TESTIMONY OF:

Lauren Shapiro
Director, Family Defense Practice
BROOKLYN DEFENDER SERVICES

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Justice System and General Welfare
Oversight Hearing on Removals
from Parents and Caretakers In Child Welfare Cases.

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Introduction:

My name is Lauren Shapiro and I am the Director of the Family Defense Practice at Brooklyn Defender Services (BDS). Thank you to the Committees on the Justice System and General Welfare for this important opportunity to submit testimony about the harmful impact that the surge in the Administration for Children's Services' child welfare filings over the past two years has had on Brooklyn children and families and how this increase in filings has made it even more difficult to obtain access to family court for the cases that need judicial intervention.

BDS is a full-service public defender office in Brooklyn, representing approximately 35,000 low-income New Yorkers each year who are arrested, charged with abuse or neglect of their children or face deportation. Our Family Defense Practice ("FDP") was founded in 2007 when New York City first began funding institutional providers to represent parents in child welfare proceedings.[1] In our eleven years of service to the Brooklyn community, FDP has represented over 11,000 parents in Brooklyn Family Court and has helped more than 20,000 children remain safely at home or leave foster care and reunite with their families. We are the primary provider of

[1] These are also called Article 10 proceedings after the article of the Family Court Act which governs abuse and neglect proceedings.

representation for parents in Article 10 cases in Brooklyn Family Court and currently represent over 2,700 parents.

Over 90 percent of our clients are charged with allegations of neglect, rather than abuse. Most of these neglect cases are poverty-related, such as poor housing conditions, lack of adequate day care or children not attending school. Other cases, such as those in which domestic violence or excessive corporal punishment is alleged, are complicated by poverty. A large number of our clients struggle with mental health and/or substance abuse issues or are facing other challenges to parenting, such as intellectual or physical disabilities. Many of our clients are or were in foster care themselves.

There are also profoundly disproportionate rates of child welfare involvement within communities of color. Despite making up only 23% of New York City's child population, Black children represent over 52% of foster care placements.[2] Racial inequity is the result of structural racism that is embedded in our historical, political, cultural, social, and economic systems and institutions. Understanding the intersections of race, racism, immigration status, and poverty is critical to challenging inequity in the child welfare system. We acknowledge that ACS is working to address the systemic issues that lead to disproportionality by creating a new office to address racial equity after having a committee on this issue,[3] we see the harmful impact of disproportionality every day and believe this work should be done on an urgent basis.

Recommendation: We encourage City Council to work with ACS to require more reporting on the families involved in this system, which will help illuminate these disproportionate rates of involvement among communities of color, and will help ACS, advocates and community members to work to find better solutions that will ensure that our child protective system accurately represents and serves the needs of the City's children and families.

While our clients often have many needs that impact their ability to keep their families together, in our experience, the vast majority of families suffer much more trauma from being separated from each other than from staying together with supports in place. Social science research and recent statements from national medical and psychological organizations such as the American Academy of Pediatrics bear out the high cost of separating children from their parents.[4]

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[2] New York City Administration of Children's Services Community Snapshots, (2010, 2011, 2013); retrieved from: http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml.

[3] New York City Administration of Children's Services, Racial Equity & Cultural Competence Committee. available at https://www1.nyc.gov/site/acs/about/racial-equity-cultural-competence.page

[4] *See, e.g.*, American Academy of Pediatrics, AAP Statement Opposing Separation of Children and Parents at the Border (July 2018), https://www. aap.org/en-us/about-the-aap/aap-pressroom/Pages/ Statement Opposing Separation of Children and Parents.aspx (explaining that "highly stressful experiences, like family separation, can cause irreparable harm, disrupting a child's brain architecture and affecting his or her short- and long-term health"); Dr. Dana L. Sinopoli & Stephen Soldz, Petition from Mental Health Professionals: Stop Border Separation of Children from Parents!, https://childsworldamerica.org/stop-border-separation/stop-border-separation-text-preview/ (last visited June 19, 2018) (signed by 9,325 mental health professionals as of 6/19/18) ("To pretend that separated children do not grow up with the shrapnel of this traumatic experience embedded in their minds is to disregard everything we know about child development, the brain, and trauma."); Harold S. Koplewicz, Separating Families and Creating Trauma, Child Mind Institute (June 2018), https://childmind.org/blog/25095/ ("Every age is affected differently. In infants, toddlers and preschoolers, forced separation is almost worse than physical harm. Their major

