New York Supreme Court

Appellate Division—First Department

Appellate Case No. 2025-03064

IN THE MATTER OF LIAM M., SARI M., and JAYLIZE D.L.C.

Children Under Eighteen Years of Age Alleged to be Neglected Pursuant to Article 10 of the Family Court Act

HAROLD M.,

Respondent,

SASHA C.,

Nonparty-Appellant,

– against –

COMMISSIONER OF THE ADMINISTRATION FOR CHILDREN'S SERVICES,

Petitioner-Respondent.

MOTION FOR LEAVE TO FILE BRIEF FOR *AMICI CURIAE* CHILDREN'S RIGHTS, JUVENILE LAW CENTER, LAWYERS FOR CHILDREN, NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, AND NATIONAL CENTER FOR YOUTH LAW IN SUPPORT OF NON-PARTY APPELLANT

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Bronx County Family Court Docket No. NN-37255-7/23

NEW YORK SUPREME COURT
APPELLATE DIVISION—FIRST DEPARTMENT

In the Matter of Liam M., Sari M., and Jaylize D.L.C COMMISSIONER OF THE ADMINISTRATION FOR CHILDREN'S SERVICES, *Petitioner-Respondent;* Harold M., *Respondent;* Sasha C., *Nonparty-Appellant.*	Appellate Case No. 2025-03064 Bronx County Family Court Docket No. NN-37255-7/23 **NOTICE OF MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE***

PLEASE TAKE NOTICE that, upon the accompanying affirmation of Asha Menon, dated November 6, 2025, and the exhibit annexed thereto, Children's Rights, Juvenile Law Center, Lawyers for Children, National Association of Counsel for Children, and the National Center for Youth Law ("*Amici Curiae*" or "*Amici,*" collectively) will move this Court at the courthouse for the Supreme Court of the State of New York, Appellate Division, First Department, at 27 Madison Avenue New York, NY 10010 on November 17, 2025, at 10:00 a.m., or as soon thereafter as counsel may be heard, for an order granting the proposed *Amici Curiae* permission to appear and file the proposed brief for *Amici Curiae* in

support of the Nonparty-Appellant ("Proposed *Amici* Brief"), attached hereto as Exhibit A, pursuant to CPLR 2214 and 22 NYCRR 1250.4(f), and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 2214(b), answering affidavits and any other papers in opposition to the above motion, if any, are required to be served upon the undersigned at least two days before the return date of this motion.

Dated: New York, New York
November 6, 2025

Respectfully Submitted,

/s/ Asha Menon

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AFFIRMATION OF ASHA MENON, ESQ. IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

ASHA MENON, ESQ., an attorney duly admitted to the Bar of the State of New York, affirms the following under penalty of perjury under CPLR 2106:

1. I am an attorney for Children's Rights, counsel for proposed *amici curiae*.

2. I submit this affirmation in support of a motion by Children's Rights, Juvenile Law Center, Lawyers for Children, National Association of Counsel for Children, and the National Center for Youth Law for leave to file a brief as *amici curiae* in the above-captioned matter.

3. Attached as Exhibit A is the proposed brief of *Amici Curiae* in support of the Nonparty-Appellant.

The Matter on Appeal

4. Ms. C. is the mother of Liam and Sari, who are eight and eleven years old. Opening Br. for Nonparty-Appellant Sasha C. at 6, Dkt. No. 5 ("Appellant's Opening Br."). When the children's father became violent with Ms. C. in December of 2023, she filed a family offense petition and sought a stay-away order of protection barring him from the home. *Id.* at 7. The Family Court granted the order of protection, and the Administration for Children's Services ("ACS") filed an Article 10 neglect petition against the father. *Id.* ACS determined Ms. C. had done nothing wrong and designated her a non-respondent parent. *Id.*

5. At intake on the neglect petition, the Family Court issued another stay-away order against the respondent father. *Id.* Without discussing any concerns about the children's safety with Ms. C., it also issued a supervision order that conditioned her custody of Liam and Sari on compliance with ACS supervision. *Id.* at 7–8.

6. Under this supervision order, and a series of others the Family Court would issue, ACS proceeded to subject Ms. C., Liam, and Sari to

invasive surveillance for well over a year. *Id.* at 8, 15. Ms. C. said that this surveillance "significantly interfered with [her and her children's] daily lives," that "[her] kids [were] exhausted," and that "this . . . process [was] traumatizing for them." *Id.* at 8–9 (first alteration in original) (describing the first five months of supervision).

7. Throughout ACS's supervision, caseworkers repeatedly told Ms. C. that continued supervision was not necessary, and neither ACS nor the Family Court ever identified any concerns about the children's safety with Ms. C. *Id.* at 8–14. Still, ACS's surveillance and efforts to extend the supervision persisted. *Id.*

8. After more than a year of this surveillance, Ms. C. filed a motion asking the Family Court to vacate the supervision orders as violating her rights under the Fourth Amendment, the Fourteenth Amendment, and Article I, Sections 6 and 12 of the New York Constitution. *Id.* at 15.

9. ACS then reversed course and, in a motion by order to show cause, asked the Family Court to vacate the supervision orders because supervision became "impracticable." *Id.* at 15–16. ACS, however, did not withdraw a previous pending order to show cause to extend supervision. *Id.* at 16. Ms. C. argued that ACS's second order to show

cause was a "litigation maneuver . . . to evade a judicial ruling," which ACS did not dispute. *Id.* (alteration in original). The Family Court scheduled a hearing on ACS's new order to show cause before Ms. C.'s motion was scheduled to be decided. *Id.*

10. At the return date on ACS's second order to show cause, the Family Court, acting *sua sponte*, decided to rule on ACS's first order to show cause, which had sought to extend supervision, even though it had previously indicated that it would rule on Ms. C.'s motion beforehand. *Id.* at 17. It denied ACS's motion to extend supervision and then deemed Ms. C.'s motion to vacate the orders on constitutional grounds moot. *Id.* at 17–18.

