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My name is Brian Jones and I am a Senior Attorney with the Family Defense Practice at Brooklyn Defender Services (BDS). On behalf of BDS, I would like to thank the New York City Council's General Welfare Committee for holding today's important hearing on racial disparities in the child welfare system. We appreciate the opportunity to speak about the inequities in this system which targets and surveilles mostly Black families and other communities of color in New York City. We need to shift public opinion about the racial inequities in the child welfare system, as we have started to do with the criminal legal system. Public hearings like this one today offer a critical opportunity to shine a light on the laws and policies that have perpetuated this punitive system for far too long.

BDS is the primary defense provider for those arrested in Brooklyn and for parents and caretakers in Brooklyn who are facing ACS investigations or child neglect and abuse cases in family court. We represent over 30,000 people each year in criminal, immigration, family, and civil matters. We use a multidisciplinary approach that offers our clients access to social workers, advocates and civil and immigration attorneys who work to minimize any collateral impact of our clients' court cases. Our Family Defense Practice represents about 4,000 parents each year. We have represented over 13,000 parents and caretakers in Brooklyn Family Court and have helped more than 20,000 children remain safely at home or leave foster care and reunite with their families.

New York City's Family Regulation System Targets Black Families and other Communities of Color

This is a unique moment where a world-wide public health pandemic has laid bare the profound inequities in our City and country that have deepened the disparities in healthcare, employment, and housing and made marginalized communities more vulnerable to systems-involvement¹. As a nation we are also experiencing a long over-due public reckoning of systemic racism and police violence. This is an opportunity for our City to explore the systems, including ACS, that have historically targeted communities of color and to make bold policy changes that hold these systems accountable and ensure that families receive the support and resources, not surveillance, that are needed to keep families together and to thrive.

Like the criminal legal system, race and poverty are defining characteristics of the family regulation system, commonly referred to as the child welfare system. Despite making up only 23% of New York City's child population, Black children represent over 52% of foster care placements.² Of NYC children with indicated reports in the State Central Registry, 42% are Black, 40% are Latinx, and 6% are white,³ although overall 32% of New Yorkers are Latinx and 27% are white. Black children also fare far worse in the foster care system and have much longer stays in care⁴.

Most of the people we represent are people of color living in poverty, raising their children in homeless shelters or public housing, and in highly policed neighborhoods, making them vulnerable to government surveillance, including ACS. Families living in homeless shelters, under incredible economic stress, are living under the fear that one argument between parents or one moment of impatience with a child may lead to a knock on their door from a child welfare worker. School attendance interrupted by homelessness or lack of internet access, or an angry landlord seeking to evict a family illegally can result in a call to the State's Central Registry of Child Abuse and Maltreatment (SCR) and begin an investigation into a family⁵.

While nearly 60% of calls made to the SCR in NYC are unfounded,⁶ the risk of ACS involvement and the removal of a child is far greater for families of color. In NYC, Black and Latinx children are 13 times more likely than white children to be placed in foster care⁷. For parents struggling with mental health conditions, cognitive delays or addiction, the system is often perceived as a punitive one rather than a restorative and supportive one. While our clients usually have many needs that impact their ability to keep their families together, in our experience many of these families suffer more trauma from being separated than from staying together with supports in place.

¹ Villarosa, Linda (April 29, 2020) "A Terrible Price: The Deadly Racial Disparities of Covid-19 in America"; New York Times; Mays, Jeffrey C. Andy Newman. (2020 April 8). "Virus is Twice as Deadly for Black and Latino People Than Whites in N.Y.C." New York Times.

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.

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<https://ocfs.ny.gov/main/recc/Exec%20Staff%20DMC%20presentation%20child%20welfare%20color%20070911.pdf>

⁴ <https://www.gao.gov/new.items/d07816.pdf>, page 4.

⁵ <https://www.nydailynews.com/new-york/ny-homeless-mother-nyc-truancy-school-doe-shelter-wifi-remote-learning-20201026-jl55pntulfejbfwt3etgxyfsm-story.html>

⁶ <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2020/09.pdf>

⁷ https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015.pdf, page 7.

Far too many parents have cases called in against them because that is often the fastest route to services and resources for families. In many cases, the issues that brought a family to the attention of ACS is poverty. Far too often the response of mandated reporters is to call ACS instead of helping families access resources, such as stable housing, food, and adequate childcare. Families are pulled into a system of services that pathologizes their economic status and further exacerbates the concept of the “deserving and undeserving poor.” There are two types of preventive services in New York City, services that only ACS can offer and services that families can access through community-based organizations. The vast majority of resources are only available through ACS with very limited services available through community-based organizations.

