

1983 Actions Stemming from Child-Related Proceedings

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CHILD NEGLECT AND ENDANGERMENT PROCEEDINGS AND 1983 CLAIMS: HOW TO AVOID GETTING SUED AND HOW TO HANDLE IF YOU DO

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POSSIBLE 1983 CLAIMS

1. First Amendment Retaliation

- Child statements to defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, Etc.) are constituted protected speech under the Free Speech Clause of the First Amendment.

2. Fourth Amendment Illegal Entry and Search

- Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, Etc.) enter and search a home and/or technology (Cell phones, computers, etc.) without a search warrant, probable cause, consent, and in the absence of exigent circumstances.

3. Fourth Amendment Unlawful Seizure Removal of Children

- Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, Etc.) deprived parents and children of their constitutional rights when the children were removed from parent's custody and care with no lawful basis (w/o consent, probable cause, consent, and in the absence of exigent circumstances.)

POSSIBLE 1983 CLAIMS

4. False Imprisonment of Children

- Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, Etc.) intended to and did confine children and the children were conscious of their confinement, did not consent to it, and did not reasonably believe they were free to leave; and the confinement was in no way privileged.

5. Fourth Amendment Seizure Interviews

- Defendants conducted an unlawful Fourth Amendment violation seizure and were not justified because there was no reasonable cause or other legal justification to suspect neglect or abuse at the time she was seized and interviewed.

6. Fourth Amendment Seizure Medical Examinations

Medical examinations ordered by defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, Etc.) were without consent, probable cause, court order, belief of exigent circumstances, or conditions presented a danger to children as a direct violation of Parent's Due Process rights.

POSSIBLE 1983 CLAIMS

7. Abuse of Process in Application to Return Hearings

- Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, County Attorneys Etc.) acted in actual malice, intent was to do harm by, and collateral objects were (a) falsely testifying in the application to return hearing that children were abused and neglected, (b) to obtain a family court endorsement for defendants' unlawful removal and cover up defendants' misconduct, (c) to punish parents for exercising their right to Due Process, (d) to leverage parents into accepting unfavorable court outcomes, and (e) to create a false narrative that children were in need for Department of Social Services services.

8. Abuse of Process in Violation and Emergency Removal Hearings

- Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, County Attorneys Etc.) inciting an action contesting parents application to return, acted in actual malice, intent to do harm by, and collateral objectives were:
 - (a) to coerce plaintiffs into accepting unfavorable resolutions in family and criminal court disputes,
 - (b) to dupe the family court into removing children,
 - (c) to dupe the family court into holding parents in contempt of court for violation of its protective order, and
 - (d) to extort adult plaintiffs into signing forms and releases not required by the protective order.

POSSIBLE 1983 CLAIMS

9. Abuse of Process and Malicious Prosecution

- Abuse of Process:
 - Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, County Attorneys Etc.) initiate a bogus neglect petition/trial, acted in actual malice, intent was to do harm, and collateral objectives were:
 - (a) to testify that untruthfully which could find the parents had been neglectful,
 - (b) to compel parents into accepting an unfavorable resolution to family and criminal court disputes, and
 - (c) to legitimize defendants' unlawful acts in violation of parent and child's constitutional rights.
- Malicious Prosecution:
 - Defendant (Police, Social Workers, Case Workers, Emergency Medical Technicians, County Attorneys Etc.) were directly and actively involved, did not make a complete and full statement of facts, acted with actual malice, without probable cause, used fraud and perjury, misrepresented and falsified evidence, withheld exculpatory evidence, in the initiation and continuation of criminal proceedings against parents when dealing with a District Attorney's Office
 - Defendants' actions were a perversion of proper legal process.
 - Defendants' prosecution was not privileged, was maintained for over nine months, and ultimately dismissed.

POSSIBLE 1983 CLAIMS

10. False Arrest of Parents

- Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, County Attorneys Etc.) intended to confine/arrest parents and the parents were conscious of their confinement, did not consent, were not free to leave, and confinement was not privileged and without probable cause.

11. Denial of Right to a Fair Trial

- Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, County Attorneys Etc.) withholds exculpatory evidence from District Attorney's Office and forwards fabricated evidence, false sworn statements, and perjured testimony to District Attorney's Office.

12. Substantive Due Process Deprivation of Constitutional Rights

- Acts of Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, County Attorneys Etc.) were intended to and did deprive parents of substantive rights guaranteed by the US Constitution and State of New York.

POSSIBLE 1983 CLAIMS

13. Municipal Liability

- “[A] municipality can be held liable under Section 1983 if the deprivation of the plaintiff’s rights under federal law is caused by a governmental custom, policy, or usage of the municipality.” *Jones v. Town of East Haven*, 691 F.3d 72, 80 (2d Cir. 2012) (citations omitted).
- Policies and Practices: There are policies and practices of using legal process to achieve illegitimate collateral objectives;
- Failure to Train
- Failure to Supervise

14. Conspiracy to Violate Constitutional Rights

- Defendants planned and agreed on action and subsequently implemented their actions to deprived plaintiffs of their constitutional rights.
- “A plaintiff must demonstrate that a defendant acted in a willful manner, culminating in an agreement, understanding or ‘meeting of the minds,’ that violated the plaintiff’s rights . . . secured by the Constitution or federal courts.” *Malsh v. Austin*, 901 F. Supp. 757, 763 (S.D.N.Y. 1995) (some internal quotation marks and citation omitted).

POSSIBLE 1983 CLAIMS

13. Equal Protection

- To state a claim for selective enforcement of the law based on racial or religious identity, a plaintiff must allege “(1) the person, compared with others similarly situated, was selectively treated, and (2) the selective treatment was motivated by an intention to discriminate on the basis of impermissible considerations, such as race or religion.” *Hu v. City of New York*, 927 F.3d 81, 91 (2d Cir. 2019) (citation omitted).
- And to succeed under a “class of one” theory, the plaintiff must demonstrate “[1] that [they have] been intentionally treated differently from others similarly situated and [2] that there is no rational basis for the difference in treatment.” *Id.* (citation omitted).

