IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

The Bronx Defenders, *et al.,* **Plaintiffs,** **v.** **Hon. Anne-Marie Jolly**, *et al.* **Defendants.**	**No. 26-cv-4875**

MOTION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Other Authorities

EXHIBIT LIST

INTRODUCTION

This motion seeks to preserve the status quo for drug testing in New York City Family Court. Under the status quo, family court judges may issue warrants authorizing drug tests of parents upon probable cause, and the Administration for Children's Services (ACS) may propose drug testing as part of the State's suggested criteria for reunifying parents and children. Drug testing is an everyday aspect of family court proceedings under this procedural framework.

This motion seeks to enjoin a separate courthouse drug testing program scheduled to begin in New York City Family Court on June 22, 2026. The program grants family court judges unfettered discretion to ask parents appearing in court to submit to on-the-spot drug testing. Parents who submit to testing will be required to urinate while a court employee watches.

There are no rules governing how judges will treat a parent's refusal. When courthouse drug testing was previously available (it stopped during the pandemic), judges routinely penalized parents who refused to test. Judges treated a parent's refusal as a sufficient reason to remove children from their homes or deny parents increased visitation. This unlawful practice coerces drug testing without valid consent in violation of the Fourth Amendment, and chills parents' access to court in violation of the First Amendment.

The reinstatement of courthouse drug testing thus poses a high risk of constitutional violations without serving any legitimate need. Instead, it creates a parallel system of suspicionless, coercive drug testing untethered from established legal standards or individualized findings, circumventing the process contemplated by state law.

Plaintiffs respectfully request that this Court maintain the status quo by enjoining family court officials, in their administrative capacities, from implementing the courthouse drug testing program.

BACKGROUND

I. The Status Quo: The Family Court Act Authorizes Drug Testing Pursuant to Warrants or Disposition Orders

The Family Court Act establishes procedures for drug testing consistent with the Fourth Amendment and the fundamental rights at stake in child protective proceedings. Parents have a fundamental liberty interest in "care, custody, and management" of their children. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). Child protective proceedings involve state intervention in this relationship, against the wishes of the parent, based on allegations of abuse or neglect. N.Y. Fam. Ct. Act §§ 1011, 1013(a). This case concerns a parent's access to their child pending findings of fact on the state's allegations.[1] Specifically, this case concerns hearings to determine whether a child should be removed from home pending fact finding, N.Y. Fam. Ct. Act §§ 1027–28, and, if so, whether parents should be granted increased visitation, N.Y. Fam. Ct. Act § 1030.

The state often contends that drug tests are relevant to these determinations. *E.g.* Ketteringham Decl., Ex. 4 ¶ 13. State law specifies a procedure for ordering a drug test: a warrant. Specifically, judges may order collection of urine in a reasonable manner "upon motion of a petitioner or attorney for the child," and "only if the court finds probable cause that the evidence is reasonably related to establishing the allegations in a petition." N.Y. Fam. Ct. Act § 1038-a. And, if the court holds a fact-finding hearing and determines that the parent abused or neglected the child, the court has broad authority to require drug testing for the parent as a condition of visitation or returning the child home. *E.g.* N.Y. Fam. Ct. Act §§ 1054(c) (permitting an order setting conditions of visitation when child is placed with non-respondent parent or

[1] Child protective cases proceed from a petition alleging that the child has been subject to abuse or neglect, N.Y. Fam. Ct. Act § 1031; to fact finding on the petition and, if the petition is sustained, a disposition order setting a plan for meeting the child's needs and ending state supervision, N.Y. Fam. Ct. Act §§ 1051–52. This case concerns the rights of parents while a petition is pending, before the court makes findings of fact on the state's allegations.

guardian); 1057(b) (requiring an order setting terms of supervision when a child is returned home).

In addition to authorizing these individualized orders to test, state law authorizes orders directing ACS to arrange for services, like drug treatment, for the family. N.Y. Fam. Ct. Act § 1015-a. State law also requires ACS to submit a "permanency[2] plan" every six months after the child is placed outside the home, which serves as the state's proposal for criteria the parent must meet to return the child home and end state supervision. N.Y. Fam. Ct. Act § 1089(c)(3). These services and plans often propose that the parent submit to random drug testing and/or participate in drug treatment. *E.g.*, Ketteringham Decl. ¶ 14 n.3. While these pre-disposition services and plans are a proposal from the state, not a court order, parents commonly accept this proposal and consent to testing in exchange for the state's agreement to increased access to their child. *E.g. id.* ¶ 14 & n.3. Parents who do not agree can reject the state's proposal and seek increased access to their child in court. *E.g. id.* ¶ 14.

Under the current system, whether drug testing occurs as the result of a warrant, a disposition order, or voluntary compliance with a service plan, the status quo allows for drug testing in child protective proceedings consistent with the Fourth Amendment and without chilling the right to be heard in court under the First Amendment. Under the status quo, drug testing is conducted outside the courthouse by trained lab technicians in private areas at medical facilities or facilities specifically designed for sample collection. *E.g. id.* ¶ 15.

New York City Family Court has operated under the foregoing authority, without courthouse drug testing, for more than five years since the pandemic. *E.g. id.* ¶ 16.

[2] The Family Court Act refers to a permanent living arrangement for the child, without state supervision, as "permanency."

II. The Imminent Violation: The Proposed Drug Testing Program Will Coerce Parents into Testing and Chill Court Access

Courthouse drug testing would upend the status quo and pose a high risk of coercing parents into warrantless, nonconsensual drug tests, or else chilling their right to court access.

A. Logistics of the Proposed Testing

On September 19, 2025, the Defendants issued a memo describing the proposed reinstatement of the courthouse drug testing program on the letterhead of the "Office of the Administrative Judge." Memo, Ex. 1 at 1.[3] The memo was issued with fourteen attachments: a "Citywide Drug Testing Waiver for court users"; a list of substances with urine cutoff levels and detection times; and, for each county,[4] substantively identical form orders to conduct drug screens, retest request forms, and record of appearance forms. *Id.* at 2; *see* Whalen Email & Attachs., Ex. 2 & Attachs. 2A–2N. On June 5, 2026, a court administrator announced that the program would be implemented starting June 22. Ketteringham Decl. ¶ 36. Plaintiffs have no reason to believe that there will be changes to the program described in the September 19 memo.

The memo explains that drug testing will use a twelve-panel urine screen for illicit substances like cocaine and MDMA, common prescriptions like benzodiazepines and suboxone,[5] and largely decriminalized recreational substances like THC and alcohol. Memo at 1. The test shows substance use within a timeframe that differs by substance and frequency of use. *See* Drug Testing Panel, Attach. 2B to Ex. 2. Alcohol use can trigger a positive for more than three days.

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[3] The memo was issued September 19, 2025. While the implementation of the program has been delayed until June 22, 2026, the memo itself has not been revised or adjusted, despite efforts by BxD and other counsel representing parents in Family Court to prevent its implementation, or at least minimize the high risk of constitutional violations posed by the program.

[4] The proposal does not include Richmond County. Memo at 1.

[5] The test screens for buprenorphine, a component of suboxone. *See* Drug Testing Panel, Attach. 2B to Ex. 2; *see also What is Buprenorphine?*, Psychiatric Rsch. Inst., Univ. of Ark. for Med. Sci., https://psychiatry.uams.edu/clinical-care/outpatient-care/cast/buprenorphine/ (last visited June 8, 2026).

Id. (screening information for ethyl glucuronide). THC use can trigger a positive for up to thirty days. *Id.* (screening information for cannabinoids).