As we explain in detail in this testimony, the increase in child welfare filings has led to an increase in removals of children from their families, many of which are unnecessary. These removals have, in turn, increased the number of emergency hearings at which a judge must decide whether a child should be placed in foster care. These hearings are taking place over days and sometimes months and are contributing to extensive delays in resolving the underlying issue of whether abuse or neglect has even occurred. All of these factors have placed an enormous burden on the court system which has led to long delays and decreased access to justice for families that require judicial intervention.

Increase in Abuse and Neglect Filings in Brooklyn over the last two years

Since the tragic death of Zymere Perkins in September 2016, child welfare filings in Brooklyn have gone up by 45% from an average of 142 cases per month to an average of 206 cases per month. Although the data may show that the number of children in long-term foster care has not increased overall, it is clear that the number of children initially removed from their parents or threatened with removals has vastly increased. To the extent that the numbers of children in foster care has not increased it is only because attorneys from Brooklyn Defender Services are actively litigating emergency hearings early on in cases – often preventing a foster care placement or ensuring the children's immediate return after they were removed without court order. In Brooklyn, the number of emergency hearings we are litigating has increased by 90% since October 2016. Our office is now litigating about 40 emergency hearings each month to keep children home or have them returned from foster care, resulting in hundreds of children never entering foster care or returning home very quickly. From July 2017 through October 2018, we litigated emergency hearings involving more than 600 children, and won or favorably resolved 66% of them reuniting families or keeping them together**.** Although many of the hearings we litigate result in children going or staying home, when children have already been removed or are under the stress of possibly being removed from their families, the removal itself is traumatic and affects a child's sense of security and attachment to their parents.

The increase in filings, without an increase in judicial resources, has negatively impacted the functioning of Kings County Family Court. In 2015, New York City Family Courts received nine additional judges, the first increase in the number of judges in over 20 years. Around the same time, Brooklyn Family Court was restructured in an attempt to expedite Article 10 cases which then had the longest time to disposition in the City. Four trial parts were designated to expedite emergency hearings and fact-finding trials where the underlying allegations of abuse or neglect are litigated to ensure a quicker resolution for families. Shortly after this, we saw a sharp increase in filings which led to a huge backlog of cases. This fall, Kings County also lost two Family Court Judges in the child protective parts, and we have not been advised whether or when these judges will be replaced. With the loss of judges and an increase in cases, the trial part system was dismantled and all judges are struggling with managing emergency hearings.

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developmental task — attachment to caregivers — is interrupted. This attachment bond functions as a blueprint for all future relationships and their primary coping strategy. Removing a parent removes a very young person's only method for regulating emotion and learning to respond to the world. These children are left confused and afraid, setting the stage for the chronic and repeated misfiring of their fear response.")

Harm of Separating Children from their Families

The decision to remove children from their parents is a grave one. Removal causes lifelong trauma to children and can often have lasting negative consequences, including psychological problems into adulthood. [5] The New York State Legislature has declared that it is in children's best interest to live with their parents "because the child's need for a normal family life will *usually best be met in the home of its birth parent*."[6] The Social Services Law further says that "the state's first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left the home."[7] The research also bears out that children belong with their parents whenever possible and that placement in foster care results in worse outcomes for children.[8] In our experience, the optimal outcome for children is remaining with their families whenever it can be safely achieved, even when their parents are less than perfect. Nothing less is required by the law. The foster care system is not a substitute for families. Children in foster care are likely to be moved multiple times; do not have the same opportunity for bonding with adults; are more likely to be arrested as they get older; and more likely to have children at a younger age.[9] Foster care should not be seen as anything but a temporary stop on the way to family reunification, except in very limited circumstances.

Although the Court of Appeals in *Nicholson vs. Scoppetta* made clear that courts must balance the harm of removal against the risk of harm to the children of remaining in the home, it is clear that ACS workers and their supervisors are not considering the harm of removal when they are deciding whether to separate children from their families. In an effort to address this problem, beginning in August 2016, we have worked with ACS to revise two Safety Alerts which discuss how the "harm of removal" should be considered in child welfare decision-making and how to minimize the trauma of removal. It took many months for ACS to sign off on these policies, and we have yet to hear back from the Office of Children and Family Services about approval of the safety alerts.

