

SUPREME COURT OF THE STATE OF NEW YORK
 APPELLATE DIVISION: FIRST DEPARTMENT

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In the Matter of the Application for Approval of an Instrument Concerning	:
	:
Zavion O.,	:
	:
A Child Subject of a Foster Care Placement Proceeding under Social Services Law § 358-a.	:
	:
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	:
Administration for Children’s Services, Petitioner-Respondent,	:
	:
Donna O., Respondent.	:
	:
Ella M., Respondent.	:
	:
-----	:
Zavion O., Subject Child-Appellant	:
	:
-----X	

NOTICE OF MOTION

New York County
 Family Court

 Docket No. L-2512/17

PLEASE TAKE NOTICE, that upon the annexed affirmation of Betsy Kramer, Esq., dated October 26, 2018, the undersigned will move this court at a term thereof to be held at the Appellate Division, First Department, 27 Madison Avenue, New York, on the 5th day of November 2018 at 10:00 a.m. or as soon there after as counsel can be heard, for an order granting Lawyers For Children, Inc. and The Children’s Law Center leave to appear as *amici curiae* in the above-captioned action, and for such other and further relief as the court may deem just and proper.

Dated: New York, New York
 October 26, 2018

Respectfully submitted,

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3. The Proposed *amici* are not-for-profit organizations that have many years experience with the issue before the Court in this case – youth who leave their foster care placements without permission.

4. Since 1984, LFC has provided free legal and social work services in more than 30,000 New York City family court proceedings involving abuse, neglect, voluntary foster care placement, termination of parental rights, adoption, guardianship, paternity, custody and visitation. This year, LFC will represent children and youth in close to 3,000 judicial proceedings. LFC’s attorney-social worker teams regularly represent clients who leave their foster care placements without permission. Some of those young people are absent for a few hours and some stay away for much longer periods of time. Many of our clients who have left placement without permission have been the subject of Family Court arrest warrants seeking to return them to foster care. Some have decided to return on their own, some have been picked up by the police, and some have been coaxed to return by the professionals working with them.

5. The Children’s Law Center (“CLC”), founded in 1997 provides representation to children through its Trial, Appellate, and (since 2011) Reflective Advocacy Practice. CLC is one of two organizations selected by the NYS Unified Court System to provide representation to the children who are assigned counsel in custody and visitation proceedings in New York City Family Court. CLC also handles paternity, family offense, child support, guardianship and connected child protective matters – including those in which children are placed in foster care. CLC has represented over 100,000 children since its inception and its attorneys will provide services to children and young adults in over 7,000 New York City cases this year. Because over seventy percent of the cases CLC handles involve low-income children living in neighborhoods with inadequate quality housing, under-performing schools, and limited access to health and

mental health care, the process of resolving family issues in an overburdened court system only adds to the trauma and disruption in the lives of the children. By working so closely with the children and representing their wishes in the matter, CLC attorneys and social workers observe the direct effects of these systemic failings and what it means for their well-being. Utilizing a comprehensive and supportive representation model CLC has unique insight into the issues raised in this case through our over twenty-one years of experience representing children and articulating the child's viewpoint.

6. Appellant in this case seeks to reverse a decision by the New York County Family Court issuing a warrant for the arrest of a young person who is not accused of any crime, but has left his foster care placement without permission.

7. Proposed *amici's* insight into the issues raised in the instant case is borne of several decades experience representing thousands of children placed in foster care.

8. LFC and CLC seek leave to file this brief because they have a unique perspective that is independent of the interests of the parties to the case, and because their long experience representing youth in foster care can be helpful to the Court in considering the scope and impact of the Family Court's decision.

9. The proposed *amicus* brief will provide the court with information regarding the context in which the issue presented in this case arises. The brief will present arguments regarding the frequency with which youth run away from foster care, the reasons they leave, the impact that execution of a warrants has on children in foster care, and the effectiveness of arrest warrants to prevent youth from leaving foster care without permission. A copy of the proposed brief is annexed hereto as Exhibit B.

10. This motion and a copy of the proposed brief have been served by personal service on Israel Appel, Esq. (attorney for the subject child), Tanya Molina, Esq. (attorney for the Administration for Children's Services), Charles Rosenberg, Esq., (attorney for non-respondent mother Donna Owens). This motion and a copy of the proposed brief have been served by overnight express mail on Ella Murdaugh (appearing *pro se*).

WHEREFORE, for the foregoing reasons, it is respectfully requested that the Court grant the instant motion in all respects and grant LFC and CLC leave to file the proposed *amicus* brief in this appeal.