Though the proposed program is characterized as voluntary, it contemplates tests carried out by court order and sets no standard for how or when such orders can issue. Memo at 1. Judges issue an "ORDER TO CONDUCT SUPERVISED ALCOHOL and/or DRUG SCREEN" to each parent who submits to testing. *Id.*; Form Orders, Attachs. 2C–2F; Testing Protocol, Ex. 16 at 1. This template order, which judges are required to use, contains no space for judges to make any probable cause determination or other findings. *See* Form Orders. The otherwise fillable PDF lists all twelve substances that the panel screens for and includes a checked box, which cannot be unchecked, next to each of the twelve substances. *Id.* The form order requires the drug testing unit to provide written results for all twelve substances to the court by a specific date and time. *Id.*

Upon issuance of the order, the parent is required to sign a "Citywide Drug Testing Waiver for court users." *See* Drug Testing Waiver, Attach. 2A to Ex. 2; *see also* Whalen Email. The parent must acknowledge that "The Honorable [Name], Part [X] has ordered me to provide a urine specimen for an alcohol and drug screening analysis." Drug Testing Waiver at 1. The parent is required to acknowledge that court staff will "supervise[]" them while they urinate, and the court will assign a staff member who shares their gender identity "[w]henever possible." *Id.* Finally, the parent must acknowledge that court staff will withhold the results of the test from the parent, and the judge will inform the parent of the results in open court. *Id.*

The Defendants' memo contains no restrictions or guidance on how the drug tests are administered. Both the form order and waiver are nearly identical to those used under the prior, pre-pandemic iteration of the courthouse drug testing program, which, as described below,

caused rampant constitutional violations. The only difference between the prior and proposed programs is that drug testing is now labeled as "voluntary" without any measures to prevent prior coercive practices. There is no reason to expect that test administration will differ from prior practice.

Under that prior practice, once the order was issued, a court officer escorted the parent to a waiting area where the parent sat, sometimes for over an hour, in view of other litigants, attorneys, and court personnel, until court personnel called their name. Baumann Decl., Ex. 5 ¶¶ 19–20; Sonera Decl., Ex. 6 ¶¶ 18–19; Smith Decl., Ex. 7 ¶¶ 16–17; Kottas Decl., Ex. 8 ¶¶ 18–20; Hill Decl., Ex. 9 ¶ 17; Weinstein Decl., Ex. 11 ¶ 18; Shapiro Decl., Ex. 12 ¶¶ 18–19. Once they were called, parents were required to urinate with the door open in front of court personnel. Baumann Decl. ¶ 20; Sonera Decl. ¶ 19; Smith Decl. ¶ 17; Kottas Decl. ¶ 20; Waer Decl., Ex. 10 ¶ 21; Weinstein Decl. ¶ 19.

The proposed program similarly requires: "The collector must observe the stream of urine entering the specimen cup. Under no circumstances should the individual being screened be left alone during the collection process." Testing Protocol at 3. Clients were embarrassed about urinating in these conditions, particularly when they were menstruating. Sonera Decl. ¶¶ 19–20 (describing variation of prior practice where court staff stood in close proximity to parents to directly observe the stream of urine); Smith Decl.¶ 18; Hill Decl. ¶¶ 16, 23; Waer Decl. ¶¶ 21–22; Weinstein Decl. ¶ 19; Shapiro Decl. ¶¶ 18, 20.

Unlike the Family Court Act, which provides that an order to test must be initiated on motion of the government or attorney for the child, N.Y. Fam. Ct. Act. § 1038-a, the proposed drug testing program permits judges to ask for tests *sua sponte*. And unlike the Family Court Act, which requires a finding that drug test results are reasonably related to pending allegations of

neglect or abuse, the program imposes no limits on a judge's authority to ask parents to test. Memo at 1–2; *see* Form Orders. Judges may ask parents to test regardless of whether the allegations in the petition concern drug use, or whether the parent had children in their care during the period covered by the test, or if the parent has submitted to other random drug tests showing consistent negative results. Family court proceedings provide no remedy against a judge making such arbitrary or biased requests. *See infra* Section II.B.

B. The Proposed Testing Program Poses a High Risk that Judges Will Order Tests Without Valid Consent

The only difference between the pre-pandemic program and the forthcoming program is that drug testing is labeled as "voluntary." This is a change in name only. Ketteringham Decl. ¶ 46. The Defendants have not made any substantive changes to prevent the judges' prior coercive practices. *Id.* ¶¶ 17, 23, 31, 46–50. The forms and procedures under the proposed program are nearly identical to the pre-pandemic program. *Id.* ¶¶ 17, 46. As before, judges are not required to make probable cause determinations or any other factual findings to support drug testing orders. Memo at 1–2; Form Orders. The proposed program does not mandate, or even suggest, alternatives to prior practice. Memo at 1–2; Ketteringham Decl. ¶¶ 46–47. The program contains no rule governing how judges elicit consent or treat a parent's refusal. Memo at 1–2; Ketteringham Decl. ¶¶ 46–47; Baumann Decl. ¶ 14. And, if the program is implemented, the Defendants will be powerless to stop judges from continuing their prior practice of ordering tests without valid consent. Ketteringham Decl. ¶¶ 31, 50.

Because there are no meaningful differences between the proposed program and the pre-pandemic program, reinstating courthouse drug testing poses a high risk of constitutional violations. Family defenders across the city agree. *E.g.* Ketteringham Decl. ¶¶ 45–48 (Managing Director of the Family Defense Practice, The Bronx Defenders); Waer Decl. ¶ 15 (Managing

Director of Litigation, Family Defense Practice, Center for Family Representation); Weinstein Decl. ¶ 14 (Strategic Litigation Staff Attorney, Family Defense Practice, Neighborhood Defender Service of Harlem); Shapiro Decl. ¶¶ 10, 21–26 (Managing Director, Family Defense Practice, Brooklyn Defender Services).

Here are some examples of judges' coercive practices under the prior program.

Judges would begin with a coercive "request" to parents appearing in court.[6] Ketteringham Decl. ¶ 40; Baumann Decl. ¶ 17; Sonera Decl., ¶ 23; Smith Decl. ¶ 21; Kottas Decl. ¶ 23; Waer Decl. ¶ 26; Weinstein Decl. ¶ 22; Shapiro Decl. ¶ 15. Experience under the pre-pandemic program shows that some judges made baseless and harassing requests. Sonera Decl. ¶ 22; Smith Decl. ¶ 20; Kottas Decl. ¶¶ 14, 22. Judges asked parents to test where there was no allegation of substance use against them, or where the parent was not seeking increased contact with their children. Ketteringham Decl. ¶ 63; Baumann Decl. ¶ 22; Sonera Decl. ¶ 22; Smith Decl. ¶ 20; Kottas Decl. ¶ 22; Waer Decl. ¶¶ 15, 24, 28; Shapiro Decl. ¶ 22. Judges asked parents to test even when the parent had already submitted to multiple recent tests in a treatment program. Weinstein Decl. ¶ 21; *see* Sonera Decl. ¶ 22. Judges also issued orders to test directly to the parents, without first asking their attorneys whether the parent would consent. *See*, *e.g.*, Baumann Decl. ¶ 27; Sonera Decl. ¶ 28; Smith Decl. ¶ 25; Kottas Decl. ¶ 29.

A judge's "request" to test was a demand as a practical matter, because judges imposed unlawful consequences on parents who refused. Practitioners agree that it was judges' explicit practice to presume that non-consenting parents would test positive for some substance. Ketteringham Decl. ¶ 21; Baumann Decl. ¶ 23; Sonera Decl. ¶ 23; Smith Decl. ¶¶ 21–22; Kottas Decl. ¶ 23. "Judges routinely informed [] clients that if they refused consent, the judge would

[6] Parents are generally required to appear in person for family court proceedings. Baumann Decl. ¶ 16.

deny whatever relief the parent was seeking." Ketteringham Decl. ¶ 40. If parents did not "consent," judges ordered emergency removal of children from their homes, refused to allow increased visitation, or refused to allow children to return home, on the sole basis of the parent's refusal to test. Baumann Decl. ¶ 25 ("[R]efusal to consent to testing is treated as determinative . . . ."); Ketteringham Decl. ¶ 41; Sonera Decl. ¶ 26; Kottas Decl. ¶¶ 16, 23–27; Waer Decl. ¶ 27; Weinstein Decl. ¶ 23; Shapiro Decl. ¶ 15. It was widespread enough that attorneys counseled clients that this was the likely outcome if they refused to test. Baumann Decl. ¶¶ 25, 34; Sonera Decl. ¶¶ 25, 34; Smith Decl. ¶ 31; Kottas Decl. ¶¶ 25, 35; Waer Decl. ¶¶ 26, 31; Weinstein Decl. ¶¶ 22, 25.