Examples:

- Defendants intentionally discriminated against parents on the basis of race, religion, and economic status.
- Defendants treated family differently from other families in that children were removed;
- Parents were investigated, arrested, and faced allegations in family and criminal court; and
- Parents endured prolonged criminal and family court litigation when other families were not investigated.

DEFENSES TO 1983 CLAIMS

1. The First Amended Complaint Violates Rule 8

- The First Amended Complaint should be dismissed when it fails to comply with the “short and plain statement” requirement of Rule 8 of the Federal Rules of Civil Procedure.

2. Absolute Immunity

- Claims against Police, Social Workers, Case Workers, County Attorneys, District and Assistant District Attorneys are barred by absolute prosecutorial immunity.
- A Prosecutor has absolute immunity for the initiation and conduct of a prosecution “unless [she] proceeds in the clear absence of all jurisdiction.” *Shmueli v. City of New York*, 424 F.3d 231 (2d Cir.2005) quoting *Barr v. Abrams*, 810 F.2d 358, 361 (2d Cir.1987).
- Applies to “officials performing certain functions analogous to those of a prosecutor” *Butz v. Economou*, 438 U.S. 478, 515, 98 S.Ct. 2894 (1978).

DEFENSES TO 1983 CLAIMS

3. Qualified Immunity

- Federal Standard:
 - Qualified immunity shields officials “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982).
 - A right is clearly established when “[t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right.... [T]he unlawfulness must be apparent.” *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 3039, 97 L.Ed.2d 523 (1987). Even where a right is clearly established, an official is entitled to qualified immunity nevertheless if it was objectively reasonable for the public official to believe that his acts did not violate that right. *Kaminsky v. Rosenblum*, 929 F.2d 922, 925 (2d Cir.1991).
- NY Social Services Law § 419:
 - Creates qualified immunity from civil and criminal liability resulting from an investigation conducted under Social Services Law Article 6 as long as the individual conducting that investigation was acting within the scope of his or her employment and did not engage in willful misconduct or gross negligence. *Tuff v. Guzman*, 2012 WL 4006463 (N.D.N.Y. 2012); citing *Preston v. New York*, 223 F.Supp.2d 452 (S.D.N.Y. Jun.27, 2002) (citation omitted), *aff'd*, 87 Fed. App'x 221 (2d Cir.2004); see also *Trombley v O'Neill*, 929 F.Supp.2d 81 (N.D.N.Y. 2013).

DEFENSES TO 1983 CLAIMS

4. Eleventh Amendment Immunity

- The Eleventh Amendment, with few exceptions, bars federal courts from entertaining suits brought by a private party against a state in its own name. *Ying Jing Gan v. City of New York*, 996 F.2d 522 (2d Cir.1993). In their role as prosecutors, the County Defendants acted on the behalf of the State of New York. Therefore, claims against the County Defendants in their official capacities are barred by the Eleventh Amendment. *Woodward v Office of District Attorney*, 689 F.Supp.2d 655, 659 (S.D.N.Y. 2010).

5. No Personal Involvement

- 2nd Circuit: Personal involvement is a prerequisite to an award of damages under § 1983.
- Must show some “tangible connection” between the unlawful conduct and the defendant. *Bass v. Jackson*, 790 F.2d 260, 263 (2d Cir.1986).
- supervisory officials may not be held liable merely because they held positions of authority.

SPECIFIC 1982 CLAIMS AND APPLICABLE DEFENSES

First Amendment

- Retaliation, Protected Speech, and Concrete Harm
- Defense: Failure to State a Claim

Fourth Amendment Illegal Entry and Search

- Probable Cause to enter based upon a confirmed report of suspected child neglect. See *Callahan v. City of New York*, 90 F.Supp.3d 60, 69-70 (E.D.N.Y.2015)(
- Qualified immunity pursuant to Federal law and/or Section 419 of the New York State Social Services Law.

SPECIFIC 1982 CLAIMS AND APPLICABLE DEFENSES

Fourth Amendment Unlawful Seizure Removal/Imprisonment of Children

- Probable cause to effectuate the removal based upon a credible report of suspected child neglect confirmed by sources; and
- Qualified immunity pursuant to Federal law and/or Section 419 of the New York State Social Services Law.

Fourth Amendment Seizure Interviews

- Probable cause and a reasonable basis to conduct an investigation regarding suspected neglect of a child based upon a credible report of suspected child neglect confirmed by sources; and
- Qualified immunity pursuant to Federal law and/or Section 419 of the New York State Social Services Law because it was “objectively reasonable under the circumstances.” *Wilkinson ex rel. Wilkinson*, 182 F.3d at 104.

SPECIFIC 1982 CLAIMS AND APPLICABLE DEFENSES

Fourth Amendment Seizure Medical Examination of Children

- No personal involvement

Abuse of Process in Application to Return Hearings

- “§ 1983 liability may not be predicated on a claim of malicious abuse of civil process”. *Green v. Mattingly*, 585 F.3d 97, 104 (2d Cir, 2009).
- The Second Circuit only recognizes claims for malicious abuse of criminal process under 42 U.S.C. § 1983. However, the Second Circuit has consistently rejected claims based on claims of malicious abuse of civil process.

Abuse of Process/Malicious Prosecution

- Federal absolute prosecutorial immunity, and statutory immunity pursuant to New York Social Services Law § 419.
- Social Services Law § 419 bars State law claim for malicious prosecution.

SPECIFIC 1982 CLAIMS AND APPLICABLE DEFENSES

False Arrest of Parents

- No personal involvement (typically only police).

Denial of Right to a Fair Trial

- "An individual suffers a constitutional deprivation of a right to a fair trial when an (1) investigating official (2) fabricates evidence (3) that is likely to influence a jury's decision, (4) forwards that information to prosecutors, and (5) the plaintiff suffers a deprivation of liberty as a result." *Cook v. City of New York*, 243 F.Supp.3d 332, 351 (E.D.N.Y.2017) (internal quotation and citation omitted).
- A plaintiff must also show that he alleged fabrication caused a deprivation of liberty. *Mortimer v. City of New York*, 2018 WL 1605982 (S.D.N.Y., March 29, 2018).