Dated: New York, New York
October 26, 2018

Betsy Kramer

New York County Family Court
Docket No. L-2512/17

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

In the Matter of the Application for Approval of an Instrument Concerning

ZAVION O.,

Under Social Services Law § 358-a.

Administration for Children's Services,
Petitioner-Respondent,

Donna O.,
Respondent,

Ella M.,
Respondent, _____

Zavion O.,
Subject Child-Appellant

**BRIEF ON BEHALF OF AMICI CURIAE
LAWYERS FOR CHILDREN and THE CHILDREN'S LAW CENTER**

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Dated: October 26, 2018
New York, New York

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTERESTS OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	3
BACKGROUND: Youth Who Leave Foster Care Without Permission	4
The Scope of the Problem	4
Why Youth Leave	7
Where Youth Go When They Leave	10
ARGUMENT	10
I. Issuing Warrants For The Arrest of Youth Who Leave Foster Care Is Counterproductive	10
A. Criminalizing Youth By Issuing Arrest Warrants Can Have Far Reaching Negative Consequences	10
B. Arrest Does Not Prevent Youth From Running Away	18
II. Issuing Warrants Disproportionately Criminalizes Black Youth	19
III. <i>As Parens Patriae</i> , the State Should Provide Children With Appropriate Services, Rather Than Treating Them As Criminals	21
CONCLUSION	25

TABLE OF AUTHORITIES

	Page
<u>Cases</u>	
<i>In re Dependency of A.K.</i> 162 Wash.2d 632 (2007)	18
<u>Other Sources</u>	
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INTERESTS OF AMICI CURIAE

Since 1984, Lawyers For Children (“LFC”) has provided free legal and social work services in more than 30,000 New York City family court proceedings involving abuse, neglect, voluntary foster care placement, termination of parental rights, adoption, guardianship, paternity, custody and visitation. This year, LFC will represent children and youth in close to 3,000 judicial proceedings. LFC’s attorney-social worker teams regularly represent clients who leave their foster care placements without permission. Some of those young people are absent for a few hours and some stay away for much longer periods of time. Many of our clients who have left placement without permission have been the subject of Family Court arrest warrants seeking to return them to foster care. Some have decided to return on their own, some have been picked up by the police, and some have been coaxed to return by the professionals working with them.

The Children’s Law Center (“CLC”), founded in 1997 provides representation to children through its Trial, Appellate, and (since 2011) Reflective Advocacy Practice. CLC is one of two organizations selected by the NYS Unified Court System to provide representation to the children who are assigned counsel in custody and visitation proceedings in New York City Family Court. CLC also handles paternity, family offense, child support, guardianship and connected child protective matters – including those in which children are placed in foster care.

CLC has represented over 100,000 children since its inception and its attorneys will provide services to children and young adults in over 7,000 New York City cases this year. Because over seventy percent of the cases CLC handles involve low-income children living in neighborhoods with inadequate quality housing, under-performing schools, and limited access to health and mental health care, the process of resolving family issues in an overburdened court system only adds to the trauma and disruption in the lives of the children. By working so closely with the children and representing their wishes in the matter, CLC attorneys and social workers observe the direct effects of these systemic failings and what it means for their well-being. Utilizing a comprehensive and supportive representation model CLC has unique insight into the issues raised in this case through our over twenty-one years of experience representing children and articulating the child's viewpoint.

SUMMARY OF ARGUMENT

A significant number of young people leave their foster care placements in New York City without permission, as they do around the country and around the world. Most leave for a short period of time – just a few days – and then return to placement. Youth who leave once are likely to leave and return, repeatedly throughout their stay in foster care. They generally do so for one of two reasons: either to escape the conditions of their foster care placement or to reconnect with family, friends or their home community.

Using arrest warrants as a means to force youth to return to foster care placement is, at best, ineffective and, at worst, liable to cause long-term harm in a number of different ways. Youth who have been arrested suffer emotional trauma, are more likely to run from foster care again, are more likely to be arrested in the future, and have worse educational outcomes than children who have never been arrested. The stigma that attaches to youth who have been arrested can jeopardize their opportunity to be discharged from foster care and return home permanently.

Black children, in particular, suffer the negative impact of ACS's use of arrest warrants to return youth to foster care. These youth are overrepresented in the foster care system and are also more likely than other foster youth to abscond from placement. As a result, a disproportionate number of black children who

have committed no crime are subject to arrest and all of the harmful consequences that flow from being apprehended by the police.

