

ORIGINAL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

MACY P., on behalf of herself and her minor children,  
DAIDEN P., KYLAN P., HARLAN P., GRAYSON P.,  
and BRISTA P., and all others similarly situated, and  
TERESA G., on behalf of herself and her minor  
grandchildren and all others similarly situated,

Plaintiffs,

v.

1:16-CV-4609

NATHAN DEAL, in his official capacity as Governor  
of Georgia, ROBYN A. CRITTENDEN, in her official  
capacity as Commissioner of the Department of Human  
Services, BOBBY CAGLE, in his official capacity  
as Director of the Division of Family and Children  
Services, BENJAMIN BRINSON, as President of the  
Council of Juvenile Court judges, STEVE MANCUSO,  
in his capacity as District Director for the Georgia  
Department of Juvenile Justice, NATALIE HOWELL,  
JESSICA RHOADS, and SUSANNE FALES ROWLEY,  
in their official capacities, and CHARLES R. REDDICK.

Defendants.

---

“Our decisions establish that the Constitution protects the sanctity of  
the family precisely because the institution of the family is deeply rooted in  
the Nation’s history and tradition.”

*Moore v. City of East Cleveland*, 431 U.S. 494, 503-04 (1977).

“The history of liberty has largely been the history of the observance  
of procedural safeguards.”

*McNabb v. United States*, 318 U.S. 332, 347 (1943).

FILED IN CLERK'S OFFICE  
U.S.D.C. - Atlanta

DEC 15 2016

JAMES N. HATTEN, Clerk  
By: *[Signature]*  
Deputy Clerk

**CLASS ACTION COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF AND DAMAGES AND  
VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

1. Plaintiffs Macy P., Teresa G., Daiden P., Kylan P., Harlan P., Grayson P., and Brista P., bring this action on behalf of themselves and all others similarly situated for violations of their rights under the First, Eighth, and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, the Georgia Constitution, and the Georgia Juvenile Code.

2. This action seeks injunctive and declaratory relief and damages on behalf of families and children who have been deprived of their rights by the Department of Human Services and its divisions, employees, and agents, and by certain individuals acting under color of law.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, which affords original jurisdiction for all civil suits arising under the Constitution, laws, or treaties of the United States.

4. This Court also has jurisdiction under 28 U.S.C. §§ 1334(3) and 1334(4), which provide for original jurisdiction over all suits authorized by 42 U.S.C. § 1983. Plaintiffs seek to enforce the rights warranted to them under the First, Eighth, and Fourteenth Amendments to the U.S. Constitution

and the Georgia Constitution and Georgia Juvenile Code and the regulations implemented to effectuate and protect those rights.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

## **PARTIES**

### **Defendants**

6. The Department of Human Services (“DHS”) is a Georgia agency charged with providing various services to the people of Georgia, including most services contemplated by the Georgia Juvenile Code.

7. The Division of Family and Children Services (“DFCS”) is the division of DHS charged with providing services to families and children in Georgia, including child protective services and family preservation services. DFCS’s provision of services is organized by county.

8. Defendant Nathan Deal, as the Governor of Georgia, is ultimately responsible for the supervision and operation of DHS, DFCS, and the counties of the state, including but not limited to the provision of services and protection of rights, in accordance with the Official Code of Georgia and regulations promulgated thereunder as well as the U.S. and Georgia Constitutions and laws and regulations promulgated thereunder. As the Governor, Defendant Deal has acted at all times relevant in his official capacity and under color of state law.

9. Defendant Robyn Crittenden, as the Commissioner of DHS, is responsible for the supervision and operation of DHS and DFCS in Georgia, including but not limited to the provision of services and protection of rights, in accordance with the Official Code of Georgia and regulations promulgated thereunder as well as the U.S. and Georgia Constitutions and laws and regulations promulgated thereunder. As the Commissioner, Defendant Crittenden has acted at all times relevant in her official capacity and under color of state law. Defendant Crittenden can be personally served at the Georgia Department of Human Services, 2 Peachtree Street, Northwest, Atlanta, Georgia, 30303.

10. Defendant Bobby Cagle, as Director of DFCS, is responsible for the for the administration, supervision, and operation of DFCS in Georgia, including but not limited to the provision of services and protection of rights, in accordance with the Official Code of Georgia and regulations promulgated thereunder as well as the U.S. and Georgia Constitutions and laws and regulations promulgated thereunder. As the Director of DFCS, Defendant Bobby Cagle has acted at all times relevant in his official capacity and under color of state law. Defendant Cagle can be personally served at the Georgia Department of Human Services, 2 Peachtree Street, Northwest, Atlanta, Georgia, 30303.

11. Defendant Benjamin Brinson, as President of the Council of Juvenile Court judges, is responsible for the administration of justice by the Juvenile Court judges of Georgia, in accordance with the Official Code of Georgia and regulations promulgated thereunder as well as the U.S. and Georgia Constitutions and laws and regulations promulgated thereunder. As President of the Council of Juvenile Court judges, Defendant Brinson has acted at all times relevant in his official capacity and under color of state law. Defendant Brinson can be personally served at 230 Peachtree Street, Northwest, Suite 1625, Atlanta, Georgia, 30303.

12. Defendant Steven Mancuso, as a District Director for the Georgia Department of Juvenile Justice, is responsible for the supervision and operation of DFCS, including but not limited to caseworkers acting to remove children from their families and homes and to place them in foster care, in accordance with the Official Code of Georgia and regulations promulgated thereunder as well as the U.S. and Georgia Constitutions and laws and regulations promulgated thereunder. As a District Director for the Georgia Department of Juvenile Justice, Defendant Mancuso has acted and continues to act at all times relevant in his official capacity and under color of state law. Defendant Mancuso can be personally served at 5 Rocquemore, Lakeland, Georgia, 31635.

13. Defendant Natalie Howell, as DFCS County Director, is responsible for the administration, supervision, and operation of DFCS at the county level, including but not limited to caseworkers acting to remove children from their families and homes and to place them in foster care, in accordance with the Official Code of Georgia and regulations promulgated thereunder as well as the U.S. and Georgia Constitutions and laws and regulations promulgated thereunder. As DFCS County Director, Defendant Howell has acted at all times relevant in her official capacity and under color of state law. Defendant Howell can be personally served at 17 E. Shirley Road, Homerville, Georgia, 31634.

14. Defendant Jessica Rhoads, as DFCS caseworker supervisor, is responsible for the administration, supervision, and operation of DFCS, including but not limited to caseworkers acting to remove children from their families and homes and to place them in foster care, in accordance with the Official Code of Georgia and regulations promulgated thereunder as well as the U.S. and Georgia Constitutions and laws and regulations promulgated thereunder. As DFCS caseworker supervisor, Defendant Rhoads has acted at all times relevant in her official capacity and under color of state law. Defendant Rhoads can be personally served at 17 E. Shirley Road, Homerville, Georgia, 31634.

15. Defendant Susanne Fales Rowley, as DFCS caseworker, is responsible for handling DFCS cases, including acting to remove children from their families and homes and to place them in foster care, in accordance with the Official Code of Georgia and regulations promulgated thereunder as well as the U.S. and Georgia Constitutions and laws and regulations promulgated thereunder. As DFCS caseworker, Defendant Rowley has acted at all times relevant in her official capacity and under color of state law. Defendant Rowley can be personally served at 17 E. Shirley Road, Homerville, Georgia, 31634.

16. Defendant Charles R. Reddick is an attorney in private practice who is contracted to provide legal services to DHS and DFCS and who acts as the agent of DHS and DFCS. As an agent of DHS and DFCS, Defendant Reddick is responsible for DHS's and DFCS's compliance with the Official Code of Georgia and regulations promulgated thereunder as well as the U.S. and Georgia Constitutions and laws and regulations promulgated thereunder. As counsel for DHS and DFCS and while holding himself out as an agent for DHS and DFCS, Defendant Reddick has acted at all times relevant under color of state law. Defendant Reddick is personally liable for his conduct described herein and is jointly and severally liable with the other

Defendants. Defendant Reddick can be personally served at 152 Sycamore Street, Homerville, Georgia, 31634.

17. All of these Defendants acted at all times relevant under color of law and without immunity. None of the Defendants are entitled to qualified immunity.

### **Representative Plaintiffs**

18. Plaintiff Macy P. is a 23-year-old recovering drug addict. She is the mother of Daiden P., Kylan P., Harlan P., Grayson P., and Brista P. She has been a party to proceedings initiated by DFCS since on or about January 26, 2014.

19. Plaintiff Teresa G. is a 43-year-old mother of three and grandmother of five. She is the mother of Macy and the grandmother of Daiden, Kylan, Harlan, Grayson, and Brista. Teresa has sought to be a party to the proceedings initiated by DFCS since on or about January 26, 2014.

20. Plaintiff Daiden P. is the son of Macy and grandson of Teresa. Born February 4, 2013, he is now approaching four years old. He has been in the custody of DFCS since on or about January 26, 2014, and has been in non-relative foster care since February 17, 2016.

21. Plaintiff Kylan P. is the son of Macy and grandson of Teresa. Born January 26, 2014, he is now approaching three years old. He has been

in the custody of DFCS since on or about January 26, 2014, and has been in non-relative foster care since February 17, 2016.