SPECIFIC 1982 CLAIMS AND APPLICABLE DEFENSES

Substantive Due Process Deprivation of Constitutional Right(s)

- It is established, however, that government officials may remove a child from his or her parents' custody before a hearing is held where there is an objectively reasonable basis for believing that a threat to the child's health or safety is imminent. See, e.g., *Cecere v. City of New York*, 967 F.2d 826, 829 (2d Cir.1995); *Hurlman v. Rice*, 927 F.2d 74, 80 (2d Cir.1991); *Robison v. Via*, 821 F.2d 913, 921–22 (2d Cir.1987); *Duchesne v. Sugarman*, 566 F.2d 817, 826 (2d Cir.1977).
- Where there has been an emergency removal of a child from a parent's custody without a hearing, due process requires that the state procedures provide the parent an opportunity to be heard at a reasonably prompt time after the removal. See generally *Armstrong v. Manzo*, 380 U.S. at 552, 85 S.Ct. at 1191.

Municipal Liability

- Failure to State a Claim; Federal qualified immunity; and Statutory immunity pursuant to New York Social Services Law.

SPECIFIC 1982 CLAIMS AND APPLICABLE DEFENSES

Conspiracy to Violate Constitutional Rights

- "A violated constitutional right is a natural prerequisite to a claim of conspiracy to violate such right. Thus, if a plaintiff cannot sufficiently allege a violation of his rights, it follows that he cannot sustain a claim of conspiracy to violate those rights." *Fitzgerald v. City of Troy, N.Y.*, 2012 WL 5986547 at *23 (N.D.N.Y., 2012). See also: *Trombley, supra* at 97.

Equal Protection

- In order to state an equal protection claim, a plaintiff must demonstrate that they are a member of a protected class, that similarly situated persons were treated differently, and that there was no rational basis for the difference in treatment. *Trombley, supra*, at 96.
- Probable cause and a rational basis for investigations and prosecutions.

PREVENTION: HOW TO HANDLE A CASE WHEN SUSPECTING CHILD NEGLECT AND/OR ENDANGERMENT

Determining When Child May Be Removed Prior to Court Intervention

- Determine whether case falls under abuse and neglect provisions. FCA § 1012 and/or SSL § 424.
 - “Abused child” means a child less than eighteen years of age whose parent or other person legally responsible for his care. FCA § 1012(e).
 - i. Inflicts or allows to be inflicted physical injury by other than accident which causes a substantial risk of death, serious or protracted disfigurement, impairment of physical or emotional health, or impairment of the function of bodily organ.
 - i. Creates or allows substantial risk of physical injury which would likely cause death, serious disfigurement, impairment of physical or emotional health, loss or impairment of the function of bodily organ.
 - i. (A) Commits or allows to be committed an offense against a child defined by N.Y. Penal Law § 130; (B) allows, permits or encourages a child to engage in any act described in N.Y. Penal Law §§ 230.25, 230.30, 230.32 and 230.34-a; (C) Commits any acts described in N.Y. Penal Law §§ 255.25, 255.26 and 255.27; (D) allows child to engage in acts described in N.Y. Penal Law § 263; or (E) permits or encourages child to engage in any offense that would render such child a victim of sex trafficking pursuant to 22 U.S.C. 7102.

PREVENTION: HOW TO HANDLE A CASE WHEN SUSPECTING CHILD NEGLECT AND/OR ENDANGERMENT

Determining When Child May Be Removed Prior to Court Intervention

- Determine whether case falls under abuse and neglect provisions. FCA § 1012 and/or SSL § 424.
 - “Neglected child” means a child less than eighteen years of age. FCA § 1012(f).
 - Whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care. FCA § 1012(f)(i).

PREVENTION: HOW TO HANDLE A CASE WHEN SUSPECTING CHILD NEGLECT AND/OR ENDANGERMENT

- Consider as counsel for agency, parent, or child, whether family court intervention is necessary to protect child. SSL § 424;
- Be mindful, in conducting review, of possible criminal implications of child protective investigation and case;
- Be mindful, in conducting review, of possible cultural sensitivities;
- Document case notes with the intent that possible judicial intervention is to follow;
- Protect due process rights of parents and families, when family court intervention is permissible;
- Attempt to settle any outstanding issues regarding CPS investigation and devise temporary resolution of matter if child has been temporarily removed and petition is not yet filed;
- Attempt to arrange for alternative child care, if warranted, with consent of CPS and parent without court involvement as part of required reasonable efforts to prevent placement of child into foster care;

PREVENTION: HOW TO HANDLE A CASE WHEN SUSPECTING CHILD NEGLECT AND/OR ENDANGERMENT

- Determine whether emergency removal is justified under statutory criteria. FCA § 1024; *Tenenbaum v. Williams*, 193 F.3d 581 (2d Cir. 1999); *Nicholson v. Scoppetta*, 3 N.Y.3d 357, 787 N.Y.S.2d 196, 820 N.E.2d 840 (2004).
- Emergency Removal Without Court Order:
 - Such person has reasonable cause to believe that the child is in such circumstance or condition that his or her continuing in said place of residence or in the care and custody of the parent or person legally responsible for the child's care presents an imminent danger to the child's life or health; and
 - There is not time enough to apply for an order under section one thousand twenty-two of this article. FCA § 1024(a)(i)-(ii).

PREVENTION: HOW TO HANDLE A CASE WHEN SUSPECTING CHILD NEGLECT AND/OR ENDANGERMENT

- After Removal:
 - He shall bring the child immediately to a place approved for such purpose by the local social services department, unless the person is a physician treating the child and the child is or will be presently admitted to a hospital, and
 - Make every reasonable effort to inform the parent or other person legally responsible for the child's care of the facility to which he has brought the child, and
 - Give, coincident with removal, written notice to the parent or other person legally responsible for the child's care of the right to apply to the family court for the return of the child pursuant to section one thousand twenty-eight of this act, and of the right to be represented by counsel in proceedings brought pursuant to this article and procedures for obtaining counsel, if indigent, and
 - inform the court and make a report pursuant to title six of the social services law, as soon as possible.