In some cases, judges abandoned any pretense of a request and simply ordered parents to test. Baumann Decl. ¶ 27; Sonera Decl. ¶ 28; Smith Decl. ¶ 25; Kottas Decl. ¶ 29; Weinstein Decl. ¶ 24. In other cases, judges explicitly required parents to test as a condition of considering expanded visitation at hearings on emergency removal of children from home, signing stipulated agreements to increased visitation, or allowing a parent to move back home with their child. Baumann Decl. ¶ 26; Sonera Decl. ¶ 26; Smith Decl. ¶ 24; Kottas Decl. ¶ 27. Judges also advised attorneys that they should withdraw applications to keep children at home if the parent was not willing to test. Baumann Decl. ¶ 26; Smith Decl. ¶ 26; Kottas Decl. ¶ 28; Sonera Decl. ¶ 26.

These were not borderline cases in which the judge weighed the evidence, determined that the weight of evidence disfavored the parent, and told the parent that a negative drug test could tip the scales in the parent's favor. These were instances in which a judge required a test as a threshold condition of considering what a parent had to say. *See*, *e.g.*, Sonera Decl. ¶ 27; Waer Decl. ¶¶ 26, 30; Ketteringham Decl. ¶¶ 40–41; Baumann Decl. ¶¶ 24, 26–27, 29; Smith Decl. ¶¶ 24–26; Kottas Decl. ¶¶ 27–30; Weinstein Decl. ¶¶ 22, 24; Shapiro Decl. ¶ 15. As multiple

practitioners attested, it was virtually impossible to successfully advocate for parents who declined to test. *See, e.g.*, Baumann Decl. ¶ 25; Sonera Decl. ¶ 25; Kottas Decl. ¶ 25; *see also* Waer Decl. ¶ 30 ("I cannot remember a time when a client refused a judge's request to take a drug test at the courthouse, yet the judge still granted the client's application").

Thus, under the pre-pandemic program, it was widely known to both family defenders and their parent clients that refusing to drug test meant the court would authorize emergency removal of children from their homes or deny increased visitation. Ketteringham Decl. ¶¶ 40–41; Baumann Decl. ¶¶ 24–26; Sonera Decl. ¶¶ 24–26; Smith Decl. ¶¶ 22–24; Kottas Decl. ¶¶ 24–27; Waer Decl. ¶¶ 27, 29; Weinstein Decl. ¶ 23; Shapiro Decl. ¶ 15; Pl. 1 Decl., Ex. 13 ¶¶ 10, 13; Pl. 2 Decl., Ex. 14 ¶ 11.[7] Defenders were required to explain that, even though the client has a right against unreasonable searches and the judge presented it as a choice, the client did not have meaningful options if they wanted to fight for access to their children. *Cf.* Weinstein Decl. ¶ 25; *accord* Baumann Decl. ¶¶ 29–30, 34; Sonera Decl. ¶¶ 29–30, 34; Smith Decl. ¶¶ 26–27, 31; Kottas Decl. ¶¶ 30–31, 35; Waer Decl. ¶¶ 29, 31–32; Shapiro Decl. ¶¶ 17, 24.

Defenders therefore counseled that, if their client said no, the judge would presume that the client would test positive and the application for the child to come home or for increased visitation would likely be denied. *See*, *e.g.*, Baumann Decl. ¶ 34; Sonera Decl. ¶ 34; Smith Decl. ¶ 31; Kottas Decl. ¶ 35; Waer Decl. ¶ 29; Weinstein Decl. ¶ 25.

Parents who want to exercise both their right to withhold consent and their right to a meaningful hearing have no alternatives. *See* Ketteringham Decl. ¶¶ 33, 42–44; Baumann Decl. ¶¶ 29–32; Sonera Decl. ¶¶ 29–32; Smith Decl. ¶¶ 26–29; Kottas Decl. ¶¶ 30–33; Waer Decl. ¶¶

[7] The individual Plaintiffs' declarations are redacted to preserve their anonymity. Plaintiffs have sought leave of court to file redacted declarations in a contemporaneous motion to proceed anonymously.

31–34; Weinstein Decl. ¶¶ 25–28; Shapiro Decl. ¶¶ 17, 24. Individual child protective cases do not permit challenging a courthouse drug testing program as an administrative matter. Ketteringham Decl. ¶ 42; Baumann Decl. ¶ 30; Sonera Decl. ¶ 30; Smith Decl. ¶ 27; Kottas Decl. ¶ 31; Waer Decl. ¶ 32; Weinstein Decl. ¶ 26. By the time a judge invokes that program by asking parents to test, the damage is done. There is no neutral party to whom the parent may appeal before deciding whether to comply. Ketteringham Decl. ¶¶ 33, 43; Baumann Decl. ¶ 31; Sonera Decl. ¶ 31; Smith Decl. ¶ 28; Kottas Decl. ¶ 32; Waer Decl. ¶ 33; Weinstein Decl. ¶ 27; *see* Shapiro Decl. ¶ 24.

Moreover, parents who refuse to test lose their chance at increased contact with their children and cannot timely appeal. *See* Ketteringham Decl. ¶¶ 33, 40 ("There is no mechanism to appeal to a different, neutral judge in the moment, and after a parent submits, there is little defense counsel can do."). And, for parents who submit to testing, there is no ability to suppress the results. Ketteringham Decl. ¶¶ 33, 44; Baumann Decl. ¶ 32; Sonera Decl. ¶ 32; Smith Decl. ¶ 29; Kottas Decl. ¶ 33; Waer Decl. ¶ 34; Weinstein Decl. ¶ 28. Suppression is not recognized as a remedy for a Fourth Amendment violation in family court proceedings. Ketteringham Decl. ¶¶ 33, 44; Baumann Decl. ¶ 32; Sonera Decl. ¶ 32; Smith Decl. ¶ 29; Kottas Decl. ¶ 33; Waer Decl. ¶ 34; Weinstein Decl. ¶ 28.

Therefore, if the program is reinstated, these are the unconstitutional choices that will be posed to each of the individual Plaintiffs, who have open child protective cases in New York City Family Court, Pl. 1 Decl. ¶ 3; Pl. 2 Decl. ¶ 3, and are at imminent risk of a courthouse drug testing request, Pl. 1 Decl. ¶ 10 (explaining that, in their first family court case from 2015 to 2016, "I took the drug tests because I did not want the family court to assume that I was doing anything wrong. I knew that refusing to take the tests would harm my case."); Pl. 2 Decl. ¶ 11 ("I

know that if I did not say yes, the judge would not truly listen to me or take me seriously when I requested that my [child] be returned to my care. I believe I would already be seen as guilty of using drugs if I refused.").

The underlying problem is that the courthouse drug testing program gives judges unfettered discretion to ask parents to test and impose unlawful consequences if they refuse. Violations are highly likely to recur if the courthouse drug testing program goes forward on June 22, 2026. *See* Ketteringham Decl. ¶¶ 46–50; Baumann Decl. ¶ 14; Sonera Decl. ¶ 14; Smith Decl. ¶ 12; Kottas Decl. ¶ 14; Waer Decl. ¶ 15; Weinstein Decl. ¶ 14; Shapiro Decl. ¶¶ 9, 24.

C. The Proposed Testing Program Poses a High Risk that Judges' Practices Will Chill Access to Court

Moreover, if courthouse drug testing is reinstated, there is an extremely high risk that judges will order parents to submit to testing without valid consent, deterring parents from presenting their claims in court. Ketteringham Decl. ¶ 62; Baumann Decl. ¶¶ 33–35; Sonera Decl. ¶¶ 33–35; Smith Decl. ¶ 30; Kottas Decl. ¶¶ 34–36; Waer Decl. ¶ 37; Weinstein Decl. ¶ 31; Shapiro Decl. ¶ 17.