22. Plaintiff Harlan P. is the son of Macy and grandson of Teresa. Born on December 6, 2014, he is now 2 years old. He has been in the custody of DFCS since on or about December 6, 2014, and has been in relative placement foster care with his maternal grandfather the entire time.

23. Plaintiff Grayson P. is the son of Macy and grandson of Teresa. Born December 11, 2015, he is now one year old. He has been in the custody of DFCS since on or about December 11, 2015, and has been in non-relative foster care since February 17, 2016.

24. Plaintiff Brista P. is the daughter of Macy and granddaughter of Teresa. Born on November 15, 2016, she has been in the custody of DFCS since November 17, 2016, was in non-relative foster care from November 17, 2016, to November 23, 2016, and has been in relative placement foster care with her maternal great aunt since then.

### **STATUTORY BACKGROUND**

25. As of January 1, 2014, Georgia had a new juvenile code. Hailed as “a model for change around the country,” the revised code is not “just a warmed up version of the current code, but a comprehensive rewrite,” which

the Georgia General Assembly passed unanimously and signed into law on May 2, 2013.

26. A central purpose of the reformed Georgia Juvenile Code is to secure for each child who comes within the jurisdiction of the Juvenile Court such care and guidance, preferably in his or her own home, as will secure his or her moral, emotional, mental, and physical welfare as well as the safety of both the child and community.

27. With respect to dependency proceedings, the Georgia Juvenile Code is designed to, among other things: (a) “preserve and strengthen family relationships, *countenancing the removal of a child from his or her home only when state intervention is essential to protect such child and enable him or her to live in security and stability;*” (b) guarantee due process of law in all proceedings, as required by the Constitutions of the United States and the State of Georgia; and (c) assure fair hearings at which legal rights are recognized and enforced for every child and his or her parent and all other interested parties.

28. One aspect of the reform of the Georgia Juvenile Code “takes into account the realities of one of the most pervasive forms of neglect—that arising from the substance abuse of the parent—and *the reality that the parent may have to go through several relapses over time before securing*

*the kind of recovery that would allow that parent to resume parenting responsibilities.*” The Georgia General Assembly recognized in reforming the Georgia Juvenile Code that, “[f]or such a parent and child, and in the absence of another permanent family opportunity, reunification might be in the child’s best interest.” Thus, “[f]or the first time in Georgia,” the Georgia Juvenile Code now “makes reunification following termination an option for a child in long term foster care.”

29. The reformed Georgia Juvenile Code clearly disfavors removal of a child from its family in the first instance. The Georgia Juvenile Code requires DFCS, the Juvenile Court, and others to provide services to alleviate conditions *before* those conditions result in removal of the child from the home and to provide services to reunite the family if removal has occurred. The Georgia Juvenile Code assigns to DFCS the burden of proving that reasonable efforts to provide services have been made.

30. In this way, the Georgia Juvenile Code codifies Georgia’s alignment with federal policy designed to preserve families, which is reflected in federal funding to reimburse states for dollars spent on children in foster care if Juvenile Court orders specifically find that DFCS has used reasonable efforts to prevent removal of the child from the family, reunify the child with the family, and to finalize the child’s permanent plan.

31. The Georgia Juvenile Code reflects a preference for placement with relatives (persons related to a child by blood, marriage, or adoption). It provides that relative care options should be identified early; that a relative care assessment should be completed within 30 days of referral; and that placements with relatives may be expedited and immediate pending a full relative care assessment.

32. To that end, the Georgia Juvenile Code expressly requires a “diligent search” for relatives, which must be filed with the court within 30 days of removal of a child from its home. The Code requires that this diligent search be initiated at the outset of a dependency case and continued throughout the duration of a case. Some sense of the importance the General Assembly places on the diligent search is apparent from a list of tasks that comprise the minimum efforts: interviews with the child’s parent during the course of an investigation, while child protective services are provided, and while such child is in care; interviews with the child; interviews with identified relatives throughout the case; interviews with any other person who is likely to have information about the identity or location of the person being sought; comprehensive searches of data bases available to DFCS including, but not limited to, searches of employment, residence, utilities, vehicle registration, child support enforcement, law enforcement, corrections

records, and any other records likely to result in identifying and locating the person being sought; appropriate inquiry during the course of hearings in the case; and any other reasonable means that are likely to identify relatives or other persons who have demonstrated an ongoing commitment to the child.

33. The Juvenile Code further requires that *all* adult relatives of the alleged dependent child identified in a diligent search and all parents of a sibling of such child (when such parent has legal custody of such sibling, subject to exceptions due to family or domestic violence) *shall* be provided with notice: specifying that an alleged dependent child has been or is being removed from his or her parental custody; explaining the options a relative has to participate in the care and placement of the alleged dependent child and any options that may be lost by failing to respond to the notice; describing the process for becoming an approved foster family home and the additional services and supports available for children placed in approved foster homes; and describing any financial assistance for which a relative may be eligible.

34. As noted, DFCS has a continuing duty to search for relatives or other persons who have demonstrated an ongoing commitment to a child and with whom it may be appropriate to place the alleged dependent child until

such relatives or persons are found or until such child is placed for adoption unless the court excuses DFCS from conducting a diligent search.

35. The Juvenile Code disfavors placement in foster care as a first resort. Thus, a child taken into custody should not be placed in foster care prior to a hearing unless: foster care is required to protect child; the child has no person able to supervise and care for child; or a court orders foster care.

36. Even if foster care is necessary, the Juvenile Code requires efforts to preserve and reunify families. Thus, it requires placement with siblings (or an explanation from DFCS as to why placement together is not appropriate) and provision for frequent visitation where siblings are not placed together (or an explanation from DFCS as to why frequent visitation is not appropriate).

37. In addition to the substantive requirements place on DFCS and the courts, the Juvenile Code creates a comprehensive framework of procedures designed to protect the rights of parties. The Juvenile Code protects without equivocation parties' families' and children's due process rights and their rights of free association.

38. This protective procedural framework operates, first and foremost, by placing checks on DFCS's awesome power to intrude into the family sanctum. The Juvenile Code is designed such that these checks come

from all directions, beginning with the internal. DFCS is required to act reasonably of its own volition within clear limits set forth in the Code. Among these limits are minimum specified tasks that DFCS must perform within minimum specified time frames. External checks on DFCS include Juvenile Court judges charged with ensuring that DFCS complies with the law and counsel (usually court-appointed) charged with advocating on behalf of children, their parents, and other interested parties.

39. As an example of the checks on DFCS, the Georgia Juvenile Code requires that, if DFCS has removed a child from its home, a preliminary protective hearing must be held within 72 hours, at which hearing DFCS and the Juvenile Court judge must follow certain procedures, including all of the following:

a. Notice of the hearing, including time, place, and purpose, must be given to the child and any parents, guardians, and legal custodians, and if such notice is not given, the party demonstrating a lack of notice must be given an opportunity for a rehearing.

b. Various persons must be afforded the opportunity to participate in the hearing, including (i) the parents, guardians, or legal custodians; (ii) their attorneys; (iii) the child's attorney and guardian

ad litem and, unless not in its best interests, the child; (iv) the assigned DFCS caseworker; (v) DFCS's attorney.

c. The Juvenile Court judge must make findings at the preliminary protective hearing and must determine: (i) whether or not probable cause for dependency exists; (ii) whether or not there is a necessity of protective custody to prevent abuse and neglect pending hearing; and (iii) whether or not the child should continue in DFCS custody.

d. Based on its findings, the Juvenile Court judge must do one of the following: (i) enter an order based upon evidence presented including a finding that continuing in the home is contrary to the child's welfare, removal was in the best interests of the child, and DFCS made the reasonable efforts required of it by the Juvenile Code; *or* (b) return the child to its home and, if no probable cause exists, dismiss the case.

40. As another example of the checks on DFCS, the Juvenile Code requires the filing of a petition alleging dependency and meeting certain requirements, including:

a. Time limits: If the child remains in custody following the preliminary protective hearing, a petition must be filed within five

days; if the child is not held in custody following the preliminary protective hearing, a petition must be filed within 30 days. In the absence of a timely petition, the court “shall” dismiss without prejudice.

b. Contents: Among other things, a verified statement that it is in the best interests of the child and the public to bring proceedings; the name, date of birth, and residence of the child; and the name and residence of the parent, guardian or legal custodian.

41. As another example of the checks on DFCS, the Juvenile Code provides for adjudication of dependency at which DFCS is required to carry the burden of proof with clear and convincing evidence. This procedural requirement, like virtually all others, must be met within certain time limits, *i.e.*, within 10 days after the filing of the petition if the child is in foster care and within 60 days if the child is not in foster care.

### **DFCS’S POLICIES, PATTERNS, AND PRACTICES**

42. DFCS and the Juvenile Court system *still* need the reforms sought by the General Assembly when it enacted the new Juvenile Code in 2013.

43. DFCS routinely fails to engage in reasonable efforts to prevent or eliminate the need for removal of children from their homes.

44. DFCS routinely fails to engage in reasonable efforts to preserve families and reunify families after removal, including by making reasonable efforts to place children with relatives rather than in non-relative foster care.

45. DFCS routinely fails to conduct the initial diligent search for relatives and routinely fails to discharge its ongoing duty to conduct diligent searches for relatives.