11. The principal questions presented in this appeal are whether the Family Court erred in finding Ms. C.'s constitutional claims moot and whether ACS's surveillance practices violated Ms. C.'s rights under the Fourth Amendment, the Fourteenth Amendment, and Article I, Sections 6 and 12 of the New York Constitution.

The Identity and Interest of Proposed Amici Curiae

12. As detailed in the Proposed *Amici* Brief, the instant case raises important issues of local and national significance about both the harmful impact of ACS surveillance on children and parents and how that harm informs children's and parents' independent rights under the Fourth Amendment, the Fourteenth Amendment, and Article I, Sections 6 and 12 of the New York Constitution.

13. Proposed *Amicus* Children's Rights is a national organization committed to improving the lives of children who are in or impacted by government child-serving systems. Through advocacy and legal action, Children's Rights investigates, exposes, and combats violations of the rights of children, and holds governments accountable for keeping kids safe, healthy, and supported. For 30 years, Children's Rights has achieved lasting, systemic change for hundreds of thousands of children across more than 20 jurisdictions throughout the United States.

14. Proposed *Amicus* Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive.

Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center's legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential *amicus* briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity.

15. Proposed *Amicus* Lawyers For Children ("LFC") is a not-for-profit legal corporation dedicated to protecting the rights of individual children in foster care in New York City and compelling system-wide child welfare reform. Since 1984, LFC has provided free legal and social work services to children in court proceedings involving abuse, neglect, voluntary foster care, termination of parental rights, adoption, guardianship, custody, visitation, and youth justice. This year, its attorney-social worker teams will represent children and youth in more than 5,000 proceedings in New York City family courts. In addition, LFC publishes guidebooks and other materials for both children and legal practitioners, conducts professional legal and social

work training sessions, and works to reform systems affecting vulnerable children through legislative advocacy and impact litigation. LFC's experience, expertise, and insight as *amicus curiae* on matters pertaining to court-involved children has been accepted by state and federal courts throughout the country. LFC's insight into the issues in this matter is born of more than 40 years of experience acting as court-appointed attorneys for children in matters pertaining to their care and custody.

16. Proposed *Amicus* National Association of Counsel for Children ("NACC") is a 501(c)(3) non-profit child advocacy and professional membership association founded in 1977 that advances children's and parents' rights by supporting a diverse, inclusive community of child welfare lawyers to provide zealous legal representation and by advocating for equitable, anti-racist solutions co-designed by people with lived experience. A multidisciplinary organization, its members primarily include child welfare attorneys and judges, as well as professionals from the fields of medicine, social work, mental health, and education. NACC's work includes federal- and state-level policy advocacy, the national Child Welfare Law Specialist attorney certification program, a robust training and technical assistance arm,

and an *amicus curiae* program. Through the *amicus curiae* program, NACC has filed numerous briefs promoting the legal interests of children in state and federal appellate courts, as well as the Supreme Court of the United States. More information about NACC can be found at www.naccchildlaw.org.

17. Proposed *Amicus* the National Center for Youth Law ("NCYL") is a private, non-profit law firm that uses the law to help children and youth grow and thrive. For over 50 years, NCYL has worked to protect the rights of children, promote their healthy development, and ensure that they have the knowledge, skills, resources, agency, and decision-making power to achieve their goals. NCYL pursues both litigation and policy solutions to ensure that children and youth are safer than they are now and that they are supported in healing and thriving in families and their communities. Part of NCYL's work focuses on children and youth in the foster system, those at risk of entry into the foster system, and their families and communities. NCYL strives to stop coercive and harmful state interventions by the family regulation system into the lives of children and secure supports in communities so that children can experience safe and supportive family and community connections.

18. Proposed *Amici Curiae*, as advocates for children, are uniquely positioned to assist the Court on the implications of this case as they relate to the welfare and rights of children subject to ACS surveillance. The Proposed *Amici* Brief identifies serious harms that children and parents may continue to suffer if this Court does not reach the merits of this case and details the legal basis for the rights to family integrity and to freedom from unreasonable searches and seizures that both children and parents enjoy, which might otherwise go unnoticed.

19. WHEREFORE, I respectfully request that this Court enter an order (i) granting proposed *Amici* leave to submit their Proposed *Amici* Brief; (ii) accepting the brief that has been filed and served along with this motion; and (iii) granting such other and further relief as this Court deems just and proper.

Dated: New York, New York
November 6, 2025

Respectfully Submitted,

/s/ Asha Menon

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EXHIBIT A

New York Supreme Court

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Bronx County Family Court Docket No. NN-37255-7/23

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INTEREST OF *AMICI CURIAE*

Lead *Amicus*, Children's Rights, is a national advocacy organization committed to improving the lives of children who are in or impacted by government child-serving systems. Through advocacy and legal action, Children's Rights investigates, exposes, and combats violations of the rights of children, and holds governments accountable for keeping kids safe, healthy, and supported. For 30 years, Children's Rights has achieved lasting, systemic change for hundreds of thousands of children across more than 20 jurisdictions throughout the United States.

Lead *Amicus* is joined by the following signatory organizations who, along with Children's Rights, share a substantial interest in ensuring that children are not harmed by unjust, intrusive, and unlawful surveillance practices:

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center's legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential *amicus* briefs in state and federal courts across the country to ensure that laws,

policies, and practices affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity.

