact On Family Reunification**

ACS recommends a service plan for nearly every family and parent facing allegations of abuse and neglect in family court. The intention may be to create a plan aligned to the specific needs of each family and that will keep a family united. However, our experience is that these plans are almost always unduly lengthy, rote and untailored, cumbersome, and wholly attenuated from the tangible resources and supports a family needs. Moreover, rather than timely and meaningfully assisting families in accessing these services, ACS often leaves parents to locate and enroll in these services on their own - forcing parents already experiencing the trauma of ACS involvement to navigate language access needs, inaccessible health insurance, high-costs,

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<sup>25</sup> Adoption and Safe Families Act (ASFA), 42 USCA § 675(5)(E).

and unfamiliar jargon. Social workers and advocates in our offices work tirelessly to assist parents to navigate this process and access services.

In spite of the lack of helpful and accessible services plans, ACS and the Court consider this service plan vital to resolve the alleged safety concerns within a family dynamic. Parents are then mandated by the court to complete a litany of these services in order to reunify with their children, keep their children in their care, or to end ACS surveillance. Enrollment, engagement, and completion of these services within the strict time frame dictated by ASFA is absolutely vital for parents working to reunify with their children in foster care, and make the difference between reunification and the permanent termination of parental rights.

At the start of the COVID-19 lockdown, access to these crucial in-person services was abruptly discontinued – mental health counseling, substance use treatment, parenting classes, and more were cancelled or delayed indefinitely. Some parents never heard from their service providers or ACS to learn how to re-engage in these services. Many more parents waited months before being able to re-engage in services or finding new providers. Others had to work incredibly hard just to obtain the needed technology to engage in new virtual services, and to reestablish trusting and supportive virtual relationships with their providers. The instability and delay caused by this unexpected and unprecedented disruption in services then delayed families making progress towards reunification and had an immeasurable negative impact - becoming the basis to curtail parenting-time and visitation, prolonging ACS surveillance, and hindering favorable legal resolutions.

This interruption in access to services has and continues to have a devastating result for families who are nearing the fifteen-month deadline for reunification mandated by ASFA – even just a few months of delay can entirely upend a successful plan for reunification under this pressing timeline. During the pandemic, in New York City, the reunification rates of separated families have gone down: there were only 1,830 reunifications in 2020, as compared to 2,309 in 2019 -- a decrease of over 20%.<sup>26</sup> Given the fifteen-month timeline, we fear that once we return to some level of normalcy, there will be an absolute flood of Termination of Parental Rights (“TPR”) proceedings, meaning that many parents and children will experience the irrevocable termination of their families because of the obstacles created by the pandemic.

We share the experience of one such family here: Prior to COVID-19 pandemic, ACS had already filed a TPR petition against Ms. H. However, after hard fought litigation in Court, she was ordered to have some unsupervised parenting time with her children - a tremendous feat. At that time, Ms. H had already completed a substance use treatment program, domestic violence counseling, parenting skills for children with special needs, was engaged in therapy and using a visitation coach. Her only remaining service was to continue to engage with this visitation coach and to join her children’s counseling sessions. All these services – along with the three sets of foster parents her children lived with, the two-hour distance between her and the agency, and the need for one-on-one visits with each of her children had created a complicated schedule for her family’s visits. As such, prior to the onset of the pandemic, Ms. H was working diligently to

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<sup>26</sup> Julia Lurie, *Mommy, How Come I Only See You on the Phone? The unending tragedy of foster care during a pandemic*, Mother Jones, March 22, 2021, <https://www.motherjones.com/crime-justice/2021/03/mommy-how-come-i-only-see-you-on-the-phone/>

manage a nearly impossible list of services, schedules, and visits, while also parenting her children through the trauma of separation. The pandemic completely disrupted her children's mental health services, the family's visit schedule, and their access to a visitation coach. After the start of the pandemic, Ms. H never saw her child in-person again, before ultimately surrendering her parental rights in the fall. The gap in these crucial support services meant that her children weren't receiving therapy they needed and she wasn't able to participate with them to better understand their needs and support them.

While we believe that no family should be held to an arbitrary and punitive legal deadline unrelated to a family's best interests and wellbeing, we strongly recommend, in accordance with guidance issued by both OCFS and the federal Dept. of Health and Human Services Children's Bureau,<sup>27</sup> that ACS instruct foster care agencies to consider the COVID-19 pandemic a "compelling reason"<sup>28</sup> to not request a permanency goal change from reunification to adoption, to decline to file a TPR petition, and to provide a family more than fifteen months to reunify. Doing so is just a small recognition of the tremendous impact of the last year on already marginalized families.

The vast majority of New York City families separated by ACS are Black and Latine, and from the same communities and neighborhoods most impacted by the COVID-19 pandemic, meaning that while working to reunite their families, and navigate the complexities of reengaging in virtual services, parents were also grieving the loss of loved-ones and support networks, working essential jobs or losing employment, facing housing instability, and coping with the stress of a global pandemic.

## RECOMMENDATIONS:

- The City Council should divest from ACS and invest the money in community solutions which provide families with support and funding to raise healthy and well children, including a flat family living wage, housing subsidies, and child care.

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<sup>27</sup> See Office of Children and Family Services, *Letter addressing the Children's Bureau's June 23, 2020 guidance regarding the filing of TPR petitions during the pandemic* (September 16, 2020) (citing Children's Bureau, Admin. Children & Families, Dept. Health & Human Servs., *Letter From Children's Bureau Regarding The Significant Stress that the COVID-19 Pandemic Has Placed On The Child Welfare System* (June 23, 2020), available at [https://www.acf.hhs.gov/sites/default/files/documents/cb/parental\\_rights\\_adoption\\_assistance.pdf](https://www.acf.hhs.gov/sites/default/files/documents/cb/parental_rights_adoption_assistance.pdf).

<sup>28</sup> "Notwithstanding any other law to the contrary, whenever: the child shall have been in foster care for fifteen months of the most recent twenty-two months; or a court of competent jurisdiction has determined the child to be an abandoned child; or the parent has been convicted of a crime as set forth in subdivision eight of this section, the authorized agency having care of the child shall file a petition pursuant to this section unless based on a case by case determination: (A) the child is being cared for by a relative or relatives; or (B) the agency has documented in the most recent case plan, a copy of which has been made available to the court, a compelling reason for determining that the filing of a petition would not be in the best interest of the child; or (C) the agency has not provided to the parent or parents of the child such services as it deems necessary for the safe return of the child to the parent or parents, unless such services are not legally required..." N.Y. Soc. Serv. Law §384-b(3)(l)(i).



- The City Council should urge ACS to instruct foster care agencies to consider the COVID-19 pandemic, subsequent lockdown, and impact on visits, services, and general stability a “compelling reason” to warrant an exception to filing a termination of parental rights petition under the statute (N.Y. Soc. Serv. Law §384-b(3)(l)(i)) and ASFA.
- The City Council should urge ACS to continue to accept parents’ virtual participation in ACS and or court mandated services and programs.
- The City Council should require ACS to provide parents with appropriate technology when needed, without delay, and require ACS to set forth written, publicly available, clear guidelines for how, when, and on what timeframe ACS will provide parents with such technology. This requirement should not be limited to the COVID-19 pandemic.
- The City Council should direct ACS and each agency to report on what if any efforts they made to facilitate visits where a lack of technology impacted the family, and the number of families who were assisted.
- The City Council should direct ACS to report on the specific visitation each foster care agency has offered to families separated during the pandemic; this report should include the number of families, changes in visits at the beginning of the pandemic and any improvement in visits in each of those families situations, by quarter; this should include the number of families who to date do not have visits that comport with ACS’s own guidelines.
- The City Council should invest in community based organizations that can supervise visits in the community, for example YMCAs, churches, and other community organizations.

Thank you for your consideration. For more information, please contact:

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**Testimony of Anna Arons**  
**Acting Assistant Professor, NYU School of Law**  
**Presented Before the New York City Council, General Welfare Committee**  
**June 14, 2021**

My name is Anna Arons and I am an Acting Assistant Professor at New York University School of Law. Thank you to the New York City Council for this opportunity to submit testimony about the effect of COVID-19 on family regulation and child safety in New York City. I have studied this topic in detail over the last year, and it is the subject of my forthcoming paper in the *Columbia Journal of Race and Law*.<sup>1</sup> I have appended a pre-print of my paper here.<sup>2</sup>

My most important finding is this: the Administration for Children’s Services own data shows that *even as New York City’s family regulation system shrank to about half its normal size, children stayed just as safe*. Children were not endangered by staying at home with their families and in their communities, in part because at the same time that ACS was forced to step back, mutual aid networks grew astronomically and families received new forms of cash assistance from the government, allowing them the autonomy and the resources to meet their own needs.

The City’s shutdown last spring forced a radical reduction of the family regulation system, nearly halving the number of reports, investigations, and family separations, and reducing surveillance of families in schools and in their homes.<sup>3</sup> Of note, even though ACS was still able to file new cases where it sought to separate families, only half as many children were placed in foster care as a result of ACS’s applications for a removal in Spring 2020, as compared to a year earlier.<sup>4</sup> This dramatic drop suggests that during the shutdown, ACS began assessing more rigorously the cases in which it might seek a removal – and as a result, holding off on filing some cases where it typically would seek a removal. This gives credence to an argument long made by parents and their advocates: that in normal times, ACS does not limit itself to seeking removals only in cases that meet legal standards and instead seeks removals even where there is no imminent risk or where alternate services could be put in place, out of a sense of frustration with “uncooperative” parents or in an attempt to punish them.

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<sup>1</sup> Anna Arons, *An Unintended Abolition: Family Regulation During the Covid-19 Crisis*, 11 COLUM. J. RACE & L. (forthcoming) (available at <http://ssrn.com/abstract=3815217>).

<sup>2</sup> The citations below refer to the relevant sections of this paper.

<sup>3</sup> See Part I(B)(1).

<sup>4</sup> See Part I(B)(2).

As a whole, ACS's decreased operations had no adverse effect on child safety, based on several metrics:

1. **Rates of Child Fatalities:**<sup>5</sup> While we all know that child fatalities represent extremely tragic, extremely rare events, they often drive child welfare policy. Further, concerns that rise to the level of injury or death to a child are more likely to result in medical attention and less likely to evade the purview of a mandated reporter. The number of investigations related to child fatalities – the type of tragedy least likely to avoid public review, no matter stay-at-home orders – dropped by 25 percent between February 2019 and June 2019 and the same period in 2020. Measured by incidences of “battered child syndrome,” the prototypical definition of child abuse that birthed the modern family regulation system, the shutdown coincided with decreased child maltreatment.
2. **Absence of “Rebound Effect”:**<sup>6</sup> As New York City crawled back toward normalcy, children began returning to schools, workers returned to the field, and family court operations began normalizing. While the number of reports and investigations began to rise again, there has not been any rebound effect, i.e. an increase in reports or investigations to compensate for a sustained period of underreporting. The number of reports received remains below previous levels, even as children resume public life: in April of this year, for instance, the State Central Register initiated about 4,000 new investigations in the City – about 1,000 fewer reports than the same month in April 2019.
3. **Steady Rate of Substantiation:**<sup>7</sup> The rate of substantiation for reports has not increased – still only about 35 percent of investigations result in a “founded” report of neglect or abuse. Had mandated reporters returned to their surveillance positions and reported an influx of valid concerns from a backlog that had previously gone unreported, the rate of substantiation would have been higher. This is all the more remarkable in light of past research showing that when agencies have fewer reports to investigate, their investigations can be more thorough and more accurate.