46. DFCS routinely fails to provide relatives with adequate notice and opportunities to be heard at hearings.

47. DFCS routinely fails to comply with the procedural requirements for hearings, petitions, and other legal actions set forth in the Juvenile Code.

48. DFCS routinely fails to provide allegedly dependent children and their family members with frequent and meaningful visitation.

49. DFCS routinely fails to provide dependent children and siblings with frequent and meaningful visitation, even where all or most of the siblings are in the custody and control of DFCS.

50. DHS and DFCS routinely fail to ensure that caseworkers and supervisors have the educational background, social work experience, or other skills necessary to provide appropriate care and treatment to children alleged or adjudicated dependent. Rather than education, experience, and

skills, caseworkers and case supervisors frequently bring to bear their prejudices and idiosyncratic value systems. Among other inappropriate attitudes, caseworkers and case supervisors handling cases that intersect with the criminal justice system frequently see their agency as an extension of corrections services and their roles as punishers. This has dire consequences in cases where dependency arises (or is alleged to have arisen) in the context of substance addiction. In such cases, caseworkers and case supervisors frequently believe that their goals include punishment of parents, grandparents, and others family members who are subject to DFCS actions.

51. DHS and DFCS routinely fail to ensure that caseworkers are not assigned to cases before they receive adequate training. Once assigned to cases, caseworkers do not receive the additional training, supervision, and support necessary for them to: (a) ensure that children alleged or adjudicated dependent receive needed services, including reasonable efforts to place them with family members; (b) adequately monitor placements, including to ensure visitation with siblings and family members; and (c) engage in case planning and case management consistent with the law and reasonable professional standards. In lieu of preserving the possibility of family reunification, caseworkers and case supervisors frequently ensure separation

of children from parents and other family members as a means of punishing those viewed as drug offenders.

52. DFCS also routinely fails to ensure adequate supervision of casework; fails to appropriately discipline incompetent or malingering caseworkers; and fails to hold caseworkers accountable for casework practice that is inconsistent with the law and reasonable professional judgment.

53. These failures of DHS and DFCS deprives children and their families of their right to freely associate and causes them serious psychological and emotional harm.

54. Appointment of counsel for parties and guardians *ad litem* for children should serve as a check on, or balance against, the power wielded by DHS and DFCS. Typically, however, counsel and guardians *ad litem* provide no such check or balance because they lack the independence, training, experience, and skill to advocate for children and families in opposition to DFCS.

55. Counsel for parties and guardians *ad litem* frequently lack the requisite independence because DFCS improperly takes a role in selecting counsel for these typically appointed positions. With the parties' appointed

counsel thus indebted to DFCS for their jobs, they are unwilling or unable to oppose DFCS in court.

56. Counsel for parties and guardians ad litem frequently lack the requisite training, experience, and skill because DFCS frequently selects attorneys with the least training, experience, and skill such that any counsel willing to oppose DFCS nonetheless lacks the ability and resources to do so.

57. Juvenile Court judges also should serve as a check on, or balance against, the powers wielded by DHS and DFCS. Frequently, Juvenile Court judges do not serve as checks or balances, however, operating instead as “rubber stamps” on DFCS decisions and actions, failing to require that DFCS comply with the requirements of the Juvenile Code. Frequently, when Juvenile Court judges act as rubber stamps, it is because they lack the requisite training, skill, and experience. As with appointed counsel and guardians *ad litem*, Juvenile Court judges frequently lack the requisite independence. It is not entirely clear why this is so. It likely results in large part due to inadequate selection and training. Notably, Juvenile Court judges often are part-time judges and sometimes are selected with input from DFCS.

58. Whatever the exact combination of reasons, Juvenile Court judges generally are unable to compensate for inadequacies in the

performance of DFCS, DFCS's counsel, parties' counsel, and guardians *ad litem*. The Council of Juvenile Court Judges bears responsibility inadequate training and selection of Juvenile Court judges.

59. The Council of Juvenile Court Judges also bears responsibility for ensuring that Juvenile Court judges are appointed to Juvenile Court cases in a timely fashion, including when a particular judge requires replacement.

60. Typically, attorneys employed to represent DFCS and DHS have significantly more experience in DFCS's and DHS's operations than DFCS caseworkers and case supervisors. They typically have more experience in dependency litigation than parties' counsel, guardians *ad litem*, and even Juvenile Court judges. That is not to say that attorneys representing DFCS and DHS follow the law or even their own guidelines. Frequently, they do not do either. However, their greater experience in dependency proceedings creates a perception of greater expertise and thereby increases their authority with all other participants in those proceedings. As a practical matter, in many Juvenile Courts, the law is whatever DFCS's counsel says it is. Consequently, attorneys employed to represent DFCS have a disproportionately greater impact on cases than do any other persons.

### **CLASS TREATMENT ALLEGATIONS**

61. This action is properly maintained as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

62. The Class consists of all children and all family members of those children who: (a) have been, are, or will be alleged or adjudicated dependent; (b) have been, are, or will be in the custody of DFCS; and (b) have or will have an open case in any Georgia county.

63. The Subclass consists of all parents and grandparents of children in the Class who have been or will be charged with a drug-related crime.

64. The Class and Subclass are so sufficiently numerous that it is impracticable to bring all Plaintiffs before the Court. The Class includes thousands of children who currently have open cases in Georgia. The Subclass includes thousands parents and grandparents of allegedly dependent children who have been or will be charged with a drug-related crime.

65. The named Plaintiffs will fairly ensure the adequate representation of the interests of the members of the Class and the Subclass. The interests of the named Plaintiffs are not antagonistic to each other or to those of the Class members, as the named Plaintiffs and the Class members

all seek declaratory and injunctive relief to halt the same systemic patterns, customs, practices, and violations of law that are herein alleged on their behalf.

66. Each named Plaintiff child appears by a parent and a grandparent, and each parent or grandparent is sufficiently familiar with the facts and circumstances surrounding the child's situation to fairly and adequately represent the child's interests in this litigation.

67. Plaintiffs and Class and Subclass members are represented by an attorney with extensive experience in class action litigation, complex federal and state court litigation, and family law litigation.

68. The character of the Plaintiffs' rights that are sought to be enforced herein is common. The questions of law and fact raised by the claims of the named Plaintiffs are common and typical of those raised by the claims of the Class and Subclass members, and the questions of law and fact raised by Macy P. and Teresa G. on behalf of themselves and the Subclass are common and typical of those held by members of the Subclass.

69. Questions of law and fact common to the claims of the Plaintiffs and the Class and Subclass members predominate over any individual issues of law or fact.

70. All of the named Plaintiffs are in need of adequate child welfare services, must rely on DHS and DFCS for those services, and are harmed by the Defendants' systemic failure to fulfill their legal obligations to provide safe care, adequate treatment, and necessary services.

71. All of the named Plaintiffs and Class and Subclass members are entitled to effective representation in their dependency proceedings in Juvenile Court and are harmed by the Defendants' failures to ensure effective representation or interference with it. The Defendants charged with the obligation to do so have failed to provide adequate and effective representation by failing to fund a sufficient number of independent, qualified attorneys to provide such representation.

72. Plaintiffs Macy P. and Teresa G. and the Subclass members are further harmed by DFCS's policy and practice of acting as an extension of the Department of Corrections in meting out punishment for drug-related crimes.

73. The harms suffered by all of the named Plaintiffs are typical of the harms suffered by the Class members, and the further harms suffered by Macy P. and Teresa G. are typical of those suffered by the Subclass members.

74. Common questions of fact include, but are not limited to:

a. Whether, contrary to law and reasonable professional standards, DFCS and other Defendants:

i. fail to provide Plaintiffs and Class members with services necessary to prevent or eliminate the need for removal of children from their homes;

ii. fail to comply with the Juvenile Code, namely the procedural safeguards designed to protect the due process and other rights of children and their family members;

iii. interfere with the due process and other rights of children and their family members as set forth in the Georgia Juvenile Code;

iv. fail to provide timely and appropriate services necessary to ensure that children are safely reunited with their families where such reunification is practicable;

v. violate the rights of parents and grandparents not to be subjected to cruel and unusual punishment, *i.e.*, deprivation of family connections;

vi. fail to properly perform their job duties to ensure that failures, interference, and violations do not occur.

b. Whether the Council of Juvenile Court Judges fails to ensure that Plaintiffs and Class and Subclass members receive adequate and effective legal representation in Juvenile Court.

75. Common questions of law include, but are not limited to:

a. Whether the actions and inactions of the Defendants violate the rights of the Plaintiffs and Class members under the Due Process Clause of the U.S. and Georgia Constitutions and the First, Eighth, and Fourteenth Amendments to the U.S. Constitution and laws and regulations promulgated thereunder;

b. Whether, under Section 9-2-20(b) of the Official Code of Georgia and under Georgia common law, the actions and inactions of the Defendants violate the rights of, and breach the obligations owed to, the Plaintiffs and Class and Subclass members as third party beneficiaries to contracts between Georgia and the federal government executed pursuant to Title IV-E;

c. Whether the Defendants' actions and inactions violate the rights of Macy P. and Teresa G. and the Subclass under the Eighth Amendment to the U.S. Constitution, as applied to the states by the Fourteenth Amendment to the U.S. Constitution, to be free of excessive bail, excessive fines, and cruel and unusual punishment;

d. Whether the actions and inactions of all the Defendants violate the rights of Plaintiffs and Class and Subclass members to adequate and effective representation before the Juvenile Courts under the Due Process Clauses of the U.S. and Georgia Constitutions and Section 15-11-98(a) of the Official Code of Georgia.