It is understandable that ACS is anxious to use all available resources to return missing children to foster care. However, law enforcement and the power of arrest should not be available for that purpose. A wide body of research examining why youth run from care and how to prevent them from doing so concludes that punishment and displays of authority are not effective to prevent youth from running away. Instead, foster care workers should use sound social work practice to engage youth and learn why they leave their placements. Implementing a plan that addresses the youth's reasons can be far more effective than a police officer's display of force in convincing the youth to return to (and stay in) placement.

BACKGROUND: Youth Who Leave Foster Care Without Permission

The Scope of the Problem:

It is not uncommon for youth in foster care to leave their placements without permission. Several studies have examined the frequency with which youth in foster care go missing and the numbers are staggering. Some reports estimate that as many as 71% of youth placed out of their homes run away from foster care for some period of time. Theodore P. Cross *et al.*, *Youth Who Run Away From Substitute Care in Illinois: Frequency, Case Characteristics, and Post-Run Placements*, University of Illinois School of Social Work (2015) (citing M.E.

Courtney and A. Zinn, *Predictors of Running Away From Out-of-Home Care*, *Children and Youth Services Review*, 31 1298-1306), https://cfrc.illinois.edu/pubs/bf_20160301_YouthWhoRunAwayFromSubstituteCareInIllinoisFrequencyCaseCharacteristicsAndPost-RunPlacements.pdf. Because there is no uniform standard for determining when a child is counted as missing, some jurisdictions apply the label whenever a youth's whereabouts are unknown, while others wait until they have been gone for 24 hours. Nonetheless, even more conservative estimates report that nearly half of children in out of home care have run at some point in time. The California Evidence-Based Clearinghouse for Child Welfare, *Running Away and Absent Without Official Leave (AWOL) in the Child Welfare System*, <http://www.cebc4cw.org/running-away-and-absent-without-official-leave-awol-in-the-child-welfare-system/> (last visited Oct. 16, 2018); Marni Finkelstein, *et al.*, Vera Inst. of Justice, *Youth Who Chronically AWOL From Foster Care: Why They Run, Where They Go and What Can be Done*, 3 (Aug. 2004), <https://www.vera.org/publications/youth-who-chronically-awol-from-foster-care-why-they-run-where-they-go-and-what-can-be-done> (Forty percent of youth who entered foster care as adolescents had at least one reported episode of being missing from placement).

As in other places around the world, a large percentage of children in New York City leave their foster homes without permission. The New York City

Council, concerned about the high number of youth who were absent from their assigned placements, requires ACS to report annually on the number who go missing from foster care. The most recent report shows that as of December 31, 2017, 354 teens were missing from their placements for more than 7 days. ACS Report on Youth in Foster Care (2017), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2017/YouthInFosterCare2017.pdf>. ACS has not reported the number of youth who are absent from their placements for less than seven days. However, that number is expected to be significantly higher than the number reported by ACS, since most youth who are missing from care are gone for only a week or less when they run away. Mark E. Courtney, *et al.*, Chapin Hall Center For Children, *Youth Who Run Away from Out-of-Home Care*, Issue Brief #103 (March 2005), https://www.chapinhall.org/wp-content/uploads/Courtney_Youth-Who-Run-Away_Brief_2005.pdf. In fact, the majority of absences tend to be short, with an average of three days. Kimberly Crossland and Glen Dunlap, *Running Away From Foster Care: What Do We know and What Do We Do?* 24 J Child Family Studies, 1697, 1698 (2015).

Almost all young people who leave their foster care placements without permission do so more than once. Turning foster homes and congregate care facilities into revolving doors, many youth leave without permission and return, repeatedly. “Youth in foster care who had a history of running away were 92%

more likely to run away again compared to youth who had no history of running away [citing A. Nesmith, *Predictors of Running Away From Family Foster Care*, 85 Child Welfare, 585-609 (2006)].” *Id.* at 1699; Michael R. Pergamit and Michelle Ernst, *Running Away From Foster Care: Youth’s Knowledge and Access of Services* 16 (April 9, 2011), <https://www.1800runaway.org/wp-content/uploads/2015/05/Part-C-Youth-in-Foster-Care.pdf> (most youth in a study of 50 foster care runaways had run multiple times). When youth return to placement, they are not likely to remain for long. More than 20 percent of youth who have run once before will run again within 30 days of returning to placement, and over 30 percent of youth who have run twice before will run again within 30 days of reentry. Mark E. Courtney, *et al.*, *supra*, at 3.