This sustained safety for the City's children may be attributable, in part, to the growth of mutual aid networks and increased government aid. As ACS stepped back, thousands of New Yorkers engaged in a transformative project, creating robust mutual aid networks in every borough.<sup>8</sup>

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<sup>5</sup> See Part I(C)(1).

<sup>6</sup> See Part I(C)(2).

<sup>7</sup> See Part I(B)(1) and Part I(C)(2).

<sup>8</sup> See Part II(A).

These networks, built on models of solidarity, collective action, and transformative change, provided food, diapers, childcare, and counseling. At the same time, more New Yorkers received financial assistance from the government, with fewer strings attached, empowering parents to decide, for themselves, how best to meet their families' needs.<sup>9</sup> Taken together, mutual aid networks and increased financial assistance from the government represent a step toward a more equitable society, in which government funds represent freedom rather than further monitoring oppression, and community members collectively coordinated to meet their own survival needs and to mobilize for change.

In light of these findings, we cannot say that ACS's "normal" model is necessary for child safety. The last year represents a rare opportunity, a rupture that made it impossible to continue with business as usual and that forced us all to re-consider the status quo in all areas of life – including child safety in the City. The last year serves as a model of a more humane, more equitable path forward, showing us that we need not destroy families and destroy communities in order to keep children safe. Instead, we can address child poverty and child safety by providing families the monetary support they need, without strings attached, and by building robust community support networks. We need not – and cannot – ever go back to "business as usual."

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<sup>9</sup> See Part II(B).

# AN UNINTENDED ABOLITION: FAMILY REGULATION DURING THE COVID-19 CRISIS

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## ABSTRACT

*In a typical year, New York City's vast family regulation system, fueled by an army of mandated reporters, investigates tens of thousands of reports of child neglect and abuse, policing almost exclusively poor Black and Latinx families even as the government provides those families extremely limited support. When the City shut down in the wake of COVID-19 pandemic, this system shrunk in almost every conceivable way as mandated reporters retreated, caseworkers adopted less intrusive investigatory tactics, and family courts constrained their operations. Reports fell, the number of cases filed in court fell, and the number of children separated from their parents fell. At the same time, families found support elsewhere, through suddenly ubiquitous mutual aid networks and through infusions of new government entitlements. This large-scale reconfiguration of the family regulation system represents a short-term experiment in abolition: in this period, New Yorkers moved away from a system that oppressed poor Black and Latinx and not only envisioned but built a more democratic and humane model to protect families.*

*This Article argues that this new model kept families just as safe. Data from the courts and from the City's Administration for Children's Services reveals that during the shutdown period, there was no rise in child abuse. Furthermore, once the City began to re-open, there was no perceivable "rebound effect," i.e. a delayed, compensatory rise in reports. Thus, this Article positions the COVID-19 shutdown period as a successful case study, demonstrating one possible future absent the massive, oppressive apparatus of the family regulation system.*

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<sup>†</sup> This is a pre-print and as such it is subject to change.

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## INTRODUCTION

Abolition of the family regulation system is too often dismissed as a fantasy, an impracticable ideal that cannot be tested in reality. Yet the COVID-19 crisis provided exactly such a test: for several months, in much of the country, the family regulation system ceased to function as usual and instead was reduced to its bare bones. New York City, the initial epicenter of the crisis, shut down in mid-March 2020 and remained under near-total lock-down until mid-June. During that time, mandated reporters and agency caseworkers were sidelined and courts limited their operations. Reports of child neglect and abuse fell, the number of cases filed in family court fell, and the number of families separated by the government fell. Meanwhile, in the absence of government assistance – and government intrusion – communities developed robust mutual aid projects to meet their needs for food, provisions, childcare, and therapeutic services.

As the first wave of the COVID-19 crisis receded in New York City, family regulation system operations began to normalize. But while the predominant media narrative predicted that the pandemic and accompanying social isolation would increase child neglect and abuse, the numbers did not bear that out: during New York's shutdown, child fatalities fell, as did reports of child neglect and child abuse. This trend continued into the fall: there was no surge in reports even once mandated reporters began to re-enter the field. With fewer government-sanctioned separations of families, children stayed just as safe.

Though the term “abolition” has been co-opted to mean everything from ending the racial capitalist regime to incrementalist, surface-level reforms to that same system,<sup>1</sup>

<sup>1</sup> Compare Andrew Sullivan, *What Does Defund the Police Really Mean?*, THE ATLANTIC (June 14,

Professor Dorothy Roberts identified three central tenets common to various formulations of abolitionist philosophy: First, that the system in question can be “traced back to slavery and the racial capitalist regime it relied on and sustained,” and second, that the expansion of that system “functions to oppress black people and other politically marginalized groups in order to maintain a racial capitalist regime.”<sup>2</sup> The third tenet, so often forgotten by those who dismiss abolition, asks that we “imagine and build a more humane and democratic society” that no longer relies on systematic violence to meet human need.<sup>3</sup>

This Article examines the COVID-19-induced period of temporary abolition in New York City. Part I describes the dramatic limitations placed on New York City’s family regulation system – a system that targets, almost exclusively, poor Black and Latinx families – during the COVID-19 shutdown. This Part concludes, using data from New York City’s Administration for Children’s Services (“ACS”) and family courts, that this shrinking of the family regulation system had no adverse effect on the safety of children. Part II then describes the mutual aid groups that grew as the family regulation system shrank and that, together with increased government cash aid, met families’ vital needs through a model of collective action and self-determination, rather than policing and state violence.

Though unintentional, this brief experiment shows that the typical outsized and reactionary family regulation system is not necessary to protect children; indeed, most children who are separated from their families are safer at home. Instead, the problems that the system typically purports to address – namely child poverty – can be addressed in a radically reduced and re-envisioned system that relies on principles of mutual aid rather than government-led oppression. Abolition need not be a fantasy; New York City already made it, for a moment, a reality.

## I. PUTTING THE FAMILY REGULATION SYSTEM ON PAUSE

Through early 2020, New York’s family regulation system was vast and vastly disproportionate in its focus. Over the last five years, one in five New York City children – but one in three Black and Latinx children – had contact with the system.<sup>4</sup> At every stage of the family regulation system, Black and Latinx children are overrepresented: while only 60 percent of the city’s children are Black or Latinx, 90 percent of children named in investigations, 90 percent of children placed in foster

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2020), <https://www.theatlantic.com/ideas/archive/2020/06/what-does-defund-police-really-mean/612904>, with Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html>.

<sup>2</sup> Dorothy Roberts, *Abolition Constitutionalism*, 133 HARVARD L. REV. 1, 7-8 (2019).

<sup>3</sup> Roberts, *supra* note 2, at 7-8.

<sup>4</sup> MOVEMENT FOR FAMILY POWER, *WHATEVER THEY DO, I’M HER COMFORT, I’M HER PROTECTOR: HOW THE FOSTER SYSTEM HAS BECOME GROUND ZERO FOR THE US DRUG WAR* 60 (2020), <https://bit.ly/2ZPiWH1>.

care, and 90 percent of children in open preventive service cases are Black or Latinx.<sup>5</sup> And while poverty drives reports of neglect generally,<sup>6</sup> the system especially targets poor Black and Latinx families. Community districts with the highest rates of child poverty had rates of investigation four times higher than districts with the lowest rates of child poverty, but even among community districts with similar poverty rates, those with higher concentrations of Black and Latinx residents had higher rates of investigation.<sup>7</sup> This disproportionality is neither a coincidence nor a recent phenomenon. Since the time of slavery, the government, aided by white reformers, has deployed tools of family regulation to maintain racial and class hierarchies by policing Black and Native families, immigrant families, and poor families.<sup>8</sup> This project continued in New York, as the government –aided by an army of mandated reporters – investigated and punished poor Black and Latinx families for conditions of poverty, coerced families into ongoing services, and broke apart families with little regard to the trauma caused by removal.

In March 2020, this machinery met an obstacle it could not churn through: the emergence of COVID-19 in New York City. As city and state officials ordered shutdowns and limits to every aspect of New Yorkers' lives, the family regulation system shrunk too: schools closed, caseworkers limited home visits, and family courts restricted the kinds of cases they would hear. This Section describes these key changes to the operations of the family regulation system during the COVID Pause and the effect of those changes on the families and communities usually surveilled by ACS.

#### A. New Limits on the Family Regulation System

##### 1. The Closure of Schools

On March 11, 2020, Mayor Bill De Blasio told New Yorkers, “If you’re not sick, you should be going about your life.”<sup>9</sup> Just four days later, on March 15, 2020, he announced the closure of New York City’s public schools.<sup>10</sup> This closure, affecting 1.1 million schoolchildren, signaled a new phase in the city’s COVID-19 response,

<sup>5</sup> Testimony of David Hansell, Commissioner of the Administration for Children’s Services, Before the Committee on General Welfare, N.Y. CITY COUNCIL (Oct. 31, 2019), 9, <https://perma.cc/ZAY5-YS86>; see also Part I.A.3, *infra*, (describing preventive service model).

<sup>6</sup> See generally MARTIN GUGGENHEIM, WHAT’S WRONG WITH CHILDREN’S RIGHTS 192-93 (2005) (quoting DUNCAN LINDSEY, THE WELFARE OF CHILDREN 65-66 (1994)) (attributing child removals to “inadequacy of income,” “more than any other factor”).

<sup>7</sup> Michael Fitzgerald, *New York City Council Confronts Child Welfare Agency Over Parent-Child Separations*, THE IMPRINT (Nov. 29, 2018), <https://perma.cc/KY4V-RP4Y>.

<sup>8</sup> See generally DOROTHY ROBERTS, SHATTERED BONDS (2002).

<sup>9</sup> Serena Dai, *Mayor Says That Healthy People Should Still Be Dining Out*, EATER (March 11, 2020), <https://ny.eater.com/2020/3/11/21175497/coronavirus-nyc-restaurants-safe-dine-out>.

<sup>10</sup> Eliza Shapiro, *New York Schools to Close to Slow the Spread of Coronavirus*, N.Y. TIMES (March 15, 2020), <https://www.nytimes.com/2020/03/15/nyregion/nyc-schools-closed.html>.

preceding by a week the broader New York State on Pause executive order that closed all non-essential businesses and banned all non-essential gatherings.<sup>11</sup>

For the family regulation system, the closure of public schools meant the loss of its primary source of surveillance. In the period leading up to the Pause, school personnel were responsible for more than a quarter of all calls to the State Central Register (“SCR”), New York’s child protection hotline.<sup>12</sup> This was not unique to New York: nationwide, education personnel make more child maltreatment allegations than any other group, though decades of data show that these same reports are the least likely to be substantiated by an investigation.<sup>13</sup> Decades of research show, too, that reporters are more likely to suspect and report neglect or abuse of poor Black and Latinx children than of white higher-income children.<sup>14</sup> Rather than ensuring the safety of students, educators’ reporting habits created distrust between parents and schools, contributing to the regulation and penalization of the city’s Black and Latinx families.<sup>15</sup> By moving schools to remote operations, the city began to close this spigot.