Under federal and state law, ACS is required to seek an order from a Family Court Judge before removing a child. However, the law permits ACS to remove children without a court order in an emergency situation when the danger to a child is so serious and so immediate that there is no time to go to court.[10] In those cases, ACS must go to court on the next court day and seek a court

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[5] American Academy of Pediatrics, AAP Statement Opposing Separation of Children and Parents at the Border (July 2018), https://www. aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationof ChildrenandParents.aspx (explaining that "highly stressful experiences, like family separation, can cause irreparable harm, disrupting a child's brain architecture and affecting his or her short- and long-term health")

[6] *See* N.Y. Soc. Serv. Law § 384-b (1)(a)(ii).

[7] N.Y. Soc. Serv. Law § 384-b(1)(a)(iii).

[8] See, e.g. Reva I. Allen, Alex Westerfelt, Irving Piliavin, & Thomas Porky McDonald, ASSESSING THE LONG TERM EFFECTS OF FOSTER CARE: A RESEARCH SYNTHESIS (Child Welfare League of America, 1997), cited in Allon Yaroni, Ryan Shanahan, Randi Rosenblum, & Timothy Ross, *Innovations in NC Health and Human Services Policy: Child Welfare Policy*, VERA INSTITUTE OF JUSTICE POLICY BRIEFS, Jan. 2014, available at http://www.nyc.gov/html/ceo/downloads/pdf/policybriefs/child-welfare-brief.pdf.

[9] Joseph J. Doyle, *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 AM. ECON. REV. 1583, 1584 (2007) [hereinafter "Doyle 2007"].

[10] Family Court Act Section 1024

order continuing the removal, or return the child.[11] Family Court Judges grant some of ACS' removal applications, but they also frequently deny these applications, finding that removal is unnecessary because the risk to the child is not imminent or can be mitigated with court orders or by providing the family with services, and/or finding that any risk of danger is outweighed by the severity of the harm that the removal would cause the children.

Recommendation: Given the highly traumatic nature of parent-child separation, unnecessary removals should be avoided whenever possible. Child Protective Service workers and their supervisors require greater training about the nature of the harm of removal and on the steps they can take to avoid removals while ensuring a child's safety. ACS should promulgate the proposed safety alerts and conduct massive training on them.

Unnecessary Removals due to Lack of Access to Court Oversight

Even in cases in which ACS does file a petition asking a Judge for an order to remove a child, Family Court Judges often refuse to hold immediate hearings, increasing the chances of an unnecessary removal.

For example, we had a case in which ACS filed a petition alleging that our client's children had been missing school and that her home was dirty, and asked the Court to remove the children. Our client, a working single mother of eight, opposed the removal and asked the court to hold a hearing before removing her children, but the court refused. Instead the Judge issued an order temporarily removing the children and placing them in foster care pending the outcome of the hearing, which it scheduled for two days later. ACS removed our client's children pursuant to the order and brought them to the Children's Center, where they stayed until 3:00 a.m., at which time they were moved to their aunt's home. The next day, the children were not brought to school. When we appeared in court for the hearing two days after the removal, ACS agreed to return the children to their mother.

It is common for Family Court Judges to refuse to decide an application for removal, instead scheduling the case for a hearing the next day and telling the parties that "ACS has its emergency removal powers."

This practice, which we believe is unlawful, is harmful to children because it increases the likelihood that ACS will make a decision to remove unnecessarily that will then be reversed by a Judge. Additionally, it deprives children and parents of the opportunity to present evidence to the court to demonstrate that the children can remain safely at home, particularly where court orders might help to ensure the children's safety. It also deprives the family of the opportunity to present evidence of the irrevocable harm that removal will cause the children until after that harm has already been done. Telling ACS to make the decision in the first instance without the benefit of judicial oversight frustrates the purpose of that oversight, allowing more erroneous and harmful removals to be conducted, only to be reversed later.

