UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELISA W., by her next friend, Elizabeth Barricelli, *et al*.,

Plaintiffs,

-against-

THE CITY OF NEW YORK, *et al*.,

Defendants.

15 Civ. 5273 (LTS) (HBP)

NAMED PLAINTIFF CHILDREN'S MEMORANDUM OF LAW IN OPPOSITION TO STATE DEFENDANT'S MOTION TO DISMISS

CRAVATH, SWAINE & MOORE LLP
Julie A. North
J. Wesley Earnhardt
Worldwide Plaza

825 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1000
Email: jnorth@cravath.com
Email: wearnhardt@cravath.com

A BETTER CHILDHOOD INC.
Marcia Robinson Lowry
1095 Hardscrabble Road
Chappaqua, NY 10514
(844) 422-2425
Email: mlowry@abetterchildhood.org

Attorneys for Plaintiffs Elisa W., by her next friend, Elizabeth Barricelli; Alexandria R., by her next friend, Alison Max Rothschild; Thierry E., by his next friend, Amy Mulzer; Lucas T., Ximena T., Jose T. C. and Valentina T. C., by their next friend, Rachel Friedman; Ayanna J., by her next friend, Meyghan McCrea; Olivia and Ana-Maria R., by their next friend, Dawn Cardi; Xavion M., by his next friend, Michael B. Mushlin; Dameon C., by his next friend, Reverend Doctor Gwendolyn Hadley-Hall; Tyrone M., by his next friend, Bishop Lillian Robinson-Wiltshire; Brittney W., by her next friend, Liza Camellerie; Mikayla G., by her next friend, Amy Mulzer; Myls J. and Malik M., by their next friend, Elizabeth Hendrix; and Emmanuel S. and Matthew V., by their next friend, Samuel D. Perry, individually and on behalf of a class of all others similarly situated.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes & Rules

Other Authorities

PRELIMINARY STATEMENT

Defendant Sheila J. Poole ("State Defendant") moves pursuant to Federal Rules of Civil Procedure 12(b)(6) to dismiss Plaintiffs'[1] claims under 42 U.S.C. § 1983 for deprivations of rights secured by the Adoption Assistance and Child Welfare Act of 1980 (the "AACWA"). (Notice of Partial Mot. to Dismiss (the "Motion"), Jan. 26, 2017, ECF No. 340.) In doing so, State Defendant seeks to relitigate issues that have already been decided in this case on the basis of arguments that have already been made. State Defendant's motion to dismiss should be denied because this Court's September 12, 2016 Opinion and Order (the "Motion to Dismiss Opinion" or "MTD Op.", Sept. 12, 2016, ECF No. 278) is the law of the case (*see* Part I below); and, even if it were not, State Defendant's argument that AACWA does not establish any individual right enforceable through Section 1983 fails (*see* Part II below).[2]

NATURE AND STAGE OF THE PROCEEDINGS

After an investigation lasting more than six months, Named Plaintiff Children and the Public Advocate filed this lawsuit on July 8, 2015, on behalf of a putative class of children in foster care in New York City. Plaintiffs allege that the child welfare system overseen by State Defendant and Defendant Gladys Carrión in her official capacity as the Commissioner of the New York City Administration for Children's Services (the "City Defendant") suffers from systemic failings that violate the rights of foster children under applicable state and federal law.

[1] Elisa W., by her next friend, Elizabeth Barricelli; Alexandria R., by her next friend, Alison Max Rothschild; Thierry E., by his next friend, Amy Mulzer; Lucas T., Ximena T., Jose T.C. and Valentina T.C., by their next friend, Rachel Friedman; Ayanna J., by her next friend, Meyghan McCrea; Olivia and Ana-Maria R., by their next friend, Dawn Cardi; Xavion M., by his next friend, Michael B. Mushlin; Dameon C., by his next friend, Reverend Doctor Gwendolyn Hadley-Hall; Tyrone M., by his next friend, Bishop Lillian Robinson-Wiltshire; Brittney W., by her next friend, Liza Camellerie; Mikayla G., by her next friend, Amy Mulzer; Myls J. and Malik M., by their next friend, Elizabeth Hendrix; and Emmanuel S. and Matthew V., by their next friend, Samuel D. Perry, are hereinafter collectively referred to as "Named Plaintiff Children". Plaintiff Letitia James, Public Advocate for the City of New York, is hereinafter referred to as the "Public Advocate" and, together with Named Plaintiff Children, "Plaintiffs".

[2] This Memorandum of Law in Opposition to State Defendant's Motion to Dismiss addresses only State Defendant's argument that AACWA is not privately enforceable. The Public Advocate has filed its own brief in response to State Defendant's argument that the Public Advocate lacks the capacity to maintain this suit.

These failings occur as a direct result of the inadequate oversight by the Office of Children and Family Services ("OCFS"), the New York State agency for which State Defendant serves as acting commissioner. OCFS is charged with overseeing the operation of the New York City child welfare system and for ensuring that federal foster care funds are spent throughout the State in accordance with state and federal law.

Over a six-month period following the initiation of this suit, State Defendants and Plaintiffs negotiated a proposed consent decree (the "Proposed Consent Decree"), which they submitted to the Court as part of a proposed settlement intended to strengthen OCFS's oversight. (*See* Not. of Mot. for Preliminary Approval, Jan. 20, 2016, ECF No. 95; Not. of Mot. for Final Approval, July 15, 2016, ECF No. 223.) After considering multiple submissions and conducting a fairness hearing, the Court declined to approve the settlement on August 12, 2016. (*See* Mem. Op. and Order, Aug. 12, 2016, ECF No. 259.) Plaintiffs and State Defendant then negotiated a briefing schedule for the present Motion. (Letter Order, Dec. 7, 2016, ECF No. 307.)

While State Defendant was engaged with Plaintiffs in negotiating the Proposed Consent Decree (but before any agreement had been reached), its co-defendant, City Defendant, filed a motion pursuant to Fed. R. Civ. P. 12(b)(6) on February 19, 2016, seeking, among other things to dismiss all claims brought by Plaintiffs for violations of AACWA on the ground that AACWA purportedly does not bestow individual rights enforceable under Section 1983. (Not. of Mot. to Dismiss, Feb. 19, 2016, ECF No. 115.) That motion was fully briefed on March 24, 2016. On September 12, 2016, this Court issued the Motion to Dismiss Opinion, upholding City Defendant's argument with respect to certain subsections of AACWA and rejecting its argument with respect to others.