## 2. Guidance to Child Protective Specialists

Just as surveillance of children at school decreased, so too did surveillance of families in their homes. On March 15, 2020, the State Office of Children and Family Services (“OCFS”) issued a guidance to family regulation workers regarding safety measures for investigations (the “Investigation Guidance”).<sup>16</sup> It encouraged caseworkers, “when appropriate, to remotely assess the safety and risk posed to a

<sup>11</sup> *New York State on Pause: 10 Point Plan*, N.Y. STATE (Mar. 22, 2020), <https://coronavirus.health.ny.gov/new-york-state-pause> (last visited February 26, 2021).

<sup>12</sup> N.Y.C. ADMIN. FOR CHILD. SERVS., *Flash Monthly Indicator Report: March 2020* 28 (2020), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2020/03.pdf> [hereinafter ADMIN. FOR CHILD. SERVS., *March 2020 Flash Report*].

<sup>13</sup> DANA WEINER, ET AL., CHAPIN HALL AT THE UNIV. OF CHICAGO, *COVID-19 and Child Welfare: Using Data to Understand Trends in Maltreatment and Response 2* (2020), <https://www.chapinhall.org/wp-content/uploads/Covid-and-Child-Welfare-brief.pdf>; Brianna Harvey, Josh Gupta-Kagan & Christopher Church, *Reimagining Schools’ Role Outside the Family Regulation System*, 11 COLUM. J. RACE & LAW (2021) (forthcoming) (describing schools as largest source of reports and noting that “[a]t every stage of the process, allegations from schools are less likely to protect children” than reports from other sources).

<sup>14</sup> Jessica Dixon Weaver, *The African-American Child Welfare Act: A Legal Redress for African-American Disproportionality in Child Protection Cases*, 10 BERKELEY J. AFR.-AM 109, 117 (2008); Jina Lee et al., *Implicit Bias In The Child Welfare, Education, And Mental Health Systems*, NAT’L CTR. FOR YOUTH LAW 3, <https://bit.ly/2ZRbSK2>.

<sup>15</sup> Rebecca Klein & Caroline Preston, *When Schools Use Child Protective Services as a Weapon Against Parents*, HECHINGER REP. (Nov. 17, 2018), <https://hechingerreport.org/when-schools-use-child-protective-services-as-a-weapon-against-parents>; Harvey, Gupta-Kagan & Church, *supra* note 13.

<sup>16</sup> N.Y. OFFICE OF CHILD. AND FAMILY SERVS., *Novel Coronavirus of 2019 Disease (COVID-19) Guidance for Children Protective Services Staff* (March 15, 2020), <https://ocfs.ny.gov/main/news/2020/COVID-2020Mar15-Guidance-for-CPS.pdf> [hereinafter O.C.F.S., *Guidance for C.P.S. Staff*].



child,” and to conduct a health screening of families before arriving their home.<sup>17</sup>

This marked a stark departure from usual investigatory protocol: ACS typically commences its investigations by going to a family’s home unannounced, often late in the night, for an initial visit where workers open cabinets and refrigerators, question parents and children separately, and demand to examine children’s nude bodies.<sup>18</sup> These intrusive investigations can spiral quickly, especially because parents are not informed that they have a right to counsel, and instead are encouraged to be “forthcoming,” with no warning that their statements may be used against them.<sup>19</sup> Thus, an investigation into a child’s lateness to school might, once a worker enters a home and interviews a parent, become an investigation into the family’s “dirty home” or into the parent’s marijuana use, if disclosed to a worker who presented herself as a helper. The Investigation Guidance limited the sprawling and invasive nature of investigations, requiring that families receive advance notice and encouraging ACS workers to stay out of families’ homes if possible.

### 3. Guidance to Contracted Agencies

Beyond the surveillance typically carried out by its own employees, ACS contracts with private agencies to place and monitor children in foster homes, as well as to administer “preventive services.”<sup>20</sup> As part of an investigation, ACS may refer a family to in-home preventive services – ongoing home visits from a caseworker, accompanied by referrals for services like therapy or substance use treatment, and limited material provisions, like diapers, furniture, and clothing for children.<sup>21</sup> ACS touts preventive services as voluntary.<sup>22</sup> But families often feel that they have no real choice; if parents do not accept the referral, ACS may file a case against them and even try to remove their children from their care.<sup>23</sup>

<sup>17</sup> O.C.F.S., *Guidance for C.P.S. Staff*, *supra* note 16.

<sup>18</sup> *A Parent’s Guide to a Child Abuse Investigation*, N.Y.C. ADMIN. FOR CHILD. SERVS., <https://www1.nyc.gov/site/acs/child-welfare/parents-guide-child-abuse-investigation.page>; THE CHILD WELFARE ORGANIZING PROJECT ET AL., *The Survival Guide To The NYC Child Welfare System: A Workbook For Parents By Parents* 24 (2007); Michelle Burrell, *What Can the Child Welfare System Learn in the Wake of the Floyd Decision?: A Comparison of Stop-And-Frisk Policing and Child Welfare Investigations*, 22 CUNY L. REV. 124, 131 (2019).

<sup>19</sup> Burrell, *supra* note 18, at 144-145.

<sup>20</sup> *About ACS*, N.Y.C. ADMIN. FOR CHILD. SERVS., <http://www1.nyc.gov/site/acs/about/about.page> (last visited March 18, 2021).

<sup>21</sup> *A Parent’s Guide to a Child Abuse Investigation*, *supra* note 18; *Prevention Services*, N.Y.C. ADMIN. FOR CHILD. SERVS., <https://www1.nyc.gov/site/acs/child-welfare/preventive-services.page>.

<sup>22</sup> *A Parent’s Guide to a Child Abuse Investigation*, *supra* note 18.

<sup>23</sup> Kathryn Joyce, *The Crime of Parenting While Poor*, THE NEW REPUBLIC (Feb. 25, 2019), <https://newrepublic.com/article/153062/crime-parenting-poor-new-york-city-child-welfare-agency-reform> (quoting a social worker who describes preventive service model as, “. . . supposedly voluntary, but there’s a lot of undertone that, ‘If you don’t, we’ll be watching.’”); *see generally* Soledad

Preventive in-home services are cast as a more progressive alternative to foster care, allowing families to stay safely together while providing them needed assistance.<sup>24</sup> But preventive services are not a panacea, nor should they be treated a gentler version of family regulation. They are unequally offered, with Black families least likely to receive a referral.<sup>25</sup> If they are offered at all, they also act as yet another means of surveillance, as preventive service caseworkers, who are mandated reporters, must see families approximately twice each month.<sup>26</sup> The threat of a new report hangs heavy, diminishing trust between families and caseworkers and leading to family separations for concerns that likely never would have risen to the level of an SCR report.<sup>27</sup>

In spite of families' reservations, ACS's preventive program has ballooned over the last two decades. As of March 2020, 21,200 children, and 9,100 families were enrolled in preventive services.<sup>28</sup> But on March 20, 2020, OCFS issued a guidance (the "Preventive Guidance") urging the private agencies with which it contracts to reduce in-person contact.<sup>29</sup> It encouraged preventive agencies to carry out "case work

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A. McGrath, *Differential Response in Child Protection Services: Perpetuating the Illusion of Voluntariness*, 42 U. MEM. L. REV. 629, 671 (2012).

<sup>24</sup> See, e.g., Jim Purcell, *Opinion: Prevention Services Can Help NYC Avoid a Feared Foster-Care Surge*, CITY LIMITS (June 10, 2020), <https://citylimits.org/2020/06/10/opinion-prevention-services-can-help-nyc-avoid-a-feared-foster-care-surge/>; NATIONAL IMPLEMENTATION RESEARCH NETWORK & CASEY FAMILY PROGRAMS, *Implementing Evidence-Based Child Welfare: The New York City Experience* 10 (2017), <https://caseyfamilypro-wpengine.netdna-ssl.com/media/evidence-based-child-welfare-nyc.pdf>.

<sup>25</sup> CHILDREN'S BUREAU, DEPARTMENT OF HEALTH AND HUMAN SERVICES, *Children of Color in the Child Welfare System: Perspectives from the Child Welfare Community* 7 (2003), <https://www.childwelfare.gov/pubPDFs/children.pdf>.

<sup>26</sup> N.Y. OFFICE OF CHILD. AND FAMILY SERVS., PREVENTIVE SERVICES PRACTICE GUIDANCE MANUAL 4-7 (2015), <https://ocfs.ny.gov/main/publications/Preventive%20Services%20Guide%202015.pdf> [hereinafter O.C.F.S., PREVENTIVE GUIDANCE MANUAL] ("Caseworkers are mandated reporters under state law, and may be prosecuted or fined if they fail to report."); *id.* at C-1 (requiring minimum of 12 casework contacts every six months).

<sup>27</sup> O.C.F.S., PREVENTIVE SERVICES GUIDANCE MANUAL, *supra* note 26, at 9-5 (instructing caseworkers to pay special attention to matters like the family's "hygiene and cleanliness" and the family's level of enthusiasm for preventive services); Joyce, *supra* note 23 ("ACS's successes have been tempered by the fact that, because many poor parents view ACS as inherently dangerous, they routinely walk away from the programs that are designed to support them, rather than invite child welfare into their lives."); Interview with Parent Defense Att'y A from an N.Y.C. Public Defender Office (July 15, 2020) (recounting case in which caseworker reported a family because a young child had had a "patch of dirt" on her skin, and there was "very little food" in the home and the mother regularly contacted the preventive service agency requesting assistance buying food.)

<sup>28</sup> N.Y.C. ADMIN. FOR CHILDREN'S SERVICES, *ACS Quarterly Report on Prevention Services Utilization, January-March 2020* (2020), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2020/1111preventionservicesq12020.pdf>.

<sup>29</sup> N.Y. OFFICE OF CHILD. AND FAMILY SERVS., *Novel Coronavirus of 2019 Disease (COVID-19) Guidance for Foster Care and Preventive Staff* (March 20, 2020), <https://ocfs.ny.gov/main/news/2020/COVID-2020Mar20-Guidance-for-Foster-Care-and-Preventive-Staff.pdf> [hereinafter O.C.F.S., *Guidance for Preventive Staff*].

contacts” remotely when possible and to pre-screen families for COVID before any home visits, in effect reducing the surveillance of families engaged in “voluntary” services just as it reduced the surveillance of families by ACS staff during investigations.<sup>30</sup>

#### 4. Limitations in Family Court

The family regulation system’s surveillance and investigation apparatus feeds into the city’s family court system. Because families have a constitutionally protected right to family integrity, the government must file a petition in court and must ultimately prove that a child was abused or neglected to remove children from their parents’ care or obtain orders that parents participate in certain services.<sup>31</sup> While, technically, parents may not be ordered to participate in any services or cooperate with agency supervision before a court makes a finding of neglect or abuse against them, in reality, parents often feel they have no choice but to participate even without a finding, as ACS may seek orders permitting ongoing home supervision and/or the parents’ participation in services as conditions of their child remaining home, and if a parent does not agree to these orders, ACS may instead seek orders removing a child from her home.<sup>32</sup>

On March 23, 2020, Hon. Jeanette Ruiz, the Administrative Judge of the New York City Family Court, issued the New York City Family Court Coronavirus Plan, effective March 26, 2020 (the “Court Plan”).<sup>33</sup> Under that directive, the family courts in the city’s five boroughs shifted to virtual operations and limited the types of cases they would hear.<sup>34</sup> All non-emergency matters – including trials, status conferences, and pending visitation applications – were adjourned, and courts heard only new cases involving remand applications (i.e. applications to separate children from their parents), as well as emergency orders to show cause on existing cases.<sup>35</sup>

For those families already deeply embroiled in the family regulation system, this order had tragic and traumatic consequences. Parents awaiting trial were left in legal limbo and parents seeking to expand their visitation with their children in foster care

<sup>30</sup> O.C.F.S., *Guidance for Preventive Staff*, *supra*, note 29.

