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**\*\*\*FOR IMMEDIATE RELEASE\*\*\***

## ***Parents and Children in NYC File Class Action Lawsuit Claiming ACS Unconstitutionally Separates Families***

*ACS has long abused its so-called “emergency removal” authority, consistently relying on it in over 50 percent of removals — with devastating consequences for families*

*90 percent of ACS’s “emergency removals” are against Black and Latino families*

(NEW YORK, NY) – New York City families filed a [class action lawsuit](#) today against the City, alleging that the Administration for Children’s Services (ACS) unconstitutionally abuses its “emergency removal” power to take children from their parents without a court order. ACS routinely misuses this power — meant only for rare, truly urgent situations when there is not enough time to get a court order — to separate families. ACS’s racially discriminatory Emergency Removal Policy, in which the agency regularly bypasses judicial review despite having time to seek court authorization, violates families’ fundamental right to remain together. This government overreach causes deep and lasting harm, especially to Black and Latino families who are disproportionately targeted.

“ACS workers are wolves in sheep’s clothing, and you have to be very cautious with them when you’re a Black or Latino parent,” **said Plaintiff Denise Archer, who filed under a pseudonym to protect her family.** “I tried to go to ACS to seek some type of assistance when my family was going through a hard time, and it turned into an almost three-year separation where I had to fight every step of the way to get my kids returned home. Even though ACS is supposed to be the entity you go to when you’re a family in need, they have their own hidden agendas, and my family and I had to pay the price of that.”

“ACS doesn’t live up to its mission,” **said Plaintiff Danielle Lorimer, who also filed under a pseudonym to protect her family.** “It says it is there to help us, but it never provides any meaningful support to struggling families. Instead, it separates families.”

This lawsuit builds on a landmark federal appellate court decision issued just last week. In [K.W. v. The City of New York](#), the U.S. Court of Appeals for the Second Circuit held it unconstitutional for ACS to unilaterally take children from their parents when there is time to obtain judicial review. The court said this legal principle is so clear that caseworkers are not even entitled to a “good faith” defense of qualified immunity—they are

personally liable for illegal family separations. Financial compensation is not enough for the plaintiffs in today's case: for the first time, this class action lawsuit seeks to affirmatively and proactively prevent the irreversible harm of unwarranted family separation from happening in the first place.

### **Background on “Emergency Removals”**

The law requires that when ACS believes it necessary to remove a child from their parents, it must first seek a court order. ACS is only supposed to exercise its emergency removal power, where it extrajudicially takes a child from their parents, in rare, truly urgent circumstances – when a child is in danger so immediate that there is not enough time for ACS to seek judicial approval. However, ACS uses this extraordinary, extrajudicial emergency removal power [in over 50 percent of removals](#).

ACS often violates families' basic constitutional rights by conducting emergency removals in situations that are not true emergencies. ACS's own data show that most child removals now happen without prior judicial authorization – almost 1,500 last year alone. And when these cases finally reach family court, at the very first hearing judges find no justification for children to remain in state custody in over 25 percent of the cases – indicating that many of these purportedly “emergency” removals never met the legal standard for a removal in the first place, yet the lasting harm has already been done.

ACS's routine overuse of its Emergency Removal Policy has not made children safer. For example, during the COVID pandemic, the agency effectively suspended the Emergency Removal Policy, and, according to the ACS commissioner at the time, children were no worse off. Yet despite this clear evidence, ACS has now returned to using emergency removals at nearly pre-pandemic levels. Countless studies show that separating children from their families – even briefly – causes lasting harm. The trauma of removal has deep and measurable effects: children taken from their parents fare worse than children who are involved with the system but allowed to stay safely at home, suggesting that it is the removal itself that causes these poor outcomes.

The evidence of ACS's discriminatory use of emergency removals is overwhelming. The practice is used almost exclusively against Black and Latino families, who make up 90 percent of all emergency removals in New York City. Meanwhile, white families make up roughly 3 percent of these removals. ACS's own staff described the agency as “predatory” and one that “specifically targets Black and Brown parents” and subjects them to “a different level of scrutiny.”