FCA § 1024(b)(i)-(iii).

PREVENTION: HOW TO HANDLE A CASE WHEN SUSPECTING CHILD NEGLECT AND/OR ENDANGERMENT

Documentation

- Investigation – Sources
 - Speak with the source(s) who alleged the complaint of suspected abuse or neglect.
 - Is the source credible?
- Thought process – Considerations
 - What was considered in the determination to remove the child?
- Alternatives to Removal
- Availability/Access to the Court

Child Neglect and Endangerment Proceedings and 1983 Claims: How To Avoid Getting Sued and How To Handle If You Do

I. Possible 1983 Claims

a. 42 U.S.C. § 1983 – First Amendment

- i. To state a First Amendment retaliation claim, a plaintiff must show that:
 1. He/She has a right protected by the First Amendment;
 2. The defendant's actions were motivated or substantially caused by individuals exercise of that right; and
 3. The defendant's actions caused the individual some injury.
 - a. *Smith v. Campbell*, 782 F.3d 93, 100 (2d Cir. 2015)(citation omitted).
- ii. Child statements to defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, Etc.) are constituted protected speech under the Free Speech Clause of the First Amendment.

b. 42 U.S.C. § 1983 – Fourth Amendment Illegal Entry and Search

- i. Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, Etc.) enter and search a home and/or technology (Cell phones, computers, etc.) without a search warrant, probable cause, consent, and in the absence of exigent circumstances.

c. 42 U.S.C. § 1983 – Fourth Amendment Unlawful Seizure Removal of Children

- i. The integrity of the family unit is a constitutional right protected by the Due Process Clause of the Fourth Amendment.
- ii. Pursuant to Due Process guarantees under the Fourth Amendment, Parents have a protected liberty interest in the uninterrupted care and custody of their children.
- iii. Children have a protected liberty interest in the care and guidance of their parents.
- iv. It is well settled that “the Fourth Amendment applies in the context of the seizure of a child by a government agency official during a civil child-abuse or maltreatment investigation.” *Emanuel v. Griffin*, No. 13-CV- 1806, 2015 WL 1379007, at *13 (S.D.N.Y. Mar. 25, 2015) (citation omitted).
- v. Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, Etc.) deprived parents and children of their constitutional rights when the children were removed from parent's custody and care.
- vi. There is no lawful basis for seizure without consent, probable cause, court order, and belief that exigent circumstances or conditions presented a danger to children that would allow for removal.

d. 42 U.S.C. § 1983 – False Imprisonment of Children

- i. Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, Etc.) intended to and did confine children and the children were conscious of their confinement, did not consent to it, and did not reasonably believe they were free to leave; and the confinement was in no way privileged.
 - 1. Privileged: seizure was lawful based upon consent, probable cause, court order, and belief that exigent circumstances or conditions presented a danger to children that would allow for removal.
- e. 42 U.S.C. § 1983 – Fourth Amendment Seizure Interview
 - i. Defendants conducted an unlawful Fourth Amendment violation seizure and were not justified because there was no reasonable cause or other legal justification to suspect neglect or abuse at the time she was seized and interviewed.
- f. 42 U.S.C. § 1983 – Fourth Amendment Seizure Medical Examination of Children
 - i. Parents have a protected liberty interest in directing the medical care of their children.
 - ii. Medical examinations ordered by defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, Etc.) were without consent, probable cause, court order, belief of exigent circumstances, or conditions presented a danger to children as a direct violation of Parent’s Due Process rights.
- g. 42 U.S.C. § 1983 – Abuse of Process in Application to Return Hearing
 - i. Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, County Attorneys Etc.) acted in actual malice, intent was to do harm by, and collateral objects were (a) falsely testifying in the application to return hearing that children were abused and neglected, (b) to obtain a family court endorsement for defendants’ unlawful removal and cover up defendants’ misconduct, (c) to punish parents for exercising their right to Due Process, (d) to leverage parents into accepting unfavorable court outcomes, and (e) to create a false narrative that children were in need of services from the Department of Social Services.
- h. 42 U.S.C. § 1983 – Abuse of Process in Violation and Emergency Removal Petitions
 - i. Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, County Attorneys Etc.) inciting an action contesting parents application to return, acted in actual malice, intent to do harm by, and collateral objectives were:
 - 1. (a) to coerce plaintiffs into accepting unfavorable resolutions in family and criminal court disputes,
 - 2. (b) to dupe the family court into removing children,
 - 3. (c) to dupe the family court into holding parents in contempt of court for violation of its protective order, and

4. (d) to extort adult plaintiffs into signing forms and releases not required by the protective order.
- i. 42 U.S.C. § 1983 – Abuse of Process/Malicious Prosecution
 - i. Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, County Attorneys Etc.) initiate a bogus neglect petition/trial, acted in actual malice, intent was to do harm, and collateral objectives were:
 1. (a) to testify that untruthfully which could find the parents had been neglectful,
 2. (b) to compel parents into accepting an unfavorable resolution to family and criminal court disputes, and
 3. (c) to legitimize defendants’ unlawful acts in violation of parent and child’s constitutional rights.
 - ii. Defendant (Police, Social Workers, Case Workers, Emergency Medical Technicians, County Attorneys Etc.) were directly and actively involved, did not make a complete and full statement of facts, acted with actual malice, without probable cause, used fraud and perjury, misrepresented and falsified evidence, withheld exculpatory evidence, in the initiation and continuation of criminal proceedings against parents when dealing with a District Attorney’s Office
 1. Defendants’ actions were a perversion of proper legal process.
 2. Defendants’ prosecution was not privileged, was maintained for over nine months, and ultimately dismissed.
- j. 42 U.S.C. § 1983 – False Arrest of Parents
 - i. Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, County Attorneys Etc.) intended to confine/arrest parents.
 - ii. Parents were conscious of their confinement, did not consent to the confinement, were not free to leave, and parent’s confinement was not privileged by any legal justification and was without probable cause.
- k. 42 U.S.C. § 1983 – Denial of a Right to a Fair Trial
 - i. Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, County Attorneys Etc.) withhold exculpatory evidence from District Attorney’s Office and forwarded fabricated evidence, false sworn statements, and perjured testimony to District Attorney’s Office.
 - ii. Materials forwarded to the District Attorney’s Office would have adversely influenced a jury decision.
 - iii. As a result of the defendants’ unlawful actions, parents were arrested, suffered a deprivation of liberty, and spent months in protracted criminal court litigation.
- l. 42 U.S.C. § 1983 – Substantive Due Process Deprivation of Constitutional Right
 - i. Acts of Defendants (Police, Social Workers, Case Workers, Emergency Medical Technicians, County Attorneys Etc.) were intended to and did