<sup>31</sup> See, e.g., *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); see also N.Y. FAM. CT. ACT §§ 1011; 1012; 1027.

<sup>32</sup> See Amy Sinden, “Why Won’t Mom Cooperate?”: *A Critique of Informality in Child Welfare Proceedings*, 11 YALE J. L. & FEMINISM 339, 354-55 (1999) (situating the pressure on mothers to “cooperate” within the “social work discourse” that is often used to frame the family regulation system); see also N.Y. FAM. CT. ACT § 1034 (permitting family court judges to order parents to produce children to ACS and to allow ACS into their home before a case is filed if ACS is “denied sufficient access to the child . . .”).

<sup>33</sup> Hon. Jeanette Ruiz, Administrative Judge, New York City Family Court, *Updated Family Court Coronavirus Plan*, NYC Covid Directive (March 23, 2020) [hereinafter March 23, 2020, *Family Court Coronavirus Plan*].

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

had to prevail upon the discretion of ACS and foster care agencies, without the ability to challenge those agencies' decisions in court.<sup>36</sup> Beyond this immediate trauma, the Pause imperiled the ability of parents to meet statutory timelines to maintain their parental rights to their children.<sup>37</sup>

But for hundreds of other parents, the Court Plan effectively prevented ACS from hauling them into court at all, as it limited ACS's ability to file new cases to only new cases in which it sought to separate children from their parents.<sup>38</sup> In 2019, 66 percent of the 12,300 children named in proceedings in the city's family courts were released under court-ordered supervision on the date of filing.<sup>39</sup> While some court-ordered supervision cases resulted from judges' denials of ACS's applications to separate families, far more reflected ACS's initial applications at filing for court-ordered supervision<sup>40</sup> – applications that, at times, reflected concerns for children's safety but at times arose, instead, out of frustration with parents' lack of "cooperation."<sup>41</sup>

Under the March 23, 2020, directive, no matter how frustrated a caseworker might be, ACS could not bring parents to court unless it was prepared to show that their children would be at imminent risk of physical or emotional harm if they stayed home. As discussed in the next Section, with this heightened barrier to filing, the number of families brought to court dropped precipitously, and so too did the court-ordered separation and surveillance of families.

<sup>36</sup> Ese Olumhense, *Parents Seeking Return of Children Must Forge Connections on Screens*, THE CITY (May 21, 2020), <https://www.thecity.nyc/government/2020/5/21/21270820/parents-seeking-return-of-children-first-must-forge-connections-on-screens>.

<sup>37</sup> See, e.g., Julia Lurie, "Mommy, How Come I only See You on the Phone?", MOTHER JONES (March 22, 2021), <https://www.motherjones.com/crime-justice/2021/03/mommy-how-come-i-only-see-you-on-the-phone> (describing families' prolonged separations and limited visits, as well as concerns from officials at the Children's Bureau of the United States Department of Health and Human Services that the clock toward termination of parental rights has "kept ticking in some places.")

<sup>38</sup> March 23, 2020, *Family Court Coronavirus Plan*, *supra* note 33.

<sup>39</sup> N.Y.C. ADMIN. FOR CHILD. SERVS., *Flash Monthly Indicator Report: Jan 2020* 9 (2020), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2020/01.pdf> [hereinafter ADMIN. FOR CHILD. SERVS., *January 2020 Flash Report*].

<sup>40</sup> Because ACS does not release data reflecting how often parents challenged their children's removal, it is difficult to discern the number of cases in which cases ACS initially sought court-ordered supervision, as opposed to the number of cases where ACS initially sought, and was denied, an order for a child's removal, thus converting the case into a court-ordered supervision case. Response from N.Y.C Administration for Children's Services to author's Freedom of Information Law Request (Aug. 6, 2020) (on file with author) [hereinafter Aug. 6, 2020, F.O.I.L. Response]. However, in those cases where ACS conducted emergency removals, then filed for approval in court *ex post facto*, 20 to 25 percent of children were immediately returned home by judges, Fitzgerald, *supra* note 7, thus converting those cases into court-ordered supervision cases. Emergency removals should reflect the direst of circumstances – those cases where ACS assessed a child to be in such immediate danger that ACS could not seek a court order prior to removal. Assuming that a similar rate of in-court applications for removals are denied, then in 2019, ACS sought court-ordered supervision in about 60 percent of cases.

<sup>41</sup> See Burrell, *supra* note 18, at 144 ("In many cases, the caseworker may mark the case as indicated but not pursue formal charges in court if the parents are cooperative with services."); see also Sinden, *supra* note 32.

## B. Effect of March Directives

The combined effect of these directives – school closures, decreased in-home surveillance, and limits on court operations – was immediate and dramatic, as the number of reports, investigations, and new family court petitions plummeted. At the same time, on the few cases they did hear, family court judges evinced an increased reluctance to separate families amid an unprecedented crisis. Yet even as media outlets predicted increases in child abuse with children “trapped” at home with parents under increased stress and away from the watchful eyes of mandated reporters, in reality, ACS’s own data shows that there was a drop in child abuse in the initial COVID shutdown and that concerns of neglect, at worst, remained steady.

### 1. Decrease in Reports and Investigations

Comparing the three full months following the implementation of the shutdown directives with the same period the prior year, the number of reports regarding children in New York City to the State Central Register fell by more than 40 percent, to 9,848 from 17,347.<sup>42</sup>

Reports from families and community members dipped by only 21 percent, but reports from mandated reporters plummeted by 53 percent.<sup>43</sup> Rather than making two-thirds of reports as they had before, mandated reporters now made just 55 percent of reports.<sup>44</sup> This drop-off was not distributed evenly among mandated reporter groups: while reports by school personnel fell by 83 percent, reports by medical providers and social service personnel dropped by around 40 percent, and reports by law enforcement fell by 33 percent.<sup>45</sup> Yet even as families’ lives moved increasingly behind closed doors, poor families could not escape all surveillance; as children moved to remote schooling, teachers began to report children for failing to log on for class.<sup>46</sup>

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<sup>42</sup> N.Y.C. ADMIN. FOR CHILD. SERVS., *Flash Monthly Indicator Report: July 2020* 3 (2020), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2020/07.pdf> [hereinafter ADMIN. FOR CHILD. SERVS., *July 2020 Flash Report*]; N.Y.C. ADMIN. FOR CHILD. SERVS., *Flash Monthly Indicator Report: June 2020* 3 (2020), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2020/06.pdf> [hereinafter ADMIN. FOR CHILD. SERVS., *June 2020 Flash Report*]; N.Y.C. ADMIN. FOR CHILD. SERVS., *Flash Monthly Indicator Report: May 2020* 3 (2020), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2020/05.pdf> [hereinafter ADMIN. FOR CHILD. SERVS., *May 2020 Flash Report*].

These figures refer to reports received by the State Central Register and include reports that were screened out, *i.e.* reports that did not trigger an investigation. *Id.*

<sup>43</sup> ADMIN. FOR CHILD. SERVS., *July 2020 Flash Report*, *supra* note 42, at 28.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Eileen Grench, *Parents Expecting iPad Deliveries Got Knock on Door From Child Welfare Workers*, THE CITY (April 22, 2020), <https://www.thecity.nyc/education/2020/4/28/21247059/parents-expecting-ipad-deliveries-got-knock-on-door-from-child-welfare-workers>.

Their families, too, continued to live in shelters and overpoliced neighborhoods and to rely on social service programs that also monitor families.<sup>47</sup>

Despite a spate of articles arguing that parents, under increased financial and emotional stress, might abuse their children at higher rates,<sup>48</sup> the content of the reports received did not vary from the year prior. From April 2019 to June 2019, 15 percent of reports concerned physical, sexual, or psychological abuse, compared with 13 percent in the same period of 2020, and concerns of neglect – more aptly described as concerns of poverty – made up approximately 85 percent of reports in both years.<sup>49</sup>

Likewise, the shutdown did not change the rate at which reports were substantiated. Among those reports that resulted in investigations, in April, May, and June 2019, the rate of substantiation hovered between 35 and 38 percent, and in the same period in 2020, between 37 and 39 percent.<sup>50</sup> A lower rate of reporting may in fact keep children safer, as fewer reports would allow workers to devote more resources to each investigation, rather than getting bogged down with frivolous reports.<sup>51</sup> Thus, the steady rate of substantiation – even with more time to devote to each investigation – is particularly noteworthy.

The decrease in reports and investigations brought with it a decrease in in-home preventive services. Compared with the same period in 2019, the number of referrals to preventive services fell by 27 percent and the number of new cases opened fell even more dramatically, by 45 percent.<sup>52</sup> Of all of the services administered by ACS, preventive services – which can provide childcare vouchers, access to food pantries, and clothing and diapers for children – might seem the most likely to swell during a recession. But preventive services are tightly linked to ACS's policing arm: from April

<sup>47</sup> Mulzer & Urs, *supra* note 23, at 28.

<sup>48</sup> See, e.g., Nina Agrawal, *The Coronavirus Could Cause a Child Abuse Epidemic*, N.Y. TIMES (April 7, 2020), <https://www.nytimes.com/2020/04/07/opinion/coronavirus-child-abuse.html>; Angela Uhfeil, *Calls to Colorado's Child Abuse Hotline Have Dropped – And That's Not a Good Thing*, 5280 (May 18, 2020), <https://www.5280.com/2020/05/calls-to-colorados-child-abuse-hotline-have-dropped-and-thats-not-a-good-thing/>.

<sup>49</sup> Compare ADMIN. FOR CHILD. SERVS., *July 2020 Flash Report*, *supra* note 42, at 29, with N.Y.C. ADMIN. FOR CHILD. SERVS., *Flash Monthly Indicator Report: July 2019* 27 (2019), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2019/07.pdf>; see, e.g., MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS 192-193 (2005) (describing poverty as the number one predictor of reports of neglect).