76. Prosecution of separate actions by individual Class or Subclass members would create a risk of: (a) inconsistent or varying adjudications with respect to individual Class or Subclass members that would establish incompatible standards of conduct for the Defendants opposing the class; or (b) adjudications with respect to individual Class or Subclass members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

77. The Defendants have acted or refused to act on grounds that apply generally to the Class and the Subclass, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or a class action is superior to other available methods for fairly and efficiently adjudicating the controversy because, among other reasons: (a) the class members do not have significant interests in individually controlling the prosecution or defense of separate actions; (b) the extent and

nature of any litigation concerning the controversy already begun by class members does not warrant individual actions and in fact demonstrates the need for class treatment; (c) it is desirable to concentrate the litigation of the claims in this particular forum, which has particular expertise with respect to the Defendants and these types of claims; and (d) it is unlikely that there will be difficulties in managing this litigation as a class action.

**FACTUAL ALLEGATIONS REGARDING  
REPRESENTATIVE PLAINTIFFS**

78. Macy is 23 years old. Her parents divorced when she was 5 years old. Her father obtained custody of Macy and her younger sister with the assistance of Macy's maternal relatives, who believed that separation from their mother, Teresa, was in the girls' best interests. Teresa had become addicted to prescription pain medication following an operation and had then progressed to methamphetamines. Macy's father remarried within months of his divorce from Teresa, adopted his stepson, and fathered another son with Macy's stepmother. Macy and her sister were raised by her father and stepmother with very little contact with Teresa. Macy had semi-regular contact with her maternal grandmother, Teresa's mother. Macy credits her maternal grandmother for giving her most of the love, affection, and emotional support she received while growing up. Macy began abusing

drugs when she was 17 and eventually became addicted to methamphetamines.

79. Macy has been seeking to fulfill her need for love, affection and emotional support for most of her life, mostly from men, resulting in five unplanned pregnancies. At 19, on February 4, 2013, she gave birth to a boy, Plaintiff Daiden P., now 3 years and 11 months old. At 20, on January 26, 2014, she gave birth to another boy, Plaintiff Kylan P., now 2 years and 11 months old. At 21, on December 6, 2014, she gave birth to another boy, Plaintiff Harlan P., now 2 years old. At 22, on December 11, 2015, she gave birth to Plaintiff Grayson P., now 1 year old. At 23, on November 15, 2016, she gave birth to a girl, Plaintiff Brista P., now four weeks old.

**Macy , Teresa, and the children’s experience is typical**

80. With the reformed Juvenile Code, the General Assembly sought to protect children while also preserving families. However, because DFCS refuses to comply with the Code, and Juvenile Court judges fail to force it to comply, DFCS has become a bureaucratic bulldozer that crushes families.

81. Macy’s experience with DFCS and Juvenile Court judges is typical. DFCS’s handling of the cases involving Macy’s children have been characterized by the failure and refusal of DFCS to make reasonable efforts to “preserve and strengthen family relationships, *countenancing the removal*

*of a child from his or her home only when state intervention is essential to protect such child and enable him or her to live in security and stability,”* and to guarantee due process of law in all proceedings, as required by the Constitutions of the United States and the State of Georgia.

82. All of Macy’s children have been removed and scattered about in DFCS custody. It is clear that DFCS violated the Juvenile Code’s directives regarding the diligent search for relatives, relative notice, and relative placement as to all of Macy’s children. It is clear that, as to Brista, DFCS violated virtually every procedural requirement contained in the Code. It is impossible to know at this point the extent of procedural violations as to Daiden, Kylan, Harlan, and Grayson, however, because Macy and her retained counsel have been denied access to court files—even though the Juvenile Code provides that “[a] party has the right . . . to *examine pertinent court files and records*”—and also have been denied access to DFCS’s case files.

83. No one would argue that a child’s safety should be risked to ensure compliance with mere procedures. Everyone recognizes that caseworkers have difficult decisions to make, often under time constraints and in the absence of complete information. Indeed, the provisions of the Juvenile Code at issue here were designed to address those difficulties. The

General Assembly has attempted to guide DFCS's actions so that it can ensure a child's safety while also preserving families by recruiting family members as the first level of protection and support for allegedly dependent children.

84. Due to the General Assembly's foresight, Macy's cases never involved difficult decisions under time constraints in the absence of complete information. At every point, DFCS had plenty of time to identify and locate members of an extensive extended family for relative placement of these children—indeed, a number of suitable relatives presented themselves—and, at every point, DFCS simply refused to act in accordance with the Juvenile Code.

#### **DFCS's "blood libel" of family members**

85. DFCS's refusal to comply with the family preservation-motivated provisions of the Juvenile Code appears to be a form of "blood libel." DFCS's attitude is that Macy is "bad" and so her family members likewise are "bad."

86. DFCS is arbitrary and capricious in its blood libel, however. If an individual family member comes forward and somehow curries favor with a DFCS caseworker—as happened with Harlan and Brista—then DFCS will place the child with that family member, without considering other

family members and without regard for whether that placement is the best placement in terms of maintaining sibling connections and in light of the possibility that the placement may become long term.

87. When Macy gave birth to her second child, Kylan, both she and the baby tested positive for drugs. DFCS was notified and opened a case, to which Defendant Rowley was assigned under the supervision of Defendant Rhoads and their supervisor, Defendant Howell. Ms. Rowley was brand new to the job when assigned to Macy's case.

88. At the point when Ms. Rowley removed Daiden and Kylan from Macy's care, Macy's mother, Teresa, and Macy's grandmother made Ms. Rowley aware that they would like to be considered for placement and also made her aware of the numerous other relatives who would be appropriate for consideration for placement of the children. At that point, Teresa had been drug-free for years, and there has never been any question regarding Macy's grandmother's parenting. However, Ms. Rowley did not consider Teresa or Macy's grandmother, *nor did she consider any of the other relatives* whose contact information was provided by Teresa and Macy's grandmother. Among other failures, Ms. Rowley never contacted Macy's three aunts—a teacher, a nurse, and an attorney, each of whom has successfully raised children.

89. At the instigation of Macy's 18-year-old sister, Ms. Rowley placed the boys with that young sister, who eventually would not want, and ultimately would not be able to handle, the responsibility of caring for the boys. As a result of that initial choice, the boys' next placement would be in foster care with non-relatives.

90. Due to her age, Macy's sister would not have been considered for placement had she not then been married (to a church youth pastor). Later, when Macy's young sister sought to have the boys returned to Macy, and despite DFCS's disagreement with returning the boys to Macy, DFCS failed to consider Teresa, Macy's grandmother, Macy's aunts *or any other family members* for placement.

91. Shortly after Daiden and Kylan were removed from her care, Macy became pregnant with Harlan. When Macy gave birth to Harlan in December 2014, neither she nor the baby tested positive for drugs. However, Macy received no prenatal care during her pregnancy with Harlan.

92. Based on Macy's lack of prenatal care, Ms. Rowley made the decision to remove Harlan from Macy's care while Macy was still in the hospital. Again, Ms. Rowley did not consider Teresa or Macy's grandmother and did not contact any of the numerous relatives whose information had previously been provided to her by Teresa and Macy's grandmother. By

then, the boys' paternal grandmother also had contacted DFCS to offer herself as a candidate, and DFCS ignored this request as well.

93. In the hospital, when Ms. Rowley indicated to Macy that she was removing Harlan, Macy begged that her father be allowed to collect Harlan from the hospital. Macy's father is a minister. Ms. Rowley agreed, and Harlan has been in the custody of Macy's father ever since.

94. As part of her probation resulting from drug-related violations, and as part of DFCS's case plan, Macy went into the Pines Family Campus in July 2015. Daiden and Kylan were still in the care of her sister; Harlan was still in the care of her father; and she was pregnant with Grayson. In December 2015, she gave birth to Grayson while a resident of the Pines and cared for him and worked as a maid at a Holiday Inn.

95. As noted, Macy's 18-year-old sister had been advocating for the return of Daiden and Kylan to Macy. DFCS objected but did not consider any other of the available relatives for placement of Daiden and Kylan, despite requests from both their maternal and paternal grandmothers. The Juvenile Court judge at the time, Clayton Tomlinson, acquiesced in the request of Macy's 18-year-old sister and returned Daiden and Kylan to Macy at the Pines.

96. Three children under the age of three, plus a job, proved to be more than the then-22-year-old, unmarried, recovering drug addict could yet handle, even in the environment of the Pines. Overwhelmed, she made bad decisions that resulted in her violating her curfew (by one hour). The Pines dismissed her from the program. Upon Macy's dismissal from the Pines, Ms. Rowley announced she was "through" with Macy and removed Daiden, Kylan, and Grayson who were then in the care of Teresa and Macy's grandmother.

97. It was only after this removal that Macy relapsed into drug use. That was Macy's only relapse after beginning treatment.