Why Youth Leave:

Two motivating factors explain generally why youth run from foster care. They are forces that “pull” youth away from their foster care placement and forces that “push” youth away from their foster care placement. Kimberly Crossland and Glen Dunlap, *supra*, at 1701; Marni Finkelstein, *et al.*, *supra* at 3; Michael R. Pergamit and Michelle Ernst, *supra*, at 25-26; Mark E. Courtney, *supra*, at 3; California Evidence-Based Clearinghouse for Child Welfare, *supra*.

Many youth leave their foster care placements without permission because they feel the pull of family, friends, and activities in their home communities.

When youth are placed in foster care, their lives are turned upside down. They are often sent to live with total strangers, in an unfamiliar neighborhood, where they attend a new school, are alienated from their friends, and may see their families only under strictly prescribed circumstances. Some older youth are placed in group homes and residential placement centers outside of New York City. They all lose the ability to have daily contact with family, friends and everything that is familiar to them. For many children, foster care placement and the attendant stigma of being “in the system” is lonely and isolating. Not surprisingly, then, connecting with family or friends is a “key reason” many youth run away.

Kimberly Crossland and Glen Dunlap, *supra*, at 1701; Julie Taylor, *Young People’s Experiences of Going Missing From Care: A Qualitative Investigation Using Peer Researchers*, 23 Child Abuse Review 387, 397 (2014) (“In our study, separation from family was cited repeatedly as a reason why young people run away from care.”); Mark E. Courtney, *et al.*, *supra* at 5 (Interviews with youth and government data pertaining to more than 14,000 youth who ran away from foster care revealed “a common theme among the youth was their hope to connect with others whom they believed cared about them and understood them.”). Many youth describe the pull to return home to their family and friends simply as an attempt to be “normal.” *Id.* at 3, 4.

Just as some youth feel the pull of family and friends, others leave in an effort to escape the conditions in their foster care placements. Many youth feel unwelcome and unwanted in their foster homes, where they are treated differently from the foster parents' biological children. Bullying, fighting, theft and assaults are not uncommon in the group residences where many older teens are placed. It is a sad truth that foster parents and congregate care staff can be insensitive to the needs of the children in their care, and have too often been neglectful. Some youth run from their foster care placements because they do not feel safe. Marni Finkelstein, *et al.*, *supra*, at 10-12; California Evidence-Based Clearinghouse, *supra*. Others leave because they believe they are languishing in foster care, not receiving appropriate programming, and not able to pursue career opportunities. Marni Finkelstein, *et al.*, *supra* at 10-12; California Evidence-Based Clearinghouse, *supra*. Often, when youth are placed in foster care, they are told they must "earn" privileges that they had while living at home. These might include for example, the right to have a key to the foster home, to stay out after school, or to hold a part time job. Some youth chafe at the restrictiveness of placement, wanting to have the same opportunities they had when living at home with their families. Mark E. Courtney, *supra*, at 4; Kimberly Crossland and Glen Dunlap, *supra*, at 1704; Marni Finkelstein, *et al.*, *supra*, at 11. For many children

who feel powerless in foster care, leaving placement without permission is simply an attempt to exert control over their lives. Julie Taylor, *supra*, at 398.

Where Youth Go When They Leave

By and large, youth who are missing from foster care are not living on the street or hiding in alleyways. Most youth who are absent from their foster care placements can be found staying with family and friends. Kimberly Crossland and Glen Dunlap, *supra*, at 1701. One study found that more than half of youth who were absent from foster care stayed with friends and one third of them stayed with relatives, accounting for almost the whole population of absent youth. Michael R. Pergamit and Michelle Ernst, *supra*, at 32. In fact, many youth who are counted as “missing” have not run away, but simply overstayed a sanctioned home visit. Marni Finkelstein, *et al.*, *supra*, at 14. Given the reasons why youth typically run from foster care, it is not surprising that most can be found in familiar places where they feel safe and can pretend for a short time that everything is “normal.”