On January 26, 2016, State Defendant filed the present Motion, making the same arguments previously raised by its co-defendant and previously resolved by this Court.

ARGUMENT

State Defendant's argument that AACWA does not supply individual rights enforceable under Section 1983 fails. Only five months ago, this Court considered that precise question in this case; and, after a hearing on the merits, it determined that Sections 671(a)(16), 675(1) and 675(5) of AACWA do confer individual rights enforceable under Section 1983. This Court should continue to adhere to that ruling under the law-of-the-case doctrine, and State Defendant makes no argument to the contrary. (*See* Part I below.) But even if this Court should revisit its earlier ruling, State Defendant's motion fails on the merits. (*See* Part II below.)

I. THIS COURT'S RULING THAT AACWA CONFERS INDIVIDUAL RIGHTS ENFORCEABLE UNDER SECTION 1983 IS THE LAW OF THE CASE.

State Defendant acknowledges that this Court has already ruled on the question of whether AACWA creates individual rights enforceable under Section 1983 (*see* Mem. of Law in Supp. of Def. Poole's Partial Mot. to Dismiss the Am. Compl. ("State Defendant's Brief" or "Def.'s Br.") at 3 n.3, 11 & n.6, Jan. 26, 2017, ECF No. 341), but provides no argument as to why that determination should not stand as the law of the case.[3] As explained below, State Defendant's Motion seeking dismissal of Plaintiffs' AACWA claims should be denied pursuant to the law-of-the-case doctrine. This Court has already considered the issue and ruled on it (*see* Part I.A below) and no exception to the law-of-the-case doctrine applies (*see* Part I.B below).

[3] State Defendant hints, in a footnote, that it believes that the Court's prior decision should not be treated as final because the State Defendant's Motion "raises additional arguments". (Def.'s Br. at 11 n.6.) As explained below, a litigant cannot evade the law-of-the-case doctrine simply by raising a new argument; and, in any event, the arguments raised by the State Defendant's motion are not new.

Should the State Defendant's forthcoming reply brief in further support of its Motion put forth some other argument as to why the law-of-the-case doctrine ought not to apply in the present circumstances, Plaintiffs may seek leave to file a surreply in order to respond to arguments improperly raised for the first time in a reply brief.

The law-of-the-case doctrine provides that "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case". *Arizona v. California*, 460 U.S. 605, 618 (1983). It applies to "issues that have actually been decided" in a "hearing on the merits". *Maersk, Inc. v. Neewra, Inc.*, 687 F. Supp. 2d 300, 334 (S.D.N.Y. 2009) (citing 18 James Wm. Moore et al., *Moore's Federal Practice* ¶ 134.20 (3d ed. 2016); *United States v. Hatter*, 532 U.S. 557, 566 (2001)).[4]

Although "[t]he law of the case doctrine is admittedly discretionary and does not limit a court's power to reconsider its own decisions prior to final judgment", *Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992), a court's reversal of its own prior rulings "should necessarily be exceptional", *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 819 (1988). "'[W]here litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again.'" *In re Bisys Sec. Litig.*, 496 F. Supp. 2d at 386 (quoting *Official Comm. of the Unsecured Creditors of Color Tile, Inc. v. Coopers & Lybrand*, 322 F.3d 147, 167 (2d Cir. 2003)); *see also O'Hagan v. Soto*, 565 F. Supp. 422, 428 (S.D.N.Y. 1983) ("[The] policies of the law of the case doctrine are rooted in concepts of finality and repose . . . . Our judicial system would cease to function effectively if every obstinate litigant were permitted to object to the court's rulings at every opportunity, to obdurately renew arguments already fully considered and rejected by the court . . ."). "Courts generally depart from the law of the case when there is a change in controlling law, when new evidence becomes available, to correct a clear error, or prevent manifest injustice." *N.Y. City Dep't of Fin.*, 1997 WL 299423, at *2.

[4] *See also In re Bisys Sec. Litig.*, 496 F. Supp. 2d 384, 386 (S.D.N.Y. 2007) (law of the case precluded reconsideration of determination made on motion to dismiss); *N.Y. City Dep't of Fin. v. Twin Rivers, Inc.*, No. 95 Civ. 1389 (HB) (HBP), 1997 WL 299423, at *2 (S.D.N.Y. June 5, 1997) (same); *Balsley v. Thermo Power Corp.*, 151 F. Supp. 2d 872, 876 (E.D. Mich. 2001) (same).

A. This Court Has Already Ruled on State Defendant's Arguments.

State Defendant asks this Court to reconsider an issue on which it has already ruled. In its motion to dismiss of February 19, 2016, City Defendant argued that AACWA does not confer private rights enforceable through Section 1983 because (i) "the overall statutory construction of the AACWA provisions at issue, including their aggregate focus and vague standards, demonstrates that they do not confer individually enforceable rights";[5] (ii) AACWA "is composed of the precise type of amorphous language found to be judicially unenforceable";[6] and (iii) 1996 amendments to AACWA setting forth an individual cause of action "suggest[] that Congress did not intend the other provisions to confer enforceable rights".[7] (City Def.'s Reply Mem. of Law in Supp. of their Mot. to Dismiss Plaintiff Letitia James, Defendants ACS and Gladys Carrión, and All Claims Brought Under the AACWA, Mar. 24, 2016, ECF No. 135.)

The Court considered these arguments with respect to each subsection of AACWA implicated in Plaintiffs' claims, and it concluded that under 42 U.S.C. §§ 671(a)(16) and 675(1)(A) there is an individually enforceable right to a written case plan that includes a plan to provide safe, appropriate and stable foster care placements. (MTD Op. at 11-14.) It reasoned that the statute clearly requires a case plan; that children in care are "unquestionably the intended beneficiaries of the case plan requirement"; that "the right is not so vague and amorphous that its enforcement would strain judicial competence"; and that "[t]here is no comprehensive scheme that would be incompatible with individual enforcement under Section 1983". (*Id*. (internal

[5] *Compare* Def.'s Br. at 13 ("[T]he provisions relied upon by Plaintiffs in their claims against Defendant Poole plainly lack any indicia of rights-creating language and suggest that Congress did not intend for an individual cause of action to arise from the statute.") (internal quotation marks omitted); *id*. at 14 ("Plaintiffs' claim also fails because the subject AACWA provisions have an aggregate focus, rather than an individual one.").