The Racial Disparities and Harm ACS Causes Families of Color are Perpetuated by the NYC Family Court

About half of the families who ACS indicates a case against are brought into family court. When litigants enter Family Court, they are first greeted by metal detectors and then armed court officers. The mostly white professionals who enter the same courthouse walk to the right and bypass the metal detectors. Litigants, who in New York City are mostly people of color, must wait in a line that snakes through the lobby only to be asked to remove their belts, empty their pockets and have their personal belongings searched and then they must walk through a metal detector. This happens to children and adults alike.

The only court staff available to answer questions about where one files an application for an order of protection, child support or the nearest bathroom, are armed court officers. The presence of armed court officers in Family Court contributes to the perception that family court is another institution which polices and controls communities of color. Court officers often escalate rather than de-escalate the invariably tense situations that arise in a very adversarial and confrontational system. Food and drinks are not allowed, despite the regular presence of children in the courthouse and the long wait most litigants must endure. Parents who are nursing have nowhere private near the courtrooms where they can breastfeed their children. Under the pretext of maintaining order and protecting children, armed court officers respond to parents who are emotional or angry as though they pose threats to the safety of the courthouse. Judges similarly view a parent’s anger and frustration with a system many perceive as unjust as threats to their children’s safety, perpetuating the trauma that parents and children alike experience in family Court.

When family court was open physically, the role of armed court officers also extended to directly removing children from their parents. When court officers are notified that a removal may occur, they usually separate children from their parents often before a court has even ruled on the government’s removal application, prioritizing “keeping order” over the emotional needs of children and parents. Judges and court officers will regularly ask for additional officers to enter a courtroom after a judge has determined that a child is to be removed from their parent’s custody, even in cases where there has been no evidence that the parent would not respect the court’s order. In one egregious example, a BDS client was breastfeeding her newborn in the courthouse and multiple armed officers removed the baby from her breast. In another example, a teenage child was removed from his mother’s custody in the courtroom by ten armed court officers and taken into the corrections section of the courthouse because he was upset by the judge’s decision. The use of armed officers to remove children exacerbates the trauma of removal to families and

contributes to the feeling that family court is another system that polices and controls communities of color. Like the calls to remove armed officers from schools, we strongly urge the Council to support efforts to remove armed officers from family courts.

Our clients experience of family court in NYC has been described by judges, attorneys and advocates across the State. This month, the New York State Special Advisor on Equal Justice in New York State Courts issued a report on the state of New York's court system, shedding light on this "second-class system of justice for people of color in New York State"⁸. The Special Advisor heard directly from family court judges who reported that the high volume of cases in court make it more likely that a judge will rely on implicit bias in decision making and force judges to rush when making decision about when to remove a child from their home.⁹

COVID and NYC's Family Regulation System

The communities targeted by the family regulation system prior to the COVID-19 pandemic are the very communities hit hardest by this crisis. Communities of color in NYC are struggling to manage job losses, housing instability, few permanent housing opportunities, limited access to remote education, and the loss of family members to the pandemic. The pandemic has only made these communities at greater risk of involvement with the family regulation system. COVID has affected contact between parents and children in foster care, access to education for ACS-involved children, has caused an unprecedented delay in family court cases and impacted access to vital services and resources that parents and children need.

For those with open ACS investigations or child neglect or abuse cases in family court, COVID-19 has had a significant impact on their families and cases. In March, when New York State issued a stay-at-home order, many of the programs serving families at risk of ACS involvement and serving families with open investigations and cases paused most in-person programming. Programming continued online leaving many parents without services or limited access to services.

With the physical courts closed to the public, parents who are brought to court by ACS have struggled to access the virtual courts and their court-appointed attorneys. Our office worked with the other city-wide family defense offices to address this issue early in the pandemic by creating a flyer with our contact information for ACS to provide all parents under investigation and before they come to court. It has been our experience that most parents are not given our contact information during the investigation and only moments before a case is filed in court. With earlier and better communication about accessing advocates, parents would be better able to plan to appear in court and know what to expect at a virtual court appearance.

Tragically, COVID has also interrupted visitation for so many families with ACS involvement. At the beginning of the pandemic, there was a lot of confusion about how parents and children could safely visit with each other. Far too many families went without visits and many families were forced to visit by telephone or video only. Many parents and children did not have regular access to devices or internet that make video visits possible and many parents were pressured to forgo in-

⁸ <https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>.