deprive parents of substantive rights guaranteed by the US Constitution and State of New York.

- ii. “Substantive due process protects individuals against government action that is arbitrary, conscience-shocking, or oppressive in a constitutional sense, but not against government action that is ‘incorrect or ill-advised.’” *Lowrance v. Achtyl*, 20 F.3d 529, 537 (2d Cir. 1994) (citations omitted).
- iii. “To establish a violation of substantive due process rights, a plaintiff must demonstrate that the state action was ‘so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.’” *Okin v. Vill. of Cornwall-On-Hudson Police Dep’t*, 577 F.3d 415, 431 (2d Cir. 2009) (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n. 8 (1998)).

m. 42 U.S.C. § 1983 – Municipal Liability

- i. Standard of Review:
 1. “[A] municipality can be held liable under Section 1983 if the deprivation of the plaintiff’s rights under federal law is caused by a governmental custom, policy, or usage of the municipality.” *Jones v. Town of East Haven*, 691 F.3d 72, 80 (2d Cir. 2012) (citations omitted).
- ii. Policy and Practices:
 1. There are policies and practices of using legal process to achieve illegitimate collateral objectives;
 2. NY FCA § 1024 emergency removal notice unconstitutionally denies all parents Due Process and a New York State – created liberty interest.; and
 3. There are policies and practices of entering and searching homes, without a warrant, consent of the guest, exigent circumstances, or probable cause.
- iii. Failure to Train:
 1. Failure to train personnel on the immediate danger requirements of NY FCA § 1024 or the Fourth Amendment necessity for exigent circumstances as a foundation for removal of children;
 2. Failure to train personnel on the imminent risk and danger requirement of NY FCA § 1022, 1024, or 1027 or the Fourth Amendment necessity for exigent circumstances as a foundation for removal of children;
 3. Failure to train on the lawful use of legal process provided to the Department of Social Services and the District Attorney’s Office under New York State Law; and
 4. Failure to train personnel on the constitutional limits of the Fourth Amendment and the requirements of Due Process protections.
- iv. Failure to Supervise:
 1. Supervisory defendants directly participated in maintaining an unjust prosecution even after family court cases are dismissed;

2. Supervisory defendants directly participated in signing the specious neglect and violation petitions;
 3. Supervisory defendants directly participated in supervising the filing of the spurious emergency removal petition;
 4. Supervisory defendants had knowledge legal process was being routinely used by the Department of Social Services to achieve illegitimate collateral objectives;
 5. Supervisory defendants created policies and practices that fostered a culture where acts like racial and religious bigotry, perjury, manufacturing of evidence, suppression of evidence, unlawful use of legal process, and collusion to cover up unlawful acts are commonplace, tolerated and spoke of openly on Facebook, during sworn testimony, in courtrooms, meeting rooms, parking lots, and hallways;
 6. Supervisory defendants were grossly negligent in supervision the subordinates listed in this complaint.
- n. 42 U.S.C. § 1983 – Conspiracy to Violate Constitutional Rights
- i. To sustain a conspiracy claim under 42 U.S.C. § 1983, plaintiffs must prove the existence of “(1) an agreement between two or more state actors or between a state actor and a private entity; (2) to act in concert to inflict an unconstitutional injury; and (3) an overt act done in furtherance of that goal causing damages.” *Morris v. Martin*, No. 5:16-cv-601, 2019 WL 5457767, at *5 (N.D.N.Y. Oct. 23, 2019) (quoting *Pangburn v. Culbertson*, 200 F.3d 65, 72 (2d Cir. 1999)).
 - ii. Put differently, “a plaintiff must demonstrate that a defendant acted in a willful manner, culminating in an agreement, understanding or ‘meeting of the minds,’ that violated the plaintiff’s rights . . . secured by the Constitution or federal courts.” *Malsh v. Austin*, 901 F. Supp. 757, 763 (S.D.N.Y. 1995) (some internal quotation marks and citation omitted).
 - iii. Defendants planned and agreed on action and subsequently implemented their actions to deprived plaintiffs of their constitutional rights.
 - iv. Unlawful and unconstitutional acts of defendants were part and parcel of an agreement and conspiracy between various individual defendants to maliciously violate parents civil rights.
 - v. Each defendant was aware of, agreed to, and/or approved at at least one overt act in furtherance of their conspiracy.
- o. 42 U.S.C. § 1983 – Equal protection
- i. To state a claim for selective enforcement of the law based on racial or religious identity, a plaintiff must allege “(1) the person, compared with others similarly situated, was selectively treated, and (2) the selective treatment was motivated by an intention to discriminate on the basis of impermissible considerations, such as race or religion.” *Hu v. City of New York*, 927 F.3d 81, 91 (2d Cir. 2019) (citation omitted).