[6] *Compare* Def.'s Br. at 18 ("These provisions . . . are so vague and amorphous that they are beyond the competence of the judiciary to enforce.") (internal quotation marks omitted).

[7] *Compare* Def.'s Br. at 19 ("When Congress amended the AACWA in 1996, it added one subsection that explicitly provided for a private right of action for an individual aggrieved by § 671(a)(18)", thereby "communicat[ing] its intent to exclude private rights under any other AACWA provision").

quotation marks omitted).) The Court further found a right under 42 U.S.C. §§ 671(a)(16) and 675(5)(A), (B), (C) & (E) to a case review system designed to achieve safe and appropriate foster care placements meeting various criteria. (*Id.* at 15-17.) The Court noted that the statute mandates a case review system with various specific features; that "[t]he language that Congress has used indicates an intention that each child whose care is subject to the statutorily-mandated plan benefit from these features of the required system"; that "the provisions, which specify goals to be addressed in plan design and proceedings to occur before specified tribunals", are not "too vague and amorphous as to strain judicial competence"; and that "AACWA does not establish any comprehensive enforcement system that is incompatible with individual enforcement of these provisions under Section 1983". (*Id.*) Finally, with respect to City Defendant's argument concerning 1996 amendments providing for a private cause of action, the Court reasoned:

> "[A]lthough Congress has explicitly provided for a private right of action with respect to one other subdivision of Section 671—Section 671(a)(18), relating to discrimination in foster care placements—that remedy is broader than the Section 1983 remedy in that it permits actions against the State and is not limited to claims against persons acting under color of state law, so it carries no implication that Congress intended to preclude resort to the narrower Section 1983 remedial route for enforcement of any rights that are created by other provisions of Section 671." (*Id.* at 13.)

The Court found that other provisions of AACWA do not establish an individual right enforceable under Section 1983. It concluded that the provision set forth in 42 U.S.C. § 671(a)(10) does not create an individual right to foster care placements that conform to nationally recommended standards (MTD Op. at 9-11); that 42 U.S.C. §§ 671(a)(16) and 675(1)(A) do not create an individual right to a written case plan that ensures safe and proper care while in the custody of the foster care system (*id.* at 14-15); that 42 U.S.C. §§ 671(a)(16)

and 675(1)(B), (E) & (G) do not create an individual right to a written plan ensuring various substantive outcomes (*id.*); and that 42 U.S.C. § 671(a)(22) is too vague and amorphous to support an individually enforceable right to quality services that protect the safety and health of children in care (*id.* at 17-18).

Absent circumstances giving rise to an exception (and no such circumstances exist here), the law-of-the-case doctrine applies to this Court's determination that Named Plaintiff Children are entitled to enforce the rights provided under elements of 42 U.S.C. §§ 671(a)(16), 675(1)(A) and 675(5).

B. None of the Exceptions to the Law-of-the-Case Doctrine Apply.

As discussed above, a court generally will not revisit an issue on which it has already ruled unless: (i) there has been a change in controlling law, (ii) the prior ruling was clearly erroneous or (iii) reconsideration is necessary to prevent manifest injustice. *N.Y. City Dep't of Fin.*, 1997 WL 299423, at *2.[8]

State Defendant does not identify any intervening change in law since this Court issued the Motion to Dismiss Order in September of 2016. Nor does it argue that the Court's ruling in the Motion to Dismiss Opinion was clearly erroneous, or that adherence to this Court's decision in the Motion to Dismiss Order would work a manifest injustice. Indeed, State Defendant's Brief does not engage with the Motion to Dismiss Opinion's reasoning at all. It simply asserts the same arguments previously made by City Defendant and rejected by the Court; and it suggests that the only reason it has made them at all is to preserve them as a defense.[9] (Def.'s Br. at 3 n.3, 11 n.6.)

[8] Although a court may also reconsider a prior ruling when new evidence becomes available, *see id.*, that exception does not apply to the present circumstances, which concern a purely legal ruling on a motion to dismiss.

[9] State Defendant's reason for presenting these arguments does not matter. The results are the same—the law-of-the-case doctrine applies and the motion should be dismissed.

That it is now the State Defendant (as opposed to the City Defendant) that is making the argument is of no consequence.[10] And to the extent that any of State Defendant's arguments *are* different from those advanced by City Defendant, that is equally irrelevant. *See Grocery Haulers, Inc. v. C & S Wholesale Grocers, Inc.*, No. 11 Civ. 3130, 2013 WL 342693, at *5 (S.D.N.Y. Jan. 29, 2013) (holding that the law-of-the-case still applied to a previous ruling despite new arguments subsequently put forward by one party).

Because this Court has already ruled in this case that AACWA confers individually enforceable rights, and because no exception to the law-of-the-case doctrine applies here, the Court should adhere to its prior ruling and deny State Defendant's Motion.

II. AACWA §§ 671(A)(16), 675(1) AND 675(5) CONFER PRIVATELY ENFORCEABLE RIGHTS UPON NAMED PLAINTIFF CHILDREN

Even were the Court to revisit this issue, however, State Defendant's Motion must still be denied, as the relevant AACWA provisions give rise to clear individual rights enforceable under Section 1983.

Section 1983 provides a cause of action for a deprivation of an individual's "rights, privileges, or immunities secured by the Constitution and laws" of the United States, including rights secured by federal statutes. 42 U.S.C. § 1983; *Monroe v. Pape*, 365 U.S. 167 (1961) (finding an individual right to bring claims under Section 1983 for the violation of constitutional rights); *Maine v. Thiboutot,* 448 U.S. 1, 10 (1980) (finding that Section 1983

[10] *See United States v. Schaff*, 948 F.2d 501, 506 (9th Cir. 1991) ("We have previously found the law of the case doctrine to be applicable when the appeal of one co-defendant is decided prior to the appeal of the other co-defendant, if both were convicted at the same trial."); *United States v. Irving*, 665 F.3d 1184, 1192-1193 & n.11 (10th Cir. 2011) (ruling an appeal from a criminal conviction was the law of the case in a co-defendant's subsequent appeal raising the same argument); *United States v. Parada*, 577 F.3d 1275, 1279-1280 (10th Cir. 2009) (where co-defendants were identically situated, ruling in appeal by one co-defendant was law of the case in subsequent appeal by other co-defendant); *United States v. Corrado*, 227 F.3d 528, 532-533 (6th Cir. 2000) (same); *In re Diamond B Marine Servs. Inc.*, No. 99 Civ. 951, 2000 WL 805235 at *2 (E.D. La. June 21, 2000) (holding that the law-of-the-case doctrine applied where the court had previously ruled on arguments in the same case that were substantially similar, even where the previous ruling involved a different party).

actions may be brought against state actors to enforce rights created by federal statutes). Plaintiffs seeking redress through Section 1983 "must assert the violation of a federal *right*" that is protected by the relevant statute. *Blessing v. Freestone*, 520 U.S. 329, 340 (1997) (finding that once a plaintiff establishes the existence of an individual right, there is a "rebuttable presumption that the right is enforceable under § 1983" (*id.* at 341)). Named Plaintiff Children seek to assert the violation of rights that this Court has already found to be guaranteed to them under the AACWA, specifically their rights to a written case plan and to a case review system pursuant to 42 U.S.C. §§ 671(a)(16), 675(1) and 675(5). (*See* MTD Op. at 11-17.)