As set forth above, when courthouse drug testing is in place, refusing to submit to a drug test often means denial of access to parents' children. *See supra* at 8. Attorneys must counsel clients about this reality to prepare them to appear in court, and counsel them again—if the judge allows it—when the judge asks the client to test. Ketteringham Decl. ¶¶ 52, 62; Baumann Decl. ¶¶ 29, 33–34; Sonera Decl. ¶¶ 29, 33–34; Smith Decl. ¶¶ 26, 30–31; Kottas Decl. ¶¶ 30, 34–35; Waer Decl. ¶¶ 31, 37; Weinstein Decl. ¶¶ 25, 31; Shapiro Decl. ¶¶ 17, 24. In many cases under the pre-pandemic program, judges warned parents' counsel to withdraw applications for return of their children if they were not willing to submit to testing, and parents complied. Baumann Decl. ¶¶ 24, 26, 29, 34–35; Sonera Decl. ¶¶ 26, 29, 34–35; Smith Decl. ¶¶ 24–26, 31; Kottas Decl. ¶¶

28, 35–36; *see also* Weinstein Decl. ¶¶ 22–25, 30 ("More often than not, judges asked attorneys like myself to be their messenger to inform parents, before the hearing began, that no relief was possible unless the parent tested."); Waer Decl. ¶¶ 26–27, 31; Shapiro Decl. ¶¶ 15. Experience also shows that some clients "consented" to testing, only to subsequently decide that they do not want to bear the indignity, and left the courthouse. Ketteringham Decl. ¶ 62; Baumann Decl. ¶ 35; Sonera Decl. ¶ 35; Kottas Decl. ¶ 36; Waer Decl. ¶¶ 22–23.

III. The Defendants Are Disregarding Known Risks of Courthouse Drug Testing

It is reasonably foreseeable that, if the Defendants implement courthouse drug testing on June 22, judges will order drug tests without valid consent. While the Defendants are aware of judges' rampant coercive practices under the prior program, no Defendant has taken meaningful action to prevent them. *See* Ketteringham Decl. ¶¶ 11–12, 30–33, 45–50. This only confirms that further constitutional violations are reasonably foreseeable.

First, the Defendants' memorandum announcing reinstatement of the program inserts language on voluntariness that, ironically, highlights a parent's lack of meaningful choice: "Parties must voluntarily consent to supervised drug testing." Memo at 1. The memo otherwise recycles form orders and a form waiver substantially similar to the forms used under the prior program, most egregiously the "waiver" that parents must sign to acknowledge that a judge "has ordered me to provide a urine specimen." *Compare* Order to Drug Screen (Kings Cnty., 2025), Attach. 2F to Ex. 2, *and* Drug Testing Waiver, at 1 (2025) (waiver stating, *inter alia*, that "***I will not be informed of the results of this test by the Family Court staff***. I will be informed of the results during my court appearance" (emphasis in original)), Attach. 2A to Ex. 2, *and* Record of Appearance (Kings Cnty., 2025), Attach. 2N to Ex. 2, *with* 2018 Drug Test Order, Results, & Record of Appearance (Kings Cnty., 2018) (order, at 1, titled "ORDER TO CONDUCT ALCOHOL and/or DRUG SCREEN"; waiver, at 2, containing largely identical language to 2025

waiver; and Record of Appearance form, at 3), Ex. 3; Ketteringham Decl. ¶ 46. The memo is silent on how to offer parents a choice, ensure that decisions are voluntary, or protect the rights of parents who decline. Memo at 1–2.

The Legal Director of The Bronx Defenders' Family Defense Practice has represented many hundreds of clients over nearly twenty years of practice, and states the memo "fails to provide judges with an alternative" to "penalizing parents who refuse to consent, as was their prior practice." Baumann Decl. ¶ 14; *accord* Ketteringham Decl. ¶¶ 45–50; Sonera Decl. ¶ 14; Smith Decl. ¶ 12; Kottas Decl. ¶ 14; Waer Decl. ¶ 15; Weinstein Decl. ¶ 14; Shapiro Decl. ¶¶ 10, 24–25. The Family Court is embedded with a backdrop of intense time pressure, bias, and unprofessionalism that results in a "second-class system of justice" treating removal of children from their homes like a "cattle call," Ketteringham Decl. ¶ 12 (quoting New York State Senate joint committee report[8]). Inserting the label "voluntary" will not change practices without affirmative protections for parents, which are lacking here.

Second, while the Defendants characterize courthouse drug testing as voluntary, practitioners have repeatedly warned the Defendants[9] that judges are likely to continue prior coercive practices. Defendant Judge Jolly has acknowledged these concerns. Ketteringham Decl. ¶¶ 23–25, 28. Judge Jolly told defenders that, while she would be unhappy if judges continue

[8] N.Y. State Sen. Comm. on Judiciary & N.Y. State Sen. Comm. on Children & Fams., The Crisis in New York's Family Courts 3 (Feb. 2024), https://www.nysenate.gov/sites/default/files/admin/structure/media/manage/filefile/a/2024-02/2.12-family-court-hearing-report-w-graphics-1.pdf.

[9] The Defendants met with the directors of publicly funded family defense practices, called "agency heads," in two ad hoc administrative meetings to discuss reinstatement of the program. *See* Ketteringham Decl. ¶¶ 10, 17–35. The first meeting was in September 2025 to discuss reinstatement, then scheduled for October. *Id.* ¶¶ 17–25. Predictably, the directors shared significant concerns about the coercive nature of testing and the minimal evidentiary value of the results. *Id.* ¶ 21–22. In response, the Defendants delayed the program by a week, then tabled it completely. *See id.* ¶¶ 24, 26. In April 2026, the Defendants set a meeting with the same group of directors and informed them that the program would be reinstated as originally planned in May 2026, later pushed to June 22, 2026. *See id.* ¶¶ 27–28; 36.

coercive practices, she cannot control what they do. *Id.* ¶¶ 23, 30–31, 50. She has also advised defenders to speak with her about coercive practices when they happen, *id.* ¶¶ 32–33, but she and the other Defendants have not modified the courthouse drug testing program to *prevent* coercion, *id.* ¶¶ 28, 35, 47.

Courthouse drug testing is also harmful to The Bronx Defenders (BxD) as an organization. A core BxD business activity is providing clients with high-quality representation in child protective proceedings. Ketteringham Decl. ¶ 51. As detailed in Exhibit 4, BxD will need to retrain staff who only practiced under the status quo, build expertise on the specific drug tests and program protocols, allocate social workers to accompany clients while they wait for testing, pay for retests of potential false positives, and document anticipated rampant constitutional violations. *Id.* ¶¶ 52–57. These needs will require more staff and more resources for BxD to serve the same number of clients. *Id.* ¶ 58.

ARGUMENT

The high risk posed by the courthouse drug testing program warrants a preliminary injunction because Plaintiffs are "likely to succeed on the merits," they have shown an "imminent risk of irreparable harm," and the balance of equities and the public interest weigh in favor of a preliminary injunction. *Reyes v. City of New York*, 141 F.4th 55, 66–67 (2d Cir. 2025).