- ii. And to succeed under a “class of one” theory, the plaintiff must demonstrate “[1] that [they have] been intentionally treated differently from others similarly situated and [2] that there is no rational basis for the difference in treatment.” *Id.* (citation omitted).
- iii. Defendants intentionally discriminated against parents on the basis of race, religion, and economic status.
- iv. Defendants treated family differently from other families in that children were removed;
- v. Parents were investigated, arrested, and faced allegations in family and criminal court; and
- vi. Parents endured prolonged criminal and family court litigation when other families were not investigated.

II. Defenses to Possible 1983 Claims

a. **THE FIRST AMENDED COMPLAINT VIOLATES RULE 8**

- i. The First Amended Complaint should be dismissed when it fails to comply with the “short and plain statement” requirement of Rule 8 of the Federal Rules of Civil Procedure.
- ii. Example: A First Amended Complaint made-up of forty-three (43) pages, and contains one-hundred and eighty (180) paragraphs of allegations. The prolixity of the First Amended Complaint is, in and of itself, grounds for dismissal.

b. **ABSOLUTE IMMUNITY**

- i. Claims against Police, Social Workers, Case Workers, County Attorneys, District and Assistant District Attorneys are barred by absolute prosecutorial immunity.
- ii. It is now well established that “a state prosecuting attorney who acted within the scope of his or her duties in initiating and pursuing a criminal prosecution is immune from a civil suit for damages under § 1983.” *Imbler v. Pachtman*, 424 U.S. 409, 410, 96 S.Ct. 984, 47 L.E.2d 128 (1976).
- iii. The Prosecutor has absolute immunity for the initiation and conduct of a prosecution “unless [she] proceeds in the clear absence of all jurisdiction.” *Shmueli v. City of New York*, 424 F.3d 231 (2d Cir.2005) quoting *Barr v. Abrams*, 810 F.2d 358, 361 (2d Cir.1987).
- iv. Prosecutorial immunity applies not only to the prosecutor himself, but extends to “officials performing certain functions analogous to those of a prosecutor” (*Butz v. Economou*, 438 U.S. 478, 515, 98 S.Ct. 2894 [1978]), including DSS officials who initiate and prosecute neglect petitions and orders of protection on the behalf of a county department of social services. *Storck v Suffolk Co. Dept. of Soc. Services*, 62 F.Supp.2d 927, 943 (EDNY 1999) citing *Walden v. Wishengrad*, 745 F.2d 149, 152 (2d Cir.1984).

c. QUALIFIED IMMUNITY

i. Federal Standard:

1. Entitled to qualified immunity if the allegations of the complaint fail to “state a claim of violation of clearly established law.” *Behrens v. Pelletier*, 516 U.S. 299, 306, 116 S.Ct. 834, 839, 133 L.Ed.2d 773 (1996) (internal quotation marks omitted).
2. Qualified immunity shields officials “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982).
3. A right is clearly established when “[t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right.... [T]he unlawfulness must be apparent.” *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 3039, 97 L.Ed.2d 523 (1987). Even where a right is clearly established, an official is entitled to qualified immunity nevertheless if it was objectively reasonable for the public official to believe that his acts did not violate that right. *Kaminsky v. Rosenblum*, 929 F.2d 922, 925 (2d Cir.1991).

ii. NY Social Services Law § 419:

1. Creates qualified immunity from civil and criminal liability resulting from an investigation conducted under Social Services Law Article 6 as long as the individual conducting that investigation was acting within the scope of his or her employment and did not engage in willful misconduct or gross negligence. *Tuff v. Guzman*, 2012 WL 4006463 (N.D.N.Y. 2012); citing *Preston v. New York*, 223 F.Supp.2d 452 (S.D.N.Y. Jun.27, 2002) (citation omitted), *aff'd*, 87 Fed. App'x 221 (2d Cir.2004); see also *Trombley v O'Neill*, 929 F.Supp.2d 81 (N.D.N.Y. 2013).

d. ELEVENTH AMENDMENT IMMUNITY

- i. The Eleventh Amendment, with few exceptions, bars federal courts from entertaining suits brought by a private party against a state in its own name. *Ying Jing Gan v. City of New York*, 996 F.2d 522 (2d Cir.1993). In their role as prosecutors, the County Defendants acted on the behalf of the State of New York. Therefore, claims against the County Defendants in their official capacities are barred by the Eleventh Amendment. *Woodward v Office of District Attorney*, 689 F.Supp.2d 655, 659 (S.D.N.Y. 2010).

e. NO PERSONAL INVOLVEMENT

- i. It is well settled in the 2nd Circuit that “personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages under § 1983.” *Wright v. Smith*, 21 F.3d 496, 501 (2d Cir.1994) quoting *Moffitt v. Town of Brookfield*, 950 F.2d 880, 885 (2d Cir.1991); *McKinnon v. Patterson*, 568 F.2d 930, 934 (2d Cir.1977), cert. denied, 434

U.S. 1087, 98 S.Ct. 1282, 55 L.Ed.2d 792 (1978); see also *Johnson v. Glick*, 481 F.2d 1028, 1034 (2d Cir.) (“The rule in this circuit is that when monetary damages are sought under § 1983, the general doctrine of respondeat superior does not suffice and a showing of some personal responsibility of the defendant is required.”), cert. denied, 414 U.S. 1033, 94 S.Ct. 462, 38 L.Ed.2d 324 (1973).

- ii. In order to prevail on a § 1983 cause of action against an individual, a plaintiff must show some “tangible connection” between the unlawful conduct and the defendant. *Bass v. Jackson*, 790 F.2d 260, 263 (2d Cir.1986).
- iii. In other words, supervisory officials may not be held liable merely because they held positions of authority.

f. Specific 1983a Claims and Applicable Defenses:

i. 42 U.S.C. § 1983 – First Amendment

1. Failure to State a Claim

a. In order to state a claim for retaliation under the First Amendment, a plaintiff must allege

- i. (1) his conduct was protected by the First Amendment,
- ii. (2) the defendants' actions were motivated or substantially caused by the exercise of that right, and
- iii. (3) defendants' actions effectively “chilled” the exercise of plaintiff's First Amendment right.