To determine whether a statute confers an individually enforceable right, courts evaluate three factors, articulated in *Blessing*: (1) "Congress must have intended that the provision in question benefit the plaintiffs"; (2) "the right assertedly protected by the statute is not so vague and amorphous that its enforcement would strain judicial competence"; and (3) "the statute must unambiguously impose a binding obligation on the States". *Blessing*, 520 U.S. at 340-41 (internal quotations marks omitted); *see also Walker v. Eggleston*, No. 04 CV 369, 2005 WL 639584, at *3 (S.D.N.Y. Mar. 21, 2005).

As discussed above (*see* Part I.A), and as this Court has already found (*see* MTD Op. at 12, 16), AACWA confers on each child in foster care an individually enforceable right (i) to have an adequate written case plan, *see* 42 U.S.C. §§ 671(a)(16), 675(1)(A) and (ii) to a case review system in compliance with 42 U.S.C. § 675(5), *see* 42 U.S.C. §§ 671(a)(16), 675(5)(A), (B), (C) and (E). Federal courts across the country have found these provisions of AACWA to confer upon foster children individually enforceable rights. *See*, *e.g.*, *Henry A. v. Willden*, 678 F.3d 991, 1006 (9th Cir. 2012) ("We [ ] join the majority of federal courts in holding that [42 U.S.C. §§ 671(a)(16) and 675(1)] are enforceable through § 1983."); *Connor B.*

ex rel. Vigurs v. Patrick, 771 F. Supp. 2d 142, 172 (D. Mass. 2011) (concluding that 42 U.S.C. §§ 671(a)(16) and 675(1) are privately enforceable); *Sam M. ex rel. Elliott v. Chafee*, 800 F. Supp. 2d 363, 386-88 (D.R.I. 2011) (finding that 42 U.S.C. §§ 671(a)(16), 671(a)(1), 671(a)(11), 672(a)(1), and 675(4)(A) are privately enforceable); *Kenny A. ex rel. Winn v. Perdue*, 218 F.R.D. 277, 292-93 (N.D. Ga. 2003) (finding that 42 U.S.C. §§ 622(b)(10)(B)(i)-(iii), 671(a)(10), 671(a)(16), 671(a)(22), 675(1) and 675(5)(D)-(E) are privately enforceable); *Brian A. ex rel. Brooks v. Sundquist*, 149 F. Supp. 2d 941, 946-49 (M.D. Tenn. 2000) (finding that 42 U.S.C. §§ 671(a)(10), 671(a)(16), 675(1), 675(5) and 622(b)(10)(B)(ii) are privately enforceable); *Jeanine B. by Blondis v. Thompson*, 877 F. Supp. 1268, 1283-84 (E.D. Wis. 1995) (finding 42 U.S.C. §§ 671(a) and 627 privately enforceable); *B.H. v. Johnson*, 715 F. Supp. 1387, 1402 (N.D. Ill. 1989) (finding 42 U.S.C. §§ 671(a)(16) and 627(a)(2) privately enforceable); *see also D.O. v. Glisson*, -- F.3d --, 2017 WL 382324 (6th Cir. Jan 27, 2017) (reversing the lower court's previous decision denying individually enforceable rights to enforce Section 672).[11]

[11] State Defendant cites four cases for the proposition that "no implied right of action exists" under AACWA. (Def.'s Br. at 12.) As an initial matter, Plaintiffs do not rely on an "implied" right of action. They bring their claims under Section 1983, which establishes an express, statutory right of action. *See Monroe*, 365 U.S. at 187 (establishing that § 1983 provides a cause of action). The relevant inquiry is only whether AACWA confers individual rights to be enforced. *See Gonzaga Univ*. 536 U.S. at 283 ("We have recognized that whether a statutory violation may be enforced through § 1983 is a different inquiry than that involved in determining whether a private right of action can be implied from a particular statute.") (internal citation omitted). And, in any event, State Defendant's cases are inapposite.

In *Alger v. County of Albany*, the "[p]laintiff fail[ed] to point out what specific provisions of the AAWCA [*sic*] create a private cause of action and explain why they would support a private claim". 489 F. Supp. 2d 155, 158 (N.D.N.Y. 2006). The Court therefore concluded, without undertaking the *Blessing* analysis, that no individual right had been established. *Id*. Likewise, in *Ingrao v. Cty. of Albany*, the Northern District of New York noted that the plaintiff had "failed to oppose" the defendant's argument that there was no individually enforceable right under AACWA, which constituted a "deemed abandonment" of the claim. No. 1:01-CV-730, 2006 WL 2827856, at *5 (N.D.N.Y. Oct. 2, 2006). In light of that abandonment, the Court had no difficulty concluding that "[p]laintiffs have failed to demonstrate that an independent private right action exists" under AACWA and Section 1983.

Finally, this Court has already noted that the logic in *Charlie H. ex rel. Hardaway H. v. Whitman*, 83 F. Supp. 2d 476 (D.N.J. 2000), and *Daniel H. v. City of New York*, 115 F. Supp. 2d 423 (S.D.N.Y. 2000), is unavailing. Both cases are premised in large part on the mistaken conclusion that by providing for a direct cause of action under one provision of AACWA, Congress signaled an intention that no other privately enforceable rights exist. As explained in the Motion to Dismiss Opinion (MTD Op. at 13) and discussed in detail below (*see* Part II.D), that reasoning is fundamentally mistaken.

These decisions are plainly correct as Congress intended the provisions of AACWA relevant here to benefit children in foster care (*see* Part II.A below); the rights conferred are not so "vague and amorphous" as to strain judicial competence (*see* Part II.B below); it is undisputed that AACWA imposes binding obligations on State Defendant (*see* Part II.C below); and 1996 amendments to AACWA did not preclude private enforcement of rights under that statute (*see* Part II.D below).