[11] Family Court Act Section 1026

Unnecessary Removals due to ACS Misuse of "Emergency Removal Powers"

Since 2010, we have been working with ACS to reduce the number of unnecessary removals city-wide, focusing on cases in which ACS removes a child first and then comes to court later, only to have a Judge decide that the child can safely remain with the parent. Although ACS developed a new policy in response to our concerns in 2011[12] and the number of emergency removals went down after issuance of the policy and training, we still see many cases in which the trauma of removal could have been avoided if ACS had come to court to seek permission to remove the child instead of using its "emergency removal powers."

1) One client of ours had her five children, ages 3-15, removed from her care twice without a court order, only to be returned to her care once the removal application came before a Family Court Judge. The first time, two of the younger children were found leaving the family's shelter alone. Our client returned to the shelter immediately and explained that she had left her children in the care of their 15-year-old sister while she went to work. ACS nevertheless removed all of the children from her care and placed them in the Children's Center, where they spent the next two nights. On the following day, the case was scheduled for a hearing to approve or deny ACS' removal application. Instead of going forward with the hearing, ACS agreed to return the children to their mother. Two months later, ACS came to the shelter in the evening and found the children home alone. Our client returned from running errands shortly after the ACS worker arrived and explained that she has arranged for a babysitter but that person had apparently left. The ACS worker initially left the children in our client's care, but returned at 2:15 a.m. and removed them. The following day a Family Court Judge ordered the children returned to their mother once again.

2) ACS removed our client's nine-year-old son for the first time in November 2017 when our client and her husband were arrested. Our client was released immediately, but ACS refused to return the child to her. He was kept in the Children's Center for four days. When the parties appeared for a hearing on the removal, ACS agreed to return him to his mother. Then, in July 2018, ACS received a report that the child had been injured by his stepfather. ACS visited the home to investigate twice in the two days after the report, but did not remove the child. Three days after the report was received, ACS removed the child without a court order based on the injury that had occurred three days earlier. ACS sought a court order the day after the removal; the case was scheduled for a hearing on the following day; and on the day of the hearing, ACS agreed to return the child to his mother.

3) ACS removed two children, ages one and five, from their parents because their father called ACS and said he could no longer care for them and their mother (our client) was not home. Instead of contacting the mother, or her counsel, or filing a petition in court, ACS removed the children without a court order and took them to the

[12] ACS Policy # 2011/01: Conducting Emergency Removals (2/23/11)

Children's Center. ACS filed a petition the following day. Our client appeared in court and asked for the children to be released to her care. ACS refused and the case was scheduled for a hearing the following week. When the parties appeared for the hearing, ACS agreed to release the children to our client. The children had been in the Children's Center for a week.

4) We represent a young mother who is currently in foster care herself and resides with her son in a mother-child program. On July 19, 2018, our client and her son were outside playing when her son ran into the street. Our client ran after him, but before she could get to him, he bumped into the back of a car. He was brought to the hospital where he was evaluated and released without marks, bruising, or pain. On Monday, July 23, 2018, a nurse at the mother-child program reported the incident to the ACS caseworker and additionally alleged that our client slapped her son the day before. ACS removed the child without a court order and brought him to the Children's Center. When ACS did seek a court-ordered removal, our client requested a hearing, and on July 31, 2018, she was granted an extended overnight visit. The visit was delayed because ACS had already placed the child in non-kinship foster care in violation of the court's orders. On August 2, 2018, the hearing concluded and the court returned the child to his mother, finding no legal basis for the weeklong removal.

Unnecessary removals frequently occur when a parent with older children in foster care has a new baby, or what are referred to as "Safety Alert 14" cases. "Safety Alert 14" is an ACS directive that requires foster care agencies to report a case to the State Central Registry when a parent who has children in foster care gives birth to a new child. Although Safety Alert 14 requires agencies to do pre-birth planning which could avoid unnecessary removals of newborns, in practice, it is difficult to get the agencies to schedule these planning conferences. In addition, even when they do have these conferences, there is no mechanism to involve ACS before the birth of the child, which results in decisions about newborns unnecessarily being treated as emergencies by ACS. This then results in many newborns remaining in the hospital after they are otherwise ready for discharge, thereby separating the mother from her newborn even when ACS ultimately agrees the newborn can be released.

