ARGUMENT

THIS COURT SHOULD DIRECT THE FAMILY COURT TO HOLD A PROMPT EVIDENTIARY HEARING TO DETERMINE WHETHER THE CHILDREN CAN SAFELY BE RETURNED HOME AS REQUIRED BY SECTION 1028 OF THE FAMILY COURT ACT AND THE U.S. CONSTITUTION.

1. Both the U.S. Constitution and New York's statutory scheme recognize and protect the fundamental rights of parents and children to be together. This Court is empowered to grant affirmative relief to protect those rights during the pendency of an appeal where the movant is able to "demonstrate (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that a balancing of equities favors his position." *Montauk-Star Island Realty Grp., Inc. v. Deep Sea Yacht & Racquet Club, Inc.*, 111 A.D.2d 909, 910 (2d Dep't 1985). Respondent-Appellant is likely to succeed on the merits of her appeal both because the Family Court's refusal to conduct an emergency hearing without delay is a clear violation of FCA § 1028 and the U.S. Constitution, and because there is no basis for concluding that her children would be at imminent risk in their mother's care with appropriate orders in place. In addition, the children's separation from their mother is causing them irreparable harm. ***If you can explain that harm in one line, say it.*** Finally, the balance of equities heavily favors the remedy sought here because the certain harm to the children of continued separation from their mother without due process of law outweighs the administrative burden on ACS and the Family Court of holding the hearing telephonically or via videoconference within a reasonable period of time. Mechanisms have already been established to allow the Family Court to conduct essential procedures without exposing litigants or counsel to health risks. Few judicial functions are as essential as reviewing the exercise of government authority to involuntarily separate families.

I. THE RESPONDENT-APPELLANT IS LIKELY TO SUCCEED ON THE MERITS OF HER APPEAL.

A. Due Process Requires, at a Minimum, That Parents and Children Be Given a Prompt Hearing When Forcibly Separated by the State.

2. Parents' interest "in the care, custody, and control of their children[ ] is perhaps the oldest of the fundamental liberty interests" that the Fourteenth Amendment protects. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). The Supreme Court has described parents' right to raise their children as "essential," one of the "basic civil rights of man," and "far more precious . . . than property rights." *See Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (citations omitted). The New York Court of Appeals has made this point as well. *See Matter of Marie B.*, 62 N.Y.2d 352, 358 (1984) ("Fundamental constitutional principles of due process and protected privacy prohibit governmental interference with the liberty of a parent to supervise and rear a child except upon a showing of overriding necessity."); *Matter of Bennett v Jeffreys*, 40 N.Y.2d 543, 552 (1976) ("Neither law, nor policy, nor the tenets of our society would allow a child to be separated by officials of the State from its parent unless the circumstances are compelling.")

3. Children, in turn, have a "parallel constitutionally protected liberty interest in not being dislocated from the emotional attachments that derive from the intimacy of daily family association." *Southerland v. City of New York*, 680 F.3d 127, 142 (2d Cir. 2012) (citation omitted); *see also Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977) (noting that the "right to the preservation of family integrity encompasses the reciprocal rights of both parent and children"). As the Court of Appeals has explained, "[t]he parent has a 'right' to rear [their] child, and the child has a 'right' to be reared by [their] parent." *Bennett*, 40 N.Y.2d at 546.

4. When the government separates them, parents and children are entitled to a hearing to contest the basis for the separation. *Stanley v. Illinois*, 405 U.S. 645, 658 (1972) ("parents are constitutionally entitled to a hearing on their fitness before their children are

removed from their custody."). If it is not possible to hold a pre-deprivation hearing prior to taking emergency action to separate children from their parents, the Constitution requires such a hearing as soon as practicable after the removal. *Kia P. v. McIntyre*, 235 F.3d 749, 760 (2d Cir. 2000) (where initial removal takes place without a hearing, parent is entitled to prompt post-removal hearing). To withstand constitutional scrutiny, state action separating a parent from a child, such as the removal order at issue in this case, must be accompanied by due process protections including the opportunity for a prompt hearing to contest the separation.