<sup>50</sup> N.Y.C. ADMIN. FOR CHILD. SERVS., *Flash Monthly Indicator Report: September 2020* 6 (2020), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2020/09.pdf> [hereinafter ADMIN. FOR CHILD. SERVS., *Sept. 2020 Flash Report*] (comparing June 2019 and June 2020); N.Y.C. ADMIN. FOR CHILD. SERVS., *Flash Monthly Indicator Report: August 2020* 6 (2020), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2020/08.pdf> [hereinafter ADMIN. FOR CHILD. SERVS., *Aug. 2020 Flash Report*] (comparing May 2019 and May 2020); ADMIN. FOR CHILD. SERVS., *July 2020 Flash Report*, *supra* note 42, at 6 (comparing April 2019 and April 2020).

<sup>51</sup> See, e.g., Mical Raz, *Unintended Consequences of Expanded Mandatory Reporting Laws*, PEDIATRICS (April 2017); Jane Spinak, *Child Welfare and COVID-19: An Unexpected Opportunity for Systemic Change* 74, in *LAW IN THE TIME OF COVID-19* (Katherina Pistor, ed., 2020).

<sup>52</sup> ADMIN. FOR CHILD. SERVS., *July 2020 Flash Report*, *supra* note 42, at 32-33.

2019 to June 2019, 80 percent of referrals to these so-called voluntary services stemmed from ACS investigations, while less than four percent stemmed from self-referrals.<sup>53</sup> Families, never accustomed to turning to ACS for truly voluntary services, continued to find support elsewhere, as discussed in Part II.

## 2. Decrease in Family Separations

As the stream of reports and investigations slowed, so too did the number of new filings in family court and the number of families separated by the government. In the first three full months following the City's shutdown, the number of new neglect and abuse cases filed by ACS in court fell by more than fifty percent, to 1,482, from 3,205.<sup>54</sup> This decrease flowed from the decrease in investigations, together with the Court Directive that permitted ACS to file new cases only where it sought to separate families, as opposed to where it sought orders of supervision over families staying together.<sup>55</sup>

In light of the Court Directive, it is not surprising that ACS filed fewer cases overall. More surprising is the equally dramatic drop in the number of children placed in foster care – a number that conceivably would have stayed nearly steady, had ACS only stripped away court-ordered supervision cases while continuing to exercise its power to request removals in the same manner that it had pre-pandemic. Instead, compared with the same period the year prior, only half as many children were placed in foster care as a result of ACS's applications for a removal at the time of filing: 375 children between April 2020 and June 2020, down from 700 in that period in 2019.<sup>56</sup>

This dramatic drop suggests that during the shutdown, two institutional actors – ACS itself and family court judges – began paying greater heed to New York's legal standard for removal. Under that standard, articulated by the New York Court of Appeals in *Nicholson v. Scopetta*,<sup>57</sup> ACS must show that a child would be placed at

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<sup>53</sup> ADMIN. FOR CHILD. SERVS., *July 2020 Flash Report*, *supra* note 42, at 33.

<sup>54</sup> Compare N.Y.C. ADMIN. FOR CHILD. SERVS., *Flash Monthly Indicator Report: July 2019* 8 (2019), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2019/07.pdf> [hereinafter ADMIN. FOR CHILD. SERVS., *July 2019 Flash Report*] (reporting new filings for April, May and June 2020) with ADMIN. FOR CHILD. SERVS., *July 2020 Flash Report*, *supra* note 42, at 9 (reporting new filings for same months in 2019).

<sup>55</sup> See March 23, 2020, *Family Court Coronavirus Plan*, *supra* note 33. Note that ACS classifies cases as “Court Ordered Supervision”; “Remand” (kinship or non-kinship foster placement); or “Other/Unspecified.” See, e.g., ADMIN. FOR CHILD. SERVS., *July 2019 Flash Report*, *supra* note 54, at 8. The “Court Ordered Supervision” category includes: 1) cases where children stay home with their parents under court-ordered ACS monitoring; 2) cases where children are released home to one parent under court-ordered ACS monitoring but the other parent is excluded from the home; and 3) cases where children are released to a non-parent friend or relative as an alternative to formal foster care.

<sup>56</sup> Compare ADMIN. FOR CHILD. SERVS., *July 2019 Flash Report*, *supra* note 54, at 9, with ADMIN. FOR CHILD. SERVS., *July 2020 Flash Report*, *supra* note 42, at 9. This refers *only* to “remand” applications. See *supra* note 55.

<sup>57</sup> 3 N.Y. 3d 357 (N.Y. 2004).

imminent risk of physical or emotional harm if she stayed in her parent's care and that no orders short of removal could mitigate that harm.<sup>58</sup> Moreover, in recognition of the trauma that even a brief family separation exacts on any child, ACS must show that the risk associated with the child remaining in her parents' care outweighs the harm to her caused by a removal from their care.<sup>59</sup>

With the Court Directive forbidding the filing of monitoring-only cases, ACS should have filed only those cases that it determined met the *Nicholson* standard for removal. Indeed, the steep decrease in the number of children placed in foster care demonstrates that ACS did in fact request far fewer family separations during the shutdown.<sup>60</sup> Strikingly, in a time where families were under increasing pressure, ACS requested remands in approximately *half* as many cases, a decrease that outpaced the decrease in reports received.<sup>61</sup> In addition to holding off on filing monitoring-only cases, ACS seems to have begun assessing more rigorously the cases in which it might seek a removal – and as a result, holding off on filing some cases where it typically would seek a removal. This gives credence to an argument long made by parents and their advocates: that in normal times, ACS does not limit itself to seeking removals only in cases that meet the *Nicholson* standard and it instead seeks removals even where there is no imminent risk or where alternate services could be put in place, out of a sense of frustration with “uncooperative” parents or in an attempt to punish them.<sup>62</sup>

During the shutdown, even among the smaller set of cases where ACS *did* seek a removal in court, judges, too, applied *Nicholson* more rigorously, paying special attention to the harm of a removal. Whereas judges previously denied approximately 20 percent of ACS requests to separate families, in the two weeks immediately following the transition to virtual court, judges denied close to 30 percent.<sup>63</sup> In those cases where parents immediately challenged their children's removal, judges

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<sup>58</sup> *Nicholson*, 3 N.Y. 3d at 368.

<sup>59</sup> *Id.*; see, e.g. William Wan, *What Separation from Parents Does to Children: 'The Effect is Catastrophic'*, WASH. POST (June 18, 2018) (summarizing research showing that separations stunt the neurological development of young children); Vivek Sankaran, *Easy Come, Easy Go: The Plight of Children Who Spend Less Than 30 Days in Foster Care*, 19 U. PA. J. L. & SOC. CHANGE 207-37 (2016) (reviewing studies showing that even short-term removals harm children emotionally, developmentally, and socially).

<sup>60</sup> The number of children placed in foster care serves as a proxy for the number of family separations requested by ACS, as family court judges grant the vast majority of ACS's applications for removal. See *supra*, note 40 and accompanying text (concluding that courts approve 75 to 80 percent of removal applications).

<sup>61</sup> Compare *supra*, note 40 and accompanying text (describing drop in reports) with *supra*, note 54 and accompanying text (describing drop in foster care placements).

<sup>62</sup> See *supra* note 41 and accompanying text; see also Stephanie Clifford and Jessica Silver-Greenberg, *Foster Care as Punishment: The New Reality of 'Jane Crow'*, N.Y. TIMES (July 21, 2017).

<sup>63</sup> Compare Abigail Kramer, *Child Welfare Limbo: Covid-19 Puts Family Reunifications On 'Indefinite' Hold*, CTR. FOR N.Y.C. AFFAIRS (March 30, 2020), <http://www.centrernyc.org/reports-briefs/2020/3/30/child-welfare-limbo-covid-19-puts-family-reunifications-on-indefinite-hold> (discussing outcomes of applications for removals in 2020) with *supra*, note 40 and accompanying text (discussing same for 2019).



determined that children should remain with their families in slightly more than 50 percent of cases.<sup>64</sup> Tasked with determining whether to separate families in the middle of an unprecedented global public health crisis, judges displayed more skepticism of ACS's applications. Public defenders litigating hearings contesting removals during the initial shutdown reported that judges increasingly fixated on the harm of removal to the child, as the pandemic disrupted families' visits.<sup>65</sup> Whereas judges typically expect that children in foster care will have at least two visits each week with their parents, that expectation was suddenly disrupted.<sup>66</sup> A remand order might now mean that a child would not see her parents in person for months, causing some judges, at least, to think twice before issuing such orders.

Judges' increased reluctance to separate families is especially striking considering the context of the applications they were hearing. With ACS itself seemingly exercising greater discretion and screening cases more rigorously before requesting separations, the cases that were in fact filed should have represented the direst situations, *i.e.* cases where ACS was confident that a court would agree that the children would be at risk at home, that services could not mitigate the risk, and that the harm of removal, even compounded by the lack of meaningful family visitation, did not outweigh the risk of the child staying home. It would follow that judges would grant a *higher* rate of applications in this context, given ACS's own intensified screening. But instead, judges disagreed with ACS with greater frequency, leaving more families together.

For more than a decade, ACS officials have pointed to the City's falling foster care population and insisted that they view the removal of children from their families as a "last resort," a path taken only when absolutely necessary to protect children from serious harm.<sup>67</sup> If this were the case, the extreme reduction in removals during the shutdown would mean that by placing only half as many children in foster care, ACS and family court judges left hundreds of New York City children to suffer grave harm at home with unsafe caregivers. But as the next section shows, the children who stayed

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<sup>64</sup> Kramer, *supra* note 63; Fitzgerald, *supra* note 41.

<sup>65</sup> Olumhense, *supra* note 36; Interview with Parent Defense Att'y B from an N.Y.C. Public Defender Office (May 4, 2020) [hereinafter Interview with Att'y B]; Interview with Parent Defense Att'y C from an N.Y.C. Public Defender Office (May 27, 2020) hereinafter Interview with Att'y C]. Even when judges did enter orders removing children from their parents' care, parent defense attorneys reported that judges were more inclined to grant liberal visitation to parents, *i.e.* allow visits outside the offices of A.C.S. or foster care agencies, in order to ensure visits could actually take place in this period. Interview with Parent Defense Att'y D from an N.Y.C. Public Defender Office (Feb. 24, 2021).

<sup>66</sup> Olumhense, *supra* note 36; Interview with Att'y B, *supra* note 65; Interview with Att'y C, *supra* note 65.

<sup>67</sup> See, e.g., Testimony of David Hansell, Commissioner of the Administration for Children's Services, Before the Committee on General Welfare, N.Y. CITY COUNCIL (Oct. 28, 2020), 16, <https://www1.nyc.gov/assets/acs/pdf/testimony/2020/GWCommitteeHearing.pdf> (describing foster care as a "necessary but last resort"); N.Y.C. ADMIN. FOR CHILD. SERVS., *Foster Care Strategic Blueprint: Three-Year Progress Report* 7 (2020), <https://www1.nyc.gov/assets/acs/pdf/about/2020/threeyearprogressreport.pdf> (highlighting the drop in the number of children in foster care).

home in this period remained safe with their families and within their communities. Thus, this precipitous drop in removals and the absence of any negative consequences for child safety would seem to suggest that in normal times, ACS needlessly requests – and courts needlessly approve – hundreds of foster care placements where families never needed that intervention after all.