1) Our client had her two-day-old infant removed from her care without a court order solely because she had several older children who were the subject of ACS cases: two of those children were in her care under ACS supervision, and two were in kinship foster care and had unsupervised visits with her. Our client had planned to breastfeed her baby but was unable to do so due to the removal. The following day, ACS filed a petition in court and agreed to return the baby to our client.

2) Our client had her newborn baby removed from her care without a court order solely because she has an older child in foster care. Although ACS knew she was pregnant and the foster care agency case worker in her older child's case had no safety concerns about her caring for the newborn baby, ACS told the hospital not to release the baby to her. ACS nevertheless did not file a petition or seek a removal order until three days after the baby was born. Our client requested a hearing and at the

conclusion of ACS' evidence, the Family Court Judge ordered her infant daughter released to her care. As a result of ACS' decision to remove the newborn baby without a court order, she was unnecessarily kept in the hospital, away from her mother, for a week, unable to nurse.

3) Another client's two-day-old baby was held in the hospital at the direction of ACS when she was discharged after giving birth because she had an older daughter in foster care. The foster care agency in charge of her daughter's case had known about her pregnancy yet failed to hold a planning conference to consider releasing the baby to her even though she was permitted unsupervised visits with her older daughter. Although the baby was medically ready for discharge on Friday, the hospital was instructed by ACS not to discharge him to his mother until the following Monday, when ACS finally decided not to seek a removal and he was released to his mother's care.

Unnecessary Requests for Remands and Delays in Litigating Emergency Hearings

Since 2016, when filings started to escalate, ACS has increasingly asked the Family Court to remand children into foster care without carefully assessing whether a removal is really necessary.

In one case, ACS filed a petition and asked for a removal on a day when our client had told ACS she was unable to come to court because she did not have carfare. ACS asked the Judge to remove our client's two children because they claimed that she had been smoking marijuana with her four-year-old son. The Judge granted the removal based on this information and adjourned the case for two days. Instead of removing the children, ACS told our client to bring the children to court two days later. The case was in front of a different Judge that day, and although our client and the children begged the Judge not to remove them, the new Judge said they had to be removed because it was already ordered by a different Judge and she could not reverse the decision without first holding a hearing. The earliest the court would hold the hearing was the following week. On the day of the scheduled hearing, ACS agreed to release the children back to their mother, after the children had spent four days separated from their mother during which time they had only one agency and one resource supervised visit. After the children were returned, we discovered that ACS had already determined long before filing the petition that the allegation that our client had smoked marijuana with her son was unfounded. The family court ultimately dismissed all of the allegations that formed the basis for the children's removal based on ACS's own records of their investigation prior to the filing of the petition. ACS agreed to the dismissal of the remaining allegation, that our client herself used drugs, after she repeatedly tested negative for all illicit substances.

ACS also frequently seeks to remove children in cases where there are unexplored options for keeping the family together – often where the parent has expressed a willingness to engage in

services that could permit the children to remain home safely or the family has not yet had a meaningful opportunity to do so. In many of these cases, there is very little social work being done by ACS at the start of the case and very little problem-solving. ACS does not appear to be thinking about orders that can be put in place to eliminate risk and is using the filing of a court case as an opportunity to force compliance. On a daily basis, we are starting hearings, litigating them from week-to-week or day-to-day, and then either winning these cases or settling them with agreements to release the children after a safety plan has been developed. Starting hearings where settlement is possible is a waste of judicial, ACS, and attorney resources. Moreover, these short-term foster care stays are clearly harming children by disrupting their sense of security and normalcy.

The increase in requests for remands has led to a dramatic increase in the number of emergency hearings. As a result of this increase in emergency hearings, ACS case workers are spending more time coming to court to participate in emergency hearings. This results in their having less time to investigate cases and to work with the other families to whom they are assigned. For non-emergency appearances, such as conferences or permanency hearings, we encounter the repeated and persistent problem of no report prepared for the court and no case worker with actual knowledge of the case appearing in court. A regular consequence of case workers being overburdened by their large caseload is that they send coworkers to cover for them who do not know anything about the family or their services. In that situation, the case is often adjourned, further wasting court resources and prolonging resolution of the case.