5. This Court has repeatedly recognized the fundamental importance of the rights of parents and children to a prompt evidentiary hearing when they are forcibly separated by the state. *See Matter of Elizabeth C.*, 156 A.D.3d 193, 204 (2d Dep't 2017) (due process requires, at a minimum, "a hearing 'at a meaningful time and in a meaningful manner," and a parent "may have a viable procedural due process claim ... if [he or she] does not receive a prompt postdeprivation hearing"); *Matter of Lucinda R.*, 85 A.D.3d 78, 87–88 (2d Dep't 2011) (the right to an emergency hearing pursuant to FCA § 1028 is activated by the State's removal of a child from a parent, regardless of whether the child is then placed with the other parent or in foster care.); *Matter of Michael Z.*, 339 N.Y.S.2d 3, 3 (2d Dep't 1972) (rejecting constitutional challenge to removal order entered *ex parte* pursuant to FCA § 1027 because "[d]ue process is accorded the parent by the procedure set forth in § 1028 of the Family Court Act for the return of a child temporarily removed."). These cases reflect the Court of Appeals' holding that a parent's interest in retaining custody of their child involves "too fundamental a right to be relinquished to the State without the opportunity for a hearing." *Matter of Ella B.*, 30 N.Y.2d 352, 356 (1972).

6. The Supreme Court has not addressed the constitutionally-required timeframe for hearings on child removals, but has emphasized that "if there is delay between the doing and the

undoing[,] petitioner suffers from the deprivation of his children, and the children suffer from uncertainty and dislocation." *Stanley,* 405 U.S. at 647. And in other contexts in which physical liberty is at stake, the Supreme Court has required a post-deprivation hearing within 48 hours. *See County of Riverside v McLaughlin*, 500 U.S. 44 (1991); *see also Gerstein v. Pugh*, 420 U.S. 103 (1975).[1]

7. Other courts have addressed the timeframe required by due process in family separation cases and consistently have found that the Constitution requires expedited review. "Although there is no bright-line rule for deciding whether a postdeprivation custody hearing is sufficiently prompt, a survey of the case law shows that the delay should be measured in hours and days, not weeks and months." *Egervary v. Rooney*, 80 F. Supp. 2d 491, 503 (E.D. Pa. 2000), *rev'd sub nom. on other grounds, Egervary v. Young*, 366 F.3d 238 (3d Cir. 2004) (collecting cases and concluding that a seven-month delay in review of a child removal violated due process). The Second Circuit has indicated that the opportunity for post-separation judicial review satisfied due process where a hearing was required within three days. *Gottlieb v. County*

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[1] In *Duchense*, the Second Circuit highlighted the relevance of *Gerstein v. Pugh* to analyzing child protective proceedings:

> In many ways, the situation involved here [removal of children from a parent] is not unlike that presented to the Supreme Court in *Gerstein v. Pugh*. In that case, the Court . . . recognized that the practicalities of on-the-street situations often require arrests before there can be a judicial determination of probable cause. Once the suspect is in custody, however, the reasons that justify dispensing with the magistrate's neutral judgment evaporate . . . there is a striking analogy here where children are initially removed from their parent in an emergency and the state seeks to maintain custody without taking steps to procure prompt judicial intervention by an impartial state judicial officer. Of course, the deprivation of liberty involved here was purportedly based on the "best interests" of the children and hence is not precisely akin to that caused by an arrest. Nevertheless, "(o)f all tyrannies a tyranny sincerely exercised for the good of its victims may be the most oppressive . . . . (T)hose who torment us for our own good will torment us without end for they do so with the approval of their own conscience."

Duchesne, 566 F.2d at 828 n.24 (internal citations omitted).

of Orange, 84 F.3d 511 (2d Cir. 1996); *see also Cecere v. City of New York*, 967 F.2d 826 (2d Cir. 1992) (finding qualified immunity for a child protective supervisor where the deprivation of parental custody was "perhaps a matter of minutes, at most four days"). Similarly, the Fourth Circuit has found sufficient process where a hearing followed removal "as soon as possible, but in no event later than seventy-two hours." *Jordan v. Jackson*, 15 F.3d 333, 344 (4th Cir. 1994). "[T]he post-deprivation hearing must truly be 'prompt' in the strictest sense because the parental liberty interest in custody over their children is so fundamental." *Campbell v. Burt*, 949 F. Supp. 1461, 1468 (D. Haw. 1996) (violation of due process where the post-deprivation hearing extends past a week after the state takes custody of a child).