A. Congress Intended the AACWA Provisions at Issue To Benefit Named Plaintiff Children.

As this Court has already found, Congress "unquestionably" intended for 42 U.S.C. §§ 671(a)(16), 675(1) and 675(5) to benefit children in foster care. (MTD Op. at 12.) The relevant provisions are "phrased in terms of the persons benefited". *Gonzaga Univ. v. Doe,* 536 U.S. 273, 284 (2002) (describing language as "rights-creating" where it is phrased "with an unmistakable focus on the benefited class" (internal quotation marks and emphasis omitted)); *see also Torraco v. Port Auth. of New York & New Jersey*, 615 F.3d 129, 144 (2d Cir. 2010) (finding the first *Blessing* factor met where the "plaintiffs fall within the class of intended beneficiaries referenced in the text"). The operative provision, Section 671(a)(16), requires the development:

> "of a case plan (as defined in section 675(1) of this title and in accordance with the requirements of section 675a of this title) *for each child receiving foster care maintenance payments* under the State plan and provides for a case review system which meets the requirements described in sections 675(5) and 675a of this title with respect to *each such child.*" (Emphases added.)

The language clearly references foster children directly in the text; it requires the State to ensure that "each child" receives a written case plan meeting criteria set forth in Section 675(1); and it requires a case review system "with respect to each child" meeting criteria set forth in Section 675(5). The statute is unambiguously intended to benefit "each child" in foster care, reflecting a clear individual focus—not an aggregate one. *See Rabin v. Wilson-*

Coker, 362 F.3d 190, 194 (2d Cir. 2004) (describing Section 1396r-6 which requires that the State provide "that each family . . . receiving aid . . . [shall] remain eligible for assistance under the plan" as reflecting Congressional intent to confer individual rights); *Briggs v. Bremby*, 792 F.3d 239, 243 (2d Cir. 2015) (noting that even where a provision was "explicitly directed at government actors", *Wilder v. Virginia Hosp. Assn.,* 496 U.S. 498, 509-10 (1990), found that "its terms were individually enforceable through private lawsuits" "in part because the language indicated a clear intent to benefit [plaintiffs]"). Because Section 671(a)(16) speaks to the individuals affected and not the institutions, the individual focus of the statute could not be clearer. State Defendant's arguments to the contrary fail.

First, State Defendant attempts to distract from the clear language indicating Congressional intent to benefit foster children by arguing that AACWA cannot confer individually enforceable rights because it "provides a federal funding mechanism for state reimbursement of payments relating to foster care and adoption". (Def.'s Br. at 13.) State Defendant argues that "the entirety of § 671 addresses what a state must do under the AACWA to receive funding". (*Id*. at 14.) Specifically Section 671(a) provides that "[i]n order for a State to be eligible for payments under this part, *it shall have a plan* approved by the Secretary which", under Section 671(a)(16), requires both case plans and a case review system for "each child". 42 U.S.C. § 671(a) (emphasis added). State Defendant reasons that because Section 671 concerns a requirement "[to] have a plan" "[i]n order . . . to be eligible for payments", it therefore cannot create individual rights. This argument fails.

In *Suter v. Artist M.*, the U.S. Supreme Court adopted similar reasoning—finding no individually enforceable right under Section 671(a)(15) on the ground that, although AACWA "does place a requirement on the States, . . . that requirement only goes so far as to

ensure that the State have a plan" in order to obtain reimbursement. 503 U.S. 347, 358 (1992). On this basis, among others, it concluded that Congress did not intend for Section 671(a)(15) to create individually enforceable rights. *Id*. at 358-63. Two years later, Congress responded by enacting legislation explicitly rejecting this reasoning. The "*Suter* Fix" provides that "[i]n an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan". 42 U.S.C. § 1320a-2. The Second Circuit has since found that a statutory provision may give rise to individually enforceable rights notwithstanding the fact that it is an element of a "state plan" requirement. *See Rabin*, 362 F.3d at 202 ("Because all of the language of [the relevant statute] except the 'plan requirements' language, reflects Congress's intention to confer a right . . . upon persons who meet the various eligibility requirements, we find that Section 1396r-6 can support a Section 1983 claim."); *see also Briggs,* 792 F.3d at 243-44 (describing *Wilder* as "demonstrat[ing] that a statute imposing a requirement on a 'State plan' for administering a social welfare program may nevertheless in appropriate circumstances give rise to a right enforceable under § 1983, for instance if it includes a specific mandate intended to give rights to a particular group"). Because State Defendant's argument is predicated on the fact that Sections 671 and 675 are "inclu[ded] . . . in a section of [AACWA] requiring a State plan or specifying the required contents of a State plan", the argument is squarely foreclosed by the *Suter* Fix. 42 U.S.C. § 1320a-2.[12]

[12] State Defendant's argument relies primarily on *Citizen's Coalition*, a case that analyzed two AACWA provisions concerning payments to foster parents—Sections 672(a) and 675(4)(a)—that Named Plaintiff Children have not sought to enforce and that are not at issue in this litigation. *See N.Y. State Citizens' Coal. for Children v. Carrion*, 31 F. Supp. 3d 512, 516 (E.D.N.Y. 2014) ("[T]his ruling is a narrow one. The Court declines to hold that Congress has expressly foreclosed any private right of action against a state actor under the [other provisions of AACWA]"). On appeal, the Second Circuit remanded the case to resolve the question of whether the Eastern District of New York lacked Article III jurisdiction at the time it entered the order. *See N.Y. State Citizens' Coal. for Children v. Velez*, 629 F. Appx. 92 (2d Cir. 2015).

Second, State Defendant seeks to extend this flawed argument further, asserting (based on a different provision 42 U.S.C. § 1320a-2a) that "the state" need "only be in 'substantial conformity' with the AACWA to receive federal funding" and that the overall statutory scheme therefore reflects an aggregate focus, rather than an individual one. (Def.'s Br. at 15-16.) This argument fails for numerous reasons. As an initial matter, it is inconsistent with the language of the *Suter* Fix: since it is irrelevant that rights-creating language is situated within a "state plan" provision, the level of compliance necessary for the "state plan" to secure continual funding must necessarily also be irrelevant. Moreover, contrary to State Defendant's characterization, Section 1320a-2a does not "require[] that the state only be in 'substantial conformity' with the AACWA"; instead, Section 1320a-2a defines the standard to be applied by the Secretary of Health and Human Services in conducting administrative reviews of the state plans.[13] That sort of administrative review scheme under Section 1320a-2a has no bearing on the separate question of whether the individual provisions of Section 671(a) confer individual rights.

