02-7079 (L)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SHARWLINE NICHOLSON, et al.

APPELLEES,

-against-

NAT WILLIAMS, et al.

APPELLANTS.

On Appeal from the United States District Court
for the Eastern District of New York

BRIEF IN SUPPORT OF AFFIRMING THE EASTERN DISTRICT OF NEW YORK ON BEHALF OF AMICI CURIAE CHILDREN'S RIGHTS, CITIZENS' COMMITTEE FOR CHILDREN OF NEW YORK, INC., JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW, JUVENILE LAW CENTER, NATIONAL CENTER FOR YOUTH LAW AND YOUTH LAW CENTER

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Dated: October 30, 2002

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STATEMENTS OF INTEREST OF AMICI

Children's Rights

Children's Rights is a national nonprofit organization whose mission is to achieve reform in the nation's child welfare systems, to ensure that children who are at risk of abuse and neglect receive the care and protection in permanent, stable families that are both their birthright and their legal right. For over thirty years, starting as the Children's Rights Project of the American Civil Liberties Union, and since 1995 as an independent organization, Children's Rights has supported this mission by: evaluating and documenting reports of serious failings and violations of children's rights among agencies providing child protective and child welfare services; using class-action litigation, and the information generated through this litigation, to create pressures for reform; and identifying and disseminating information about the policies, strategies and approaches that work best for improving the performance, accountability and outcomes for children involved with child welfare systems across the United States. Children's Rights uses a variety of approaches that combine policy analysis with strategic litigation.

Citizens' Committee for Children of New York

Citizens' Committee for Children of New York (CCC) is a fifty-eight year old independent, multi-service advocacy organization dedicated to ensuring that every New York City child is healthy, housed, educated and safe. CCC is an independent voice for New York City's children. CCC champions children who cannot vote, lobby, or act on their own behalf, especially those who are poor, have special needs or are particularly vulnerable. Our goal is to secure the rights, protections, and services children deserve. Many of CCC's activities directly affect the lives of individual children but most of its efforts are spent identifying the causes and effects of disadvantage and poverty, promoting the development of services in the community,

and working to make public and private institutions more responsive to children. CCC is unique among child advocacy organizations in that citizen members and staff work side-by-side assuming the roles of spokesperson, researcher, coordinator and watchdog for the City's children. CCC's staff and members include specialists in health, mental health, education, child care, housing, homelessness, income security, child welfare, juvenile justice and child and youth development.

Judge David L. Bazelon Center for Mental Health Law

The Bazelon Center for Mental Health Law, formerly the Mental Health Law Project, is a national legal advocacy organization dedicated to advancing the rights and dignity of adults and children with mental health needs. The Center has been counsel in several statewide class action lawsuits involving the child welfare system because children in that system disproportionately are in need of mental health services and supports. In its litigation and policy advocacy, the Center has been a strong proponent of individualized decision-making that focuses on the unique strengths of the child and family and seeks to support the child's mental health and stability.

Juvenile Law Center

Juvenile Law Center (JLC) is one of the oldest public interest law firms for children in the United States. JLC ensures that the child welfare, juvenile justice and other public systems provide vulnerable children with the protection and services they need to become happy, healthy and productive adults.

National Center for Youth Law

The National Center for Youth Law (NCYL) is a private, non-profit legal organization devoted to improving the lives of poor children in the United States. For more than

25 years, NCYL has provided support services to child advocates nationwide and direct representation in cases involving child welfare, public benefits for children and their families, legal issues involving child and adolescent health, fair housing for families with children, and juvenile justice. In particular, NCYL has ongoing litigation focused on the needs of youth in the child welfare system throughout the country. NCYL also engages in policy analysis, and administrative and legislative advocacy, on both state and national levels.

Youth Law Center

The Youth Law Center is a non-profit public interest law office that has worked to protect abused and at-risk children since 1978. The Center works nationally to serve children, focusing particularly upon the problems of children living apart from their families in the child welfare and juvenile justice systems.