B. The Family Court Act Affords Parents and Children Due Process by Guaranteeing the Right to a Prompt Evidentiary Hearing Regarding the Removal of a Child Within Three Days at Either the Parent or Child's Request.

8. While the Constitution requires a hearing within days after removal, New York State's statute specifically mandates that parents and children have the opportunity to contest a removal at an evidentiary hearing no more than three court days after requesting such a hearing. The prompt hearing requirement in FCA § 1028 reflects one of the primary purposes of Article Ten, which is to "provide a due process of law for determining when the state, through its family court, may intervene against the wishes of a parent on behalf of a child." FCA § 1011. Because Article Ten prioritizes due process, "[t]he Family Court has no discretion to deny, without a hearing, a parent's application pursuant to Family Court § 1028 if the conditions of the statute are satisfied." *Matter of Danazah B.D.*, 125 A.D.3d 964 (2d Dep't 2015). *See also, Matter of Prince Mc.*, 88 A.D.3d 885 (2d Dep't 2011) (reversing Family Court's denial of mother's application for the return of her children and remitting for an immediate hearing pursuant to FCA section 1028), *Matter of Cory M.*, 307 A.D.2d 1035 (2d Dep't 2003) ("The court had no discretion to deny the [parent's] application [for the return of the child pursuant to FCA § 1028] without a hearing as

long as the conditions established by the plain language of the statute were satisfied"), *Matter of Melissa H.*, 404 N.Y.S.2d 49 (2d Dep't 1978) (directing Family Court to commence a hearing immediately because the mother had a statutory right as the "statute does not grant any discretion to deny a hearing once one has been demanded"). In this case, the hearing was adjourned for seven months in clear contravention of the statute.

9. At the 1028 hearing, the child protective agency must present evidence to establish that returning the child to the parent's custody would place the child at imminent risk to their life or health, that the risk outweighs the harm to the child of removal from the parent, and that there are no orders that could be issued to keep the child safe at home, or the child must be returned. FCA §§ 1027, 1028. Section 1028(a) of the Family Court Act states:

> "Upon the application of the parent or other person legally responsible for the care of a child temporarily removed under this part or upon the application of the child's attorney for an order returning the child, the court shall hold a hearing to determine whether the child should be returned …."

"Except for good cause shown," the hearing "shall be held within three court days of the application and shall not be adjourned. Upon such hearing, the court shall grant the application, unless it finds that the return presents an imminent risk to the child's life or health." *Id.*

10. The Family Court may schedule and commence the hearing outside of the three-day timeframe or adjourn it once it has begun only upon "good cause shown." FCA § 1028(a). In its order, the Family Court cited the "exigent circumstances occasioned by the COVID-19 pandemic" as the basis for its finding of good cause to adjourn the Respondent-Appellant's 1028 application to the end of October. During this public health crisis, however, the Family Court is continuing to accept and adjudicate Article Ten abuse and neglect petitions like this one in which the Administration for Children's Services is seeking an order removing a child from their home.

The Family Court has put in place measures to permit attorneys and litigants to appear remotely through phone or Skype in child protective and other essential proceedings. *See* March 23, 2020 Memorandum from the Hon. Jeanette Ruiz, Administrative Judge of the New York City Family Court, attached as Exhibit C. There is simply no compelling reason the court could not conduct a 1028 hearing while avoiding in person contact, using the existing remote appearance procedures, thereby avoiding any danger to public health.

11. Even if this Court were to find that the physical closure of the Family Court provided a sufficient basis to adjourn the 1028 hearing outside of the statutorily prescribed three days, the Family Court's adjournment of the 1028 hearing for a period of seven months was an unlawful, highly prejudicial, and improvident exercise of discretion. Whether the granting of an adjournment is a proper exercise of judicial discretion hinges not only on whether there is a good reason for the adjournment, but also on the length of the adjournment in light of the proffered reason, and whether the adjournment will prejudice the rights of any of the parties. *See Matter of Wunika A.*, 58 Misc. 3d 564, 566 (Kings Cty. Fam. Ct. 2017) (considering as a factor the effect another adjournment would have on an "already unusually long 1028 hearing in contradiction to the clear statutory right of the parents to an expedited hearing"); *see also Matter of Paul N.*, 244 A.D.2d 490, 491 (2d Dep't 1997) (affirming Family Court's grant of a short adjournment "since there was no prejudice to the [respondent]" in juvenile delinquency proceeding). In this case, the Family Court erred by failing to consider the substantial prejudice a seven-month adjournment would cause to [Respondent-Appellant and [her children, and the other means by which the Family Court could provide them a meaningful opportunity to be heard at a meaningful time. Because the Family Court is able to conduct a 1028 hearing by video there is not good cause to support the extraordinarily lengthy, and extraordinarily prejudicial, adjournment of the

Respondent-Appellant's 1028 hearing until October 2020.