Courts hold emergency removal hearings under either section 1027 or 1028 of the Family Court Act. Under 1027, where no remand order has been entered, parents can challenge ACS's request for a remand and the court must start a hearing by the next day and then continue the hearing day to day as necessary. Under section 1028 of the Family Court Act, when a parent requests the return of their child after a removal order has been entered, the court must commence that emergency hearing within three days of the request unless good cause can be shown why it should be delayed, and once commenced, it shall not be adjourned. In practice, courts are struggling to fit in all of the emergency hearings being requested and as a result, they are often being held for 15-30 minutes at a time and being adjourned for weeks, or even months. These are some examples:

1) A client's two young children had been in kinship foster care with their grandfather for several months, during which time our client completed the parenting class that ACS recommended and had become fully engaged in counseling services. When the client learned that her father would no longer be able to care for her children due to a medical issue, the client requested that her children be returned to her pursuant to section 1028. While the first hearing date was scheduled within the statutorily required three days, the hearing did not conclude for four months. Although the testimony at the hearing came from only two witnesses, that testimony was spread out over the course of 13 appearances between June and October 2018 with one adjournment lasting 56 days. At the conclusion of the hearing, the family court returned the children to our client, but during the four months that it took to complete the hearing the children were required to live in foster care with strangers.

2) In another case filed in May 2018, we requested a 1028 hearing on June 6th. After 20 court appearances, we prevailed on the case after ACS finished presenting their evidence on November 15th – more than five months after the hearing was requested.

3) Our client's five children (ages 2-10) were removed from her care when she was nine months pregnant with her sixth child. As soon as her daughter was born, just two weeks later, ACS removed her as well. We litigated an emergency hearing for the return of all six children over the course of nearly six weeks. Initially, the children had been split into groups of three and placed with family members. However, throughout the course of the hearing, the three oldest children were again removed from family and placed in non-kinship foster care with a family that spoke only Spanish, even though the children did not speak Spanish. They were then removed from that home and separated into two different non-kinship foster homes until the hearing ended. After eleven court appearances, the Judge agreed to release all of the children to our client's care.

4) In another case filed in October 2017, our client's two-month-old baby was removed from her care for almost a month. The Judge agreed to return our client's baby to her after 6 court appearances and he has remained safely with his mother since that time.

5) Our client's ten-year-old and two-year-old sons were removed following her arrest. We ultimately prevailed on the 1028 that spanned across seven court appearances over seven weeks. The hearing consisted of two witnesses for ACS and one witness for us (our client). The Judge was unavailable for three weeks in the middle of those seven weeks, further delaying the hearing. The children, who had never been separated from one another, were split into two different kinship foster homes. Although they were kinship, the two foster parents did not live near each other, and it wasn't until the judge awarded unsupervised time (about halfway through the hearing) that the children had meaningful sibling visitation. Additionally, the eight-year-old had been attending school across the street from his home before his removal. ACS never ensured that he received bussing from his foster home, despite their legal obligation to do so (and a court order by the Judge to do so). For one month, he commuted over an hour to school and regularly missed the daily school breakfast.

Increased Backlog in Brooklyn Family Court Resulting in Long Delays in Resolving Cases.

With the increase in filings and emergency hearings, judges' calendars are backlogged and fact finding trials are being adjourned for months at a time, even when parents and children are separated from each other. Parents come to court repeatedly despite delays in their case, compromising their employment, delaying visits with their children who they are separated from, and often causing them to miss mandated service requirements. These are some examples of delays:

1) In a case filed in December 2016, the child was removed from our client. The fact finding trial commenced in October 2017 and was adjourned six times after that. The

most recent adjournment was due to the court hearing an emergency hearing on an unrelated case. This month, the child was released to both parents. However, the case remains open and the trial is now adjourned to January 2019 - two and a half years after the case was filed.

2) In a case filed in October 2016, the trial was originally scheduled for September 2017 but was delayed because the court was unavailable. The case was adjourned to December 2017 when it was again adjourned due to the court's unavailability. The trial commenced in May 2018 for 30 minutes. The matter was adjourned to a second date in May 2018 for an hour. After an hour of testimony, the hearing was adjourned to June 2018. On the June date, the court informed all counsel that it was unavailable and adjourned to November 2018. Again, the court was not available on this date and the trial was adjourned a fifth time to December 2018, over two years from when it was initially filed.