⁹ *Id.* at 56.

person visits to preserve foster care placements for their children. Eight months into the pandemic, many in-person visitation between parents and children has resumed and, yet far too many families continue to only have virtual visits. We have observed that there is no uniformity in visitation policies across foster care agencies, resulting in some parents who were ordered to have two or three agency visits with their children in a week limited to one visit. Even today, parent's in-person visiting with their children continues to be extremely curtailed as a result of COVID-19.

COVID-19 also caused family courts in New York City to shutdown physically in March. Since then, the City's family courts have prioritized hearing new case filings where ACS is seeking a removal of children from their families or exclusion of a parent from the home. Despite the prioritization of these emergency applications, hearings for the return of children to their parents are taking days or weeks to complete due to inadequate virtual courtroom time. Very few trials have been held, extending the time that families are living under ACS supervision without a finding of wrongdoing. Many parents with criminal orders of protection have been prevented from seeing their children because they have not able to access family court to seek a visitation order since March. Some judges have begun to hold conferences in pending cases or agreed to settle cases where all parties agree; however, most families have experienced a significant delay in their court case because judges are not scheduling new trials until next year. While the City takes credit for the decrease in the number of children in foster care, court cases remained chronically high long before the pandemic. We are very concerned about how this overburdened system will further delay reunification between children and their parents and how the courts will be able to resolve matters timely. Before the pandemic, cases dragged on for months, and very often years, while families waited for service plans to be created, referrals to be made, and hearings and trials to be heard and determined. All these harms to the communities of color involved in the family court system have been exacerbated by the unprecedented delays caused by this pandemic.

Bold, Progressive Legislation is Needed to Address the Inequities in the City's Child Welfare System

Last year, City Council and the Progressive Caucus introduced a package of bills that seek to address the profoundly disproportionate rates of ACS involvement within communities of color in New York City. We applaud City Council for this effort and hope to see these bills passed this year in order to hold this system accountable and to ensure fewer children enter the system by relying on systems of community-based support.

NYC Needs to Maintain and Publicly Distribute Accurate Data About the Racial Disparities Among Families Impacted by ACS

Many of the bills introduced last year with the intention of holding ACS accountable to the communities it serves and the City at large address the need for widespread, reliable, and consistent data about the racial and economic makeup of the families directly impacted by ACS. Unless this information is collected, documented and made available to communities and advocates, affected communities will not be able to accurately assess the effectiveness and bias of the child welfare system. This information is needed to identify the nature and extent of the disparities within the system, to identify areas and policies for improvement, and to monitor progress.

Early Access to Legal Assistance During ACS Investigations

Having access to legal assistance at the beginning of a child welfare investigation can ensure that parents and caretakers understand the process, can result in speedier referrals to important supportive services and help avoid family court filings or the removal of children. Thanks to the generous support of City Council, many parents in New York City have been able to access the support of legal advocates at the early stages of an ACS investigation and the results of this representation show that outcomes are better when parents have support early on.

Last year, City Council introduced a critical bill that would address the imbalance of power and bias in ACS investigations. When ACS investigates a family after a call is made to the SCR, ACS will often begin their investigation by visiting the family's home and speaking with the subject parent or caretaker. Parents we work with have long described these investigations as frightening and overwhelming. Families already living under close surveillance by police, shelter and hospital staff, are subjected to middle-of-the-night visits, body searches of their children, and invasive questioning about their family, relationship history and are often asked to sign documents waiving privacy rights out of fear of losing their children.

There is widespread agreement that families facing child welfare investigations benefit from early representation. In February 2018, after conducting an extensive investigation and hearing from many child welfare and Family Court stakeholders, the New York State Commission on Parent Representation issued a report to Chief Judge Janet DiFiore which recommended that parents be “timely provided with relevant information about the right to counsel, and that parents be granted access to counsel during a child protective agency investigation and sufficiently in advance of the first court appearance.”¹⁰ Even the federal Administration for Children and Families has come out in support of early assignment of counsel: “[t]here is a growing body of empirical research linking early appointment of counsel (at or prior to a party's initial appearance in court) and effective legal representation in child welfare proceedings to improved case planning, expedited permanency and cost savings to state government.”¹¹

With funding from the Council, BDS has been able to assist over 600 parents and caretakers from July 2019 to June 2020 during an ACS investigation. We represent parents who have criminal cases filed against them, former clients, and parents who seek our assistance at our community office. Through legal advice, advocacy with the child welfare agency, and service referrals, we are often able to resolve these cases in ways that prevent family court involvement and/ or prevent the unnecessary removal of children from their homes.