ARGUMENT

I. Issuing Arrest Warrants For The Arrest of Youth Who Leave Their Foster Care Placements Is Counterproductive

A. Criminalizing Youth By Issuing Arrest Warrants Can Have Far Reaching Negative Consequences

Despite regularly requesting arrest warrants for youth who leave foster care without permission, ACS has recognized the harm that executing those warrants

can cause for young people. In 2015, ACS issued a draft policy for the procedures to be followed when youth go missing. The policy was introduced with the following statement: “ACS acknowledges that, in practice, the execution of a warrant can have unintended negative consequences to the child or youth that is absent from care.” NYC Administration for Children’s Services, *ACS Provider Bulletin*, https://www1.nyc.gov/assets/acs/pdf/provider-bulletin/2015/3_18_15_ACS_Provider_Bulletin.pdf. Those unintended negative consequences can include a profound immediate impact on the child’s well-being, as well as a long-term impact on the child’s emotional health, likelihood of future arrest, school performance, and relationships with friends and family. In light of the bleak forecast for all children in foster care in each of these realms, the Court should not sanction any action that further jeopardizes outcomes for youth in those areas – especially when that action is of dubious utility.

The negative impact that being arrested has on the emotional well-being of young people, in general, has been well documented. The findings are the same, whether or not the youth is charged after being picked up. “Youth who are involuntarily stopped by police reported experiencing high rates of distress, perceived injustice, hopelessness, and dehumanization.” Kim Gilhuly, *et al.*, Human Impact Partners, *Reducing Youth Arrests Keeps Kids Healthy and Successful: A Health Analysis of Youth Arrest in Michigan*, 8 (June 2017),

https://humanimpact.org/wp-content/uploads/HIP_MichYouthArrests_2017.06.pdf. Treating children like criminals when they have neither committed a crime nor been accused of having committed a crime “sends a signal to them that they are “bad” – a label that brings about stigma and negative self esteem. Mahsa Jafarian and Vidhya Ananthakrishnan, Vera Instit. of Justice, *Just Kids: When Misbehaving Is a Crime*, 11 (August 2017), <https://www.vera.org/when-misbehaving-is-a-crime#how-status-offenses-lead-kids-into-the-justice-system>; The School Attendance Task Force, Los Angeles County Education Coordinating Council, *A Comprehensive Approach to Improving Student Attendance in Los Angeles County*, 7 (Jan. 2012), http://www.publiccounsel.org/tools/assets/files/Los-Angeles-School-Attendance-Task-Force-Report_2-2-12.pdf (Using the police to manage non-criminal behaviors – such as running away – results in “the unnecessary criminalization and humiliation of youth”).

Youth in foster care are particularly vulnerable to suffering emotional harm as a result of being arrested. These children have been abused, neglected or abandoned by their families. They have, as such, suffered trauma that leaves many of them with a heightened sensitivity to threats, intimidation, and displays of force. And, when foster care providers involve law enforcement in incidents that would not have resulted in the police being called if the child were living with their

parents, they add to the child’s feelings of rejection. Howard League for Penal Reform, *Ending The Criminalization Of Children In Residential Care: Briefing 1* (July 2017), <https://howardleague.org/publications/ending-the-criminalisation-of-children-in-residential-care/>. As a result, “[w]hen law enforcement is brought into a non-life-threatening situation with a foster child, the caregivers and the already traumatized children are likely to see the crisis escalate rather than stabilize.” County Welfare Directors Association of California, *Family Urgent Response System for Foster Youth and Caregivers* (Apr. 2018), https://www.cwda.org/sites/main/files/file-attachments/ab_2043_fact_sheet_website.pdf. And, calling on the police to intervene in non-criminal matters involving foster children “only worsened their precarious situations.” Karen de Sá, *et al.*, *Chronicle Investigation: Fostering Failure Dubious Arrests, Damaged Lives*, San Francisco Chronicle (May 18, 2017), <https://projects.sfchronicle.com/2017/fostering-failure/>. Unfortunately, youth in foster care do not easily recover from being detained by the police. An in-depth report on the criminalization of youth in foster care found that “the experience of being arrested, handcuffed and jailed, even briefly, can have lasting impact, from deepened trauma to greater odds of a criminal future.” *Id.*

Being handcuffed – just one small piece of the arrest experience – can be particularly detrimental to young people. “Child psychiatrists say that shackling is

so damaging to a child's developing sense of self that it may well push him or her into further criminality." Patricia Puritz, *Shackling Juvenile Offenders Can Do Permanent Damage To Our Kids*," Washington Post, Nov. 13, 2014. One teen, testifying before her state legislature had this to say about her experience of being handcuffed:

the dehumanizing experience shaped not only how others saw me, but how I saw myself for many years. . . I felt as though everyone was seeing me as a criminal, and that I would be nothing to them but a lifelong offender. Those experiences also made me think of myself as a criminal, and my expectation was that it would happen again because if they could do it to me once, they would do it again. If figured that this was who I was, not just something I did." Skye Gosselin, *Handcuffs, Shackles on Juveniles Rob Kids of Their Self-Esteem*, (May 2, 2015), <https://www.centralmaine.com/2015/05/02/handcuffs-shackles-on-juveniles-rob-kids-of-their-self-esteem/>.