### C. Sustained Safety

The pandemic brought a torrent of sensationalist news articles, positing that children were at increased risk from their families during stay-at-home orders.<sup>68</sup> These articles, backed by horrifying anecdotes rather than data, were wrong: through the initial Pause period, severe child abuse in New York City fell, and as the city began re-opening, there was no compensatory increase in reports as mandated reporters and caseworkers resumed their surveillance. Per ACS's own data, even as only half as many children were taken from their families, children stayed just as safe.

#### 1. Fall in child abuse

Measured by reports of child fatalities and physical or sexual abuse, child abuse dropped during the shutdown. While such reports always make up a tiny percent of child maltreatment concerns, they offer a valuable and much-cited measure:<sup>69</sup> though all mandated reporters are affected by implicit biases, child injuries and fatalities serve as a more objective measure than nebulous suspicions of neglect;<sup>70</sup> further, concerns that rise to the level of injury or death to a child are more likely to result in medical attention and less likely to evade the purview of a mandated reporter, even during the a shutdown.<sup>71</sup>

Between April 2019 and June 2019, the SCR received nearly 5,000 reports of physical abuse, a category including “burn, fatality, fracture, choking, twisting, shaking, excessive corporal punishment, internal injuries, lacerations, bruises, welts, poisoning, noxious substances.”<sup>72</sup> In that period, 70 percent of reports alleging any form of abuse

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<sup>68</sup> See, e.g., Nikita Stewart, *Child Abuse Cases Drop 51 Percent. The Authorities Are Very Worried.*, N.Y. TIMES (Aug. 7, 2020); Candy Woodall, *As Hospitals See More Severe Child Abuse Injuries During Coronavirus, 'The Worst Is Yet To Come'*, USA TODAY (May 13, 2020).

<sup>69</sup> See Martin Guggenheim, *The History and Influence of the National Association of Counsel for Children - An Alternate Perspective*, 39 CHILD. LEGAL RTS. J. 12, 14 (2020) (describing the emergence of “battered child syndrome” – findings by medical professionals that explained injuries to children as consequences of child abuse – as driving the creation of the modern family regulation system).

<sup>70</sup> See *supra* note 49 (discussing coding of poverty as neglect); see also *supra* note 14 (discussing bias of mandated reporters).

<sup>71</sup> Reports by medical professionals and law enforcement – the mandatory reporters often best positioned to report physical abuse – fell by only 40 percent, compared to the 77 percent drop in educators' reports. ADMIN. FOR CHILD. SERVS., *July 2020 Flash Report*, *supra* note 42, at 28.

<sup>72</sup> Compare ADMIN. FOR CHILD. SERVS., *July 2019 Flash Report*, *supra* note 27.

were unfounded.<sup>73</sup> In the same months of 2020, during the Pause, the SCR received approximately 2,000 reports of physical abuse, a decrease of 60 percent.<sup>74</sup> Just over 75 percent of reports alleging any form of abuse were unfounded.<sup>75</sup>

This dramatic decrease in reports may reflect that some incidents of physical injuries to children went unnoticed and unreported once children were confined to their homes. However, the number of investigations related to child fatalities – the type of tragedy least likely to avoid public review, no matter stay-at-home orders – also dropped by 25 percent between February 2019 and June 2019 and the same period in 2020.<sup>76</sup>

Taken together, this data indicates that, at the very least, child abuse did not increase during the COVID Pause. Fewer reports were received, and among the reports that were received, fewer were substantiated, even as investigating workers had more time to devote to each individual investigation. Measured by incidences of “battered child syndrome,” the prototypical definition of child abuse that birthed the modern family regulation system, the shutdown coincided with decreased child maltreatment.

## 2. Absence of a rebound effect

In fall 2020, in a respite between waves of COVID-19, New York City crawled back toward normalcy: children began returning to schools, workers returned to the field, and family court operations began normalizing.<sup>77</sup> While the number of reports and investigations began to rise again, by three measures, there has not been any rebound effect, i.e. an increase in reports or investigations to compensate for a sustained period of underreporting.

First, even as mandated reporters returned to the field, the total number of reports

<sup>73</sup> N.Y.C. ADMIN. FOR CHILDREN’S SERVICES, *ACS Quarterly Report on Prevention Services Utilization, April-June 2019* 5-6 (2019), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2020/CWIndicatorsCityCouncilReportQ22019.pdf>.

<sup>74</sup> ADMIN. FOR CHILD. SERVS., *July 2020 Flash Report*, *supra* note 42, at 29.

<sup>75</sup> N.Y.C. ADMIN. FOR CHILDREN’S SERVICES, *ACS Quarterly Report on Prevention Services Utilization, April-June 2020* 6-7 (2020), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2020/ChildWelfareIndicatorsReportQ2.pdf>.

<sup>76</sup> Response from N.Y.C. Administration for Children’s Services to author’s Freedom of Information Law Request (Aug. 20, 2020) (on file with author) [hereinafter Aug. 20, 2020, F.O.I.L. Response] (reporting that from February 2019 to June 2019, there were 63 “[c]hildren with fatality SCR allegations (unique children),” including “children with roles in initial and subsequent investigation stages,” compared to 47 children in the same period in 2020; these numbers reflect the total number of *reports* received regarding child fatalities and include fatalities later determined not to be the result of parental neglect or abuse).

<sup>77</sup> *COVID-19 Phase 4 Operations Summary*, N.Y.C. FAM. CT. (July 31, 2020) (on file with author); Eliza Shapiro and Mihir Zaveri, *New York City Becomes First Big City in U.S. to Reopen All Its Schools*, N.Y. TIMES, Nov. 18, 2020, <https://www.nytimes.com/2020/10/01/nyregion/nyc-coronavirus-schools-reopen.html>.

remained lower than the previous year. In the final three months of 2020, the SCR received 17 percent fewer reports than it had received in the year prior.<sup>78</sup> By the time the city's schools completed their staged re-opening for in-person education on September 30, 2020, a quarter of the city's schoolchildren were attending class in person.<sup>79</sup> Following school re-openings, SCR reports did creep upward between September and November – but at a rate in line with the increase in a non-pandemic fall, rather than a more dramatic leap.<sup>80</sup> Far from showing a rebound effect from schools calling in a backlog of reports, school personnel still made 35 percent fewer reports than they had the same period the previous year.<sup>81</sup>

Second, the types of concerns reported did not shift from the year prior. In both 2019 and 2020, approximately 75 percent of reports received in the city solely relayed concerns of neglect.<sup>82</sup> While reflective of the ongoing issue of families being reported for poverty, it is consistent with prior patterns: the Pause did not, as doomsayers predicted, lead to an increase in physical abuse to children by overstressed parents.

Finally, the rate of substantiation of reports also remained steady through the fall. For both years, the rate of substantiation hovered between 35 and 37 percent.<sup>83</sup> Had

<sup>78</sup> N.Y.C. ADMIN. FOR CHILD. SERVS., *Flash Monthly Indicator Report: January 2021* 28 (2021), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2021/01.pdf> [hereinafter ADMIN. FOR CHILD. SERVS., *January 2021 Flash Report*].

<sup>79</sup> Eliza Shapiro, *Only 26% of N.Y.C. Students Attend In-Person Classes, Far From Goal*, N.Y. TIMES, Oct. 26, 2020, <https://www.nytimes.com/2020/10/26/nyregion/nyc-schools-attendance.html>.

<sup>80</sup> Compare a 20 percent increase in reports between September 2021 and December 2021, N.Y.C. ADMIN. FOR CHILD. SERVS., *Flash Monthly Indicator Report: October 2020* 3 (2020), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2020/10.pdf> [hereinafter ADMIN. FOR CHILD. SERVS., *October 2020 Flash Report*]; N.Y.C. ADMIN. FOR CHILD. SERVS., *Flash Monthly Indicator Report: December 2020* 3 (2020), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2020/12.pdf> [hereinafter ADMIN. FOR CHILD. SERVS., *December 2020 Flash Report*], with a 15 percent increase in reports between September 2019 and November 2019, N.Y.C. ADMIN. FOR CHILD. SERVS., *Flash Monthly Indicator Report: October 2019* 3 (2019), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2019/10.pdf>; N.Y.C. ADMIN. FOR CHILD. SERVS., *Flash Monthly Indicator Report: December 2019* 3 (2019), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2019/12.pdf> [hereinafter ADMIN. FOR CHILD. SERVS., *December 2019 Flash Report*], and a 27 percent increase in reports between September 2018 and December 2018. N.Y.C. ADMIN. FOR CHILD. SERVS., *Flash Monthly Indicator Report: October 2018* 3 (2018), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2018/10.pdf>; N.Y.C. ADMIN. FOR CHILD. SERVS., *Flash Monthly Indicator Report: December 2018* 3 (2018), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2018/12.pdf>.

<sup>81</sup> ADMIN. FOR CHILD. SERVS., *December 2020 Flash Report*, *supra* note 80, at 28.

<sup>82</sup> Compare N.Y.C. ADMIN. FOR CHILDREN'S SERVICES, *Child Welfare Indicators Annual Report 2020* 9 (2020), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2020/CityCouncilReportCY2020.pdf>, with N.Y.C. ADMIN. FOR CHILDREN'S SERVICES, *Child Welfare Indicators Annual Report 2019* 9 (2019), [https://www1.nyc.gov/assets/acs/pdf/child\\_welfare/2020/CWIndicatorsAnnualCityCouncilReportCY2019.pdf](https://www1.nyc.gov/assets/acs/pdf/child_welfare/2020/CWIndicatorsAnnualCityCouncilReportCY2019.pdf).

<sup>83</sup> ADMIN. FOR CHILD. SERVS., *March 2020 Flash Report*, *supra*, note 12, at 6; N.Y.C. ADMIN. FOR

mandated reporters returned to their surveillance positions and reported an influx of valid concerns from a backlog that had previously gone unreported, the rate of substantiation would have been higher. But that was not the case. This is in line with prior analysis; every summer, when schools go on break, the number of child welfare reports drop, but the drop-off relates to concerns that do not reach the threshold of substantiation; “teacher reports in the summer months that do result in substantiation remain steady.”<sup>84</sup>

ACS’s data from the fall reveals that children stayed as safe with less surveillance, less government intrusion, and less family separation. They stayed safe not because of the family regulation system’s presence but because of its absence – and because of the radical re-imagining of society that was taking place at the same time.

## II. SUPPORTING FAMILIES WITHOUT REGULATING FAMILIES

As Professor Roberts noted, abolition requires a reckoning with the racist history and ongoing purpose of systems like the family regulation system, but alongside that, it asks that we imagine and build a more humane and democratic society, one no longer reliant on those systems to meet human needs and solve social problems.<sup>85</sup>

As government forces receded – reducing surveillance and interference but also failing to meet the most basic needs of New Yorkers – thousands of New Yorkers engaged in just such a transformative project. Mutual aid networks, built on models of solidarity, collective action, and transformative change, rather than charity, saviorism, and control, grew in every borough, providing food, diapers, childcare, and counseling. Meanwhile, more New Yorkers received financial assistance from the government, with fewer strings attached – itself a re-envisioning of the role of government. This Part describes the massive growth and work of mutual aid groups during the Pause, including the tensions raised by these projects, then concludes by briefly describing the role of government entitlements.