Blessing itself is instructive. In that case, plaintiffs sought to enforce the *entirety* of Title IV-D of the Social Security Act[14] under Section 1983. By statute, if a state failed to "substantially comply" with all of Title IV-D's requirements, the Secretary of Health and Human Services was authorized to penalize the state by reducing its AFDC funding. *Blessing*, 520 U.S. at 335. The plaintiffs sued under the "substantial compliance" provision, arguing that "federal law granted them 'individual rights to *all mandated services delivered in substantial compliance* with Title IV-D and its implementing regulations'". *Id*. at 341 (emphasis added). The Supreme

[13] 42 U.S.C. § 1320a-2a ("The Secretary . . . shall promulgate regulations for the review of such programs to determine whether such programs are in substantial conformity" with AACWA's requirements).

[14] Title IV-D sets forth various requirements of a state-level child support enforcement program as a condition to states receiving funding under the Aid to Families with Dependent Children ("AFDC") program. *Blessing*, 520 U.S. at 333.

Court rejected this "blanket approach to determining whether Title IV-D creates rights". *Id.* at 344. It noted:

> "It is readily apparent that many . . . provisions of that multifaceted statutory scheme do not fit our traditional three criteria for identifying statutory rights. To begin with, many provisions, like the 'substantial compliance' standard, are designed only to guide the State in structuring its system wide efforts at enforcing support obligations. These provisions may ultimately benefit individuals who are eligible for Title IV-D services, but only indirectly." *Id.*

Critically, however, the Court left open the possibility that individual provisions within Title IV-D could still give rise to individual rights. That is, even though Title IV-D, like AACWA, includes a "substantial compliance" standard for administrative oversight, the Supreme Court stated: "We do not foreclose the possibility that some provisions of Title IV-D give rise to individual rights. The lower court did not separate out the particular rights it believed arise from the statutory scheme, and we think the complaint is less than clear in this regard." *Id.* at 345. The Court strongly hinted that at least one provision of Title IV-D might give rise to an individual "federal right to receive a specified portion of the money collected on [the plaintiff's] behalf" by the state, *id.* at 345-46; and it remanded to the district court "to construe the complaint in the first instance, in order to determine exactly what rights, considered in their most concrete, specific form, respondents are asserting", *id.* at 346. The Court clearly did not believe (as State Defendant argues, *see* Def.'s Br. at 15-16) that a "substantial compliance" standard within an administrative oversight mechanism abrogates all individual rights conferred by specific provisions within a statute.[15]

[15] State Defendant relies on *Midwest Foster Care* and other cases to suggest that courts "routinely recognize that . . . substantial compliance regime cuts against an individually enforceable right". (Def.'s Br. 15.) Yet in *Midwest Foster Care* the court noted that in *Wilder* the Supreme Court identified an enforceable right despite the presence of a substantial compliance requirement, concluding that "while a substantial compliance regime may suggest an absence of the requisite congressional intent, it cannot by itself establish an aggregate focus". 712 F.3d 1190, 1201 (8th Cir. 2013).

Third, State Defendant argues that definitional sections alone cannot contain "rights-creating language". (Def.'s Br. at 14 (citing *31 Foster Children v. Bush*, 329 F. 3d 1255, 1268 (11th Cir. 2003) (holding that 42 U.S.C. §§ 675(5)(D)-(E) do not confer individually enforceable rights "[b]ecause [these provisions] are definitional in nature, they *alone* cannot and do not supply a basis for conferring rights") (emphasis added)).) The Eleventh Circuit case law that State Defendants rely on, however, is no longer valid in light of subsequent amendments to Section 671(a)(16).[16] In *31 Foster Children*, the Eleventh Circuit rejected the existence of an individual right to enforce definitional Sections 675(5)(D)-(E) because at the time, Section 671(a)(16) only required a "case review system which meets the requirements described in section 675(5)(B)". 42 U.S.C. § 671(a)(16) (1999); *31 Foster Children*, 329 F.3d at 1271-72. The Eleventh Circuit therefore reasoned that the plaintiffs' claims asserted under the definitional Sections 675(5)(D) and (E) must be analyzed independently from the operational language in Section 671(a)(16) and concluded that the definitional sections alone could not confer rights. *Id.* at 1271. However, in September 2015, Congress amended Section 671(a)(16) to incorporate by

---

State Defendant also cites the district court decision in *D.O. v. Beshear*, which denied the existence of an individually enforceable right under Section 672. No. 5:15-048, 2016 WL 1171532, at *5 (E.D. Ky. Mar. 23, 2016). However, the day after State Defendant filed its Motion, the Sixth Circuit reversed the *D.O.* decision, instead holding that Section 672 confers individually enforceable rights. *D.O. v. Glisson*, 2017 WL 382324, at *5. With respect to the defendant's "substantial compliance" argument, the Court concluded that, if anything, it militated against concluding that Congress had intended to supplant Section 1983 as an enforcement mechanism. *Id.* ("[AACWA's] weak enforcement mechanisms fall short of foreclosing access to § 1983 remedies.") The Sixth Circuit found individual enforcement was not foreclosed given that "[a]bsent resort to § 1983, foster families possess no federal mechanism to ensure compliance with the Act". *Id.* The Sixth Circuit also distinguished the Supreme Court's *Gonzaga* decision which found that administrative procedures in the Family Educational Rights and Privacy Act of 1974 ("FERPA") foreclosed individual enforcement. The Sixth Circuit instead found that "[AACWA], unlike FERPA, includes no private federal review mechanism that an aggrieved foster family can employ". *Id.*

[16] *Midwest Foster Care* is similarly inapplicable. Plaintiffs in *Midwest Foster Care* sought to enforce Sections 672(a) and 675(4)(A) which relate to foster care maintenance payments made to foster parents. 712 F.3d at 1197. Here the Eighth Circuit analyzed the definitional § 675 independent from the other sections. However, unlike § 671(a)(16) which explicitly references the definitional sections in § 675, § 672(a) does not reference the definitional § 675 in the text of that section. 42 U.S.C. § 672(a).

reference all subsections of Section 675(5). *See* 42 U.S.C. § 671(a)(16) (requiring a "case review system which meets the requirements described in sections 675(5) and 675a of this title"). Operational language in Section 671(a)(16) therefore confers a right for each child in foster care to have a written case plan and a case review system, and references definitional language in Sections 675(1) and 675(5) to set forth their features. Plaintiffs have never argued that the definitional language alone confers an individual right.