Children in foster care may be especially vulnerable to the harms that being handcuffed can cause. Many of them have experienced physical or sexual abuse, struggle with mental health issues, and have been diagnosed with developmental disabilities. For these children, in particular, the use of shackles can cause "serious mental and emotional harm." Kim Gilhuly, *et al.*, *supra*, at 11; Emily Banks, *et al.*, University of Florida Levin College of Law, *The Shackling of Juvenile Offenders: The Debate in the Juvenile Justice Policy*, 3, https://www.law.ufl.edu/_pdf/academica/centers-clinics/centers/shackling.pdf.

On occasion, the warrant issued for an absent foster youth will specify that handcuffs are to be used only if required for public safety. This restriction is not

sufficient to protect children from the harms of indiscriminate shackling. The broad discretion afforded to the arresting officers is so vague as to be virtually meaningless. And, officers who apply handcuffs as a matter of course when executing an arrest warrant often use their standard operating procedure when arresting children – regardless of what is written on the warrant.

Arresting youth can have implications far beyond the immediate impact on their emotional stability. The mere fact of having been arrested can cause irreparable damage to youth's place in their community – even when they have committed no crime. The stigma that attaches to having been picked up by the police, placed in handcuffs, put into a squad car, and brought down to the police station, can all contribute to youth being perceived negatively and subsequently treated differently by their family, friends, and others around them. Kim Gilhuly, *et al.*, *supra*, at 8. The impact of this stigma should not be underestimated. It can affect the youth's ability to return home and unnecessarily prolong their stay in foster care.

When ACS obtains a warrant for the arrest of a young person, the agency sets the stage for the youth to have repeated entanglements with the police. Youth who have been arrested once are more likely to be arrested in the future. In some instances, this is because who have been treated as criminals are more likely to act as criminals. David Huizinga *et. al.*, *The Effect of Juvenile Justice System*

Processing on Subsequent Delinquent and Criminal Behavior: A Cross-National Study, 101 (2004) www.ncjrs.gov/pdffiles/nij/grants/205001.PDF; Karen de Sá, *et al.*, *supra* (being arrested increases the odds that a youth will engage in criminal activities in the future). Disturbingly, even youth who do not engage in delinquent behaviors are at increased risk of future arrest, simply because they are more likely to be perceived by law enforcement as delinquent youth. Kim Gilhuly, *et al.*, *supra* at 22.

The negative correlation between juvenile arrest, foster care placement, and high school graduation rates is another important factor to consider when examining the impact that arrest warrants have on youth who run away from foster care. In general, youth in foster care are significantly less likely than their peers to graduate from high school. National Working Group on Foster Care and Education, *Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster care* (Apr. 2018), <http://www.fostercareandeducation.org/Database.aspx>; Fostering Youth Success Alliance, <https://www.fysany.org/why-we-exist> (last visited 10/23/18) (in New York State, 50% of foster youth will not receive a high school or equivalency diploma by the time they age out of foster care). Youth who have been arrested also face severely diminished odds of completing secondary school. A first-time arrest during high school nearly doubles the chances a student will drop out of

school, even when the arrest does not lead to court involvement. Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 *Justice Quarterly* 462, 473, 478 (Dec. 2006); David S. Kirk and Robert J. Sampson, *Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood*, 86 *Sociology of Education*, 36, 47 (2013) (sixty four percent of Chicago public school students who had never been arrested graduated from high school compared with twenty six percent of youth who had been arrested which “suggest that arrest has severe consequences for the prospects of educational attainment”). For a youth who has either been placed in foster care or been arrested, the chance of completing high school is disturbingly low. For a youth who has to contend with the effects of both foster care placement and an arrest, the odds seem almost unbeatable.

Some youth (perhaps those who are trying to beat the odds for youth in foster care) make an effort to stay in school while absent from placement. Unfortunately, those youth will stop attending when they believe that they will be picked up there. Mark E. Courtney, *et al.*, *supra*, at 6; Michael R. Pergamit and Michelle Ernst, *supra*, at 31-32. This is particularly common among youth who believe a warrant has been issued for them. For these youth, the desire to obtain an education is superseded by the fear of being arrested at school, taken out of the classroom, handcuffed and driven away in the back of a squad car, all while their

teachers and classmates watch. Thus, by obtaining warrants for youth who are absent from care, ACS pushes young people away from attending school and closer to joining the large numbers of undereducated former foster youth struggling to survive.