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community of child welfare lawyers to provide zealous legal representation and by advocating for equitable, anti-racist solutions co-designed by people with lived experience. A multidisciplinary organization, its members primarily include child welfare attorneys and judges, as well as professionals from the fields of medicine, social work, mental health, and education. NACC's work includes federal and state level policy advocacy, the national Child Welfare Law Specialist attorney certification program, a robust training and technical assistance arm, and an *amicus curiae* program. Through the *amicus curiae* program, NACC has filed numerous briefs promoting the legal interests of children in state and federal appellate courts, as well as the Supreme Court of the United States. More information about NACC can be found at www.naccchildlaw.org.

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strives to stop coercive and harmful state interventions by the family regulation system into the lives of children and secure supports in communities so that children can experience safe and supportive family and community connections.

INTRODUCTION

Amici are national and local organizations with decades of experience advocating for the legal rights of children in, and at risk of entering, government systems. *Amici* respectfully submit this brief to assist the Court by highlighting the grave harm children and parents[1] suffer due to intrusive government surveillance practices in what are often referred to as child welfare, child protection, or family regulation systems. *Amici* assert that this harm, which can impact child brain development, warrants the Court's recognition and strict application of the heightened protections held by both Ms. C. and her children under the Fourteenth Amendment right to family integrity, the Fourth Amendment right to be free from unreasonable searches, and the corresponding rights under the New York Constitution.

In this case, a series of Family Court orders subjected Ms. C. and her two minor children to extreme, invasive, and unlawful surveillance by the Administration of Children's Services ("ACS"). Despite no concern regarding the

[1] For simplicity, this brief generally uses the term "parents" to refer to parents and other caretakers who are in a legally responsible parental role.

safety of the children's placement with their mother, indeed no neglect petitions were ever filed against Ms. C. as a presumptively fit parent, the Family Court entered multiple orders that authorized unannounced, unfettered surveillance in their lives for well over a year. ACS did exactly that, subjecting Ms. C. and her children to numerous unnecessary, invasive searches and repeated questioning—even enlisting out-of-state law enforcement to conduct home searches and interviews after Ms. C. and her children moved out of state.

The Family Court's baseless orders subjected Ms. C. and her children to a myriad of harms and violated both Ms. C.'s and her children's Fourth and Fourteenth Amendment rights under the United States Constitution as well as their rights under Article I, Section 12 and Article I, Section 6 of the New York Constitution.[2] This Court should recognize the severe trauma and harm of ACS's unlawful surveillance practices, reverse the Family Court's mootness ruling, and vacate the supervision orders at issue as violative of both Ms. C.'s and her children's constitutional rights.

ARGUMENT

I. Unfettered Authority to Conduct Invasive Family Surveillance Harms Children and Families

[2] This amicus brief focuses on a child's rights to family integrity and to be free of unreasonable searches and seizures, and the harms children (and parents) suffer when these rights are not upheld. *Amici* endorse Appellant's other arguments set forth on appeal, *see* Appellant's Opening Br., but do not address those issues here. Notably, the harmful surveillance of non-respondent parents and their families that is at issue here will likely repeat and evade review because the family courts regularly issue time-limited supervision orders that expire before an appeal can be heard. *See* Appellant's Opening Br. at 45-48.

a. The Family Regulation System Uses Intrusive Surveillance Tactics

Once a family becomes involved with the family regulation system, they "are under near-constant inspection, and parental behaviors and decisions are regularly questioned."[3] Home searches, including those conducted by ACS, are often unannounced and broad in scope. ACS routinely enters children's bedrooms, searches their personal belongings, and rummages through refrigerators, cabinets, closets, and drawers.[4] Caseworkers may also subject children to humiliating examinations of their bodies during home visits.[5] During these examinations, "children are expected to remove as much of their clothing as the caseworker deems necessary, up to and including their underwear, and allow their bodies to be examined by total strangers, often with no advance notice to the parent."[6] One ACS caseworker compared these tactics "to being stopped and frisked for 60 days."[7]

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[3] Darcey H. Merritt, *How Do Families Experience and Interact with CPS?*, 692 Am. Acad. Pol. Soc. Sci. 203, 210 (2020).

[4] Doriane L. Coleman, *Storming the Castle to Save the Children: The Ironic Costs of a Child Welfare Exception to the Fourth Amendment*, 47 Wm. & Mary L. Rev. 413, 518 (2006).

[5] Eli Hager, *Police Need Warrants to Search Homes. Child Welfare Agents Almost Never Get One*, ProPublica, Oct. 13, 2022, https://www.propublica.org/article/child-welfare-search-seizure-without-warrants ("Many former caseworkers said they were most upset by having to routinely conduct searches of children's bodies, down to their underwear (More than two dozen caseworkers, parents, children and attorneys said the practice is part of every or nearly every initial home visit by the agency, regardless of whether there is any allegation of physical or sexual abuse.)").

[6] Hum. Rts. Watch, *"If I Wasn't Poor, I Wouldn't Be Unfit": The Family Separation Crisis in the US Child Welfare System*, Hum. Rts. Watch 64 (2022), https://www.hrw.org/sites/default/files/media_2022/11/us_crd1122web_3.pdf.

[7] Andy Newman, *Is N.Y.'s Child Welfare System Racist? Some of Its Own Workers Say Yes.*, N.Y. Times (Nov. 22, 2022), https://www.nytimes.com/2022/11/22/nyregion/nyc-acs-racism-abuse-neglect.html.

b. Surveillance Practices Harm Children and Disrupt Familial Bonds

The family regulation system's intrusive surveillance practices cause a myriad of known harms to children and families. *See, e.g.*, *Matter of R.C.*, 240 A.D.3d 33, 39 (1st Dep't 2025) (quotations omitted) ("[A] child protective agency's involvement with a family may itself have a negative impact on the parent or the child."); *Halley v. Huckaby*, 902 F.3d 1136, 1143 (10th Cir. 2018) (recognizing "the stress and trauma" a child suffered as a result of the child welfare agency's questioning, as well as the negative impact it had on his relationship with his father); *Schulkers v. Kammer*, 955 F.3d 520, 530 (6th Cir. 2020) (describing that, after being questioned by a caseworker at school, the "children returned home that afternoon terrified and crying, stating that they were afraid of being 'taken away' and wanted to know if their mother or father was going to jail"). Depending on the child and the invasiveness of the intrusion, "the process can cause emotional and psychological damage," including "significant long-term harm."[8]

These practices alter family relationships by disrupting the bond between children and their caregivers.[9] For example, "home searches undermine a child's

[8] Coleman, *supra* note 4, at 419.