### A. Mobilization of Mutual Aid

Dean Spade describes mutual aid as “collective coordination to meet each other’s needs,” growing out of “an awareness that the systems we have in place are not going to meet them,” and in fact, that those systems “have often created the crisis or are making things worse.”<sup>86</sup> Mutual aid projects meet people’s immediate survival needs, but beyond that, they build a shared understanding of the structural causes of

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CHILD. SERVS., *Flash Monthly Indicator Report: March 2021* 6 (2021), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2021/03.pdf>.

<sup>84</sup> WEINER, *supra* note 13, at 2.

<sup>85</sup> See Roberts, *supra* note 2, at 7-8.

<sup>86</sup> DEAN SPADE, *MUTUAL AID: BUILDING SOLIDARITY DURING THIS CRISIS (AND THE NEXT)*, 9, 12 (2020).

deprivation and mobilize movements to dismantle the systems causing the harm.<sup>87</sup> These projects stand in stark contrast to charity and government social services, programs that position rich people in and out of government as morally superior to poor people and empower them to judge the moral worth of charity recipients and attach conditions to aid accordingly.<sup>88</sup> Rather than aiming to root out the violence of the capitalist system, charity and social services legitimize that very system, providing political cover to elites while controlling and surveilling recipients and affording minimal assistance.<sup>89</sup>

When, in the face of COVID-19, existing charity and government systems failed to meet the basic needs of New Yorkers, mutual aid projects stepped into the breach, just as they have in the face of countless past disasters worldwide.<sup>90</sup> During the shutdown, New Yorkers' needs swelled; by mid-April, one in four New Yorkers was food insecure, and nearly 40 percent of parents reported skipping or cutting meals for themselves to ensure they had food for their children.<sup>91</sup> Parents could not work, not only because their workplaces were closed but because in the absence of schools, they lacked childcare.<sup>92</sup> As stressors piled up, families were even less likely to have access to mental health services.<sup>93</sup> The family regulation system, like so many arms of the government, failed to meet New Yorkers' needs, as provision of preventive services plummeted and ACS continued to antagonize families rather than aid them.<sup>94</sup>

With the government failing, New Yorkers themselves undertook the project of ensuring that all community members' needs were met. By the end of July, there were nearly 60 mutual aid networks operating throughout the city.<sup>95</sup> Some of these groups organized through social media after the city shut down.<sup>96</sup> But others grew out of pre-

<sup>87</sup> SPADE, *supra* note 86, at 9, 13.

<sup>88</sup> *Id.* at 22.

<sup>89</sup> *Id.* at 24.

<sup>90</sup> See, e.g., Lucas Blaise Burdick, *After the Flood: Lessons from Occupy Sandy*, THE WORLD AT 1 °C (Sept. 13, 2017), <https://worldat1c.org/after-the-flood-lessons-from-occupy-sandy-904c81a21c2f>; Isa Rodríguez Soto, *Mutual Aid and Survival as Resistance in Puerto Rico*, 52 NACLA REP. AMERICAS 303 (2020); SPADE, *supra* note 86, at 3-5 (describing mutual aid projects efforts in Hong Kong).

<sup>91</sup> Sharon Lerner, "We Need Protein"—Coronavirus Pandemic Deepens New York's Hunger Crisis, THE INTERCEPT (June 16, 2020), <https://theintercept.com/2020/06/16/coronavirus-hunger-crisis-nyc>.

<sup>92</sup> See, e.g., Eliza Shapiro and Patrick McGeehan, *Big New Obstacle for Economic Recovery: Child Care Crisis*, N.Y. TIMES (July 10, 2020), <https://www.nytimes.com/2020/07/10/nyregion/nyc-school-daycare-reopening.html>.

<sup>93</sup> Azza Altiraiji & Nicole Rapfogel, *Mental Health Care was Severely Inequitable, Then Came the Coronavirus Crisis*, CTR. AMER. PROGRESS (Sept. 10, 2020), <https://www.americanprogress.org/issues/disability/reports/2020/09/10/490221/mental-health-care-severely-inequitable-came-coronavirus-crisis>.

<sup>94</sup> See *supra*, section I(B); see also Grench, *supra* note 46.

<sup>95</sup> Elizabeth Lawrence, 'Love and Solidarity': Amid Coronavirus, Mutual Aid Groups Resurge in New York City, NPR (July 26, 2020), <https://www.npr.org/sections/healthshots/2020/07/26/895115149/love-and-solidarity-amid-coronavirus-mutual-aid-groups-resurge-in-new-york-city>.

<sup>96</sup> See, e.g., *Overview*, BED-STUY STRONG'S MUTUAL AID COMMUNITY FUND,

existing projects; for instance, a group in Brooklyn's Flatbush neighborhood that previously fought for police accountability and against gentrification turned its attention to food distribution.<sup>97</sup> Regardless their histories, projects espoused principles of solidarity and collective care, accountability, and racial justice.<sup>98</sup>

Mutual aid projects mobilized to provide an extraordinary array of services to community members who requested aid. Nearly every group organized grocery deliveries and provision of essential items like diapers, but others focused on more specialized services, like childcare for workers or mental health care and support groups.<sup>99</sup> Rather than the exacting intake procedures required by charities and government social services, groups kept their barriers for entry low, requiring only that community members complete online request forms or call intake lines, and removing eligibility requirements that judged moral worthiness.<sup>100</sup>

While mutual aid was by no means a novel concept in the city, the rapid expansion of mutual aid projects was breathtaking: Bed Stuy Strong, for instance, began in Brooklyn in March, and by the end of its first month, had built a network of 2,700 volunteers, while in neighboring Crown Heights, Crown Heights Mutual Aid made 1,300 grocery deliveries between mid-March and mid-May alone.<sup>101</sup> Across the city, mutual aid groups pooled and redistributed hundreds of thousands of dollars through the work of thousands of volunteers.<sup>102</sup>

This rapid growth brought with it some stumbles, particularly for newly formed

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<https://ioby.org/project/bed-stuy-strong's-mutual-aid-community-fund> (last visited Feb. 26, 2020) (describing group's mid-March founding through Slack, a messaging program).

<sup>97</sup> #BrooklynShowsLove Mutual Aid Project, EQUALITY FOR FLATBUSH, <http://www.equalityforflatbush.org/brooklyn-shows-love-mutual-aid-project/> (last visited Dec. 11, 2020).

<sup>98</sup> See, e.g., #BrooklynShowsLove, *supra* note 97; *Mission and Guiding Principles*, Crown Heights Mutual Aid, <https://crownheightsmutualaid.com/mission-and-guiding-principles/> (last visited Feb. 25, 2021); Lakshmi Gandhi, *South Asian American Activism Must Go Beyond Viral Stories, Advocates Say*, NBC NEWS (June 12, 2020), <https://www.nbcnews.com/news/asian-america/south-asian-american-activism-must-go-beyond-viral-stories-advocates-n1230596> (quoting founder of Bronx Mutual Aid Network)..

<sup>99</sup> WORKERS NEED CHILDCARE, <https://www.workersneedchildcare.org> (last visited Feb. 25, 2021); *About the Network*, NYC COVID CARE NETWORK, <https://nyccovidcare.org/about> (last visited Feb. 25, 2021); Rachel Holliday Smith & Claudia Irizarry Aponte, *Evolving in COVID Crisis*, NYC Mutual Aid Groups Head Into 2021 With Tablets, Toys — and Diapers, THE CITY (Jan. 4, 2021), <https://www.thecity.nyc/life/2021/1/4/22202979/nyc-mutual-aid-groups-covid-head-into-2021-with-expanded-mission>.

<sup>100</sup> See, e.g., *Request a Delivery*, INVISIBLE HANDS, <https://invisiblehandsdeliver.org/request> (last visited Feb. 26, 2021); CORONA COURIER, <https://coronacourier.nyc/#/> (last visited Feb. 26, 2021).

<sup>101</sup> CMHLA Updates: May 21, 2020, CROWN HEIGHTS MUTUAL AID, <https://us18.campaign-archive.com/?u=4fe6ce4b9bcc1bbfbc2904356&id=551556dda7> (last visited Feb. 26, 2021); Jessica McKenzie, *Bed-Stuy Strong: Scaling Mutual Aid During COVID-19*, CIVIC HALL (Apr. 16, 2020), <https://civichall.org/civicist/bed-stuy-strong-mutual-aid>.

<sup>102</sup> See, e.g., Smith & Aponte, *supra* note 99; *Bed-Stuy Strong's Mutual Aid Community Fund*, ioby.org (last visited Feb. 25, 2017), <https://ioby.org/project/bed-stuy-strong%E2%80%99s-mutual-aid-community-fund>.

groups. While groups like #BrooklynShowLove in Flatbush built on decades of community organizing, newer groups – many populated by the same white, affluent people who are displacing poorer Black and brown New Yorkers from their homes through gentrification – at times displayed the same attitudes of saviorism and hierarchical, exclusionary decision-making that plague charity and government services.<sup>103</sup> For instance, controversy erupted in the Crown Heights Mutual Aid group in May, when it unveiled a community fridge at an apartment building on the very day that building tenants were memorializing a neighbor who had recently been gunned down.<sup>104</sup> Residents had not been consulted about the placement of the fridge and were not comforted by organizers’ assurances that the building’s landlord approved of the fridge – because residents had been engaged in a years-long dispute with that same landlord over deplorable housing conditions.<sup>105</sup> This tension reflected a common reality: mutual aid projects can easily “slip into some of the well-worn grooves” of the charity model if organizers do not deeply examine their principles.<sup>106</sup>

Such missteps and growing pains should not be surprising, considering the radical project underway: mutual aid networks began to create a more democratic and humane society, one in which community members mobilized to provide support for families – in the form of food, diapers, mental health services, and childcare – without subjecting those families to governmental surveillance and scrutiny, deeming them worthy or unworthy, or threatening them with the possible loss of their children if they did not adhere to outsiders’ visions of what they “should” be doing.

#### B. Government Support Without Government Control

Together with the increase in mutual aid came a rare influx of government aid with few strings attached. The CARES Act, passed in early April 2020, provided a one-time stimulus payment of \$1,200 per adult for individuals earning less than \$75,000 annually, with an additional \$500 payment for each child under the age of 17, and an extra \$600 per week in unemployment benefits, through the end of July 2020.<sup>107</sup> Together, these measures represented a transfer of funds from the government to the people larger than all other non-retirement programs combined.<sup>108</sup>

<sup>103</sup> SPADE, *supra* note 86, at 45.

<sup>104</sup> Crown Heights Mutual Aid, FACEBOOK (May 12, 2020), <https://www.facebook.com/groups/496603171016990/permalink/529358747741432> (posts on file with author).

<sup>105</sup> Crown Heights Mutual Aid, FACEBOOK (May 12, 2020), <https://www.facebook.com/groups/496603171016990/permalink/529358747741432> (posts on file with author).

<sup>106</sup> SPADE, *supra* note 86, at 45.

<sup>107</sup> Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (2020).