B. Arrest Does Not Prevent Youth From Running Away

Punishment – such as arrest – is not effective to prevent youth from running away and may, in fact, actually drive youth to leave foster care without permission. It is often believed that youth will be deterred from engaging in undesirable behavior when confronted with the possibility of arrest or other harsh punishment. Yet, research examining various approaches to undesirable youth behavior across several cities has concluded: “arrest does not appear to help individuals reduce or desist from delinquency. Rather, it furthers persistence.” David Huizinga *et. al.*, *supra*, at 101. This outcome has been found to be true in the particular context of youth who leave their foster care placements without permission. Studies of young people’s experiences going missing from care have concluded that “punitive measures” do not appear to be effective to prevent runaway behavior. Julie Taylor, *supra*, at 397. And, according to the American Academy of Child and Adolescent Psychiatry, when youth are punished for leaving foster care, it becomes *more* likely that they will continue to run away from their foster care placements. *In re Dependency of A.K.* 162 Wash.2d 632 (2007). In light of the frequency with which

youth repeatedly leave their foster care placements without permission despite the looming prospect of arrest, it is clear that the threat of such punishment does little to deter them from leaving and may, in fact, push them to do so. ACS should not be permitted to use a tool that is, at best, ineffective to prevent youth from running away, and, at worst, may compel them to do so repeatedly.

II. Issuing Warrants Disproportionately Criminalizes Black Youth

Black youth are vastly overrepresented in the foster care system. In New York City, Black children make up only 24.3% of the child population. Yet, more than half (55%) of the children in the foster care system are Black. Vajeera Dorabawila and Nicole D’Anna, New York State Office of Children and Family Services *Request for Proposals Part IV: Disproportionate Minority Representation (DMR) in Child Welfare and Juvenile Justice Systems* 3 (Dec. 2015). Once placed in foster care, Black children remain in the system longer than white or Hispanic children. *Id.* at 10. They are, as such, more likely than other children to contend with the negative consequences associated with foster care placement – including the emotional trauma that comes from being separated from their friends, families and home communities, diminished prospects for graduating from high school, and increased likelihood of entering the criminal justice system.

The longer lengths of stay in foster care may explain why Black youth are further disproportionately represented among youth who leave placement without

permission. Several studies – both regional and national – have found that Black children, who spend more time in foster care than white children, are much more likely to run away from out-of-home care than whites. Mark E. Courtney, *et al.*, *supra*, at 5; Theodore P. Cross *et al.*, *et al.*, *supra*, at 3, 5 (Youth who ran away were significantly more likely to be African American”). In a recent evaluation of the foster care records of approximately three million children nationwide, The Center For State Child Welfare Data found that 30% of Black adolescents ran away from their placements, compared to only 18% of white youth. Fred Wulczyn, *et al.*, Chapin Hall, The Center for State Child Welfare Data, *Understanding the Differences in How Adolescents Leave Foster Care*, 10 (2017), https://fcda.chapinhall.org/wp-content/uploads/2017/12/Chapin-Hall_Understanding-the-Differences-in-How-Adolescents-Leave-Foster-Care_12.26_DEF.pdf. As discussed above, youth often leave their foster care placements because they feel disconnected from their families and friends, and frustrated at the perceived lack of progress in returning them to their home communities. Black children are absent from their assigned foster care placements more often than white children not because they are criminals who need to be arrested, but because they are children who have been separated from their families and friends for too long and just want to be “normal.”

When warrants are issued for the arrest of Black children, they do not just face the prospect of unnecessary criminalization, unnecessary trauma, damaged relationships in their communities, and diminished odds of completing high school. Black children face additional risks when confronted by the police, as people of color experience disproportionate use of force by police compared to their white counterparts. Kim Gilhuly, *et al.*, *supra*, at 12; Ronald G. Fryer, Jr., Nat'l Bureau of Econ. Research, *An Empirical Analysis Of Racial Differences In Police Use Of Force* (Jan. 2018), <https://www.nber.org/papers/w22399.pdf>. Exposing children to this additional risk should not be sanctioned.