[9] Merritt, *supra* note 3, at 210 ("[J]udgment and behavioral mandates from authorities can negatively impact the dynamics of family functioning."); Hum. Rts. Watch, *supra* note 6, at 4 ("Angela Olivia Burton, former director of New York State Office of Indigent Legal Services, told Human Rights Watch that an investigation has the impact of 'rupturing the village of the child's ecological system, which has ripple effects and brings not just stigma, but also fear and distrust, as it tears the fabric of a child's life and community.'").

basic attachment to their parents, forever impacting their earliest and most important human relationships by fundamentally altering a child's trust in a parent's ability to protect and provide for them."[10] Notably, "[a]ny invasion of family privacy alters the relationship between family members." [11] And children "react with anxiety even to temporary infringements of parental autonomy."[12] As one study found, "the intense level of supervision from child welfare intervention impacted parents' ability to parent effectively by undermining parental authority, sometimes leading to increases in rebellious behavior in the children."[13]

These disruptions to parent-child relationships may also have consequences for children's physical brain development. One study found that "better mother–child attachment quality in infancy is related to greater [whole-brain gray matter] volume in . . . brain regions involved in social, cognitive, and emotional functioning."[14] Other research has highlighted that children with insecure

[10] Tarek Ismail, *Family Policing and the Fourth Amendment*, 111 Calif. L. Rev. 1485, 1489 (2023).
[11] Joseph Goldstein et al., *The Best Interests of the Child: The Least Detrimental Alternative* 97 (1996).
[12] *Id.*; *see also Matter of A.R.*, 2025 N.Y. Slip. Op. 04295, 2025 WL 2076702, at *5 (1st Dep't July 24, 2025) (citing and quoting Goldstein et al.).
[13] Melissa Friedman & Daniella Rohr, *View of Overreporting and Investigation in the New York City Child Welfare System: A Child's Perspective*, 15 Colum. J. of Race & L. 1160, 1181 (2025); Dorothy E. Roberts, *The Racial Geography of Child Welfare: Toward a New Research Paradigm*, 87 Child Welfare 125, 134 (2008) ("Respondents reported that children's awareness [of] the agency's potential power over parents increased the threat to parental authority. Six interviews included stories of children who reported false accusations of maltreatment to DCFS to avoid their parents' rules or to rebel against parents who disciplined them.").
[14] Élizabel Leblanc, *Attachment Security in Infancy: A Preliminary Study of Prospective Links to Brain Morphometry in Late Childhood*, 8 Frontiers in Psych. 1, 9 (2017).

attachments in childhood are more likely to struggle with impaired social functioning and health morbidities.[15]

Moreover, families may face the threat—spoken or unspoken—of prolonged surveillance or removal if parents do not cooperate with court-sanctioned surveillance.[16] Indeed, Ms. C. and her children's experience with ACS surveillance exemplifies this threat, as Ms. C. reported that she felt "constantly threatened" she would lose her children if she did not comply.[17] As set forth in the Children's Brief, the "danger of separation from a parent . . . seeds within the child an uncertainty of the parent's basic capacity to protect them or provide for their needs."[18] And as one parent reported, even absent removal, "their young children react with fear to a knock on the door months after investigations have closed."[19]

Beyond the disruption to familial relationships, "[c]hildren experience and achieve privacy through control over their bodies, physical space, and territory, and a child's home provides one of the earliest opportunities to create and experience a

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[15] Gail Hornor, *Attachment Disorders*, 33 J. Pediatric Health Care 612, 612–13 (2019) (summarizing studies); *see also* Elizabeth A. Carlson, *A Prospective Longitudinal Study of Attachment Disorganization/Disorientation*, 69 Child Development 1107, 1122–23 (1998).
[16] Charlotte Baughman et al., *The Surveillance Tentacles of the Child Welfare System*, 11 Colum. J. Race & L. 3, 501, 528 (2021).
[17] Appellant's Opening Br. at 14. This constant threat is only reinforced by ACS's Brief, which openly wielded the threat of neglect proceedings against Ms. C. if ACS had not been able to conduct its unlawful surveillance. Br. for Respondent ACS at 38, Dkt. No. 14 ("Respondent's Br.").
[18] *See* Br. for the Children, Dkt. No. 12 at 40 ("Children's Br.") (citing Ismail, *supra* note 10, at 1535–36).
[19] *Id.* (citing Anna Arons, *The Empty Promise of the Fourth Amendment in the Family Regulation System*, 100 Wash. U. L. Rev. 1057, 1074 (2023)).

private space."[20] Unannounced home and school visits and body checks frequently employed during court-ordered supervision are "often highly stressful, and even traumatizing."[21] As the ABA has recognized, body searches are "perceived as particularly intrusive by children" and can "seriously traumatize children," leading to long-term psychological effects.[22]

Searches conducted by caseworkers are often similar in nature to those conducted by police,[23] and as was the case here, police are sometimes involved in families' interactions with the family regulation system. Research on police encounters has highlighted their deleterious consequences for children's mental health. Police stops can lead children to disengage from school and "display higher levels of anxiety and trauma."[24] Some scholars classify police contact as an "adverse