I. Plaintiffs Are Likely to Succeed on the Merits Because Courthouse Drug Testing Presents a High Risk of Fourth and First Amendment Violations

A. Courthouse Drug Testing is a Warrantless Search

The Fourth Amendment protects parents from unreasonable searches by child welfare authorities. *E.g. Southerland v. City of New York*, 680 F.3d 127, 143–49 (2d Cir. 2012) (vacating summary judgment against parent on Fourth Amendment claim). A search without a warrant is presumptively unreasonable, *Katz v. United States*, 389 U.S. 347, 357 (1967), and urine tests for

drugs are "indisputably searches within the meaning of the Fourth Amendment." *Ferguson v. City of Charleston*, 532 U.S. 67, 76 (2001). This holds true even if the drug test is for child welfare proceedings. *See Southerland*, 680 F.3d at 143–49 (applying ordinary Fourth Amendment analysis to home search for child welfare purposes); *Hurlman v. Rice*, 927 F.2d 74, 79 (2d Cir. 1991) (same); *L.B. v. City of New York*, No. 23-cv-8501, 2025 WL 788662, at *4 (E.D.N.Y. Mar. 12, 2025) (same); *Coleman-Bey v. Childrens Aid Soc'y*, No. 19-cv-7911, 2019 WL 5693688, at *4 (S.D.N.Y. 2019) (same for drug test); *Phillips v. Cnty. of Orange*, 894 F. Supp. 2d 345, 369–70 (S.D.N.Y. 2012) (same for home search); *People United for Children, Inc. v. City of New York*, 108 F. Supp. 2d 275, 299–300 (S.D.N.Y. 2000) (same). *Accord Jerger v. Blaize*, 41 F.4th 910, 912–14 (7th Cir. 2022) (holding blood draw for drug test at the behest of child welfare authorities was a search).

The courthouse drug testing program explicitly authorizes warrantless searches. Unless these searches fall within one of the "few specifically established and well-delineated exceptions" to the warrant requirement, they are unreasonable in violation of the Fourth Amendment. *Hudson Shore Assocs. v. New York*, 139 F.4th 99, 108 (2d Cir. 2025) (quoting *City of Los Angeles v. Patel*, 576 U.S. 409, 419 (2015)). Of the two exceptions that are conceivably relevant to the courthouse drug testing program, consent and special needs, neither applies.

B. Courthouse Drug Testing Will Likely Occur Without Valid Consent

Parents consent to courthouse drug testing because, otherwise, the judge will deny their request for increased access to their children. This consent is invalid for two reasons. First, the consent is coerced by threat of unlawful separation of parents from their children. Second, the consent violates the unconstitutional conditions doctrine, because judges cannot seek waiver of Fourth Amendment rights as a condition of granting parents access to their children.

1. There is a High Risk that Judges Will Induce Consent Through Threats to Unlawfully Separate Parents and Children

There is a high risk that judges will coerce consent to drug testing because judges will unlawfully remove children from their homes, deny return of children to their homes, or deny increased visitation if parents do not agree. New York law mandates a carefully regulated process for parents to access their children while child protective cases are pending. N.Y. Fam. Ct. Act §§ 1027–28 (removal), 1046 (evidence), 1089 (permanency hearings). Courthouse drug testing subverts this process in three key ways: judges ask for drug tests *sua sponte*, presume that parents who do not consent would test positive, and treat that as dispositive to deny the parent's motion.

Courts evaluate coercion by considering the totality of the circumstances to decide whether "unfair . . . tactics" deprived the subject of a "free and unconstrained choice." *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973). Thus, it is not coercive for a judge to give a "mere explanation of the alternatives" that are legally available. *McGrath v. LaVallee*, 348 F.2d 373, 377 (2d Cir. 1965); *accord United States v. Doe*, 537 F.3d 204, 212–13 (2d Cir. 2008). But courts are wary of "the potential coercion which results from the inequality of bargaining power between the judge and the accused," mindful that even "the assistance of counsel . . . does not alter the underlying inequality of power." *United States ex rel. Anolik v. Comm'r of Corr.*, 393 F. Supp. 48, 52–53 (S.D.N.Y. 1975) (collecting cases). *See United States v. Werker*, 535 F.2d 198, 202 (2d Cir. 1976) ("The defendant may [] be reluctant to reject a proposition offered by one who wields such immediate power. Regardless of the judge's objectivity, it is the defendant's perception of the judge that will determine whether the defendant will feel coerced . . . ."). In addition, any deviation from describing alternatives that are legal, to describing alternatives that

are "improper," constitutes an impermissible coercive "threat[]." *Brady v. United States*, 397 U.S. 742, 755 (1970).

When it comes to family separation, while authorities are generally allowed to describe ***lawful*** action they may take in the absence of consent, courts have repeatedly held that it is coercive to threaten ***unlawful*** separation of a child from their parent. *Lynumn v. Illinois*, 372 U.S. 528, 534 (1963) (holding officers coerced mother by making threats to take children if she did not confess); *Jerger*, 41 F.4th at 915 (holding child welfare investigator coerced consent to drug test by threatening parents with unlawful termination of rights to make medical decisions); *Hernandez ex rel. Hernandez v. Foster*, 657 F.3d 463, 482 (7th Cir. 2011) (holding child welfare investigator coerced consent by threatening to unlawfully withhold child); *United States v. Isiofia*, 370 F.3d 226, 232–33 (2d Cir. 2004) (holding consent coerced where, among other things, officers threatened never seeing family again); *Croft v. Westmoreland Cnty. Children & Youth Servs.*, 103 F.3d 1123, 1125 n.1 (3d Cir. 1997) (same for threats to unlawfully remove child); *Akey v. Placer Cnty.*, No. 14-cv-02402, 2015 WL 1291436, at *7 (E.D. Cal. Mar. 20, 2015) (same); *cf. United States v. Eggers*, 21 F. Supp. 2d 261, 269–70 (S.D.N.Y. 1998) (holding consent coerced by threats to unlawfully lock the subject's children out of their home).

As the Seventh Circuit has explained:

> [W]here an official makes a threat to take an action that she has no legal authority to take, that is duress. . . . In the context of removing a child from his home and family, . . . a threat becomes more coercive as the cost of non-compliance increases relative to the cost of compliance.. . . It is one thing for parents to . . . [refuse consent] when they have custody of their child; it is entirely another when the parents don't have custody. In the former situation, the parents' resistance may create the risk that the child will be taken away from them, whereas in the latter, the child has already been removed—the risk is certain.

Hernandez, 657 F.3d at 482–83 (citation omitted).

Identical reasoning applies here.

First, judges ask parents for a drug test *sua sponte*, and, if the parent "consents," the judge issues an order to test without any findings or probable cause determination. *Supra* at 5–7, 12. This is contrary to the Family Court Act, which grants judges authority to order drug testing only "[u]pon motion of a petitioner or attorney for the child," and "only if the court finds probable cause that the evidence is reasonably related to establishing the allegations in a petition." N.Y. Fam. Ct. Act § 1038-a. It is also a violation of New York law requiring judges to remain impartial, N.Y. Jud. Law §§ 16, 17, which prohibits judges from "assum[ing] the advocacy role traditionally reserved for counsel" and eliciting evidence that the parties have chosen not to introduce. *People v. Arnold*, 98 N.Y.2d 63, 67 (2002) (citing *In re Carroll v. Gammerman*, 193 A.D.2d 202 (1st Dep't 1993) (citing N.Y. Jud. Law §§ 16, 17)). *See In re Jacqulin M.*, 83 A.D.3d 844, (2d Dep't 2011) (reversing family court disposition due to judge's advocacy: "the function of the judge is to protect the record at trial, not to make it").

Second, judges explicitly tell parents that, if they do not consent, the judge will presume that a test would be positive. *Supra* at 8–10. This presumption is contrary to the requirement that family court judges make removal decisions based on "particularized evidence," not presumptions other than those permitted by statute. *Nicholson v. Scoppetta*, 3 N.Y.3d 357, 382–83 (2004) (holding that courts cannot presume harm to children witnessing domestic violence: "That presumption would be impermissible."); *see also* N.Y. Fam. Ct. Act § 1046 (listing permissible presumptions); N.Y. Fam. Ct. Act § 1089(d) (requiring decisions at permanency hearings "upon the proof adduced").