REQUEST FOR ORAL ARGUMENT

Amici respectfully request permission of the Court to participate in oral argument.

SUMMARY OF ARGUMENT

This is a case about children's rights. Children affected by public child welfare systems are among our country's most vulnerable citizens. They are often at the mercy of agencies whose mission to protect them is belied by ill-conceived policies and practices that have the opposite effect and unnecessarily cause them substantial harm. Amici are organizations devoted to public education and advocacy principally on behalf of children involved with such public systems.

Amici file this brief, with consent of all the parties, in support of the District Court's ruling that the practice of removing children from their mother's custody solely because their mothers are battered women is unconstitutional. There is no child welfare basis for such a policy or practice. A child should not be removed from a non-abusive parent by New York City's Administration for Children's Services ("ACS") without an individual determination that the child is in imminent danger. The enjoined ACS practices cause serious psychological, emotional, and developmental harm to child witnesses to domestic violence who are unnecessarily removed from their mothers.

Amici further agree with the District Court that abstention is wholly inappropriate. Contrary to City Defendants' implicit suggestions, this federal class action and the preliminary injunction obtained therein do not interfere with Family Court proceedings in any manner. Nor are those individual proceedings adequate for seeking broad injunctive relief for systemic federal constitutional violations such as was successfully obtained in this case. The District Court properly held that the doors of the federal courts should remain open to such vulnerable plaintiffs who bring a classic civil rights case seeking system-wide relief from unconstitutional government

actions, much like the lawsuits brought by various Amici on a regular basis. The District Court's order should be affirmed.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY FOUND THAT ACS'S PRACTICE OF REMOVING CHILDREN FROM THEIR MOTHERS' CUSTODY SOLELY BECAUSE THEIR MOTHERS ARE BATTERED WOMEN CAUSES CONSTITUTIONAL HARM TO CHILDREN.

The District Court appropriately relied on extensive expert testimony in finding that the unnecessary removal of children from their mothers who have been the victims of domestic violence can cause serious harm to those children. *See Nicholson v. Williams*, 203 F. Supp.2d 153, 198-204 (E.D.N.Y. 2002). Not only are those findings not clearly erroneous based on the evidence credited by the District Court, they are also fully consistent with sound child welfare policy and the relevant social science research. *See Olivieri v. Ward*, 766 F.2d 690, 693 (2d Cir. 1985) ("findings of fact stand unless we find that they are clearly erroneous").

A. There Is No Child Welfare Basis For Automatically Removing Children From Non-Abusive Parents Who Are Victims Of Domestic Violence Without Individual Determinations Of Imminent Risk To The Children's Safety.

The plaintiff children's constitutional interest "in not being dislocated from the 'emotional attachments that derive from the intimacy of daily association,' with [a] parent" is well established. *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977). Thus, absent a court order or a compelling state interest, such as the imminent threat of harm, ACS cannot remove children from their parents. *See Tenenbaum v. Williams*, 193 F.3d 581, 594 (2d Cir. 1999), *cert. denied*, 529 U.S. 1098 (2000). The general ACS practice of unnecessarily removing children from the non-abusive parent when domestic violence occurs, as documented by the District

Court, was therefore correctly found to be unconstitutional. *See Nicholson*, 203 F. Supp.2d at 207-221, 228-229, 238.

There is no child welfare basis for assuming that the children of mothers victimized by domestic violence are at risk of immediate harm if not separated from their non-abusive mothers. The consensus in the child welfare literature is that child witnesses of domestic violence react to adult domestic violence in different ways, based upon a variety of factors that include the child's age, gender and relationship with adults in the home. *See* Salcido Carter, L., et al., "Domestic Violence and Children: Analysis and Recommendations," 9 Domestic Violence and Children 3: 4, 6 (Winter 1999). One of the most critical protective factors for a child is the existence of a strong, positive relationship between the child and a competent and caring adult. *Id.* The many child witnesses of domestic violence who have a strong and positive relationship with their mothers and count on them for emotional support and stability are therefore less likely to suffer emotional harm. *See* Sullivan C.M. & Bybee, D.I., "Children Witnessing Domestic Violence: What Affects Their Well-Being Over Time?" Domestic Violence Report (Dec./Jan. 2002) at 30.