Our goal is to avoid court filings for parents and their families, whenever possible. Cases involving common family problems such as drug or alcohol use or mental health issues should be resolved outside of court, as they generally are for families who enjoy racial and economic privilege and who live in neighborhoods with little family regulation system presence. Families are not served adequately by being pulled into a court system plagued with inequities and chronic delays.

¹⁰ http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf?fbclid=IwAR2DGVUGk86o8SH4HkViJ7a9uJyYHWZt7rktZ044xQlnyKH3K9HYNBwqLiw, page 16.

¹¹ US Dept of Health and Human Services, ACYF-CB-IM17-02, January 17, 2017 (citations omitted).

To prevent cases from reaching family court or resulting in the removal of a child from his/her home, our advocates connect with parents during one of the most frightening moments for their family. Parents describe feeling scared and confused and often pressured to say yes to anything asked of them in order to prevent the removal of their children. With our help, parents better understand what an ACS investigation looks like, who the players are that they are speaking with and what risks are involved. In our experience, parents are often very willing to engage with ACS once they understand the process and their rights during these investigations.

Family defense social workers accompany parents to meetings with the local child welfare agency when ACS is considering whether to file a family court case and immediately intervene to help parents obtain benefits and find needed services. The involvement of social workers who bring their experience and knowledge to ACS child safety conferences results in better outcomes by increasing parents' participation and by facilitating the creation of service plans that better reflect the particular needs of the family.

New York City Family Miranda Rights

Given the serious nature of child welfare investigations, the fact that these investigations invade families' privacy and may infringe on their right to family integrity, resulting in the parents' loss of the care and custody of their own children, parents and caretakers must be aware of their rights during a child welfare investigation so that they can make informed decisions about their family. Last year, City Council introduced two bills that would ensure parents investigated by ACS would be provided with oral and written notice of their rights during an ACS investigation. Connecticut and Florida¹² are two states which require that parents are given information about their rights during a child protective investigation. Connecticut's legislature paved the way for informing parents of their rights in 2011 by enacting a comprehensive parent's bill of rights statute¹³ that could serve as a model to help New York parents understand and protect their rights when it comes to their children.

In our practice, we regularly come in to contact with parents who have been dealing with ACS for weeks or months without the benefit of counsel or information about their rights. They are subjected to drug and alcohol testing without informed consent; their mental health and medical providers are contacted without informed consent; and their children are interviewed at all hours of the day and night—including while they are at school—without their parents' permission.¹⁴

A NYC Family Miranda Rights bill would help ensure that all New Yorkers, regardless of income, county or neighborhood, understand their rights during an ACS investigation so all parents can make informed decisions for their family.

A strong bill would require that investigative child welfare workers be charged with providing the notice of rights upon initial contact with a family both orally and in writing. Safeguards must be

¹² Fla. Stat. Ann. § 39.301(5)(a)

¹³ C.G.S.A. § 17a-103d.

¹⁴ Rise, *Surveillance Isn't Safety- How over-reporting and CPS Monitoring Stress Families and Weaken Communities* (Sept. 17 2019).

built into any bill to ensure that the information is in fact provided to all parents at the first point of contact with ACS. We also believe the law itself must enumerate the specific rights every parent and caretaker have during a child welfare investigation, including that they are entitled to seek the advice or representation of counsel, that they have the right to not allow the child welfare or investigative worker into their home without a court order, that they have the right to refuse to submit to drug or alcohol screenings, and that they have the right to not sign releases for information or medical records¹⁵. Importantly, this notice must be provided to parents and caretakers in their first language and should be in *plain* language that takes into account the need for parents of all educational backgrounds and intellectual abilities to be able to read and understand the information being provided to them.

BDS is grateful to New York City Council's General Welfare Committee for hosting this important hearing and shining a spotlight on the racial disparities within ACS. Thank you for your time and consideration of our comments. We look forward to further discussing these and other issues that impact the people and communities we serve. If you have any additional questions, please contact Anya Mukarji-Connolly, Associate Director of Policy, at amukarjiconnolly@bds.org or 347-592-2535.

¹⁵ <https://portal.ct.gov/-/media/DCF/Brochures/PRTKEnglish-2019.pdf?la=en>.