98. Again, Ms. Rowley did not consider Teresa or the paternal grandmother, nor did she consider Teresa's mother or any of the numerous relatives identified by Teresa and her mother.

99. Ms. Rowley *could not* consider Macy's sister. By then, Macy's sister had divorced her youth pastor husband for, among other things, having sex with an underage girl. Because Macy's sister was ineligible to care for the children, Ms. Rowley placed the boys in foster care with non-relatives.

100. The non-relative foster parents with whom the boys were placed were selected by Macy's young sister, who knew them through her husband's church. Macy's sister maintains that she never would have

recommended the couple if she had known the placement might become permanent. The boys had known these non-relatives less than a year, as sometime babysitters. Macy, Teresa, and Macy's grandmother had met these non-relatives only once. Yet DFCS deemed them "fictive kin." DFCS frequently denominates foster parents favored by DFCS as "fictive kin," even though they do not meet the statutory standard, so that the foster parents enjoy the rights of relatives.

101. Upon information and belief, the non-relative foster parents saw the placement as an adoption opportunity from the beginning. They took steps to ensure their ongoing relationship with Daiden, Kylan, and Grayson, to the detriment of Macy's and the children's other family members' connections with them. They taught the boys to call them "Mama" and "Daddy." Upon information and belief, the foster father, who is employed as a drug task force officer, notified authorities in his jurisdiction of Macy's dismissal from the Pines, which was a violation of her probation and resulted in her being incarcerated in a distant county, far from all of her children. Members of the foster family's household then made Daiden (who was old enough to understand) aware that his mother was in jail. Members of the foster family then interfered with Teresa's and Macy's grandmother's attempts at visitation with Daiden, Kylan, and Grayson. Teresa and Macy's

grandmother sought DFCS's assistance, and DFCS limited the boys' visitation with their family members to a few hours every other Sunday. Teresa and Macy's grandmother have consistently fulfilled their visitation opportunities, usually accompanied by additional relatives, including but not limited to Macy's younger sister, the boys' paternal grandmother, and child relatives. Once Macy's incarceration had ended, she joined in each visitation with her boys.

102. At the point that Ms. Rowley placed Daiden, Kylan, and Grayson in non-relative foster care, Ms. Rowley had never initiated contact with any family member of the children other than Macy's young sister. Despite a year-and-a-half on Macy's case, neither Ms. Rowley nor any other person acting on behalf of DFCS had provided the required notice to the boys' many relatives who would have been suitable candidates for placement.

103. Soon after placing Daiden, Kylan, and Grayson with non-relative foster parents, Ms. Rowley announced her plan to make the placement permanent. She felt that Daiden, Kylan, and Grayson were "doing so good" with their foster family that they should remain there forever, even though this meant separating them not only from their grandparents but also from their brother Harlan.

104. The possibility that the three boys would be placed for adoption came as a shock to the boys' family members, many of whom did not live nearby, had never been contacted by DFCS, had had limited contact with Macy due to her drug history, and had not fully appreciated the potential consequences of the initial removal and placement with Macy's sister.

105. A number of additional family members then sought to be considered as candidates for placement of the children. Despite repeated contacts from the children's family members, DFCS took months to even begin the process of considering any of them as possible candidates, took months to conduct evaluations, and, upon information and belief, has never completed any of the evaluations.

106. At the same time that DFCS has been dilatory with respect to relative placement, DFCS has been advising Macy that adoption will be necessary due to the amount of time that the boys were spending in foster care.

107. Upon information and belief, Daiden, Kylan, and Grayson have visited with their brother Harlan only once since entering foster care. Relatives have made Ms. Rowley aware of this lack of sibling contact, with no response.

108. Macy was pregnant when Daiden, Kylan, and Grayson were placed in foster care and when their foster father ensured that she was incarcerated for violating her probation. Although DFCS, including Ms. Rowley, had been aware of the pregnancy since at least May 2016 (when the pregnancy was visible), and although Ms. Rowley had removed Harlan based on Macy's lack of prenatal care, neither Ms. Rowley nor DFCS even inquired about Macy's prenatal care during her incarceration. Ms. Rowley did, however, repeatedly indicate her intent to take custody of the baby once it was born. DFCS's complete lack of interest in Macy's prenatal care violates the Juvenile Code's requirement that DFCS provide services to avoid or eliminate the need for removal.

#### **Teresa takes legal action**

109. Teresa had been asking for nearly two years to be considered for placement and now understood that DFCS intended that Daiden, Kylan, and Grayson be placed for adoption. She retained counsel. Teresa could not afford an attorney and so her sister, who is an attorney, agreed to represent her for a nominal fee.

110. Teresa and her counsel appeared at the May 2016 hearing set on DFCS's nonreunification plan. Although represented by counsel, Teresa understood it would be unwise to antagonize DFCS and made it clear that

she had every intention of cooperating with DFCS. This included complying with DFCS's clear preference that she disavow any intention of helping Macy regain custody of her children.

111. Mr. Reddick advised Teresa and her counsel to file a notice of appearance and motion for custody. They did so. Recognizing that DFCS already had demonstrated a lack of enthusiasm about Teresa, Teresa and her counsel included in the motion a request that the court award custody to Teresa's counsel (Macy's aunt) if not to Teresa.

112. Macy was present at the May 2016 hearing, but her counsel was not. Indeed, he has failed to attend more than half of the hearings regarding Macy's children, has spent only a few minutes (just prior to a few hearings) interviewing her, has failed to return her many telephone calls, and has failed to provide her with copies of many of the documents served in her cases. Because Macy's appointed attorney was not present, the nonreunification hearing was reset for June.

113. Teresa's counsel also sought to discover whether DFCS had any basis for refusing to place the boys with Teresa. DFCS refused to provide any information or guidance. Teresa's counsel continued to seek an amicable resolution of the custody of the boys, but DFCS was uncooperative.

114. Even after Teresa retained counsel, DFCS dragged its feet for months before initiating an evaluation of Teresa, which still has not been completed. When Teresa asked that DFCS also consider one of her sisters, DFCS required Teresa to choose whether DFCS would proceed with her own evaluation or stop that process and evaluate Teresa's sister. In other words, with three toddlers in foster care with non-relatives and while considering adoption due to the length of time in care, DFCS refused to consider more than one potential relative placement at a time.

#### **The bad side of DFCS's counsel**

115. DFCS attorney Charles Reddick has a reputation in the community for being a misanthrope. Teresa and her counsel knew to tread carefully with him and endeavored to do so.

116. DHS and DFCS also have every reason to know that Mr. Reddick is not an appropriate choice to serve as their legal representative. In an incident covered by CNN and the Atlanta Journal-Constitution, Mr. Reddick convinced a judge to keep an unemployed, homeless man in jail for a year for nonpayment of child support—despite two DNA tests proving that the man was not the father of the children for whom support was owed—until the man's release was secured by the Southern Center for Human Rights in July 2009.

117. Mr. Reddick's maliciousness and vindictiveness are so capricious that it is not possible to escape except by luck. Teresa and her counsel did not have any luck with Mr. Reddick.

118. At the June 2016 hearing, despite having invited the notice of appearance and motion for custody, Mr. Reddick took issue with Teresa's being a party to the Daiden's, Kylan's, and Grayson's cases as their maternal grandmother. Mr. Reddick accused Teresa of attempting an "end run around DFCS."

119. Subsequently, recognizing that informal cooperation would not be forthcoming, and aware of the need to address any problems that DFCS perceived with Teresa, Teresa's counsel served a written request for discovery pursuant to Section 15-11-170 of the Official Code of Georgia. (Teresa's counsel also had attempted to examine the court file but was refused access.) Although Section 15-11-170 requires production within five days, DFCS has failed and refused to provide any discovery at all.

120. Indeed, Mr. Reddick made it clear that he required a full hearing "in open court" on the question of whether Teresa could even be a party to the cases before he would even consider providing discovery—despite his May 2016 invitation to her and her counsel to file a notice of appearance and motion for custody.

121. Teresa's counsel sought to set a hearing on the issue, but court was canceled while Mr. Reddick was vacationing out of the country. By the time he returned, the assigned Juvenile Court judge had recused himself from the case. Later, the Council of Juvenile Court Judges would appoint Marlo Ross to replace him.

122. In keeping with his initial conduct (described above) and especially following Brista's birth (described below), Mr. Reddick has escalated each interaction into a full scale battle, taking the most adversarial stance possible on each and every issue, and he has protracted the proceedings and vexatiously delayed them as much as possible. His actions are not explained by any obligation to zealously represent DFCS. DFCS's obligations are to the best interests of the children, and Mr. Reddick's vituperous litigiousness is not in the best interests of the children. Put simply, Mr. Reddick is belligerent and sadistic.

#### **Macy's recovery**

123. In July 2016, Macy's incarceration ended and, with no help at all from DFCS, she became drug free, obtained employment, and secured independent living arrangements. She attributes much of her success to her participation in a drug court program. During her recovery, she has received

substantial assistance and support from her mother, Teresa, and especially from her grandmother.