12. Adjournments in matters with statutory time limits "must be decided on a case-by-case basis, [and] with due regard to the stated legislative goal of prompt adjudication." *Matter of Anthony H.*, 219 A.D.2d 436, 440 (1st Dep't 1996) (quoting *Matter of Frank C.*, 70 N.Y.2d 408 (1987)). Accordingly, the Family Court should have departed from the three-day rule only to the extent that was necessary for it to make the necessary arrangements to hold the hearing by electronic means; but that was clearly not what occurred here. New York's courts have employed video technology to facilitate hearings for several years now. *See e.g., Melissa S. v. Allen S.*, 54 Misc. 3d 684, 687 (Queens Fam. Ct. 2016) ("The use of electronic technology to facilitate participation by litigants in judicial proceedings locations remote from the courtroom has found acceptance in recent years, as technology has developed."); *46 Downing St. LLC v. Thompson, 41 Misc. 3d 1018, 1030* (Civ. Ct. 2013), *aff'd sub nom. 46 Downing St. LLC. v. Thompson, 44 Misc. 3d 143(A), 998 N.Y.S.2d 306* (App. Term 2014) ("In the current age of technology, new courthouses… have available technological means to permit an individual to participate in the court process remotely through video technology."). And this Court has held that due process is satisfied where the video procedures utilized afford the litigants a full opportunity to participate in the hearing. *See Omnamm L. v. Kumar L.*, 177 A.D.3d 973, 975–76 (2d Dep't 2019). The Kings County Family Court has already established technological means by which it can continue to perform its essential functions without compromising the litigants' safety. Therefore, the Family Court's adjournment of the Respondent-Appellant's 1028 hearing for a period of seven months was an improvident exercise of discretion.

C. Executive Order 202.8 Does Not Justify the Family Court's Refusal to Hold a Timely 1028 Hearing

13. When adjourning the hearing for seven months over respondent's objection, the Family Court explained that the Governor's Executive Order number 202.8 issued March 20, 2020 suspended all statutory time frames, and that she was therefore not bound by the FCA § 1028 requirement that hearings be held within three days. This reasoning is flawed for several reasons. First, by its own terms, the Executive Order applies only "subject to the state constitution, the federal constitution, and federal statutes and regulations," Exec. Law 29-a(1), and reading the Order to deny prompt review of family separations would clearly violate the State and Federal Constitutions for the reasons explained above in section I(A). Second, this interpretation is simply not supported by the stated purpose or plain language of the Executive Order itself.

14. The Executive Order states, in pertinent part,

> [i]n accordance with the directive of the Chief Judge of the State to limit court operations to essential matters during the pendency of the COVID-19 health crisis, any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules. . . .

The Chief Judge has specifically designated child protective proceedings seeking the removal of children from their homes as "essential." *See* March 22, 2020 Administrative Directive, attached as Exhibit D. The Family Court therefore continues to function and issue removal orders, but without holding the 1028 hearings which are the primary method for parents and children to be heard regarding those removals. If the Executive Order had intended to suspend all meaningful judicial oversight, it would not have authorized the Chief Judge to designate essential matters that the court must continue to conduct during this public health emergency.

15. The Executive Order suspends statutes of limitations and other similar deadlines to initiate proceedings. It does not eliminate the process by which essential proceedings are

litigated. It does not authorize courts to fundamentally alter the standards by which the central issues in those essential proceedings are decided. The Executive Order does not alter the requirement that the removal of a child be supported by evidence that the child would be at imminent risk if permitted to remain in her home. But the Family Court's adjournment of the Respondent-Appellant's 1028 hearing has the effect of permitting a seven-month removal without providing the Respondent-Appellant the opportunity to be heard, thereby dispensing with the provision of the statute that directs the court on how to determine accurately whether imminent risk exists. If the order adjourning this case to October 21, 2020 is permitted to stand, the children will remain separated from their mother for over seven months without a judicial determination based on evidence that the separation is lawful.