ACS's general practice of removing children from non-abusive parents in situations which involve domestic violence fails to account for the possible lack of immediate danger based on the unique circumstances of each case. It also ignores viable alternatives to removal where "safety for the mother can provide safety for the child." Goodmark, L. "A Balanced Approach to Handling Domestic Violence in Child Welfare Cases," 20 Child Law Practice 5: 49 (July 2001). Assisting the battered mother in safety planning for herself and her children while holding batterers accountable for their abusive behaviors can, along with appropriate support services, protect children and their primary family relationship. *Id.* Because children function best if they can remain safely in their families, "[i]t is particularly shortsighted to remove children from the

care of their battered mothers without first trying to remove or change the source of the domestic violence risk, the batterers." National Council of Juvenile & Family Court Judges Family Violence Department, "Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice," (1999) at 19 ("National Council Guidelines"). For example, helping domestic violence victims find safe housing, jobs, and childcare can eliminate the need to remove children from the care of their mothers. *See id.* at 20. Without a policy that requires an individual assessment of risk and the development of viable mother and child safety plans, as well as proper CPS training, workers are inclined to remove children from their victimized mothers unnecessarily. *See* Mills, Linda G., et al., "Child Protection and Domestic Violence: Training, Practice, and Policy Issues," 22 Children and Youth Services Review 5, 315, 319 (2000).

Jurisdictions that have been recognized as having successfully integrated a domestic violence response program within their child protective services programs focus on the strengths and needs of the family, including an individual assessment of the child's situation, in order to develop a coordinated response that protects both the child and the abused parent. *See* Findlater, J.E. & Kelly, S., "Child Protective Services and Domestic Violence," 9 Domestic Violence and Children 3:84, 88-90 (Winter 1999). The failure to implement such individualized assessments of children's and family's circumstances, especially in homes with domestic violence, cannot be supported by social science research or child welfare policy. *See generally* National Council Guidelines. Not only do such failures harm children directly as discussed below, they have the additional perverse effect of discouraging battered women from seeking assistance for themselves and their children for fear of losing child custody, thereby increasing incidents of child abuse. *See* The "Failure to Protect" Working Group of Child Welfare Committee of New

York City Inter-agency Task Force Against Domestic Violence, "Charging Battered Mothers With 'Failure to Protect': Still Blaming the Victim," 27 Fordham Urban Law Journal 3, 849, 857 (February 2000). If individualized assessments are not made before removing children from their mothers on an emergency basis when domestic violence erupts, children will be removed unnecessarily from the one person who can help them cope with what they have experienced.

B. ACS's Domestic Violence Removal Practice Is Harmful To Children.

Unnecessarily separating children from non-abusive parents because of domestic violence in the home causes serious and immediate harm to children. Children who have witnessed abuse are already struggling with anger, grief, anxiety and feelings of being responsible for the abuse. *See* The "Failure to Protect" Working Group, at 857. By being removed from non-abusive parents, the children are victimized again by their increased sense of helplessness and fear of abandonment. *Id.* Separations imposed by ACS's removal practices are likely to intensify the trauma of the domestic violence to a child, provoking anxiety, chronic worry about the safety of the non-abusive parent, and guilt that he or she is the cause of the separation. *Id.*

Where children have a strong positive attachment to the non-abusive parent, severing that bond is also extremely traumatic for the child and can cause serious emotional and psychological damage. *See* Committee on Early Childhood, Adoption, and Dependent Care, "Developmental Issues for Young Children in Foster Care," Pediatrics (Nov. 2000) at 2-3 ("Developmental Issues"). Such emotional and cognitive disruptions in the early lives of children can impair brain development or lead to severe attachment disorders. *See id.* at 2; Mark D. Simms, M.D., "Health Care Needs of Children in the Foster Care System," Pediatrics (Oct. 2000) at 6 ("Health Care Needs"). Such emotional harm is compounded by the social disruption of the children's lives incident to removal. Changes in homes, schools, health care providers, and the inability to

continue relationships with friends and family all can have serious deleterious effects on a child's psychological, emotional, and developmental well-being. *See* Developmental Issues, at 3. Resulting behavioral problems can themselves lead to multiple placement changes in foster care, further compounding the harm. *See* Health Care Needs, at 6.