III. As *Parens Patriae*, the State Should Ensure That Youth Receive Appropriate Services, Not That They Be Treated As Criminals

In light of the poor outcomes experienced by youth who have been arrested and subject to other forms of punishment, legal policy makers and social services professionals recommend that these tactics not be used when youth run away. Instead, foster care providers should seek to engage youth, determine the reasons they left placement, and implement a plan of action that addresses the youth's concerns. Engaging youth in this way may be a more effective way to return them to foster care, reduce the likelihood that they will run away again, and keep them safe – while avoiding all of the harms that may result from having the youth arrested.

The American Bar Association has urged the legal community to revise the approach traditionally taken with runaway children, replacing law enforcement with practices that address the root cause of the behavior. The ABA Center on Children and the Law looked at the ways in which public systems treat youth who run away and commit other status offenses. Its report found that absent safety issues, youth and families achieve better outcomes at a lower cost to the states if they resolve their problems within the family and community, rather than in the courts. Jessica R. Kendall, *Families in Need of Critical Assistance: Legislation and Policy Aiding Youth Who Engage in NonCriminal Misbehavior*, ABA Center on Children and the Law, vii (2007). Based, in part, on those findings, the ABA issued a resolution urging state, local and territorial governments to revise their laws, policies and practices to help runaway youth. “In light of the emergence of new models and best practices in the law to help runaway youth and their families,” the ABA’s suggested revisions include “assisting, instead of arresting and using the courts to unnecessarily detain, children who have been forced out of their homes or who have run away from homes that are abusive or neglectful.” *ABA Recommendation Adopted by the House of Delegates* Feb. 8-9, ¶¶ 5-7, 10-12 (2010).

The new models and best practices referenced by the ABA are also discussed in numerous social science studies exploring the effectiveness of various

responses to youth who run away (both from foster care and from their families). Those studies recognize that the traditional arrest, punishment and detention responses to youth who run are not effective to keep youth safe and should be replaced with compassionate responses that address the reasons why youth leave their homes. Researchers who interviewed youth about their experiences in running away from foster care, found “young people advised of the need for firm boundaries, reinforced not with actions of power, but rather empathy, understanding, support, respect and a listening ear.” Julie Taylor, *supra*, at 398. Researchers also note that a youth who is met with an empathetic response may be less likely to run again in the future, than is a youth who is met with anger or irritation and punishment. Marni Finkelstein *et al.*, at 31-32. And, tailoring intervention to address the motivation for running may also be effective in stabilizing placement. Kimberly Crossland and Glen Dunlap, *supra*, at 1703; Theodore P. Cross *et al.*, *supra*, at 6 (“We should be inspired to understand better the needs underlying running away and work to seek improvements that will reduce youths’ motivation to run.”); Kevin M. Ryan, *Stemming The Tide of Foster Care Runaways: A Due Process Perspective*, 42 Cath. U. L. Rev. 271, 309 (1993) (Rather than imposing punishment, protecting children from the dangers of running away “requires a comprehensive remedy that anticipates the child’s behavior and creates appropriate programs.”).

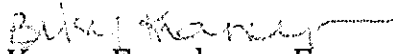
Courts and foster care providers should respond to the youth leaving placement in a manner that is sensitive to the underlying issues, that helps to address those issues, and that is designed to engage the youth. For example, if a child leaves foster care to spend time with family, the foster care agency should consider implementing a consistent visitation plan for the child and family, instead of dragging the child away from the family in handcuffs. If there are safety concerns in the parents' home, the foster care agency should think creatively about how to increase contact without exposing the youth to risk. More frequent family visits of shorter duration or outside of the home may be appropriate. Or, agency-approved visits to the home of a friend or extended family member might help to address the youth's feeling of isolation and disconnectedness. The agency might also consider engaging the youth in activities that are based in the child's home community, such as sports leagues or arts programs. Further, if a child leaves the foster care placement to avoid a conflict there, the agency should engage the youth in an effort to understand the nature of the conflict and take steps to ensure the child's safety, rather than dragging the child back to face the same conditions that caused him to flee. Responding in a manner that does not address the youth's concerns with sensitivity will put that child at a continued risk of harm.

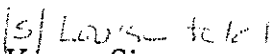
CONCLUSION

Children in foster care face daunting obstacles that other children do not encounter. It is cruel to issue warrants for the arrest of foster children simply because they want to spend time with family and friends, or because they are hoping to escape the bullying harassment or threats of harm that are too common in foster care. It is particularly harsh given the many negative consequences that flow from arrest and the availability of other means to engage youth and return them to care. For all of the reasons set forth herein and in Appellant's brief, we respectfully request that the Court reverse the Order of the family court issuing a warrant for the arrest of the subject child.

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