1. See *Dillon v. Morano*, 497 F.3d 247, 251 (2d Cir.2007), *Curley v. Village of Suffern*, 268 F.3d 65 (2d Cir.2001).

ii. 42 U.S.C. § 1983 – Fourth Amendment Illegal Entry and Search

1. Social Worker cannot be held liable for entering a home when there is probable cause to enter the home, based on a confirmed report of suspected neglect. See *Callahan v. City of New York*, 90 F.Supp.3d 60, 69-70 (E.D.N.Y.2015)(holding there was probable cause to enter a room and remove children, ages five or six and thirteen, when the two children were left unattended in the room for more than two hours).

2. Assuming arguendo that the Social Worker entering and photographing a home violates the parents 4th Amendment rights, the Social Worker should be afforded qualified immunity pursuant to either Federal law and/or Section 419 of the New York State Social Services Law.

3. The Second Circuit Court of Appeals, previously applied Section 419 in similar cases. See *Cornejo v. Bell*, 592 F.3d 121 (2d Cir.2010); *Powell*, 2012 WL 4052261 (N.D.N.Y.2012); *Tuff*, 2012 WL 4006463 (N.D.N.Y.2012).

- iii. 42 U.S.C. § 1983 – Fourth Amendment Unlawful Seizure Removal/Imprisonment of Children
 - 1. These causes of action should be dismissed because (1) defendants had probable cause to effectuate the removal; and, (2) even if there was a Constitutional violation, which defendants deny, defendants should be afforded qualified immunity under either Federal qualified immunity or statutory immunity pursuant to New York Social Services Law.
- iv. 42 U.S.C. § 1983 – Fourth Amendment Seizure Interview
 - 1. Following a credible report of suspected neglect from the Central Registry, which was confirmed with the law enforcement source, and the information available to them at the time, Social Workers had probable cause and a reasonable basis to conduct an investigation regarding the suspected neglect of the children.
 - 2. Assuming *arguendo* that the Social Worker’s interview of the children violated their Constitutional rights, which Defendants deny, the Social Worker should be afforded qualified immunity because interviewing the children as part of his investigation of reported neglect was objectively reasonable under the circumstances. *Wilkinson ex rel. Wilkinson*, 182 F.3d at 104.
- v. 42 U.S.C. § 1983 – Fourth Amendment Seizure Medical Examination of Children
 - 1. No personal involvement
- vi. 42 U.S.C. § 1983 – Abuse of Process § 1028 Application to Return Hearing, Process of Violation and Emergency Removal Petitions
 - 1. It is well-settled that a § 1983 claim may not be predicated on a claim of malicious abuse of civil process.
 - 2. “§ 1983 liability may not be predicated on a claim of malicious abuse of civil process”. *Green v. Mattingly*, 585 F.3d 97, 104 (2d Cir, 2009).
 - 3. At most, the Second Circuit only recognizes claims for malicious abuse of criminal process under 42 U.S.C. § 1983. However, the Second Circuit has consistently rejected claims based on claims of malicious abuse of civil process.
 - a. See: *Prasad v. City of New York*, 370 Fed. Appx 163, 165 (2d Cir 2010); *Cook v. Sheldon*, 41 F.3d 73,79-80 (2d Cir.1994) (citing *Spear v. Town of W Hartford*, 954 F.2d 63, 68 [2d Cir. 1992]), *cert den* 516 US 817 (1993); *DeMartino v. New York State Dep’t of Labor*, 167 F.Supp. 3d 342, 372-73 (EDNY 2016), *ajj’d in part, dism. in part*, 712 F. App’x 24 (2d Cir. 2017); *Alroy v. City of New York Law Dep’t*, 69 F. Supp. 3d 393, 402 (SDNY 2014).
- vii. 42 U.S.C. § 1983 – Abuse of Process/Malicious Prosecution

1. Defendants had probable cause to prosecute parents, and should be afforded immunity.
 2. Prosecutorial immunity applies both to § 1983 and to common law claims. As a result, absolute prosecutorial immunity bars both Plaintiffs Federal and State law claims. *Rose v. Bethel*, 2007 WL 2476389, fn 9 (S.D.N.Y., 2007); *Garcia v. Hebert*, 2009 WL 10664306, at *4 (D. Conn., 2009), *aff'd*, 352 Fed. App'x 602 (2d Cir. 2009).
 3. Statutory immunity pursuant to New York Social Services Law because there is no evidence in this case of bad faith. *Preston*, 223 F.Supp.2d at 471-72; *Rine v Chase*, 309 AD2d 796 (2d Dept.2003) (Social Services Law § 419 bars State law claim for malicious prosecution).
- viii. 42 U.S.C. § 1983 – False Arrest of Parents
1. No personal involvement
- ix. 42 U.S.C. § 1983 – Denial of a Right to a Fair Trial
1. "An individual suffers a constitutional deprivation of a right to a fair trial when an (1) investigating official (2) fabricates evidence (3) that is likely to influence a jury's decision, (4) forwards that information to prosecutors, and (5) the plaintiff suffers a deprivation of liberty as a result." *Cook v. City of New York*, 243 F.Supp.3d 332, 351 (E.D.N.Y.2017)(internal quotation and citation omitted).
 2. A plaintiff must also show that he alleged fabrication caused a deprivation of liberty. *Mortimer v. City of New York*, 2018 WL 1605982 (S.D.N.Y., March 29, 2018).
- x. 42 U.S.C. § 1983 – Substantive Due Process Deprivation of Constitutional Right
1. Failure to State a Claim
 - a. A parent may not lawfully be deprived of the custody of his or her child without a hearing “at a meaningful time and in a meaningful manner.” *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965).
 - b. It is established, however, that government officials may remove a child from his or her parents' custody before a hearing is held where there is an objectively reasonable basis for believing that a threat to the child's health or safety is imminent. See, e.g., *Cecere v. City of New York*, 967 F.2d 826, 829 (2d Cir.1995); *Hurlman v. Rice*, 927 F.2d 74, 80 (2d Cir.1991); *Robison v. Via*, 821 F.2d 913, 921–22 (2d Cir.1987); *Duchesne v. Sugarman*, 566 F.2d 817, 826 (2d Cir.1977).
 - c. Where there has been an emergency removal of a child from a parent's custody without a hearing, due process requires

that the state procedures provide the parent an opportunity to be heard at a reasonably prompt time after the removal. See generally *Armstrong v. Manzo*, 380 U.S. at 552, 85 S.Ct. at 1191.