Removal of children from a non-abusive parent thus cannot be justified unless there are immediate and substantial countervailing safety concerns. The District Court correctly enjoined current ACS practices that do not protect children from such harms without case-by-case findings of imminent injury necessary to meet the minimum constitutional standard.

II. THE DISTRICT COURT PROPERLY FOUND THAT ABSTENTION WAS INAPPROPRIATE.

Amici concur with the Subclass A Plaintiffs that the City Defendants have waived any argument that *Younger* abstention applies in this case. *See* Brief for Subclass A Plaintiffs-Appellees, at 94-95. To the extent the Court reaches this issue, however, Amici urge the Court to affirm the District Court's exercise of jurisdiction. To apply *Younger* abstention to such a federal systems-reform class action would run counter to established caselaw, as well as jeopardize a well-established right for various Amici to vindicate in federal court the federal rights of children who are the subjects of ongoing state abuse and neglect proceedings.

As the Supreme Court and this Court have repeatedly held, "federal courts have an unflagging obligation to adjudicate cases brought within their jurisdiction. It is now black-letter law that abstention from the exercise of federal jurisdiction is the narrow exception, not the rule." *CECOS Int'l, Inc. v. Jorling*, 895 F.2d 66, 69 (2d cir. 1990)(*citing Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 14 (1983)); *see also New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 365 (1989)("NOPSI"); *Colorado River Water*

Conservation Dist. v. United States, 424 U.S. 800, 813 (1976). In this case, the district court correctly held that no abstention doctrine bars plaintiff children and their mothers from pursing their constitutional challenges to ACS's policies, because they do not seek to enjoin any state court proceeding, nor can they adequately raise their class-wide constitutional challenges in their New York Family Court proceedings. City Defendants' oblique attacks on these holdings should be rejected, to the extent they have not already been waived.

A. There Is No Interference With A State Court Proceeding.

The *Younger* abstention doctrine derives from *Younger v. Harris*, 401 U.S. 37 (1971), in which the Court held that a federal court should abstain from hearing a suit seeking to enjoin pending state criminal proceedings. The doctrine has since been expanded to bar federal actions seeking to enjoin state "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." *NOPSI*, 491 U.S. at 368. Consistent with the Supreme Court in *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982), this Court abstains under *Younger* only where "1) there is an ongoing state proceeding; 2) an important state interest is implicated; and 3) the plaintiff has an avenue open for review of constitutional claims in the state court." *Philip Morris, Inc. v. Blumenthal*, 123 F.3d 103, 105 (2d Cir. 1997).

As the State Defendants readily concede, of course, actual interference with a state court proceeding is required for *Younger* abstention to apply. *See* State Defs' Br. at 57 (citing *Philip Morris*, 123 F.3d at 105). The Supreme Court has also made clear that for *Younger* abstention to apply a federal suit must in fact interfere with a state proceeding, and not simply run parallel to it. *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996)("[F]ederal courts have the power to refrain from hearing cases that would *interfere with* a pending state criminal proceeding, or with

certain types of state civil proceedings.") (citations to *Younger* and its progeny omitted) (emphasis added).