[20] Kristin Henning, *The Fourth Amendment Rights of Children at Home: When Parental Authority Goes Too Far*, 53 Wm. & Mary L. Rev. 55, 91 (2011).
[21] Hum. Rts. Watch, *supra* note 6, at 4.
[22] A.B.A., *Resolution Prohibiting Strip Searches of Children and Youth, Except in Exceptional Circumstances* 5, 20 (2020), https://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/111b-annual-2020-final.pdf; *see also Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 375 (2009) (recognizing that, in the context of a strip search, "adolescent vulnerability intensifies the patent intrusiveness of the exposure") (internal citations omitted).
[23] Newman, *supra* note 7 (comparing a child welfare investigation in New York City to getting stopped and frisked).
[24] Juan del Toro et al., *The Policing Paradox: Police Stops Predict Youth's School Disengagement Via Elevated Psychological Distress*, 58 Dev. Psych. 1, 8 (2022); Amanda Geller et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104 Am. J. Pub. Health 2321, 2324 ("We found that young men reporting police contact, particularly more intrusive contact, also display higher levels of anxiety and trauma").

childhood experience,"[25] which are associated with higher lifetime risks for chronic disease and poor mental health.[26]

Intervention by the family regulation system can also make children less safe. For parents, knowledge of ACS's needlessly aggressive surveillance practices may worsen fears about losing their children and heighten barriers to seeking help. For example, parents may view the threat of family surveillance or removal as a barrier to disclosing domestic violence—which Ms. C. suffered in this case—or seeking treatment for substance use.[27] The impacts of unlawful surveillance practices are thus not only traumatizing, they risk actively undermining the safety of children and families.

c. The Harms of Family Surveillance Disproportionately Affect Children and Families of Color and Those Experiencing Poverty

Nationally, Black families and families experiencing poverty live under the constant threat of surveillance by the family regulation system. New York is no

[25] Amanda Geller, *Youth–Police Contact: Burdens and Inequities in an Adverse Childhood Experience*, 2014–2017, 111 Am. J. Pub. Health 1300, 1307 (2021).
[26] Ríoghnach S. O'Neill et al., *Adverse Childhood Experiences*, 7 Clinics in Integrated Care 1, 5 (2021).
[27] Rebecca L. Heron & Maarten C. Eisma, *Barriers and Facilitators of Disclosing Domestic Violence to the Healthcare Service: A Systematic Review of Qualitative Research*, 29 Health & Soc. Care Cmty. 612, 623 (2020) (finding the threat of losing custody of children and the threat of stigma are principal barriers to domestic violence disclosure); Erin R. Barnett et al., *Difficult Binds: A Systematic Review of Facilitators and Barriers to Treatment Among Mothers with Substance Use Disorders*, 126 J. Substance Abuse Treatment 1, 7 (2021) (highlighting similar barriers to seeking treatment among mothers struggling with substance use disorders).

different.[28] As New York courts have recognized, "the disproportionate involvement of Black and Hispanic children in the child welfare system cannot be ignored." *Matter of Sapphire W.*, 237 A.D.3d 41, 51 (2d Dep't 2025); *see also Matter of A.R.*, 2025 WL 2076702, at *4 (". . . the hardships that can result from ACS supervision disproportionately affect lower-income and marginalized communities, including Black and Latino communities."). This disproportionality is exemplified by the families and children subjected to court-ordered monitoring: In 2019, Black children made up 26% of children in New York City, but 42% of children entering court-ordered supervision.[29] Latino children are similarly overrepresented, making up 36% of children in New York City but 48% of children entering court-ordered supervision in 2019.[30] Many communities of color are also subject to highly concentrated family surveillance within their neighborhoods. One data analysis demonstrated that one-third of families entering court-ordered supervision came from just fifteen of New York City's over 200 zip codes.[31]

[28] NYCLU, *Racism at Every Stage: Data Shows How NYC's Administration for Children's Services Discriminates Against Black and Brown Families*, (2023) https://www.nyclu.org/report/racism-every-stage-data-shows-how-nycs-administration-childrens-services-discriminates (showing racial disproportionality at each stage of involvement with ACS).
[29] Catherine Pisciotta, Nora McCarthy, & Ryan Brown, *Court-Ordered Supervision 2019*, NYC Family Policy Project, https://familypolicynyc.org/data-brief/court-ordered-supervision/.
[30] *Id.*
[31] *Id.*

II. Aggressive Surveillance Does Not Decrease Child Abuse or Maltreatment

Reduced surveillance, much less reduced unlawful surveillance of the type challenged on this appeal, does not compromise child safety. At the beginning of the COVID-19 pandemic, ACS began encouraging caseworkers to shift from in-person investigations of families to remote assessments.[32] At the same time, New York City family courts limited their caseloads.[33] Over the next three months, compared to the same period in 2019, the number of investigations and court supervision orders both went down by over 45%.[34]

There was no significant rise in suspicious emergency room visits or child fatalities, and no apparent backlog of undetected abuse when ACS investigations started to return to their pre-pandemic levels.[35] The reduced surveillance overall did not result in any additional risks to children's safety.[36] In other words, ACS's