Third, judges generally treat the unlawful presumption as a determinative reason to deny the parent's motion. *Supra* at 8. Multiple family court practitioners attested that, in their

experience, they have never seen a parent refuse to consent to a test, yet win the relief they sought at their hearings. *Supra* at 9. This is contrary to the requirement that the judges order removal only if "necessary to avoid imminent risk to the child's life or health," N.Y. Fam. Ct. Act §§ 1027(b), 1028(b), order visitation unless "the child's life or health would be endangered thereby," and order unsupervised visitation according to the "best interest of the child." N.Y. Fam. Ct. Act § 1030(c). One positive drug test is rarely dispositive of these questions. Treating it as such violates the Family Court Act[10] and the parent's right to due process. *See Nassau Cnty. Dep't of Soc. Servs. ex rel. Dante M. v. Denise J.*, 87 N.Y.2d 73, 79 (1995) ("[A] positive toxicology for a controlled substance generally does not in and of itself prove that a child . . . is in imminent danger . . . ."); *Nicholson*, 3 N.Y.3d at 378 ("The court *must do more* than identify the existence of a risk of serious harm. Rather, a court must weigh, in the factual setting before it, whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal."). *Accord Gottlieb v. Cnty. of Orange*, 84 F.3d 511, 520 (2d Cir. 1996) (holding due process gives parents a right to be heard "in a meaningful manner" (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965))).

Thus, family court judges extract consent by threatening to unlawfully deny parents contact with their children if they refuse, which is inherently coercive. *Hernandez*, 657 F.3d at 482; *see also Croft*, 103 F.3d at 1125 n.1. This is especially true where the parent's cost of compliance—submitting to a degrading courthouse drug test—is dramatically outweighed by the cost of noncompliance: losing the return of their child to their care. *Hernandez*, 657 F.3d at 482.

[10] In addition to the provisions cited above, this practice is also inconsistent with the Family Court Act's definition of neglect, which reflects a judgment by the New York State Legislature that a parent's drug use, by itself, is not a reason to separate parents from their children. Courts may enter a finding of neglect only if the state proves that by "misusing a drug," the parent caused a "substantial risk" of harm to their child. N.Y. Fam. Ct. Act § 1012(f)(1)(B). It makes little sense to separate parents and children due to the parent's drug use alone, pending findings on a neglect petition, when drug use alone does not constitute neglect.

Unlawfully depriving parents of access to their children is an "unfair . . . tactic[]" that deprives parents of a "free and unconstrained choice" that could produce voluntary consent. *Schneckloth*, 412 U.S. at 225.

In *Jerger v. Blaize*, a child welfare investigator told parents that they would lose the right to make medical decisions for their child if they did not consent to a drug test. 41 F.4th at 912. The Seventh Circuit held that a jury could conclude that the investigator coerced consent to the test by "threatening . . . proceedings with a predetermined outcome," "leaving no time . . . to seek legal advice," and sending police officers to accompany the family to ensure that the child submitted to the test. *Id.* at 914–15. Remanding the case for trial on the Fourth Amendment claim, the Court reiterated that "it is improper to obtain consent . . . through duress or other illegal means." *Id.* at 915.

Here, courthouse drug testing implicates each of these factors: judges threaten to draw an unlawful presumption that will predetermine denial of whatever relief the parent is seeking, ask parents to test with no advance warning, and send court officers to ensure that parents comply with what is by then the court's order to submit to the test.

Another Seventh Circuit case holds that it is coercive for child welfare authorities to represent that, absent consent, losing access to one's children is inevitable. *Hernandez*, 657 F.3d at 482–83. The Seventh Circuit held that it would be "odd" to expect that "parents in the Hernandezes' position should mistrust what a DCFS investigator says to them." *Id*. at 483. So too for parents who are told to submit to testing, or else subject themselves to the presumption of a positive test that is treated as a dispositive reason to deny access to their children. These threats do not induce voluntary consent.

2. Judges Will Likely Require Consent as a Condition of Granting Parents Access to Their Children, in Violation of the Unconstitutional Conditions Doctrine

Even if family court judges had complete discretion to separate parents from their children, which they don't, it would still violate the Fourth Amendment to condition a parent's access to their children on consent to drug testing. Such a scheme violates the unconstitutional conditions doctrine, which holds that "the government may not do indirectly what it cannot do directly" by requesting waiver of a constitutional right in exchange for a discretionary benefit. *United States v. Whitten*, 610 F.3d 168, 194 (2d Cir. 2010). This doctrine recognizes that the government is a monopoly provider of many services that are essential in everyday life, and if the government were allowed to condition these services on waiver of constitutional rights that function to "preserve spheres of autonomy," these spheres of private autonomy would quickly disappear. *United States v. Scott*, 450 F.3d 863, 866 (9th Cir. 2006). The unconstitutional conditions doctrine thus "vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013).

Multiple courts have held that the unconstitutional conditions doctrine prohibits "voluntary" drug testing like the program here. In *United States v. Scott*, the Ninth Circuit held that the government cannot require consent to drug testing as a condition of granting pretrial release: "free rein to grant conditional benefits creates the risk that the government will abuse its power by . . . striking lopsided deals and gradually eroding constitutional protections." [11] *Id.* It did not matter that drug testing might be an appropriate condition of release in individual cases.

[11] The Ninth Circuit acknowledged that pretrial liberty is protected by the Constitution, but treated the decision to release Mr. Scott on recognizance as fully discretionary for the sake of argument. 450 F.3d at 866 n.5.

The court needed to make the requisite findings and *order* drug testing. *Id.* at 874. Requiring consent to drug testing without making such findings impermissibly allowed the government to "short-circuit" the hearing process and accomplish indirectly what it could not do directly: order drug testing without any evidentiary basis. *Id.* The same is true of any reinstated courthouse drug testing program.

In *Lebron v. Secretary, Florida Department of Children & Families*, the Eleventh Circuit concluded that "Florida cannot drug test [welfare payment] applicants absent individualized suspicion or a showing of a governmental substantial special need," and thus the state "cannot do so indirectly by conditioning the receipt of this government benefit on the applicant's forced waiver of his Fourth Amendment right." 710 F.3d 1202, 1217 (11th Cir. 2013). The court specified that such a choice is coercive:

> [T]he State cannot mandate 'consent' to drug testing, which essentially requires a[n] applicant to choose between exercising his Fourth Amendment right against unreasonable searches at the expense of life-sustaining financial assistance for his family or, on the other hand, abandoning his right against unreasonable government searches in order to access desperately needed financial assistance, without unconstitutionally burdening a[n] applicant's Fourth Amendment right to be free from unreasonable searches.

Id. at 1217–18. Securing access to one's children—a fundamental liberty interest—is at least as compelling as securing financial assistance to care for them.

Finally, the D.C. District Court also held that government employees could not be required to consent to drug testing as a condition of employment. *Lewis v. Gov't of D.C.*, 161 F. Supp. 3d 15, 24 (D.D.C. 2015).

Each of these cases held that consent is invalid under the unconstitutional conditions doctrine, and instead, drug testing must be justified under a different exception to the warrant requirement if it is to be justified at all. So too for courthouse drug testing here.

C. Courthouse Drug Testing Is Not Justified By "Special Needs" Making Individualized Warrants Impracticable

Courthouse drug testing does not fall within the "special needs" exception to the warrant requirement. This exception applies only if "special needs . . . make the warrant and probable-cause requirement impracticable," necessitating suspicionless searches. *Southerland*, 680 F.3d at 158 (quoting *Tenenbaum v. Williams*, 193 F.3d 581, 603 (2d Cir. 1999)). "Not only must the government identify the special needs that make the warrant and probable-cause requirement impracticable but it must establish that those special needs are 'substantial.'" *Lebron*, 710 F.3d at 1207 (quoting *Chandler v. Miller*, 520 U.S. 305, 318 (1997)). "Only if the government is able to make a showing of substantial special needs will the court thereafter 'undertake a context-specific inquiry, examining closely the competing private and public interests advanced by the parties,' to determine the reasonableness of the search." *Id.* (quoting *Chandler*, 520 U.S. at 314).