Indeed, the Supreme Court itself has endorsed *Younger* abstention only when federal plaintiffs sought injunctive or declaratory relief that would interfere directly with state judicial proceedings by putting a halt to those proceedings. *See, e.g., Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987)(injunction sought to enjoin execution of state civil judgment); *Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619 (1986)(injunction sought to enjoin state civil rights commission from exercising its jurisdiction over sex discrimination complaint); *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982)(injunction sought to enjoin pending state attorney disciplinary proceedings); *Moore v. Sims*, 442 U.S. 415 (1979)(injunction sought to enjoin state protective custody prosecution in child abuse and neglect proceedings); *Trainor v. Hernandez*, 431 U.S. 434 (1977)(injunction sought to enjoin civil attachment that was integral part of state civil enforcement action); *Juidice v. Vail*, 430 U.S. 327 (1977)(injunction sought to enjoin state court contempt proceedings); *Doran v. Salem Inn, Inc.*, 422 U.S. 922 (1975)(injunction sought would enjoin ongoing state criminal prosecution); *Hicks v. Miranda*, 422 U.S. 332 (1975)(injunction sought would enjoin ongoing state criminal prosecution); *Kugler v. Helfant*, 421 U.S. 117 (1975)(injunction sought would enjoin ongoing state criminal prosecution); *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975)(injunction sought to enjoin execution of state court judgment); *O'Shea v. Littleton*, 414 U.S. 488, 500 (1974)(injunction sought to enjoin state court judges from various practices in state criminal proceedings); *Perez v. Ledesma*, 401 U.S. 82 (1971)(injunction sought would enjoin ongoing state criminal prosecution). Collateral effects on state court proceedings are thus insufficient to invoke *Younger* abstention. The Supreme Court has declined to apply *Younger*, for example,

even where "the federal court's disposition of such a case may well . . . *pre-empt*, a future—or, as in the present circumstances, *even a pending*—state-court action." *NOPSI*, 491 U.S. at 373 (emphasis added).

Circuit Courts of Appeals around the country have also held that *Younger* abstention is only applicable when the federal proceeding interferes directly with the state proceeding by terminating or truncating the proceeding itself, even if there are collateral effects. *See, e.g., Green v. City of Tuscon*, 255 F.3d 1086, 1098 (9th Cir. 2001) (*en banc*) (*Younger* abstention does not apply where "the federal court action [does not seek] to enjoin, declare invalid, or otherwise involve the federal courts in terminating or truncating the state court proceedings."); *Marks v. Stinson*, 19 F.3d 873, 884-85 (3d Cir. 1994) (*Younger* abstention does not apply where federal court plaintiffs do not seek [ ] to enjoin any state judicial proceeding or "directly or indirectly ask the court for any relief with respect to those state proceedings."); *Crawley v. Hamilton County Comm'rs*, 744 F.2d 28, 30 (6th Cir. 1984) (declining to abstain where "the federal plaintiffs . . . are not attempting to use the federal courts to shield them from state court enforcement efforts"); *Ciudadanos Unidos de San Juan v. Hidalgo County Grand Jury Comm'rs*, 622 F.2d 807, 830, n.49 (5th Cir. 1980) (consent decree that would reform a grand jury selection process does not implicate *Younger* because "the relief is directed to a time prior to the initiation of any actual judicial proceedings[, and] compliance with the district court's order can be fully accomplished and evaluated before any actual proceedings are commenced."), *cert. denied,* 450 U.S. 964 (1981); *David B. v. McDonald*, 156 F.3d 780, 783-84 (7th Cir. 1998) (the Juvenile Court was not a proper defendant because of *Younger* for a class of in-custody delinquents seeking mental health services, but "Plaintiffs [were] free to initiate proceedings against any state official who today has custody of class members and is violating federal statutory or constitutional

law").[1] As both the *Green* and *Marks* courts stressed, even such powerful collateral effects as preclusion do not constitute interference for abstention purposes. *Green*, 255 F.3d at 1094; *Marks*, 19 F.3d at 884-885.