124. In light of Macy's progress toward becoming capable of mothering her children, and given Teresa's and her counsel's inability to be recognized as parties or to gain access to the court file or DFCS's case files, Macy, Teresa, and Teresa's counsel determined to work together to pursue Macy's and Teresa's shared goal—recovering Daiden, Kylan, and Grayson from foster care and securing them in the care of their family. Rather than enable them to gather needed information, this move would serve as DFCS's excuse for denying all of them access to information and for further departures from the requirements of the Georgia Juvenile Code. In particular, it would draw the ire of Mr. Reddick.

#### **Brista's birth**

125. Macy gave birth to Brista on November 15, 2016. On November 18, 2016, two representatives of the Clinch County DFCS Office entered the maternity ward of South Georgia Medical Center in Lowndes County and removed three-day-old Brista from Macy.

126. The removal, which was authorized by Steven Mancuso, violated Georgia law because DFCS had taken no steps to avoid the need for removal and in fact resisted all efforts by others to prevent any need for it.

Upon information and belief, DFCS has never justified its failure to engage in any efforts to avoid removal.

127. As a threshold matter, no need for removal existed, and a non-existent need cannot be prevented. DFCS suggested its concern was Macy's prior drug use. To that end, at the time of removal, DFCS employees took Macy's hair follicles as samples. (Four days later, the hair follicle samples tested negative for drugs.) The test was pointless, however, as DFCS employees were well aware that Macy had been participating in drug court for four months and had been passing drug tests *three or four times* a week during those months. (Macy has submitted to so many hair follicle tests that she has bald patches on her scalp.) If a need for removal existed, however, placement in foster care could nonetheless have been prevented by placement of Brista with family members—which Macy begged DFCS to do.

128. Macy was not the only member of Brista's family asking DFCS to place Brista with family. At least five relatives of Brista contacted four different representatives of Clinch DFCS repeatedly in the five months preceding the removal. These relatives included Brista's grandmother, Teresa, as well as Macy's grandmother, and Brista's aunt and great aunt.

These contacts occurred specifically to make DFCS aware of opportunities for placement of Brista with family members.

129. In fact, Brista's great aunt repeatedly contacted DFCS three days before the removal and *the day before* the removal. Relatives continued contacting DFCS in the days following the removal, requesting that Brista be allowed visitation with Macy. The two DFCS employees who physically removed Brista from Macy acknowledged that both had received calls from the great aunt but had not returned them. The great aunt (like Teresa and Macy's grandmother) had already undergone a home evaluation—nearly four months after requesting it—and the original caseworker admitted to Macy that the great aunt was a “perfect” candidate.

130. Although no need for removal existed, and although numerous of Brista's family members sought to avoid her placement in foster care, DFCS nonetheless placed Brista in foster care in Lowndes County on November 18, 2016.

**The preliminary protective hearing that never was**

131. Following this violation of Macy's, Brista's, and their family members' substantive rights, DFCS and its counsel Mr. Reddick engaged in repeated violations of Macy's, Brista's, and their family members'

procedural rights by failing and refusing to comply with provisions of the Juvenile Code enacted to ensure due process.

132. The Juvenile Code provides that, following a removal such as that which occurred in this matter, “the preliminary protective hearing shall be held promptly *and no later than 72 hours after a child is placed in foster care[.]*” O.C.G.A. § 15-11-145. The point of the preliminary protective hearing is to make two determinations within 72 hours of removal: (1) whether there is probable cause to believe a child is a dependent child; and (2) whether protective custody of a child is necessary to prevent abuse or neglect pending a hearing on a dependency petition. DFCS bears the burden of demonstrating the existence of probable cause and the necessity of protective custody.

133. The 72-hour period would expire on Tuesday, November 22, 2016. The preliminary protective hearing was scheduled for Monday, November 21, 2016. No preliminary protective hearing took place, however. In fact, although Brista was removed nearly four weeks ago, *no preliminary protective hearing has ever taken place.*

134. Although the case was called on November 21, 2016, the Juvenile Court judge failed to conduct a hearing in that she never *considered*, much less *determined*, whether probable cause existed or

whether protective custody was necessary. No witnesses were heard and no evidence whatsoever was presented on either the question of probable cause or the need for protective custody.

135. The complete failure of the Juvenile Court judge to take evidence (or even an offer of proof) violates Georgia law because the Juvenile Court judge has no discretion to refuse to hold a preliminary protective hearing within 72 hours of removal and such a hearing requires, at a minimum, evidence from DFCS on both probable cause and the need for protective custody. The evidentiary requirement is clear from the mandatory language of the Juvenile Code—which states that the Juvenile Court judge “*shall* determine” whether there is probable cause and whether protective custody of a child is necessary—and the fact that DFCS bears the burden of demonstrating probable cause and the necessity of protective custody.

136. Because DFCS failed to present any evidence, the Juvenile Court judge was required to order the return of Brista to her mother unless DFCS stood ready to make its case by the next afternoon. The Juvenile Court judge had no discretion to rule otherwise. Georgia law mandates that, in the absence of a timely showing by DFCS, the Juvenile Court judge “shall return the child . . . pending the hearing on the dependency petition[.]”

137. Instead of complying with the clear dictate of Georgia law, the Juvenile Court judge extended the 72-hour period indefinitely by allowing DFCS to retain custody of Brista. This was clear error because the Juvenile Court judge had no discretion to continue DFCS's custody where DFCS had not even offered any evidence. Georgia law is clear that a Juvenile Court judge may continue a child in DFCS custody "pending the hearing on the dependency petition" only upon a finding of probable cause and the necessity of protective custody. Indeed, for DFCS to have temporary custody of the child, a Juvenile Court judge must enter an order containing "a finding that . . . [c]ontinuation in his or her home would be contrary to such child's welfare . . . and . . . [r]emoval is in such child's best interests."

138. In failing to make these most basic of inquiries, the Juvenile Court judge also failed to inquire as to whether DFCS made reasonable efforts to prevent the need for the removal and to avoid placement in foster care and did not make the written findings required as to DFCS's efforts in this regard (including a brief description of what preventive and reunification efforts were made by DFCS).

139. Needless to say, the Juvenile Court judge did not perform any of the other procedures that the Juvenile Code contemplates. At the commencement of the hearing, the Juvenile Court judge was required to

inform Macy and other parties of the following: the contents of the complaint; the nature of the proceedings; and their due process rights, “including the parties’ right to an attorney and to an appointed attorney if they are indigent persons, the right to call witnesses and to cross-examine all witnesses, the right to present evidence, and the right to a trial by the court on the allegations in the complaint or petition.”

140. These failures were made even more egregious by the fact that not only Macy but also Teresa, Macy’s grandmother, Brista’s uncle, and two great aunts presented themselves at the hearing. These family members had traveled to Coffee County on short notice because the hearing was set there rather than in Clinch County, where Macy resides, or in Lowndes County, where the removal occurred, as required by the Juvenile Code’s venue provision.

141. Absent from the hearing, by the way, was Macy’s court-appointed counsel. Although Mr. Reddick stated upon the call of the case that notice had been sent to the attorney whom DFCS had chosen for Macy in the boys’ cases, that attorney was not present.

142. Not only did the Juvenile Court judge fail to advise Macy and others regarding the right to counsel, the Juvenile Court judge rubber-stamped DFCS’s interference with Macy’s choice of counsel. Indeed, even

though the Juvenile Code makes clear that “[a] party other than a child shall be given an opportunity to . . . [o]btain and employ an attorney of such party’s own choice[,]” the entirety of the time that the Juvenile Court judge spent on Brista’s case was spent on the disqualification of Macy’s chosen attorney.

143. A graduate of New York University School of Law who is licensed in three states and has 19 years of litigation experience, Macy’s attorney has never participated in or witnessed a court proceeding in which both the judge and opposing counsel demonstrated such disregard for the most basic precepts of the law as was shown on November 21, 2016, at what was to be the preliminary protective hearing.

144. When the case was called, Mr. Reddick saw and visibly reacted to the fact that Macy had retained counsel. Mr. Reddick immediately asked to be heard in chambers. In chambers, Mr. Reddick made, and the Juvenile Court judge entertained, an unnoticed oral motion to disqualify Macy’s chosen attorney. Mr. Reddick asserted that Macy’s chosen attorney is disqualified from representing Macy due to a conflict of interest—specifically, her representation of Teresa in her motion for custody of Daiden, Kylan, and Grayson, with herself as an alternative to Teresa.

145. Macy's chosen attorney responded that: (a) all family members' interests are aligned in recovering all of Macy's children from foster care and keeping them together with their siblings in their family; and (b) Macy and Teresa affirmatively waived any potential conflicts of interest. Proof was offered on both points, with Macy's chosen attorney asking the Juvenile Court judge to hear from Macy and Teresa, who were together in the courtroom with their other family members. Macy's chosen attorney reminded Mr. Reddick that, at the most recent hearing regarding the boys, Macy had stated in open court while represented by her DFCS-selected, court-appointed counsel that she joined with and consented to Teresa's motion for custody.

146. Mr. Reddick then indicated that Macy, Teresa, and Macy's chosen attorney would be punished by continuation of the "pick-up order"—that is, by DFCS's continuing to keep Brista in foster care. Mr. Reddick stated, "You did this to yourself."