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[32] Anna Arons, *An Unintended Abolition: Family Regulation During the COVID-19 Crisis*, 12 Colum. J. Race & L. 1, 8–9 (2022).
[33] *Id.* at 10–12.
[34] N.Y.C. Admin for Child.'s Servs., *Monthly Flash Report Indicators*, NYC OpenData, (last updated Sept. 30, 2025), https://data.cityofnewyork.us/City-Government/Monthly-Flash-Report-indicators/2ubh-v9er/about_data (April through June of 2019: 14,660 consolidated investigations and 2,063 children placed under court supervision; April through June of 2020: 8,009 consolidated investigations and 934 children placed under court supervision); *see also* Arons, *supra* note 32, at 13 (making a similar comparison).
[35] Melissa Friedman & Daniella Rohr, *Reducing Family Separations in New York City: The COVID-19 Experiment and a Call for Change*, 123 Colum. L. Rev. 52, 68–70 (2023).
[36] *Id.* at 69 (quoting ACS Commissioner David Hansell: "I'm happy to say that we really haven't seen any indicators of a larger bolus of undetected child abuse"). Data on investigation outcomes help provide context about the ineffectiveness of aggressive ACS surveillance. In 2022, ACS closed over 93% of investigations without a court filing, and an ACS spokesperson reported it closed more than 96% of investigations without finding risks to a child's safety requiring removal. N.Y.C. Council Comm. Oversight & Investigations, *Meeting Video: Hearing on*

aggressive family surveillance traumatizes children and disrupts family relationships without helping to keep them safe. The ineffectiveness of these practices is only amplified when, as is the case here, there are no underlying safety concerns due to the absence of any abuse or neglect allegations against the parent being subjected to ACS surveillance.

The profound trauma and harm that unlawful surveillance inflicts on children and families informs the analysis of the legal issues before the court. As a threshold matter, these injustices are relevant to the issue of mootness, such that this court should exercise its jurisdiction and reach the merits of this case. The trauma inflicted on children and families, and the impact on the fundamental rights of children and parents, highlight the considerable injustice of the family court supervision orders and raise novel issues of great public interest regarding the constitutionality of ACS's practice of surveilling non-respondent parents and their children. *See* Appellant's Opening Br. at 48–49, 53–54.

Oversight – Operational Challenges in Family Court, N.Y.C. Council, at 1:05:30 (Apr. 24, 2023), https://legistar.council.nyc.gov/DepartmentDetail.aspx?ID=7023&GUID=EE34B2F8-FDF1-4FB8-A5DC-3B9AA6758336&R=b0aeea2a-6ca8-41f9-91d1-77c62ccde0b8; Hager, *supra* note 5 ("[l]ess than 4% of the agency's more than 56,000 cases each year end up revealing a safety situation requiring the removal of a child from a home, according to data provided by an ACS spokesperson").

III. In Light of the Foregoing Harms, This Court Should Vacate the Family Court Orders Because They Violated the Children's Fourteenth Amendment Right to Family Integrity

a. Children and Parents Have a Fundamental Right to Family Integrity

The "right to the preservation of family integrity encompasses the reciprocal rights of both parent and children." *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977); *see also Santosky v. Kramer*, 455 U.S. 745, 760 (1982) ("until the state proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of the natural relationship"). This right is protected by the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. *Duchesne*, 566 F.2d at 824 ("It is beyond peradventure that freedom of personal choice in matters of . . . family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.") (internal quotations omitted). The right to family integrity is "perhaps the oldest of the fundamental liberty interests recognized by [the Supreme Court]." *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *see also Moore v. City of E. Cleveland*, 431 U.S. 494, 503 (1977) ("the sanctity of the family . . . is deeply rooted in this Nation's history and tradition"); *Matter of R.C.*, 240 A.D. 3d at 40 ("the child's rights as well as the parents' rights to bring up their own children . . . [t]hose rights are among our oldest and most fundamental . . . guaranteed to parents and children by our State and Federal Constitutions.") (quotations omitted); *Brokaw v. Mercer Cty.*, 235 F.3d 1000, 1018 (7th Cir. 2000) ("Equally fundamental

is the substantive due process right of a child to be raised and nurtured by his parents.").

For parents, the right to family integrity is the right to "companionship, care, custody and management of his or her children," and for children, it is the right to "not be dislocated from the 'emotional attachments that derive from the intimacy of daily association with the parent.'" *Duchesne*, 566 F.2d at 825 (quoting *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) and *Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 844 (1977)) (cleaned up). As the Court of Appeals has acknowledged, "[f]undamental constitutional principles of due process and protected privacy prohibit governmental interference with the liberty of a parent to supervise and rear a child except upon a showing of overriding necessity." *Matter of Marie B.*, 62 N.Y.2d 352, 358 (1984) (citing *Santosky*, 455 US at 753).

Even absent removal, courts have held that actions that infringe on familial relationships may violate the right to family integrity. *See, e.g.*, *Doe v. Heck*, 327 F.3d 492, 524 (7th Cir. 2003) (holding a caseworker interview of children in school without parental notification or consent, absent allegations the parents were aware of alleged abuse or had abused their children, violated the right to familial relations); *Schulkers*, 955 F. 3d at 544 (affirming district court's denial of defendants' summary judgment motion on the mother's substantive due process claim when the defendants' supervision restrictions "deprived [the mother] of her right to be alone

with her children in the sanctity of her home without arbitrary government interference (and, in turn, violated the children's right to be alone with their parent)"); *Troxel*, 530 U.S. at 60–61 (overturning a trial court order that allowed for the children's grandparents to have visitation rights over the objection of the children's mother).[37] As the Supreme Court recognized, "so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *Troxel*, 530 U.S. at 68–69.

Moreover, other courts considering state-imposed restrictions on the parental rights of a parent against whom there is no finding or allegation of maltreatment have found it is impermissible to infringe upon that parent's rights solely based on allegations or findings against the other parent. *See, e.g.*, *In re Sanders*, 852 N.W. 2d 524, 539 (Mich. 2014) (maltreatment by one parent did not authorize government infringement on rights of other parent, because "due process requires a specific adjudication of a parent's unfitness before the state can infringe the constitutionally protected parent-child relationship"); *People ex rel. United States*, 121 P.3d 326, 327

[37] Against this weight of authority, ACS's assertion that the "right at stake is not fundamental," and that the supervision orders do not even implicate the right to family integrity, should be summarily dismissed as conflicting with well-settled law. Respondent's Br. at 49. This assertion also reveals the danger in this practice of surveilling non-respondent parents and their children repeating itself if this Court does not protect the rights of children and parents in this context.