3) In a case filed in April 2017, the trial commenced that November for one hour. Then, the trial was adjourned for three months to February 2018. In February 2018, the court did not have the trial time available and the trial was adjourned a second time to June 2018. In June, the trial continued for one hour and was adjourned a third time to February 2019, 15 months after the start of the trial.

Another reason that fact findings are being delayed is that attorneys for ACS are struggling with too many cases and do not turn over discovery on time. These are some examples:

1) In a case filed on September 20, 2017, the trial was scheduled a year later on September 20, 2018. However, it could not go forward on that date because ACS had not provided the discovery. The trial was rescheduled for February 2019, but ACS then missed the new discovery deadline of October 23, as well as a follow-up deadline of November 9. At this time, critical discovery has still not been provided and the February 2019 trial date appears to be in jeopardy. The subject child in this case, who has special needs, remains in non-kinship foster care even though the child's lawyer believes the allegations are in error and supports the child going home.

2) In a case filed on December 5, 2017, the trial was scheduled for October 2018, but could not proceed because ACS had not provided discovery despite numerous requests. The trial has been rescheduled for February 2019, but ACS has already missed the new discovery deadline meant to get the case on track. ACS finally provided discovery earlier this month on November 9, 2018, approximately eleven months after the filing.

3) In a case filed on May 24, 2017, the trial was scheduled for over a year later on November 7, 2018. Despite several requests, discovery was not provided until the very day of trial. Given the delays, the judge insisted that the trial go forward. The trial started and was then adjourned to March 4, 2019 for continued proceedings.

4) In a case filed on December 14, 2017, the October 2018 trial had to be adjourned because ACS had not provided discovery. ACS provided the records the day after the missed trial date. The case is now adjourned to January 30, 2019.

Unnecessary Court Filings

Although filing a court case can be instrumental in staving off a later removal, there are many filings that bring people into court when court intervention is not necessary and workers are using precious resources that could be better spent elsewhere. For example, we see many cases involving allegations of one-time use of excessive corporal punishment or one-time domestic violence cases (sometimes outside the presence of children) without a sufficient assessment of risk to the children and without a sufficient assessment of what services are needed for the family. In some cases, we see filings against non-parents (persons deemed "Persons Legally Responsible" for a child) where there is no longer a relationship with the parent and no contact with the children. We are also seeing more cases where marijuana use is the only allegation. In many of these cases, the family is not being given a chance to first cooperate with preventive services and ACS is not working with the family to find services prior to filing. Many of these cases are also resulting in requests for remands or exclusions without ACS making efforts to keep the family together.

Recommendation: ACS should end its punitive response to marijuana. ACS should examine its approach to cases involving allegations of drug use and develop policies and practices to ensure that ACS intervenes and files a Family Court case only where there is actual evidence that a parent's drug use is harming or poses a risk of harm to the children and referrals for costly, time consuming treatment programs are made only when unnecessary. Children should not remain in foster care solely on the basis of positive tests for marijuana where there is no evidence that the parent was under the influence in the presence of the children. ACS should train workers on the nature of addiction and about harm reduction programs that use a public health approach, identify drug treatment programs that provide services in the home or outside work hours and permit families to continue to reside together so that a parent does not have to choose treatment over his or her family and children are not unnecessarily placed or remain in foster care because a parent needs treatment.

Our experience is that referrals for services are very delayed prior to filing and after filing of the petition, especially where children are released to parents or relatives and ACS is monitoring the family. This also causes frequent adjournments in court and clogs the court system. We are seeing many cases in which ACS files a petition and seeks court ordered supervision but then provides the family with no services for months. ACS' inaction in these cases suggests that they are not truly concerned about an imminent danger to the children, which begs the question as to why court and ACS resources are being used in the first place.

Article 10 Pre-Petition Advocacy Prevents Removals

Pre-petition access to counsel helps prevent unnecessary removals of children from their families and avoids unnecessary Family Court litigation by giving parents who are under investigation by

ACS access to expert legal advice and social work services before ACS seeks to remove children or files an Article 10 petition in Family Court.