16. Hearings pursuant to section 1028 of the FCA are the statute's method for determining whether removal of children from their parents is necessary to protect them from imminent risk as required by the statute. *See Elizabeth C.*, 156 A.D.3d at 205 (the relevant statutes within Article 10, including inter alia sections 1022, 1027 and 1028, "in recognition of the serious constitutional implications of interfering with the relationship between a parent and child, only permit the removal of the child from the parent upon the conducting of a prompt assessment of the situation while applying the substantive standard of imminent risk to the child"). A section 1028 hearing is therefore a fundamental part of, not a separate procedure from, determining whether children should be removed from their parents. If removing children from parents for alleged neglect or abuse is considered an essential function, then the systems that exist to ensure the accuracy of the determination regarding which children must be removed must also be considered essential. Particularly in the context of the public health emergency, when removal from their homes and placement in congregate facilities such as the Children's

Center or in a foster home with strangers necessarily brings with it risks to their health, it is more important than ever to ensure that children are not unnecessarily separated from their families.

II. THE FAMILY COURT'S FAILURE TO PROMPTLY CONDUCT AN EMERGENCY HEARING AS REQUIRED BY BOTH FCA § 1028 AND THE U.S. CONSTITUTION IS CAUSING IRREPARABLE HARM TO THE RESPONDENT-APPELLANT AND HER CHILDREN.

17. By refusing to give the Respondent-Appellant a timely opportunity to present evidence showing that her children should be returned to her care, the Family Court is delaying the children's return home, thus causing irreparable harm to all of them. *See, e.g.*, *Matter of Joseph DD.*, 300 A.D.2d 760, 766 (3d Dep't 2002) (criticizing the Family Court for delaying mother's hearing to contest the removal of her child because "the harm done here to both mother and child—their unnecessarily long separation—is likely of an irreparable nature which must be avoided with vigilance in all cases."); *Matter of Chelsea B.B.*, 34 A.D.3d 1085, 1089 (3d Dep't 2006) (criticizing the Family Court for inflicting the trauma of a removal on the children when there was not sufficient evidence to support it). *See also* American Academy of Pediatrics, AAP Statement Opposing Separation of Children and Parents at the Border (July 2018), https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx (explaining that "highly stressful experiences, like family separation, can cause irreparable harm, disrupting a child's brain architecture and affecting his or her short- and long-term health"). This Court should protect these children from the harm of unwarranted separation from their mother, as it has done for similarly situated children in the past. *Matter of Alexander B.*, 28 A.D.3d 547, 549 (2d Dept. 2006) (reversing Family Court's removal order because the court failed to hold a hearing pursuant to section 1027 to consider the harm of removal and what reasonable efforts could be made to prevent removal). During the Covid-19 public health emergency, it is more important than ever for families to be together.

18. In *Nicholson v. Scoppetta*, the Court of Appeals held that in deciding whether to continue the removal of a child pursuant to section 1027 or 1028 of the FCA, "[t]he court *must do more* than identify the risk of a 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. It must balance that risk against the harm removal might bring, and it must determine factually which course is in the child's best interests." 3 N.Y.3d 357, 378 (2004). The Court of Appeals recognized that separation from a parent causes harm to children, and that the Family Court must engage in a fact-intensive inquiry to weigh that harm against any imminent risk to the child of reunification with the parent. It is therefore incumbent on the Family Court to minimize the period of time during which the child unnecessarily suffers the harm of removal by holding a prompt evidentiary hearing to determine whether the removal is warranted or whether it is doing more harm than good.

19. Current conditions in New York City only compound the inherent harm of separation to both the children and their mother. Because of the global pandemic caused by COVID-19, residents of New York State are under unprecedented orders to remain inside, businesses and non-profit organizations have shut down or moved online, and schools have instituted "distance learning." *See, e.g.*, Eric Levenson & Elizabeth Joseph, *New York Gov. Cuomo Says Social Distancing Efforts Are Working to Slow Coronavirus*, CNN News (Mar. 25, 2020). The virus is spreading rapidly throughout the state: as of March 26, 2020, New York State had 37,258 confirmed cases of COVID-19, up more than 6,400 from the day before. *100 Deaths From Coronavirus in N.Y. in One Day: Live Updates*, New York Times (Mar. 26, 2020). At this strange and terrifying time, many New Yorkers have expressed relief that they are at least able to be with the members of their family, and to know that they are safe at home.