Here, the Defendants cannot get past step one. There is no conceivable impracticality in seeking a warrant for courthouse drug tests, especially where the status quo already permits such practice. Requiring individualized evidence would not "impose intolerable burdens on [ACS] or the courts." *Tenenbaum*, 193 F.3d at 603. Nor would the process of seeking a warrant for the drug test "prevent [ACS] from taking necessary action, or tend to render such action ineffective." *Id.*

There is no need for suspicionless drug tests in this context, much less a "substantial" one. This conclusion is consistent with Second Circuit precedent, which has twice determined that emergency removal of a child does not present special needs making a warrant impracticable. *Southerland*, 680 F.3d at 158–59 (explaining "this case does not present circumstances in which the 'special needs' test applies, *if ever it does in the child-removal context*." (emphasis added) (citing *Tenenbaum*, 193 F.3d at 603–04 (same))). This is also

consistent with the Second Circuit's observation that "[c]ase law from our sister circuits . . . concludes that the 'special needs' test is never applicable in this context." *Id.* at 159 n.27 (collecting cases); *accord Tenenbaum*, 13 F.3d at 603 (collecting cases). If it is practical to require a warrant for removal of a child from an allegedly abusive or neglectful parent, it is surely practical to require a warrant to test that parent for drug use.

Even if the government were able to demonstrate substantial special needs making a warrant impracticable, courthouse drug testing would nevertheless violate the Fourth Amendment because it is unreasonable in scope and manner of execution. Special needs searches must be reasonable as determined by "a context-specific inquiry, examining closely the competing private and public interests." *Lebron*, 710 F.3d at 1207 (quoting *Chandler*, 520 U.S. at 318); *see also Jones v. Cnty. of Suffolk*, 936 F.3d 108, 118 (2d Cir. 2019). It is not enough to simply gesture at a government interest like child welfare: that interest must be advanced by the testing scheme, and the value of testing must be balanced against the private interest at stake to determine the reasonableness of a search.

Here, the private interests are strong, and they are totally disregarded. The "nature of the liberty interest," *Jones*, 936 F.3d at 118, is undiminished: parents who are the subject of unproven allegations have no diminished expectation of privacy. The "character of the deprivation," *id.*, is extreme. It is unreasonable to expect immediate compliance with a request to search, without a chance to challenge the search before a neutral decisionmaker or guidelines to prevent harassment. *Compare Patel*, 576 U.S. at 421 (striking down scheme where "Even if a hotel has been searched 10 times a day, every day, for three months, without any violation being found, the operator can only refuse to comply . . . at his or her own peril."), *with Hudson Shore Assocs.*, 139 F.4th at 108 (upholding searches that have a "generous timeframe for compliance,

do not authorize in-person inspections . . . , cover a narrower set of information, and have guardrails against abuse" (citation modified)). And reasonableness depends on "protections against the dissemination of the results to third parties," *Ferguson*, 532 U.S. at 78, which are completely lacking here when the results of a parent's drug test are announced in open court.

Drug testing results read aloud in open court also have the potential to reveal medical information about parents, a matter of utmost privacy. "Medical information in general, and information about a person's psychiatric health and substance-abuse history in particular, is information of the most intimate kind." *O'Connor v. Pierson*, 426 F.3d 187, 201 (2d Cir. 2005). Finally, and most obviously, the search here requires parents to be partially nude and urinate in front of court personnel. *Compare Bd. of Educ. v. Earls*, 536 U.S. 822, 834 (2002) (citing "minimally intrusive nature of the sample collection" where urination was permitted in closed restroom stalls) *with supra* at 6 (describing, *inter alia*, some court staff standing in close proximity to parents to directly observe the stream of urine).

Courthouse drug testing does little to advance the government's interest in child welfare. The program is unrestricted in scope, encompassing parents who are not subject to allegations related to drug use as well as parents who did not have children in their care during the period covered by the test. Even for parents fitting these categories, a positive drug test result does not tell the court when drugs were used, whether a child was present, or whether the drug use otherwise endangered a child. *See Nassau Cnty. Dep't of Soc. Servs.*, 87 N.Y.2d at 79 (describing limited evidentiary value of positive drug test); *see also* Ketteringham Decl. ¶ 49 (describing likelihood that judges will fail to consider whether positive results demonstrate a risk to children); Sonera Decl. ¶ 14 (same); Shapiro Decl. ¶ 16 (same). The Family Court Act reflects a similar legislative judgment: the law carefully specifies that drug use alone is not sufficient to

show neglect. N.Y. Fam. Ct. Act. § 1012(f)(i)(B) (defining neglect as putting a child at "substantial risk" of harm by "misusing a drug"). The benefit of courthouse drug testing is thus negligible relative to the substantial intrusion it requires into parents' privacy.

* * *

Plaintiffs are likely to succeed on their Fourth Amendment claim.

II. Judges' Coercive Practices Will Unconstitutionally Burden the First Amendment Right to Court Access

Parents have a constitutional right of access to family court. *Monsky v. Moraghan*, 127 F.3d 243, 246 (2d Cir. 1997), *cert. denied*, 525 U.S. 823 (1998). This right is unconstitutionally burdened where "hostile action toward a litigant" "hinder[s] efforts to pursue a legal claim." *Id.* at 247. A litigant is hindered, for example, when they cut short visits to the courthouse, decide against returning on a future occasion, or otherwise suffer prejudice to their litigation interests. *Id.*

Here, a demand for on-the-spot drug testing is a hostile action that hinders parents' efforts to pursue their valid legal claims to their children due to shame or a requirement (real or perceived) that parents who refuse to consent withdraw their claim. *See supra* at 5-6, 12; *see also*, *e.g.*, Kottas Decl. ¶ 19 (explaining, further, that he has "also heard court officers joking and even betting on the results of the tests, as the court officers would find out first—before either [he] or [his] client—and deliver the results to the judge," and that court officers "trea[t] that information as if it were an entertaining reveal").

On-the-spot courthouse drug testing subjects parents to public shaming, and deprives them of a chance to consult with their counsel about the results, for reasons that appear unrelated to any legitimate interest. *See*, *e.g.*, Pl. 1 Decl. ¶ 8 ("I felt humiliated when the Judge asked me to drug test during court appearances. I felt as though I was being labeled as an alcohol abuser in

front of people I know. I felt stigmatized in open court."); Pl. 2 Decl. ¶ 13 ("It would be humiliating to have to pee in the place where I go to court, in front of a court officer."); *see also* Hill Decl. ¶¶ 16, 23 (clients expressed "embarrassment" and "humiliation" at being required to test). Some parents therefore simply left the courthouse and abandoned their arguments rather than submitting to a test, reasoning that they were unlikely to succeed if the result was positive. *See supra* at 12*; see, e.g.,* Hill Decl. ¶¶ 22–23. The practices under the courthouse drug testing program "effectively dr[o]ve the litigant out of a courthouse." *Monsky*, 127 F.3d at 247. *Accord Doe v. U.S. Immigr. & Customs Enf't*, 490 F. Supp. 3d 672, 694 (S.D.N.Y. 2020) (holding First Amendment violation where ICE regularly made arrests at a courthouse, inducing an "atmosphere of fear" of arrest that effectively deterred people from attending court). There is no reason to believe that parents will react differently if this program is reinstated.

III. All Other Factors Warrant a Preliminary Injunction

In addition to the Plaintiffs' likelihood of success demonstrating imminent First and Fourth Amendment violations, all other preliminary injunction factors warrant issuing an injunction here.

A. Plaintiffs Are Likely to Succeed on Other Elements of Section 1983 Liability

Plaintiffs are likely to succeed on other elements of their claims under 42 U.S.C. § 1983: reinstatement of courthouse drug testing is an administrative act under color of state law, and it will cause the First and Fourth Amendment violations discussed above.

1. The Defendants Are Liable for Their Administrative Acts

Because this case does not concern the Defendants' acts or omissions in a judicial capacity, the bar on injunctive relief in Section 1983 does not apply. The Defendants acted jointly, under the authority of the Office of the Administrative Judge of New York City Family Court, to re-implement courthouse drug testing. Memo at 1. As the administrative judges for the

family courts, the Defendants and the clerks acting at their direction act under color of state law. N.Y. Jud. Law § 212(d); N.Y. Comp. Codes. R. & Regs. tit. 22, § 80.2(a)(1). Injunctive relief against the Defendants is therefore merited under *Ex parte Young*, 209 U.S. 123 (1908), to prevent imminent violations of federal law. *See, e.g.*, *Walden v. Kosinski*, 153 F.4th 118, 133–34 (2d Cir. 2025).