- xi. 42 U.S.C. § 1983 – Municipal Liability
 - 1. Failure to State a Claim
 - a. Conclusory Claims
 - 2. Federal Qualified Immunity
 - Statutory immunity pursuant to New York Social Services § 419
- xii. 42 U.S.C. § 1983 – Conspiracy to Violate Constitutional Rights
 - 1. In order to state a claim for conspiracy claim under §1983, a plaintiff must allege facts plausibly showing: "(1) an agreement between two or more state actors or between a state actor and a private entity; (2) to act in concert to inflict an unconstitutional injury; and (3) an overt act done in furtherance of that goal causing damages." *Pangburn v. Culbertson*, 200 F.3d 65, 72 (2d Cir.1999). See also: *Trombley, supra*, at 96-97; *Walker v. Tormey*, 178 F. Supp. 3d 53, 66 (N.D.N.Y. 2016).
 - 2. "A violated constitutional right is a natural prerequisite to a claim of conspiracy to violate such right. Thus, if a plaintiff cannot sufficiently allege a violation of his rights, it follows that he cannot sustain a claim of conspiracy to violate those rights." *Fitzgerald v. City of Troy*, N.Y., 2012 WL 5986547 at *23 (N.D.N.Y., 2012). See also: *Trombley, supra* at 97.
 - 3. Mere conclusory and unsupported conjecture of conspiracy is insufficient. *Walker, supra*, at 66.
- xiii. 42 U.S.C. § 1983 – Equal protection
 - 1. In order to state an equal protection claim, a plaintiff must demonstrate that they are a member of a protected class, that similarly situated persons were treated differently, and that there was no rational basis for the difference in treatment. *Trombley, supra*, at 96.
 - 2. When there is probable cause and a rational basis for the investigations and prosecution of the Department of Social Services and the District Attorney's Office, parent's equal protection claims must fail.

III. Prevention: How to Handle a Case When Suspecting Child Neglect and/or Endangerment

a. **Determining When Child May Be Removed Prior to Court Intervention**

- i. Determine whether case falls under abuse and neglect provisions. FCA § 1012; SSL § 424;
 - 1. "Abused child" means a child less than eighteen years of age whose parent or other person legally responsible for his care. FCA § 1012(e).

- a. (i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or
 - b. (ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or
 - c. (iii) (A) commits, or allows to be committed an offense against such child defined in article one hundred thirty of the penal law; (B) allows, permits or encourages such child to engage in any act described in sections 230.25, 230.30, 230.32 and 230.34-a of the penal law; (C) commits any of the acts described in sections 255.25, 255.26 and 255.27 of the penal law; (D) allows such child to engage in acts or conduct described in article two hundred sixty-three of the penal law; or (E) permits or encourages such child to engage in any act or commits or allows to be committed against such child any offense that would render such child either a victim of sex trafficking or a victim of severe forms of trafficking in persons pursuant to 22 U.S.C. 7102 as enacted by public law 106-386 or any successor federal statute; (F) provided, however, that (1) the corroboration requirements contained in the penal law and (2) the age requirement for the application of article two hundred sixty-three of such law shall not apply to proceedings under this article.
 - i. FCA § 1012(e).
2. “Neglected child” means a child less than eighteen years of age. FCA § 1012(f).
 - a. Whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care. FCA § 1012(f)(i).
 - ii. Consider as counsel for agency, parent, or child, whether family court intervention is necessary to protect child. SSL § 424;
 - iii. Be mindful, in conducting review, of possible criminal implications of child protective investigation and case;

- iv. Be mindful, in conducting review, of possible cultural sensitivities;
- v. Document case notes with the intent that possible judicial intervention is to follow;
- vi. Protect due process rights of parents and families, when family court intervention is permissible;
- vii. Attempt to settle any outstanding issues regarding CPS investigation and devise temporary resolution of matter if child has been temporarily removed and petition is not yet filed;
- viii. Attempt to arrange for alternative child care, if warranted, with consent of CPS and parent without court involvement as part of required reasonable efforts to prevent placement of child into foster care;
- ix. Determine whether emergency removal is justified under statutory criteria. FCA § 1024; *Tenenbaum v. Williams*, 193 F.3d 581 (2d Cir. 1999); *Nicholson v. Scopetta*, 3 N.Y.3d 357, 787 N.Y.S.2d 196, 820 N.E.2d 840 (2004).
 - 1. Emergency Removal Without Court Order:
 - a. Such person has reasonable cause to believe that the child is in such circumstance or condition that his or her continuing in said place of residence or in the care and custody of the parent or person legally responsible for the child's care presents an imminent danger to the child's life or health; and
 - b. There is not time enough to apply for an order under section one thousand twenty-two of this article.
 - i. FCA § 1024(a)(i)-(ii).
 - 2. After Removal:
 - a. He shall bring the child immediately to a place approved for such purpose by the local social services department, unless the person is a physician treating the child and the child is or will be presently admitted to a hospital, and
 - b. Make every reasonable effort to inform the parent or other person legally responsible for the child's care of the facility to which he has brought the child, and
 - c. Give, coincident with removal, written notice to the parent or other person legally responsible for the child's care of the right to apply to the family court for the return of the child pursuant to section one thousand twenty-eight of this act, and of the right to be represented by counsel in proceedings brought pursuant to this article and procedures for obtaining counsel, if indigent, and

- d. inform the court and make a report pursuant to title six of the social services law, as soon as possible.
 - i. FCA § 1024(b)(i)-(iii).