(Colo. App. 2005) (agency could not use maltreatment findings against one parent to require the other parent to comply with a treatment plan).

b. The Harms of Family Surveillance Warrant Strict Scrutiny

As with other fundamental rights, government interference with a child's right to family integrity should be subject to strict scrutiny. *See Nicholson v. Williams*, 203 F.Supp.2d 153, 243–44 (E.D.N.Y. 2002) (applying strict scrutiny to ACS practice of removing children because their mothers were subjected to domestic violence). This is particularly important considering the documented harm caused to children and families by government intrusion into the family unit. *See Tenenbaum v. Williams*, 193 F.3d 581, 595 (2d Cir. 1999) ("[W]e must be sensitive to the fact that society's interest in the protection of children is, indeed, multifaceted, composed not only with concerns about the safety and welfare of children from the community's point of view, but also with the child's psychological well-being, autonomy, and relationship to the family.") (citations omitted). Indeed, *Amici* agree with ACS that the "need to protect children" from harm informs the standard of review under both the Fourth and Fourteenth Amendments. *See* Respondent's Br. at 33. The harms to children at issue in this case, however, are the known consequences of ACS's invasive and unlawful surveillance, harms entirely ignored by ACS in their practices and in their briefing.

The application of strict scrutiny means government agencies cannot infringe upon the family unit in the absence of a "compelling state interest." *See, e.g.*, *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (explaining that due process "forbids the government to infringe . . . 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.") (quoting *Reno v. Flores*, 507 U.S. 292, 302 (1993)) (emphasis in original). Even where there is a compelling state interest, any intrusion must be "narrowly tailored" to serve the state's interest in protecting the child's health and well-being. *See, e.g.*, *Glucksberg*, 521 U.S. at 721; *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (concluding it would be unconstitutional "[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest."); *Moore*, 431 U.S. at 499.

It is clear in this case that there was no compelling interest justifying ACS's invasion of Ms. C. and her children's relationship through court-ordered monitoring. That is because Ms. C. is a safe and fit parent, and there was no stated concern regarding Ms. C.'s ability to care for her children. *See Troxel*, 530 U.S. at 72–73. Nor were the Family Court supervision orders narrowly tailored to meet any justifiable interest. Indeed, there is no evidence that ACS's supervision protected Ms. C's children; to the contrary, the record amply shows that the supervision only

compounded the trauma they suffered after witnessing their father's acts of violence against their mother. Thus, the Family Court orders violated both Ms. C.'s and her children's Substantive Due Process right to family integrity under the Fourteenth Amendment and the broader protections provided under Article I, Section 6 of the New York Constitution. *See* Appellant's Opening Br. at 43 (explaining the more expansive protections provided by Article I, Section 6).

IV. Given the Harms Inflicted on Children by Unlawful Home Searches, This Court Should Also Vacate the Family Court Orders as Violative of the Children's Fourth Amendment Rights

a. Both Children and Parents Have a Right to Be Free from Unreasonable Searches and Seizures

The Fourth Amendment's protections against unreasonable searches and seizures apply to both parents and children. *See, e.g.*, *New Jersey v. T.L.O.*, 105 S. Ct. 733, 740–41 (1985); *Calabretta v. Floyd*, 189 F.3d 808, 820 (9th Cir. 1999) ("The reasonable expectation of privacy of individuals in their homes includes the interests of both parents and children in not having government officials coerce entry in violation of the Fourth Amendment."); *Romero v. San Bernardino Cnty. Sheriff's Dep't*, 2012 WL 13426225, at *5 (C.D. Cal. 2012) ("A child has a Fourth Amendment right against government intrusion into a family home where he resides and has a reasonable expectation of privacy.").[38] Thus, like adults, children have the

[38] The protections provided by the Fourth Amendment also apply to orders issued under Article 10 of the Family Court Act, including the monitoring orders in question. *See, e.g., Matter of Shernise C.*, 91 A.D.3d 26, 31 (2d Dep't 2011).

right to be free from unreasonable searches and seizures wherever they have a reasonable expectation of privacy. *See Commonwealth v. Porter*, 923 N.E.2d 36, 45 (Mass. 2010) (juvenile had standing to challenge search of room he shared with his mother in a shelter because "the juvenile had a reasonable expectation of privacy in his home."); *Roska ex rel. Roska v. Peterson*, 328 F.3d 1230, 1240–42 (10th Cir. 2003) (warrantless entry by child welfare agency officials violated the rights of the impacted children and parents).

Where a family court order authorizes entry into the home, it must meet the constitutional requirements of a warrant: it must (i) be supported by probable cause; and (ii) describe with particularity the area of the home to be searched. *Kentucky v. King*, 563 U.S. 452, 459 (2011); *Clark v. Stone*, 998 F.3d 287, 301 (6th Cir. 2021) (family court order authorizing home searches neither contained sufficient facts to demonstrate probable cause nor described with particularity the area of the home to be searched, in violation of the Fourth Amendment).[39]

[39] While ACS insists that the "special needs" exception should apply to the searches at issue here, that argument cannot be reconciled against the long line of authority applying the traditional Fourth Amendment probable cause standard to child welfare investigations, which guards against the unique harms children suffer as a result of unreasonable searches. *See* Appellant's Opening Br. at 24 (application of probable cause to family court orders authorizing home searches).

b. The Harms of Family Surveillance Require the Recognition of Heightened Fourth Amendment Protections for Children Against Unreasonable Searches

Courts have long protected children's Fourth Amendment rights with particular concern for the unique harms government surveillance inflicts on children. For example, the Fifth Circuit emphasized these harms when declining to apply the less demanding Fourth Amendment "special needs" test to a strip search during a child welfare investigation. *Roe v. Texas Dep't of Protective & Regul. Servs.*, 299 F.3d 395, 406 (5th Cir. 2002). The court explained that "[i]t does not require a constitutional scholar to conclude that a nude search of a thirteen-year-old child is an invasion of constitutional rights of some magnitude" and "[m]ore than that: it is a violation of any known principles of human decency." *Id.* (internal quotations and citations omitted).