Fourth, State Defendant further argues that because AACWA was enacted under Congress's spending power, the statute must have an "inherent aggregate focus". (Def's Br. at 16.) This argument ignores binding precedent. The Supreme Court has found on at least two occasions that spending statutes with similar structures conferred individually enforceable rights. *See Wilder,* 496 U.S. at 508-10 (finding that the Medicaid statute conferred individually enforceable rights for providers despite the fact that the statute contemplated withholding of federal funds for noncompliance); *Wright v. City of Roanoke Redevelopment and Hous. Auth.*, 479 U.S. 418, 429 (1987) (holding that the public housing statute limiting rent conferred individually enforceable rights to tenants despite providing a federal agency the power to restrict public housing authority funding for violations). Similarly, the Second Circuit recently confirmed that spending statutes can confer individually enforceable rights. *See Rabin,* 362 F.3d at 202 (holding that the Medicaid Act conferred an individual right to plaintiff Medicaid recipients); *Briggs*, 792 F.3d at 245-46 (holding that the Food Stamp Act conferred privately enforceable rights for plaintiff recipients).

Finally, in reliance on *Gonzaga*, State Defendant argues that enforcement under Section 1983 is foreclosed because AACWA "contains its own scheme for federal administrative and judicial review" by the Secretary of Health and Human Services (who may terminate

funding in the event of substantial non-compliance). (Def.'s Br. at 16-17.) Under *Gonzaga,* courts consider whether the aggrieved individual had access to a federal review mechanism. *Gonzaga,* 536 U.S. at 289-90 (finding that access to a federal review mechanism "further counsel[s] against [ ] finding a congressional intent to create individually enforceable private rights"). However, the federal review mechanism in *Gonzaga* included express authorization for parents and students whose privacy had been violated to file individual complaints with a compliance office, triggering an investigation. The mechanism further authorized the Secretary of Education to "deal with violations" of the FERPA by "establish[ing] or designat[ing] [a] review board" for handling violations. *Id.* at 289 (discussing the review provisions of 20 U.S.C. § 1232g that the aggrieved individual had access to such as the creation of the Family Policy Compliance Office, whose mandate included "act[ing] as the Review Board required under the Act [and] enforc[ing] the Act with respect to all applicable programs"). As the Sixth Circuit has recently noted, AACWA does not contain an individual complaint procedure or a review mechanism that is anywhere near as extensive as the mechanism addressed in *Gonzaga*. *See, e.g.*, *Glisson*, 2017 WL 382324, at *5 (distinguishing *Gonzaga* on the grounds that "[AACWA], unlike FERPA, includes no private federal review mechanism that an aggrieved foster family can employ . . ."). Rather, "the extensive statutory scheme for helping wayward states return to 'substantial conformity'" described by State Defendant is merely a provision that allows for a federal agency's review of a state's plan to determine if it is generally conforming to the requirements prior to distributing federal funds. (*See* Def.'s Br. at 17.)

In *Blessing* itself, the Supreme Court concluded that a similar administrative review scheme did not foreclose enforcement under Section 1983 because "[t]he Secretary can audit only for 'substantial compliance' on a programmatic basis". *See Blessing*, 520 U.S. at 348.

State Defendant's own case is in accord, *see Midwest Foster Care & Adoption Ass'n v. Kincade*, 712 F.3d 1190, 1202-03 (8th Cir. 2013) ("In contrast, although the [AA]CWA 'provides for oversight and funding restrictions that may be imposed by the Secretary' on the participating states, there is no direct federal review of the claims of individual providers"); as is the Second Circuit, *see Briggs*, 792 F.3d at 245 (finding that in contrast with FERPA, the Food Stamp Act contains no similar agency adjudication process or enforcement structure that could take the place of private lawsuits). As this Court has already found, "there is no comprehensive scheme that would be *incompatible with individual* enforcement under Section 1983". (*See* MTD Op. at 13) (emphasis added).

B. The Rights Protected By Sections 671(a)(16) and 675 Are Not So "Vague and Amorphous" that Enforcement Would Strain Judicial Competence.

State Defendant argues that the relevant provisions of AACWA are too vague and amorphous to give rise to an individual right. This fails as well. Section 675(1) sets out specific requirements that must be included in a case plan for "each child", including "the health and education records of the child", a "description of the steps that the agency has taken to determine that it is not appropriate for the child to be returned home" and documentation of "the reasons why a [specific] permanent placement . . . is in the child's best interests", among various other specific guidelines. *See* 42 U.S.C. §§ 675(1)(A)-(G); (*see* MTD Op. at 12 (describing how §675(1) "sets forth extensive specific content requirements")). Section 675(5) requires that the state review case plans at least every six months and requires that if a child is in foster care for 15 of the most recent 22 months, the agency responsible for such child must begin proceedings to secure the child a permanent home. *See* 42 U.S.C. §§ 675(5)(B)-(E); (MTD Op. at 16 (describing the specific actions required on behalf of the State in reviewing each child's case plan, including requiring "particular structures and timetables" in §675(5)). These requirements

are "sufficiently specific and definite to qualify as [an] enforceable right[]". *Wilder*, 496 U.S. at 511-12 (discussing *Wright* and noting that "because the regulations set out guidelines for the housing authorities to follow" the statute was sufficiently clear for the court to enforce (*id.* at 511)).[17] Courts routinely make the types of determinations that would be required to ascertain compliance with Sections 671(a)(16) and 675's written case plan requirement and case review requirements. *See, e.g.*, *Wilder,* 496 U.S. at 519-20.

C. The Parties Do Not Dispute that AACWA Unambiguously Imposes Binding Obligations on the State Defendant.

The third and final *Blessing* factor requires that the provisions at issue "unambiguously impose a binding obligation on the State". *Blessing*, 520 U.S. at 341. State Defendant does not and cannot argue that AACWA does not impose binding obligations on the State. The language is mandatory, providing that a state "shall have a plan" meeting the specified requirements. 42 U.S.C. § 671(a). Courts have fairly interpreted this language as mandatory. *See Briggs*, 792 F.3d at 242 (finding that the Food Stamp Act imposed a binding obligation because "both provisions use the mandatory 'shall'"); *Sam M.*, 800 F. Supp. 2d at 388 (noting that the language in Section 671(a)(16) "is explicitly mandatory, requiring that 'a State . . . *shall* have a plan approved by the Secretary'") (internal citation omitted); *Henry A.*, 678 F.3d at 1007 (citing *Connor B.*, 771 F. Supp. at 171, to demonstrate that "plainly, [§§ 671(a)(16) and 675] are both couched in mandatory terms" using language that "expresses a clear mandate by using the term 'shall'").