147. Notably, Mr. Reddick did not even wait for the Juvenile Court judge to rule before telling Macy's chosen attorney how the case would proceed. This plainly recognized the manner in which the *in camera* proceedings already had been occurring, *i.e.*, with the Juvenile Court judge

acting as an advocate for DFCS. Indeed, Mr. Reddick and the Juvenile Court acted as a tag team. For example:

a. In response to Mr. Reddick's claim of a conflict of interest (and ignoring Macy's chosen attorney's offer of proof), the Juvenile Court judge stated that Macy's chosen attorney would have to withdraw from representation of Teresa in order to represent Macy.

b. Macy's chosen attorney stated, "I withdraw."

c. Mr. Reddick interjected that the withdrawal would have to be in writing.

d. Macy's chosen attorney began handwriting her withdrawal and described her action for the record.

e. Mr. Reddick stated that Macy's chosen attorney could not withdraw without notice to, and an opportunity to be heard by, the guardian ad litem.

f. The Juvenile Court judge asked for, and immediately signed, Mr. Reddick's proposed order appointing Reddick's selection as counsel for Macy.

g. (Subsequently, when that attorney wrote the Juvenile Court judge to say that he was unable to represent Macy, the Juvenile

Court judge would immediately accept his withdrawal—and ask *Mr. Reddick* for a substitution of counsel to replace him.)

148. On November 21, 2016, at what was to be the preliminary protective hearing, Mr. Reddick asked for, and the Juvenile Court judge granted, a continuance until the DFCS-selected, court-appointed attorney could be present. Macy's chosen attorney advised the Juvenile Court judge and Mr. Reddick that they were requiring Macy to choose between Macy's right to counsel of her choosing and Macy's and Brista's right to have the preliminary protective hearing take place within 72 hours.

149. It had been clear at the start of the hearing that the Juvenile Court judge and DFCS intended to proceed with the hearing even though they believed Macy had no counsel present. When, however, Macy's chosen attorney appeared, they insisted on a continuance (which became indefinite) until Macy could be represented by the attorney of their choosing.

#### **Continued denial of discovery**

150. During the course of the *in camera* proceeding that took place on November 21, 2016, Macy's chosen attorney served DFCS with a written request for discovery pursuant to Section 15-11-170 of the Official Code of Georgia. Mr. Reddick refused to accept the written request, and Macy's chosen attorney dropped it in his lap. Section 15-11-170 requires production

of discovery within five days of a written request. DFCS has never produced any documents in response to the request.

### **Denial of access to the transcript**

151. At a certain point on November 21, 2016, Macy's chosen attorney paused the *in camera* proceedings to ask for a court reporter. (This caused apparent irritation on the part of the Juvenile Court judge.) Macy's chosen attorney went to the courtroom and brought a court reporter back, and that court reporter recorded the remainder of the proceedings.

152. Following the *in camera* portion of the hearing, Mr. Reddick left chambers, expressed his frustration to those present in the courtroom, and stormed out of the courtroom, and the Juvenile Court judge closed herself in chambers with the court reporter.

153. Later that day, when Macy's chosen attorney contacted the court reporter to obtain a transcript, the court reporter stated that an order signed by the Juvenile Court judge was required before the court reporter could transcribe the proceedings or provide her with a copy of the transcript. Section 15-14-5 of the Official Code of Georgia provides in pertinent part that "[i]t shall be the duty of each court reporter to transcribe the evidence and other proceedings of which [s]he has taken notes as provided by law *whenever requested so to do by counsel for any party* to such case and

upon being paid the legal fees for such transcripts. . . .” Two days later, Macy’s chosen attorney sent the Juvenile Court judge a written request for an order authorizing the court reporter to transcribe the proceeding and provide a copy. Five days later, when the Juvenile Court judge had failed to act on this request, she followed up with further correspondence regarding the request, noting the time sensitive nature of the proceedings.

154. Mr. Reddick responded to this second request for the transcript, citing his purported concern that confidentiality would be breached by Macy’s chosen attorney’s having a copy of the transcript of the proceedings—even though Macy’s chosen attorney had participated in those proceedings. To date, neither the requested order nor the requested transcript has been provided. Instead, the Juvenile Court judge recused herself from the case (making her the third Juvenile Court judge to enter a voluntarily recusal). Although the Juvenile Court judge stated that she had taken the necessary steps to obtain a replacement, weeks have passed without appointment of a new Juvenile Court judge.

155. Brista eventually wound up in a relative placement. This is how it happened: After Macy and her family members’ repeated, unsuccessful efforts to have a family member considered for a relative placement, one of Macy’s aunts realized that her ex-husband knew a DFCS caseworker

*socially*; that aunt prevailed upon her ex-husband to prevail upon the DFCS caseworker to place Brista with her; the ex-husband did as his ex-wife asked; DFCS placed Brista with Macy's aunt within 48 hours of that request.

156. Macy's aunt resides in Coffee County, and Macy resides in Clinch County where she works and has a drug court-imposed curfew. Macy's great grandmother, who also resides in Clinch County, must drive 70 miles round trip every day so that Macy's aunt, a nurse, can work. Other relatives who reside in Clinch County also must make the trip to assist Macy's aunt (who has two young boys of her own) in caring for the newborn. Macy and the infant Brista have had limited opportunities to bond, given Macy's work schedule and curfew in Clinch County. For these reasons, this placement is not ideal. However, this appeared to Macy and her family members to be the only relative placement that DFCS would even consider. Amazingly, this placement was made after the 72-hour deadline had expired without a finding (or even consideration) of probable cause or the need for protective custody. DFCS's continued custody of Brista is unlawful as is its interference with this family.

### **The Defendants' culpability**

157. Each defendant either actively participated in these multiple violations of Macy's, Macy's children's, and Teresa's due process rights or they breached their duties to properly supervise those who did.

158. Mr. Reddick's and DFCS's violations of Macy's and Teresa's due process rights were motivated by the belief that Macy and Teresa deserved punishment for their infractions of drug laws and DFCS and Mr. Reddick's belief that they serve as extensions of the corrections department.

159. All of the Defendants have violated and continue to violate legally enforceable and clearly established federal rights.

160. None of the Defendants were performing discretionary functions when they refused to comply with the Georgia Juvenile Court Code and violated legally enforceable and clearly established federal rights.

161. The conduct of all of the Defendants was malicious or intentional or recklessly or callously indifferent to Plaintiffs' protected rights.

### **COUNT 1**

#### **DUE PROCESS VIOLATIONS—EQUITABLE RELIEF**

162. Plaintiffs re-allege and incorporate by reference all paragraphs preceding Count 1 as if fully set forth herein.

163. The Defendants' failures to comply with the provisions of the Juvenile Code providing for the preservation and reunification of families, considered both individually and in their totality, constitute a denial of due process in violation of Plaintiffs' rights under the Fourteenth Amendment to the United States Constitution, as enforced through 42 U.S.C. § 1983, and in violation of the Georgia Constitution.

164. The Defendants' failures to comply with the provisions of the Juvenile Code—including but not limited to those requiring timeliness of various acts, notice of and an opportunity to be heard at hearings, judicial diligence in finding of facts and application of law, judicial fairness and impartiality, adequate legal counsel, access to court files and records, and access to DFCS's files and records—considered both individually and in their totality, constitute a denial of due process in violation of Plaintiffs' rights under the Fourteenth Amendment to the United States Constitution, as enforced through 42 U.S.C. § 1983, and in violation of the Georgia Constitution.

165. The Defendants' failures are willful.

166. Plaintiffs are entitled to injunctive relief because: (a) they are likely to succeed on the merits; (b) there is no adequate remedy at law; (c)

Plaintiffs will suffer irreparable harm without injunctive relief; and (d) injunctive relief is necessary to serve the public interest.

167. Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual and justiciable controversy exists regarding the Defendants' failure and refusal to comply with the Georgia Juvenile Code.

168. Plaintiffs are entitled to reasonable attorneys' fees and expenses associated with this action to vindicate Plaintiffs' rights and address the Defendants' failures.

**COUNT 2**  
**DUE PROCESS VIOLATIONS—DAMAGES**

169. Plaintiffs re-allege and incorporate by reference all paragraphs that precede Count 1 as if fully set forth herein.

170. The Defendants' failures to comply with the provisions of the Juvenile Code providing for the preservation and reunification of families, considered both individually and in their totality, constitute a denial of due process in violation of Plaintiffs' rights under the Fourteenth Amendment to the United States Constitution, as enforced through 42 U.S.C. § 1983, and in violation of the Georgia Constitution.

171. The Defendants' failures to comply with the provisions of the Juvenile Code—including but not limited to those requiring timeliness of

various acts, notice of and an opportunity to be heard at hearings, judicial diligence in finding of facts and application of law, judicial fairness and impartiality, adequate legal counsel, access to court files and records, and access to DFCS's files and records—considered both individually and in their totality, constitute a denial of due process in violation of Plaintiffs' rights under the Fourteenth Amendment to the United States Constitution, as enforced through 42 U.S.C. § 1983, and in violation of the Georgia Constitution.

172. The Defendants' failures are willful.

173. Plaintiffs have been damaged as a result of the Defendants' failures.

174. Plaintiffs are entitled to compensation for their damages and to reasonable attorneys' fees and expenses associated with this action to vindicate Plaintiffs' rights and address the Defendants' failures.