### **Background on Plaintiffs**

The Archer and Lorimer families have been subjected to numerous removals that ACS claimed were on an emergency basis. For example, pursuant to its Emergency Removal Policy, ACS emergency removed the Lorimer children while they were in their mother's care entering a homeless shelter. The day before, ACS told the Lorimer family that they needed to enter the homeless shelter. Earlier on the very day they took the children, ACS had appeared in court and agreed to a plan that Ms. Lorimer would bring her children to the ACS office the next day. ACS could have asked the court to review the need for removal and did not do so. Yet, less than two hours after the court appearance, and with no new information, ACS conducted a traumatic extrajudicial removal of the children. Two days later, ACS agreed to return the children to their mother's care—where they have safely remained ever since. The Lorimer family still struggles with the indelible effects of this traumatic family separation.

In Ms. Archer's case, ACS conducted an emergency removal of her children after she reached out to ask for respite care, a service that the agency itself had offered to help her care for her daughter, who has autism and ADHD, and two young sons. Instead of providing the support Ms. Archer requested, ACS separated this tight-knit family and placed the children in foster care, where they remained for nearly three years until an appellate court reversed the family court's finding of neglect for asking for respite care. Foster care was devastating to the Archer family. For months, ACS held all three children in a pre-placement congregate care

center, before moving them to a foster home that was not prepared to support Ms. Archer's daughter's needs due to her disability. The foster agency frequently had Ms. Archer's daughter involuntarily hospitalized and forcibly medicated, and her sons developed anxiety, bed-wetting, and self-harm behaviors.

The Lorimer family is Black and Latino. The Archer family is Black. Both families are proceeding under pseudonyms to protect their identities.

## **Background on Claims**

Filed by a coalition of legal and advocacy groups on behalf of both parents and children, this groundbreaking case seeks to end ACS's Emergency Removal Policy, especially as this policy is deployed almost exclusively against Black and Latino families. The lawsuit asserts that the agency's use of this unconstitutional policy violates children's Fourth Amendment rights to be free from unreasonable seizures, parents' and children's due process rights, and Black and Latino parents' and children's right to equal protection.

The class of parents is represented by the Family Justice Law Center, the NYU Family Defense Clinic, the CUNY School of Law Family Defense Clinic, the Center for Constitutional Rights, and Wilmer Cutler Pickering Hale and Dorr LLP. The class of children is represented by The Legal Aid Society's Juvenile Rights Practice and Cleary Gottlieb Steen & Hamilton LLP.

"ACS has perverted a profound but limited government power into a widespread and unconstitutional policy of extrajudicial family separation—a policy that predominantly and disproportionately harms Black and Latino families," said **David Shalleck-Klein, the Executive Director and Founder of the Family Justice Law Center**. "For years, communities harmed by ACS's practice of tearing families apart have been sounding the alarm. And for years, ACS has ignored their concerns. But today, because of the bravery of the families leading this landmark class action lawsuit, meaningful change is possible."

"ACS's abuse of its emergency removal powers not only hurts children in the immediate moment of separation from their parents, but it also inflicts enduring physical, emotional, and psychological harm, resulting in trauma that persist throughout their lives," said **Dawne Mitchell, Chief Attorney of The Legal Aid Society's Juvenile Rights Practice**. "Children from communities of color face constant surveillance and targeting and their families are routinely and unjustly torn apart. To truly protect children, like the eight in this lawsuit, ACS must end its unconstitutional and abusive practice."

"The science is clear that family separations are harmful to children, and the law is clear that family separations should be a last resort," said **Chris Gottlieb, Assistant Professor of Law at NYU**. "Yet ACS routinely tears families apart without court authorization. This lawsuit will make clear that the Constitution protects all families."

"ACS's policy is yet another example of a centuries-old government practice that terrorizes Black and Latino families by taking their children," said **Julia Hernandez and Tarek Ismail, Co-Directors of CUNY Law's Family Defense Clinic**. "For too long, ACS has relied on fear and intimidation to trample the rights of New York City families. This lawsuit will hold ACS accountable for its harms while ending its practice of unconstitutional family separation."

"ACS's policy has unlawfully transformed what is supposed to be a rare, exceptional power – to tear apart families bypassing the protections of due process – into a regularized state practice," said **Baher Azmy, Legal Director of the Center for Constitutional Rights**. "And, like the City's stop-and-frisk practices we litigated, which a court found unconstitutional, the ACS policy almost exclusively targets Black and Brown families while sparing white families from its cruelty. In such instances, the federal courts must intervene to safeguard basic constitutional rights and honor the equal dignity and worth of Black and Brown families."

For more information, see [here](#) and [here](#).

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