<sup>108</sup> Zachary Parolin, Megan A. Curran & Christopher Wimer, *The CARES Act and Poverty in the*



In some ways, the CARES Act precisely exemplified the aid model against which mutual aid stands. It established a hierarchy of deservingness, excluding undocumented immigrants and their family members; it required that anyone who had not filed taxes the previous year jump through additional hoops to claim their stimulus checks; and it served to prop up the legitimacy and stability of the capitalist system, by providing minimal payments designed to “stimulate” the economy rather than enacting broader, longer-lasting changes that would have allowed people to meet their needs on an ongoing basis and stay safe for the duration of the pandemic.<sup>109</sup>

But in other ways, these new entitlements showed the possibility of a world in which the government acts to meet people’s survival needs without requiring that recipients prove their worthiness, jump through hoops like completing programs or undergoing drug tests, endure stigmatization, and use funds only on limited, approved expenses. Empowered to spend their funds as they saw fit, people receiving stimulus funds increased their spending on food, household items, and bill payments, including rent—i.e. survival needs—and were less likely to spend on durable goods like electronics, furniture, or cars,<sup>110</sup> defying the decades-long narrative that elites need to direct the spending of poor people, to protect them, and society, from irresponsible, frivolous spending. As people began receiving checks, mutual aid projects mobilized, encouraging those who could afford to turn their stimulus checks over to more vulnerable community members, and thousands answered the call.<sup>111</sup> Meanwhile, the higher unemployment payments did not discourage people from re-entering the labor market and instead allowed workers to find jobs that suited their expertise and skills.<sup>112</sup> Overall, rates of poverty fell in the three months following the passage of the CARES

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*COVID-19 Crisis*, CTR. ON POVERTY & SOCIAL POL’Y, June 21, 2020, <https://static1.squarespace.com/static/5743308460b5e922a25a6dc7/t/5eefa3463153d0544b7f08b4/1592763209062/Forecasting-Poverty-Estimates-COVID19-CARES-Act-CPSP-2020.pdf>.

<sup>109</sup> See, e.g., Cyiera Roldan, *1.2 Million New Yorkers Excluded from the CARES Act*, FISCAL POLICY INSTITUTE, (May 19, 2020), <https://fiscalpolicy.org/1-2-million-new-yorkers-excluded-from-the-cares-act>; Stephen Roll and Michal Grinstein-Weiss, *Did CARES Act Benefits reach vulnerable Americans? Evidence From a National Survey*, BROOKINGS INSTITUTE (Aug. 25, 2020), <https://www.brookings.edu/research/did-cares-act-benefits-reach-vulnerable-americans-evidence-from-a-national-survey> (finding that Black and Hispanic households, part-time workers, those without bank accounts, and those with very low income were more likely to experience delays in receiving stimulus payments).

<sup>110</sup> Scott R. Baker, et al, *Here’s How Americans Are Spending Their Stimulus Checks*, KELLOGG INSIGHT, May 5, 2020, <https://insight.kellogg.northwestern.edu/article/stimulus-checks-spending-data-2020-coronavirus-covid>.

<sup>111</sup> Christine Chung, *Community Groups Ask New Yorkers to Pledge Fed Stimulus Checks to Vulnerable*, THE CITY, April 14, 2020, <https://www.thecity.nyc/economy/2020/4/14/21247102/community-groups-ask-new-yorkers-to-pledge-fed-stimulus-checks-to-vulnerable>; see also *#sharemycheck*, RESOURCE GENERATION, <https://www.sharemycheck.org/> (last visited Feb. 26, 2021).

<sup>112</sup> Lucas Finamor & Dana Scott, *Labor Market Trends and Unemployment Insurance Generosity During the Pandemic*, 199 Econ. Letters 5 (2021).

Act.<sup>113</sup>

Though, like the deconstruction of the family regulation system, this large-scale government entitlement program proved temporary and inadequate, it too proved the possibility of a version of government too often dismissed as fantasy. Society is accustomed, Dean Spade writes, to a binary choice between a government that “denies the disaster’s significance and abandons people to its devastation,” or a government that “responds with inadequate aid that comes with enhanced policing, surveillance, militarization, and wealth transfers to the top.”<sup>114</sup> So inured are we to this binary that it can feel impossible to imagine any choices beyond it.<sup>115</sup> But during the shutdown, as woefully inadequate systems that provide aid at the cost of human dignity receded and as the government, by and large, abandoned its people, New Yorkers envisioned and enacted a radical new society, in which government funds represented freedom rather than further oppression, and community members collectively coordinated to meet their own survival needs and to mobilize for change.

## CONCLUSION

As the COVID-19 pandemic has stretched on, it can feel impossible to find signs of hope within it. It has killed, as of this writing, more than 500,000 Americans, with Black, Indigenous, and Latinx communities disproportionately bearing the brunt of those tragic and needless deaths even as they are disproportionately called to the frontlines as “essential workers”; it has spurred the largest economic crisis since the Great Depression, leaving millions of families without sufficient food and on the brink of homelessness; and it has kept thousands of children nationwide from seeing their parents as they wait out the pandemic in foster care. Were that not enough, police have continued to murder Black Americans with impunity, those protesting the murders have themselves been beaten and prosecuted, and the former president cheered on the murderers while denying the validity of a democratic election and inciting an insurrection.

But this death and destruction—the rupturing of the interlocking systems of oppression that power this country—has, too, created a window onto a different world, one in which people are not controlled, regulated, and destroyed by the government in the service of the capitalist system, but instead collectively aid each other to ensure not just that community members have what they need to survive but to survive safely and to thrive.

New York’s shutdown forced a temporary but radical reduction of the family regulation system, halving the number of reports, investigations, and family

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<sup>113</sup> Jeehoon Han, Bruce D. Meyer & James X. Sullivan, Income and overtly in the COVID-19 Pandemic, 10-11 (Nat’l Bureau of Econ. Rsch., Working Paper No. 27729, 2020), [https://www.nber.org/system/files/working\\_papers/w27729/w27729.pdf](https://www.nber.org/system/files/working_papers/w27729/w27729.pdf).

<sup>114</sup> SPADE, *supra* note 86, at 39.

<sup>115</sup> *Id.*

separations, reducing surveillance of families in their schools and in their homes, and removing not only the intrusion but also the limited support of voluntary preventive services. Rather than endangering children, this shutdown protected them: rates of substantiated abuse did not rise and in fact may have dipped, rates of substantiated neglect remained unchanged, and children stayed ensconced in their families and in their communities rather than enduring the trauma of a separation, much less a separation with no family visitation. Families stayed safely together not because of the family regulation system but because of its absence. Even in the midst of the nonstop trauma of 2020, community members worked for and with each other, providing their neighbors food, diapers, childcare, mental health services, and redistributing government wealth.

Even once society recognizes, as abolitionists ask, that the family regulation system can be traced to slavery and to the racial capitalist regime and that its endless expansion functions to oppress marginalized groups to maintain that regime, it can be difficult, under the drudgery and daily struggle of the capitalist system, to find the space or the energy to imagine—let alone build—a more humane and democratic society. The COVID crisis, though, made that easier; we need not imagine, from whole cloth, how we might keep children safe in the absence of the family regulation system. Nor need we continue to speculate as to how we might address the child poverty that drives neglect reports without resorting to the violence of family separations. We have the answers. We can envision a world in which we address child poverty and child safety by providing families the monetary support they need, without strings attached, and by building robust community support networks, governed by principles of solidarity and collective caretaking rather than punishment and moral judgment. We can envision this world because, for a short time in 2020, we lived it.

Date: Mon, Jun 14, 2021 at 10:41 AM

My name is D W. I'm a member of the Parent Legislative Action Network. In December 2020 my adult son aged 25 and my husband got into a loud argument. The police were called and both were arrested and released within hours with a limited order to not menace one another in the apartment.

I have a 5 year old with my husband. After my son and husband returned to the apartment together a few hours later at about 1:30am ACS knocked on my door. I did not want to let them in so they threatened to call the police. I did not want the police to come back as whenever a black person interacts with the NYPD it can go very wrong and someone could end up dead. Not knowing my rights I let them. They woke up my child and stripped searched him for marks and bruises.

The worker told my husband he had to move out immediately when we refused she took us to court. This was at the height of the Pandemic and he had nowhere to go. We refused because the argument had nothing to do with me or my son and it was not a physical altercation. ACS filed an article 10 to remove my child. While the Judge did not honor the article 10 removal we are still taking stupid meaningless services of surveillance today.

I wish I had known my rights. I wish I had been Mirandized. Please pass legislation for parents to know their rights.

My name is Irma Rodriguez. I am the proud sister of a child with Autism, bipolar disorder and ADHD. Our experience with the children's center was horrible during covid 19 pandemic. My brother's length of stay was 4 plus months. During his stay he encountered staff that cursed at him because they were frustrated. I also witnessed how the staff would allow him to stay with his face dirty and wear dirty clothes. Due to their lack of care for his safety and cleanliness. He ended up diagnosed covid 19 positives. The treatment they provided when my brother was covid 19 positive highlighted the lack of preparedness. They put him in a room by himself, no tv, no sheets, no food, no shower, only a laptop for entertainment. One would call this solitary confinement. Which was not appropriate for a child with his mental capacity. All documented and sent to his advocates and it wasn't until then when ACS did the right thing and corrected their treatment. With a push of denial.

Even though school at the time was remote and ACS assigned a 1 to 1 to my brother. They couldn't get him up on time to make it to his virtual classes. Even though I would call ahead of his start time to assure he would attend or I would get lied to as staff would tell me he is up. The days they did get him on time he was not placed in a private setting. He couldn't stay focused because there were so many distractions. Such as other kids screaming, staff talking in the background, some children making inappropriate gestures on camera. There were times where they couldn't find his assigned laptop. He missed nearly 492 assignments. This is not even an exaggeration.

Virtual visit If I didn't have to call them to remind them. It would receive a video call after the set time we pre planned on. Visiting in person they always had an excuse as to why they weren't able to drop him off on time. Traffic, short staffed etc. This would cause me to lose visits. As I live in a different state. It got so bad I had to step in by having him one week on one week off without ACS providing me financial assistance or any other assistance other than transporting him one way to me on my weekday he was to visit with me. ACS was notified several times I needed help by me and his advocate. But, due to their response "they had to figure something out." I was in a position where I had to figure it out, adding more stress to an already stressful situation.

My brother was bullied by other kids, Glasses were stepped on by other children. Fights. Glasses not replaced in a timely manner. I can go on and on. All while having a 1 to 1. But I only have 3 mins. I just want to say I am here to speak up for those like my brother that can not speak for themselves. Please do better. Not every child has family members so involved in their daily life as I am with my brothers or able to take a financial hit as I did and still do just to continue to be there for him. These are human beings. We trust that the children entering ACS care are entering a safe place. It is my belief it is your job to make them feel loved, safe and supported in such a difficult time in their lives. I am asking to please work on not being part of the problem and work a bit harder on being the solution. To you this might be just one case. But to us ( the family ) it is one case 2 many.

Lastly, I want to thank my brother's advocate Sarah Bodak and her team. Each and every time I encounter and continue to encounter any issue. She and her team are ready to stand up for my

brother full force to make sure his needs are met without hesitation. If it wasn't for her and her team I fear he would've been just another sad story and static.

**I am still waiting on ACS financial support as court ordered till this day.**

Thank you all for your time today.

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