Plaintiffs seek relief against the Defendants for their administrative acts, not their judicial acts. The Defendants explicitly announced courthouse drug testing in their administrative capacities as administrative judges and court clerks. Reinstating courthouse drug testing lacks any indicia of judicial action: it is not specific to any individual "parties," resolves no "dispute," and does not "adjudicate" any individual rights. *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435–36 (1993). Creation of such general-purpose courthouse programs, like the system for selection of jurors, is deemed administrative "even though they may be essential to the very functioning of the courts." *Forrester v. White*, 484 U.S. 219, 227–28 (1998). It was summarized in a memo issued to "agency heads" and reinstated in a manner typical of other administrative acts in New York City Family Court. *See* Ketteringham Decl. ¶¶ 9–10, 17–18 (describing typical process for matters of court administration). The memo represents one of the "administrative . . . functions that judges may on occasion be assigned by law to perform." *Forrester*, 484 U.S. at 227.

2. It is Reasonably Foreseeable that Reinstating Courthouse Drug Testing Will Result in First and Fourth Amendment Violations

The Defendants are liable for causing any First and Fourth Amendment violations that occur as the result of reinstating courthouse drug testing because these violations are "reasonably foreseeable." Causation under Section 1983 is governed by common law tort principles holding a person liable for "the natural consequences of his actions." *Monroe v. Pape*, 365 U.S. 167, 187

(1961), *overruled in part on other grounds by Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 695–701 (1978). Thus, even if someone else takes the final step in the causal chain of a constitutional violation, an official is liable under Section 1983 if they could "reasonably foresee" that result. *Higazy v. Templeton*, 505 F.3d 161, 177 (2d Cir. 2009). *See also In re Flint Water Cases*, 960 F.3d 303, 323, 330–35 (6th Cir. 2020) (holding state officials liable for deliberate indifference to known risk of violations); *Finch v. N.Y. State Off. of Children & Fam. Servs.*, 499 F. Supp. 2d 521, 536–40 (S.D.N.Y. 2007) (holding state officials liable for policy posing a "pervasive and unreasonable threat of constitutional injury").

The Second Circuit has repeatedly held officials liable for putting a constitutional violation in motion because they could "reasonably foresee" a judge or prosecutor taking the final step in the causal chain. *Walsh v. City of New York*, 742 F. App'x 557, 562 (2d Cir. 2018) (police officer could reasonably foresee prosecutor's decision to charge); *Cameron v. City of New York*, 598 F.3d 50, 63–65 (2d Cir. 2010) (same); *Higazy*, 505 F.3d at 177 (issue of fact whether polygraph examiner could reasonably foresee judge's decision to detain based on coerced statements); *Zahrey v. Coffey*, 221 F.3d 342, 352 (2d Cir. 2000) (prosecutor could reasonably foresee introduction of falsified evidence).

The evidence here goes beyond whether the Defendants *could* reasonably foresee constitutional violations: they already have. Each Defendant has heard repeated warnings that reinstating courthouse drug testing will effectively reinstate judges' coercive practices, and Judge Jolly has acknowledged these concerns. *See supra* at 14–15; Ketteringham Decl. ¶¶ 21–24, 28, 30–33. Yet it appears the Defendants have not made a single change to the program. *See* Ketteringham Decl. ¶¶ 28, 35, 47–48, 50.

The evidence is plain: the Defendants know of a high risk that constitutional violations will result, not least because defenders have pointed out the systemic violations associated with prior practice. The Defendants are nevertheless reinstating courthouse drug testing with deliberate indifference to that risk.

B. All Other Factors Weigh Heavily in Plaintiffs' Favor

An injunction would prevent parents from suffering irreparable harm through unreasonable searches, an injunction would cause no countervailing harm to the government, and an injunction would advance the public interest.

First, absent relief, parents will be coerced into unconstitutional searches and unconstitutionally hindered from pursuing their claims. The deprivation of these constitutional rights alone is sufficient to show irreparable harm. *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984); *see also Nat'l Inst. of Fam. & Life Advocs. v. James*, 160 F.4th 360, 379–80 (2d Cir. 2025) (holding imminent First Amendment violation sufficient to show irreparable harm); *Ligon v. City of New York*, 925 F. Supp. 2d 478, 539 (S.D.N.Y. 2013) (same for Fourth Amendment).

Given these irreparable harms, the balance of equities and public interest weighs heavily in favor of Plaintiffs. The government does not appear to have suffered harm from the lack of courthouse drug testing program since the pandemic and could continue to operate under the status quo. And "no public interest is served by maintaining an unconstitutional policy when constitutional alternatives are available to achieve the same goal." *Nat'l Inst. of Fam. & Life Advocs.*, 160 F.4th at 380.

Finally, the Court should waive the requirement to post security, given that "nature of the rights being enforced" is "in the public interest," *Cellco P'ship v. T-Mobile USA Inc.*, No. 26-cv-0972, 2026 WL 867129, at *8 (S.D.N.Y. Mar. 30, 2026) (citing *Pharm. Soc'y of State of N.Y., Inc. v. N.Y. State Dep't of Soc. Servs.*, 50 F.3d 1168, 1174 (2d Cir. 1995)). The Defendants are

unlikely to suffer any monetary loss from the requested injunction. *See, e.g., Regeneron Pharm., Inc. v. U.S. Dep't of Health & Hum. Servs.*, 510 F. Supp. 3d 29, 51 n.6 (S.D.N.Y. 2020) ("No bond is needed" where government "ha[s] not shown a likelihood of financial harm" (citation omitted)).

C. Provisional Class Certification is Appropriate

Courts may issue temporary relief to a putative class. *A.A.R.P. v. Trump*, 605 U.S. 91, 98 (2025) (citing 2 W. Rubenstein, Newberg, & Rubenstein on Class Actions § 4:30 (6th ed. 2022 and Supp. 2024)). A court "need not decide whether a class should be certified" in order to "temporarily enjoin the Government . . . while the question [presented by the claims] is adjudicated." *Id.*; *accord Mercado v. Noem*, 800 F. Supp. 3d 526, 559 (S.D.N.Y. 2025). For the reasons set forth in the accompanying class certification motion, Dkt. No. 6, the Court should enter findings supporting each of the Rule 23 factors and provisionally certify the class.

CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court issue an order:

1. Provisionally certifying a class of "All respondents who are the subject of pending petitions in child protective proceedings in Bronx, Brooklyn, New York, or Queens County Family Court, and who are not incarcerated" for the reasons set forth in the accompanying Motion for Class Certification;

2. Enjoining the Defendants from reinstating the courthouse drug testing program on June 22, 2026 and therefore preserve the status quo;

3. Requiring the Defendants to take the following steps to ensure compliance with the Court's order:

a. Notify any person to whom the Defendants have sent written guidance concerning reinstatement of courthouse drug testing that the program has been enjoined by this Court pending final judgment in this case; and

b. Serve the preliminary injunction order on each of the Defendants' officers, agents, servants, employees, and attorneys who have duties related to reinstatement of the courthouse drug testing program, including but not limited to all "Drug Testing Unit Staff" and/or "Drug Screening Unit Staff" and inform them that the program has been enjoined by this Court pending final judgment in this case;

4. Waiving the requirement to give security, or alternatively, requiring Plaintiffs to give security in the amount of $1; and

5. Ordering any other relief this Court deems just and proper.

Respectfully Submitted,

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**Application for admission forthcoming.

CERTIFICATE OF COMPLIANCE
WITH WORD COUNT LIMITATION

I certify that this Memorandum contains 10,394 words, which is over the 8,750 word limit in Local Civil Rule 7.1(c). Plaintiffs will seek leave to exceed the word count limitation as soon as this case is assigned to a judge.

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