[17] *See also Concourse Rehab. & Nursing Ctr. Inc. v. Whalen*, 249 F.3d 136, 144 (2d Cir. 2001) (finding the question of whether "the State's plan provides compensation that is 'reasonable and adequate' [to be] a question that the Supreme Court has found to be within the competence of the courts"); *Briggs*, 792 F. 3d at 242 (finding that a statute was neither vague nor amorphous where the provisions at issue required State action within a definite time period).

D. Congress' Passage of the 1996 Removal of Barriers Amendment Does Not Preclude Private Rights of Action Under AACWA.

Finally, State Defendant's argument that Congress' 1996 amendment of AACWA "communicated its intent to exclude private rights under any other AACWA provision" is unavailing, and has already been rejected by this Court (*see* Def.'s Br. at 19; MTD Op. at 13).

The Supreme Court has instructed that federal courts "do not lightly conclude that Congress intended to preclude reliance on § 1983 as a remedy". *Wright,* 479 U.S. at 423-24. It is the burden of the party advocating preclusion to "make the difficult showing that allowing § 1983 actions to go forward . . . would be inconsistent with Congress' carefully tailored scheme". *Blessing,* 520 U.S. at 346 (citation and internal quotation marks omitted). The Supreme Court has "repeatedly held that the coverage of [§ 1983] must be broadly construed". *Golden State Transit Corp. v. City of Los Angeles,* 493 U.S. 103, 105 (1989).

State Defendant fails to recognize that the text of the 1994 amendment to AACWA (the so-called *Suter* Fix), stands in direct contradiction to its position. As discussed above (*see* Part II.A), in 1994 Congress amended AACWA to clarify that a statute's state plan requirement could not alone preclude private enforcement of that statute. The amended statute states that "[i]n an action brought to enforce a provision of this chapter [including AACWA], such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan". 42 U.S.C. § 1320a-2. The *Suter* Fix importantly did not "limit or expand the grounds for determining the availability of private actions to enforce State plan requirements". *Id.* But it clearly signaled Congress's understanding that various provisions of Title 42, Chapter 7 of the U.S. Code, including AACWA, were privately enforceable. In fact, legislative history demonstrates that the

intended purpose of the amendment was to ensure that courts did not interpret *Suter v. Artist M.* as foreclosing all individually enforceable rights:

> "I rise today to introduce legislation to overturn the Supreme Court's opinion in the case of Suter versus Artist, M. In this case the Court ruled that individuals—mainly low-income children—did not have recourse through the Federal courts when States fail to implement State plan requirements under the title IV-E Foster Care Program of the Social Security Act. . .
>
> . . .
>
> The legislation I am introducing today makes it clear that when the Congress places requirements in a statute, we intend for the States to follow them. If they fail in this, the Federal courts can order them to comply with the congressional mandate. For 25 years, this was the reading that the Supreme Court had given to our actions in Social Security Act State plan programs. The Suter decision represented a departure from this line of reasoning.
>
> . . .
>
> Mr. President, I remember when the Federal courts—particularly the Supreme Court—were the last bastion of protection for the disadvantaged. The Suter decision changed that. It is time that we reopen the courthouse doors to these people. The people who need our social welfare programs must be able to protect their rights under the system." 139 Cong. Rec. S3173-01, S3189, 1993 WL 76447 (daily ed. Mar. 18, 1993) (statement of Sen. Donald Riegle).[18]

Furthermore, as this Court has already noted, the cause of action set forth in 42 U.S.C. § 674(d)(3) for a violation of Section 671(a)(18) is substantially broader than Section 1983, as it provides a direct cause of action against the state. *See* 42 U.S.C. § 674(d)(3). "[B]ecause the express cause of action created for § 671(a)(18) is actually *broader* than § 1983, it does not suggest an intent to limit § 1983 enforcement". *Henry A.*, 678 F.3d at 1008. State Defendant's reliance on *Charlie H. v. Whitman*, 83 F. Supp. 2d 476, is therefore unavailing, as

[18] *See also Sam M.*, 800 F. Supp. 2d at 388 ("the [1994] amendment . . . expressed Congress' intent not to preclude courts from determining whether other provisions of the AACWA allowed private enforcement actions") (emphasis in original).

Charlie H. "did not [] recognize the difference in scope between Section 1983 and the AACWA private action provision". (MTD Op. at 13 n.3.)

As such, State Defendant's argument that the principles of statutory construction militate against enforceability under Section 1983 fails.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny State Defendant's partial motion to dismiss Plaintiffs, AACWA claims brought pursuant to Section 1983.

February 13, 2017

by Marcia Robinson Lowry /CB

Marcia Robinson Lowry
A BETTER CHILDHOOD INC.
1095 Hardscrabble Road
Chappaqua, NY 10514
(844) 422-2425
mlowry@abetterchildhood.org

CRAVATH, SWAINE & MOORE LLP

Julie A. North
J. Wesley Earnhardt
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000
jnorth@cravath.com
wearnhardt@cravath.com

Attorneys for Plaintiffs Elisa W., by her next friend, Elizabeth Barricelli; Alexandria R., by her next friend, Alison Max Rothschild; Thierry E., by his next friend, Amy Mulzer; Lucas T., Ximena T., Jose T. C. and Valentina T. C., by their next friend, Rachel Friedman; Ayanna J., by her next friend, Meyghan McCrea; Olivia and Ana-Maria R., by their next friend, Dawn Cardi; Xavion M., by his next friend, Michael B. Mushlin; Dameon C., by his next friend, Reverend Doctor Gwendolyn Hadley-Hall; Tyrone M., by his next friend, Bishop Lillian Robinson-Wiltshire; Brittney W., by her next friend, Liza Camellerie; Mikayla G., by her next friend, Amy Mulzer; Myls J. and Malik M., by their next friend, Elizabeth Hendrix; and Emmanuel S. and Matthew V., by their next friend, Samuel D. Perry, individually and on behalf of a class of all others similarly situated.