The instant case is a classic civil rights action brought to compel an administrative agency to comply with federal law in its dealings with all class members, and it does not affect or implicate any decision or action by any member of the state judiciary. While some of the plaintiff children have ongoing proceedings before the Family Court, no provision of the District Court's preliminary injunction actually limits the discretion of the Family Court itself, either now or in future proceedings. The preliminary injunction at issue here directs changes only to ACS's own social work policies and practices, and limits administrative decisions made outside of any actual court proceedings. *See* Preliminary Injunction at ¶ 2 (directing ACS to declare particular types of reports of abuse and neglect unfounded if allegation based solely on ground that the mother has been a victim of domestic violence); ¶ 3 (barring, with some exceptions, ACS from removing a child without court order if sole basis of removal is because mother is victim of domestic violence); ¶ 4 (requiring ACS to make reasonable efforts to separate batterer from mother and child before separating mother and child); ¶ 5 (requiring ACS to inform mother of her rights before removal on basis that mother is victim of domestic violence); ¶ 6 (requiring necessary specificity in ACS pleadings alleging domestic violence); ¶ 7 (directing ACS to return children separated from their non-abusive mothers due solely to domestic violence as soon as a safe non-removal alternative can be made available); ¶ 8 (directing ACS to hold child safety

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[1] Only the Tenth Circuit has departed from established Supreme Court precedent. *See Joseph A. v. Ingram*, 275 F.3d 1253, 1267-1274 (10th Cir. 2002) (consent decree's restriction on agency actions could amount to "insidious" interference with state court proceedings). To the extent this Court even reaches this issue, it should decline to adopt that Circuit's unprecedented and ill-considered holding.

conferences within 72 hours of a removal of a child who was removed solely because his mother was the victim of domestic violence); ¶¶ 9 and 10 (directing ACS to review and take corrective actions as to pending petitions against any victim of domestic violence whose child was removed solely because of domestic violence and directing ACS to ensure immediate returns of children to their mothers when courts order such returns); ¶ 11 (ordering ACS to implement a training and supervision program); ¶ 12 (ordering ACS to include a domestic violence specialist on each clinical consultant team); ¶ 14 (establishing a review committee to ensure ACS compliance with the preliminary injunction).[2]

A class action lawsuit for injunctive relief challenging the constitutionality of ACS's practices has already been found by United States District Court Judge Robert Ward in the Southern District to not interfere with ongoing New York Family Court proceedings. *See Marisol A. v. Giuliani*, 929 F. Supp. 662, 689 (S.D.N.Y. 1996), *aff'd*, 126 F.3d 372 (2d Cir. 1997) ("Because none of the plaintiffs in the instant case are improperly challenging a state court proceeding through the federal courts, the *Younger* abstention doctrine is inapplicable."). Just like the plaintiffs in the case at bar, the *Marisol A.* plaintiffs challenged ACS practices (including, *inter alia*, the manner in which ACS conducted child abuse and neglect

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2 Amici concur with Subclass A Plaintiffs' argument that *Younger* abstention is not a bar to the District Court's preliminary injunction at ¶ 13 setting counsel rates in Family Court proceedings because the related state proceeding, *NYCLA v. Pataki,* does not involve the same parties. *See also* 17A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 4252 (2nd ed. 1988) (citing *Steffel v. Thompson*, 415 U.S. 452 (1974); *Roe v. Wade*, 410 U.S. 113 (1973)(if a prosecution is pending in state court against one person and another person against whom no prosecution is pending brings a federal action challenging the statute on which the first prosecution is based, the federal action is not barred); *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 930 (1975); *Gajon Bar & Grill, Inc. v. Kelly*, 508 F.2d 1317, 1318-19 (2d Cir. 1974)). Moreover, Defendants' reliance on *O'Shea v. Littleton*, 414 U.S. 488 (1974), and *Luckey v. Miller*, 976 F.2d 673 (11th Cir. 1992), is misplaced as, unlike in the case at bar, plaintiffs there sought injunctions against state court judges. No monitoring of, or enforcement against, state court judges is either contemplated or required by the District Court's injunction in this case. The section of the District Court's order regarding counsel fees merely establishes a constitutional floor for fees paid to 18(b) attorneys by the state.

investigations) affecting children involved in Family Court proceedings, but not the actions of the Family Court itself. *Id.* at 683-684, 689. *Younger* abstention, therefore, does not apply. Defendants' apparent position that well-established abstention doctrines should somehow be expanded to reach such a traditional civil rights action as this, seeking systems reform, is contrary to established case law and invites an unwarranted abdication of federal jurisdiction.