20. Yet for Respondent-Appellant's family, the situation is exactly the opposite: with their normal routines already in disarray as a result of the current public health crisis, the children have now been torn away from their mother and their home, and placed in the care of strangers. Moreover, the effects of the virus on New York City residents and organizations have led to severe restrictions on visitation between parents and their children who have been separated by ACS. Many families have been denied in-person visits altogether, while others have seen the frequency of their visits significantly reduced. For those who have been permitted to have in-person visitation, physical contact and close interaction has been limited in accordance with "social distancing" recommendations. *See, e.g.*, John Kelly, Michael Fitzgerald and Jeremy Loudenback, *During Pandemic, New York and Los Angeles Take Different Paths on Family Visits*, The Chronicle of Social Change (Mar. 20, 2020) ("Some [foster care agencies] suspended visits entirely, while other agencies in the same community moved to virtual visits. The disruptions threatened to prolong already fragile family reunifications and the court hearings that determine their course."); Leila Fadel, *Child Welfare Services and Caretakers Grapple With COVID-19 Effects*, Morning Edition (Mar. 19, 2020), available at https://www.publicradioeast. org/post/ child-welfare-services-and-caretakers-grapple-covid-19-effects?utm_medium =email&utm_source=govdelivery; Eli Hager, *Coronavirus Leaves Foster Children With Nowhere to Go*, The Marshall Project (Mar. 24, 2020). As a result of such restrictions, the Respondent-Appellant and her children may well be forced to endure their separation from each other without even being able to see each other regularly, to play together, or to hold each other in their arms. ***If there are specific details about limitations on/ loss of visitation in this particular case, include them here rather than using the more general discussion.***

21. Even in comparatively "normal" times, "[t]he loss a child experiences when separated from his or her parent or parents is profound and can last into adulthood," interfering with "a child's sense of safety, and multiple critical capacities, including learning, curiosity, social engagement, and emotional regulation." U.S. Dep't of Health and Human Services, Administration for Children and Families, *Family Time and visitation for children and youth in out-of-home care*, ACYF-CB-IM-20-02, at p. 2 (Feb. 5, 2020). In a time such as the present—when families' normal routines are disrupted and both parents and children throughout New York City are understandably anxious about their safety and the safety of those they love—it would be unconscionable to continue the children's separation from their mother for months on end without providing them a hearing to determine whether such a separation is in fact necessary and legal.

III. A BALANCING OF EQUITIES FAVORS THE RESPONDENT-APPELLANT'S POSITION THAT THIS COURT SHOULD ORDER THE FAMILY COURT TO SCHEDULE AND COMMENCE AN EMERGENCY HEARING PURSUANT TO FCA § 1028 WITHOUT DELAY.

22. For the reasons discussed above, a balance of the equities favors the Respondent-Appellant's position that this Court should order the Family Court to conduct a 1028 hearing without delay. *See McLaughlin, Piven, Vogel, Inc. v. W.J. Nolan & Co.*, 114 A.D.2d 165, 174 (2d Dep't 1986) (in order to establish that the balance of the equities weighs in favor of issuance of a preliminary injunction, it "must be shown that the irreparable injury to be sustained is more burdensome to the [party seeking the injunction] than the harm caused to [the other party] through imposition of the injunction") (citation omitted). If the Family Court's adjournment order is permitted to stand, the children and the Respondent-Appellant will be separated for over seven months without even being given the opportunity to have a court determine whether that separation is necessary and legally justified. By contrast, if this Court orders the Family Court to

hold an emergency hearing without delay, neither the Family Court nor the other parties involved in the proceeding will suffer anything more than the administrative burden of conducting the hearing via the same videoconferencing procedure that is already being used to conduct applications for removal brought by ACS. Notably, even this burden may be lessened if necessary by having the parties confer and stipulate to as many facts as necessary prior to the beginning of the hearing.