Even under more lenient Fourth Amendment standards, courts have found that these grave harms may render government searches unconstitutional. In *Safford v. Redding*, for instance, the Supreme Court declared a strip search of a student in a school unconstitutional, explaining that the student's "adolescent vulnerability intensifie[d] the patent intrusiveness of the exposure," which "implicate[d]" the search's reasonableness. 557 U.S. at 375.

New York courts have also centered children's unique interests when interpreting the Fourth Amendment and Article I, Section 12. *See Matter of Shernise*

C., 91 A.D.3d at 28 ("An innocent child should certainly have as much right to be free from an unreasonable search and seizure as someone suspected of committing a crime."). In a case involving claims under both the federal and state provisions, a New York family court explained that warrantless arrests of juveniles in their homes were impermissible. *See Matter of Demetrius W.*, 481 N.Y.S.2d 955, 958 (Fam. Ct. Kings Cnty. 1984). The court stressed, "a juvenile's reliance on the security of his home against the real and imagined fears of the outside world ma[kes] the application of the rule's protection to a juvenile even more fundamental than to an adult." *Id.* (internal quotations omitted). Thus, courts have recognized the unique importance of enforcing children's fundamental right to be free from unreasonable invasions of privacy, which informs children's Fourth Amendment rights.

c. Unreasonable Family Surveillance Violates Children's Fourth Amendment Rights

Courts have found that surveillance practices like those at issue here violate children's Fourth Amendment right to be free from unreasonable searches and seizures. For example, courts have held that unreasonable home entries by child welfare agency officials violate the Fourth Amendment rights of both parents and children. *See, e.g.*, *Roska*, 328 F.3d at 1240–42 (warrantless entry by child welfare agency officials violated both parents' and children's Fourth Amendment rights); *Calabretta*, 189 F.3d at 817 (same). Moreover, several courts have found that questioning children about maltreatment in schools without adequate justification

can impinge on their Fourth Amendment rights. *See, e.g.*, *Schulkers*, 955 F.3d at 538 (emphasizing that "a social worker must have reasonable suspicion of child abuse before conducting an in-school interview without a warrant or consent" and finding that a child welfare interview in a school constituted a seizure that violated children's Fourth Amendment rights); *Halley*, 902 F.3d at 1143, 1147 (pulling a child from school to interview him at a safehouse without adequate justification was a seizure that violated the child's Fourth Amendment rights). [40]

Here, there was no justification for ACS's repeated home searches and interviews of Ms. C.'s children. ACS never disputed that Ms. C. was a safe and fit parent, and in fact repeatedly communicated to Ms. C. that they had no need to supervise her family based on her care of her children. *See* Appellant's Opening Br. at 12.[41] Absent any reasonable suspicion of child abuse or probable cause[42] justifying the Family Court's surveillance order, the interviews of Ms. C.'s children conducted by law enforcement and the repeated invasions of the family's home violated Ms. C.

[40] While cases discussed in this section involve warrantless searches and the lack of reasonable suspicion of child maltreatment, similar standards govern supervision orders authorizing a home entry, which must be supported by probable cause. *See* Appellant's Opening Br. at 25 (in the family court context, probable cause requires "at the very least, information to support a reasonable belief that a child is currently in a specific situation in which he or she is, or is in imminent risk of, being abused or neglected or that evidence of this child abuse or neglect may be found in a certain place").

[41] Astoundingly, ACS blames the lack of factual support for the constitutionality of the Family Court's supervision orders on Ms. C.'s failure to preserve the issue rather than the absence of allegations that Ms. C. was unable to care for her children. *See* Respondent's Br. at 28.

[42] While not explicitly discussed here, *Amici* adopt the arguments set forth in Appellant's Opening Brief with respect to the lack of probable cause and particularity in the Family Court's supervision orders. *See* Appellant's Opening Br. at 25–32.

and her children's rights under the Fourth Amendment and Article I, Section 12 of the New York Constitution.[43] *See Schulkers*, 955 F.3d at 536 (caseworkers' in-school interview of children "violated the plaintiff children's Fourth Amendment rights by seizing them from their classrooms without a warrant and without any reasonable suspicion of child abuse or neglect"); *Clark*, 998 F.3d at 301 (home entries effectuated pursuant to family court order violated parents' Fourth Amendment rights when the order "contain[ed] no facts that detail probable cause.").

CONCLUSION

Both children and parents suffer grave, long-lasting harm when subjected to unwarranted government intrusion into the home. Both children's and parents' Fourteenth Amendment right to family integrity and their Fourth Amendment right to be free from unreasonable searches serve as a necessary safeguard against these harmful intrusions. For all the reasons set forth in this brief, this Court should recognize the harms of the unlawful surveillance at issue in this case, reverse the Family Court's mootness ruling, and vacate the Family Court supervision orders as unconstitutional with respect to both Ms. C. and her children.

[43] As set forth in Appellant's Opening Br., New York courts "have interpreted [their] own Constitution to provide greater protections . . . in the area of search and seizure." *People v. Weaver*, 12 N.Y.3d 433, 445 (2009). Thus, any violation of the Fourth Amendment also constitutes a violation of the Article I, Section 12 of the New York Constitution.

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Respectfully Submitted,

/s/ Asha Menon

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CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2025, I electronically served the foregoing via NYSCEF, which sends notification to all electronic filers in a matter.

Dated: New York, New York
November 6, 2025

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