Recommendation: We strongly urge the City Council to fund this important work and ensure that parents are aware of their rights during an investigation and are given every opportunity to keep their children safely at home with them.

BDS currently engages in pre-petition advocacy on a limited basis on behalf of current clients of BDS or people who come to our community office. Through legal advice and informal advocacy, we are often able to resolve ACS cases in ways that prevent unnecessary removals without court involvement.

> In one recent case, the family originally came to ACS's attention because of abuse allegations which turned out to be unfounded. However, in the course of the investigation ACS discovered that the child had many school absences and began investigating the mother for educational neglect. The mother reached out to our office, and we assigned a social worker to advocate for her. The social worker discovered that the child had significant special needs and his mother had been transferring him between different schools hoping to find a school that could meet his needs. After BDS helped her obtain a placement for the child in a special education school, the child's attendance improved and the case was resolved without an Article 10 petition ever being filed.

Through our criminal practice, BDS has also been able to engage non-custodial parents in cases in which they would not otherwise have taken part in court proceedings, thus expanding the family resources available and improving outcomes for children and families. For example, our Mandarin-speaking staff has worked with numerous immigrant families in which a parent works out-of-state for long periods of time. Between the geographic distance and the language barrier, ACS is often unable to communicate with these parents or provide notice of a pending case. In many of these cases, our staff has successfully reached out to these parents and explained the court process allowing them to make informed choices about how to participate in Article 10 proceedings regarding their children.

Most parents involved in an ACS investigation are unlikely to have access to counsel or an advocate/social worker to assist them. We often see petitions filed in situations in which earlier access to counsel could have resolved the underlying issues and prevented the Article 10 petition from being filed entirely.

> For example, BDS currently represents a young mother in a case alleging educational neglect and lack of stable housing. The family was homeless and had been bounced between various shelters all over New York City for most of the school year. The Department of Homeless Services repeatedly found the family ineligible for shelter on the grounds that they could reside with the maternal grandmother, who herself had an ACS case when our client was a child; our client had been removed from her care due to maltreatment. Our client was scared that her own children would be unsafe living in the same home with her mother, so each time she was found ineligible for shelter she returned to the PATH intake office to reapply. The negative effects on school attendance

> for families being found ineligible for shelter and bounced around the city between different placements is well documented.[13] Our client wanted to minimize disruption in her daughter's schooling by waiting until they finally obtained stable housing to enroll her in the local school. But that process took far longer than she anticipated. In the meantime, ACS had received a report that the nine-year-old had not been attending school, and when they tried to investigate, they were unable to make contact with the mother because she was moving around. After filing, BDS was immediately able to assist her in establishing her shelter eligibility and obtaining a stable shelter placement. She enrolled her daughter in school, and her daughter finished the school year and was promoted to the next grade. If BDS had been able to assist this mother when the ACS case was first called in, we could have helped her establish shelter eligibility so that she would have had a place to stay and enroll her daughter in school, eliminating the need for an Article 10 filing entirely.

Organizational providers of parent representation should be funded to provide pre-petition representation. We could operate a hotline for parents who are the subject of an ACS investigation and parents could receive legal advice and, where appropriate, social work advocacy. Our social workers would be made available to attend conferences with parents prior to filing and immediately intervene to provide services and afford the parent the benefits of BDS's resources. Often the involvement of social workers in ACS case conferences results in better outcomes by increasing the parent's participation and by helping to inform a positive outcome. This facilitates the creation of service plans that better reflect the particular needs of the family, preventing unnecessary litigation and keeping children safely at home. Expanding this advocacy to include parents who are the subject of ACS investigations would expand these benefits to more families, thus obviating the need for removals and court involvement in many of these cases.

Thank you for your time and considering BDS' comments. If you have any additional questions, please reach out to Lauren Shapiro at lshapiro@bds.org or 347-592-2510.

[13] *See, e.g.*, Elizabeth A. Harris, *For New York City's Homeless Children, Getting to School Is the Hard Part*, N.Y. TIMES, Oct. 10, 2016, available at https://www.nytimes.com/2016/10/11/nyregion/for-new-york-citys-homeless-children-getting-to-school-is-the-hard-part.html.