B. Plaintiff Children Do Not Have An Adequate Opportunity To Raise Their Federal Claims In Family Court Proceedings.

Even assuming arguendo that there is interference with ongoing Family Court proceedings, the District Court correctly held that plaintiffs do not have an adequate opportunity to raise their federal claims in Family Court proceedings, making *Younger* inapplicable. S*ee LaShawn A. v. Kelly*, 990 F.2d 1319, 1323 (D.C. Cir. 1993), *cert. denied*, 510 U.S. 1044 (1994) (*Younger* abstention inapplicable as plaintiff children's family court proceedings are an inappropriate forum for class action lawsuit seeking broad injunctive relief even though federal claims could have been raised in those proceedings). As Judge Ward has also held in finding *Younger* abstention inapplicable in this very context, individual abuse and neglect proceedings in New York Family Court "are not suitable fora" for challenges to the constitutionality of a system-wide ACS child abuse policy that affects individuals not before that court, and where the Family Court "cannot afford plaintiffs the full breadth of injunctive and declaratory relief they seek."[3] *People United for Children, Inc. v. City of New York*, 108 F. Supp.2d 275, 286-287, 291 (S.D.N.Y. 2000) (New York Family Court can award "only that relief clearly provided for by the Family Court Act"). "Because child protective proceedings must focus on the narrow issue of the child's health, safety,

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[3] This Court has previously recognized Judge Ward's "substantial expertise in overseeing litigation affecting [New York] City's child welfare system." *Joel A. v. Giuliani*, 218 F.3d 132, 141 (2d Cir. 2000).

and welfare in a particular case, they do not provide [the plaintiff class of children] with an adequate opportunity to raise their constitutional claims." *Id.* at 292. *See also Phifer v. City of New York*, 289 F.3d 49, 59 (2d Cir. 2002) ("the family court's decisions regarding neglect, custody and visitation . . . are based on the parents' conduct, the harm to the child, and what is in the best interest of the child").

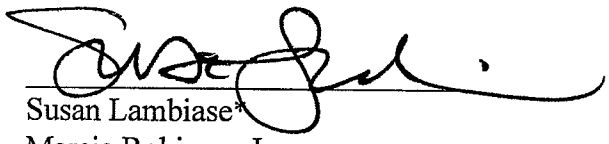
In this federal action, plaintiff children obtained system-wide remedial relief that cannot be obtained on a case-by-case basis in New York Family Court. Moreover, the focus of the entire preliminary injunction is to change unconstitutional ACS removal practices concerning domestic violence victims before a Family Court proceeding is even initiated. As should be clear, by the time the Family Court obtains jurisdiction, the serious harm caused by the unnecessary removals that plaintiff children seek to prevent has already been effected. This is precisely the type of case the federal courts have "an unflagging obligation to adjudicate," *CECOS Int'l*, 895 F.2d at 69 (citations omitted), and Younger abstention does not apply.

CONCLUSION

For all of the reasons stated, Amici respectfully request that the District Court's order be AFFIRMED.

Dated: October 30, 2002

Respectfully submitted,



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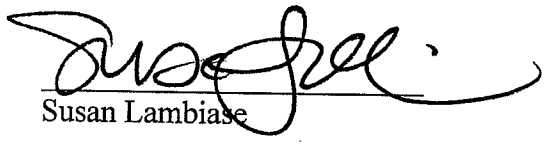
CERTIFICATE OF COMPLIANCE

This Brief, submitted by Amici, complies with the pertinent length limit imposed by Fed. R. App. P. 32(a)(7)(B) and Rule 29(d). It contains 4,817 words, inclusive of all headings, footnotes, and quotations. The word count was generated by using the word-processing system used to prepare the Brief pursuant to Rule 32(a)(7)(C).



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