**COUNT 3**  
**FREE ASSOCIATION VIOLATIONS—EQUITABLE RELIEF**

175. Plaintiffs re-allege and incorporate by reference all paragraphs preceding Count 1 as if fully set forth herein.

176. The Defendants' failures to comply with the provisions of the Juvenile Code providing for the preservation and reunification of families, considered both individually and in their totality, constitute a violation of the

free association clause of the First Amendment to the United States Constitution, as enforced through 42 U.S.C. § 1983, and in violation of the Georgia Constitution.

177. The Defendants' failures are willful.

178. Plaintiffs are entitled to injunctive relief because: (a) they are likely to succeed on the merits; (b) there is no adequate remedy at law; (c) Plaintiffs will suffer irreparable harm without injunctive relief; and (d) injunctive relief is necessary to serve the public interest.

179. Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual and justiciable controversy exists regarding the Defendants' failure and refusal to comply with the Georgia Juvenile Code.

180. Plaintiffs are entitled to reasonable attorneys' fees and expenses associated with this action to vindicate Plaintiffs' rights and address the Defendants' failures.

**COUNT 4**  
**FREE ASSOCIATION VIOLATIONS—DAMAGES**

181. Plaintiffs re-allege and incorporate by reference all paragraphs preceding Count 1 as if fully set forth herein.

182. The Defendants' failures to comply with the provisions of the Juvenile Code providing for the preservation and reunification of families, considered both individually and in their totality, constitute a violation of the

free association clause of the First Amendment to the United States Constitution, as enforced through 42 U.S.C. § 1983, and in violation of the Georgia Constitution.

183. The Defendants' failures are willful.

184. Plaintiffs have been damaged as a result of the Defendants' failures.

185. Plaintiffs are entitled to compensation for their damages and to reasonable attorneys' fees and expenses associated with this action to vindicate Plaintiffs' rights and address the Defendants' failures.

**COUNT 5**  
**CRUEL AND UNUSUAL PUNISHMENT—EQUITABLE RELIEF**

186. Plaintiffs re-allege and incorporate by reference all paragraphs preceding Count 1 as if fully set forth herein.

187. The Defendants' failures to comply with the provisions of the Juvenile Code providing for the preservation and reunification of families, considered both individually and in their totality, are intended by DFCS and Mr. Reddick to constitute, and do in fact constitute, additional, unauthorized, cruel and unusual punishment in violation of Macy's, Teresa's, and the Subclass Plaintiffs' rights under the Eighth Amendment to the United States Constitution, as enforced through 42 U.S.C. § 1983, and in violation of the Georgia Constitution.

188. The Defendants' failures to comply with the provisions of the Juvenile Code—including but not limited to those requiring timeliness of various acts, notice of and an opportunity to be heard at hearings, judicial diligence in finding of facts and application of law, judicial fairness and impartiality, adequate legal counsel, access to court files and records, and access to DFCS's files and records—considered both individually and in their totality, are intended by DFCS and Mr. Reddick to constitute, and do in fact constitute, additional, unauthorized, cruel and unusual punishment in violation of Macy's, Teresa's, and the Subclass Plaintiffs' rights under the Eighth Amendment to the United States Constitution, as enforced through 42 U.S.C. § 1983, and in violation of the Georgia Constitution.

189. The Defendants' failures are willful and malicious.

190. Plaintiffs are entitled to injunctive relief because: (a) they are likely to succeed on the merits; (b) there is no adequate remedy at law; (c) Plaintiffs will suffer irreparable harm without injunctive relief; and (d) injunctive relief is necessary to serve the public interest.

191. Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual and justiciable controversy exists regarding the Defendants' failure and refusal to comply with the Georgia Juvenile Code.

192. Plaintiffs are entitled to reasonable attorneys' fees and expenses associated with this action to vindicate Plaintiffs' rights and address the Defendants' failures.

**COUNT 6**  
**CRUEL AND UNUSUAL PUNISHMENT—DAMAGES**

193. Plaintiffs re-allege and incorporate by reference all paragraphs preceding Count 1 as if fully set forth herein.

194. The Defendants' failures to comply with the provisions of the Juvenile Code providing for the preservation and reunification of families, considered both individually and in their totality, are intended by DFCS and Mr. Reddick to constitute, and do in fact constitute, additional, unauthorized, cruel and unusual punishment in violation of Macy's, Teresa's, and the Subclass Plaintiffs' rights under the Eighth Amendment to the United States Constitution, as enforced through 42 U.S.C. § 1983, and in violation of the Georgia Constitution.

195. The Defendants' failures to comply with the provisions of the Juvenile Code—including but not limited to those requiring timeliness of various acts, notice of and an opportunity to be heard at hearings, judicial diligence in finding of facts and application of law, judicial fairness and impartiality, adequate legal counsel, access to court files and records, and access to DFCS's files and records—considered both individually and in

their totality, are intended by DFCS and Mr. Reddick to constitute, and do in fact constitute, additional, unauthorized, cruel and unusual punishment in violation of Macy's, Teresa's, and the Subclass Plaintiffs' rights under the Eighth Amendment to the United States Constitution, as enforced through 42 U.S.C. § 1983, and in violation of the Georgia Constitution.

196. The Defendants' failures are willful and malicious.

197. Plaintiffs have been damaged as a result of the Defendants' failures.

198. Plaintiffs are entitled to compensation for their damages and to reasonable attorneys' fees and expenses associated with bringing this action.

**COUNT 7**  
**HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

199. Macy P. re-alleges and incorporates by reference all paragraphs preceding Count 1 as if fully set forth herein.

200. In addition to injunctive and declaratory relief and damages as set forth above, Macy P. petitions the Court for issuance of a writ of habeas corpus to the Division of Family and Children Services of the Georgia Department of Human Services.

201. Macy P. seeks a writ on the basis that all five children are being held unlawfully by DFCS, which failed to comply with required provisions

of the Georgia Juvenile Code in taking and maintaining legal and physical custody of them.

202. DFCS's unlawful custody was ordered by the Juvenile Court of Clinch County, which acted unlawfully in failing to ensure that DFCS had complied with the required provisions of the Georgia Juvenile Code.

203. Macy P. did not appeal any of these decisions because she did not know that she could appeal them. Macy P. has pursued administrative remedies, *i.e.*, contacting the DFCS caseworker to seek return of her children to her.

204. Macy P. is unable to challenge any of these decisions because currently no Juvenile Court judge is assigned to these matters. Even if a Juvenile Court judge were assigned to them, Macy P. believes, based on her experience, that any confidence that the Juvenile Court judge would act expeditiously to correct the prior judge's errors would be misplaced.

205. Based on these cases' progress for the last two years, further efforts in the Juvenile Court would be futile.

206. Upon information and believe the docket and case numbers for Daiden, Kylan, and Grayson are Juvenile Case No. 037-16J-006, Juvenile Case No. 037-16J-007, and Juvenile Case No. 037-16J-008, respectively. Macy P. does not know the docket or case numbers for Harlan or Brista.

207. The grounds for petitioning for a writ of habeas corpus are set forth in detail above but include violations of Macy P.'s and her children's constitutional rights of due process and freedom of association and their right to be free from cruel and unusual punishment.

208. Macy P. requests that the Court issue a writ of habeas corpus ordering the Division of Family and Children Services of the Georgia Department of Human Services to relinquish custody of all of her children, Daiden P., Kylan P., Harlan P., Grayson P., and Brista P., and deliver them into her custody or into the custody of her family members, specifically, Daiden, Kylan, and Grayson into the custody of Teresa G., Harlan into the custody of Macy P.'s father, and Brista into the custody of Macy P.

### **JURY TRIAL DEMAND**

Plaintiffs demand a trial by jury on all issues and claims so triable.

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- (a) Enter an order pursuant to Rule 23 of the Federal Rules of Civil Procedure:
  - (i) determining that this action is a proper class action;

- (ii) designating Plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure;
  - (iii) designating Plaintiffs' counsel as class counsel under Rule 23 of the Federal Rules of Civil Procedure; and
  - (iv) providing for notice to the class members at the Defendants' expense.
- (b) Enter a judgment in Plaintiffs' favor.
- (c) Declare the Defendants' conduct unlawful.
- (d) Declare that the conduct of the Defendants was malicious or intentional or recklessly or callously indifferent to Plaintiffs' protected rights.
- (e) Enjoin the Defendants from continuing to engage in the unlawful conducts set forth herein.
- (f) Order the Defendants to take appropriate steps to avoid similar violations in the future, including through proper selection and training of personnel and an emphasis on compliance with the spirit and letter of the Georgia Juvenile Code.

- (g) Award Plaintiffs compensatory and punitive damages as allowed by law.
- (h) Award Plaintiffs reasonable attorneys' fees and expenses as allowed by law.

CERTIFICATION

The undersigned counsel certifies that the foregoing was prepared using Times New Roman 14 point, a font and point selection approved by Rule 5.1B of the Local Rules of the Northern District of Georgia.

This 15th day of December, 2016.

  
Elizabeth Graddy  
Georgia Bar No. 056838  
jegraddy@graddylegal.com  
GRADDY LAW LLC  
3355 Lenox Road  
Atlanta, Georgia  
(404) 863-8789  
Counsel for Plaintiffs