

March 1, 2024

Carla Carter
Associate Deputy Director for Civil Rights
U.S. Department of Health and Human Services, Office for Civil Rights
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, D.C. 20201

**Re: Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d,
and 45 C.F.R. Part 80 Regarding Discrimination by the State of Minnesota**

Dear Ms. Carter,

The Minneapolis Branch of the NAACP (“NAACP Minneapolis”), hereby files this Complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and 45 C.F.R. Part 80, regarding discrimination by the State of Minnesota, and requests an immediate investigation into the use of federal funds related to Minnesota’s child welfare system, specifically in Hennepin and Ramsey counties (Minneapolis), which discriminates against, and is having a disparate and harmful impact on, Black children and families.

1. The child welfare system refers to a set of laws and government agencies mandated to protect and support victims of child abuse and neglect, together called “child maltreatment.”¹ Under this system, government agencies at the state and local levels enforce federal and state laws relating to child welfare.² These agencies receive reports, including claims of child maltreatment; investigate those claims; determine if they believe abuse or neglect occurred; and, often, remove children from their homes and place them into the physical and/or legal custody of the state.³ At

¹ *How the Child Welfare System Works*, CHILD.’S BUREAU, ADMIN. FOR CHILD. & FAMILIES, U.S. DEP’T OF HEALTH & HUM. SERVS. (Oct. 2020), at 2, <https://www.childwelfare.gov/resources/how-child-welfare-system-works/>.

² *Id.*

³ *Id.* at 3-7.

every stage of this process, Black children and families face racial discrimination and unequal outcomes.

2. The child welfare system has had a devastating and disparate impact on Black families. Entry into this system, which includes the surveillance, regulation, control, and separation of families through federal and state laws, causes profound trauma to Black children and their families and has lifelong impacts.⁴

3. For years, the State of Minnesota, its child protection agencies, instrumentalities, and officials (collectively, “the State”) have discriminated on the basis of race against Black families in Minnesota, particularly in Hennepin County and Ramsey County. The discrimination is evident in the historic, pervasive, and ongoing overrepresentation of Black families in Minnesota’s child welfare system.

4. Minnesota’s state run child welfare system, and the county-administered systems in Hennepin and Ramsey counties, have been scrutinized for their disproportionate treatment of Black families, and yet, over the last three years, the disproportionate percentage of Black children who have been reported, who have been investigated from screened-in reports, and who have been removed from their homes, has remained relatively unchanged.⁵ These trends evidence

⁴ See Emma P. Williams, *Regulating Families: How the Family Policing System Devastates Black, Indigenous and Latinx Families and Upholds White Family Supremacy*, UPEND (June 2022), at 12-13, <https://upendmovement.org/wp-content/uploads/2022/06/upEND-Regulation.pdf>; Shereen A. White et al., *Fighting Institutional Racism at the Front End of Child Welfare Systems: A Call to Action to End the Unjust, Unnecessary, and Disproportionate Removal of Black Children from Their Families*, CHILD.’S RTS. (May 15, 2021), at 4, <https://bit.ly/3hGX2jj>.

⁵ *Children’s Services Study of Outcomes for African American Children in Minnesota’s Child Protection System: Report to the 2002 Minnesota Legislature*, MINN. DEP’T. OF HUM. SERVS., (Apr. 2002), at 5, <https://www.lrl.mn.gov/docs/pre2003/mandated/020299.pdf>. Percentages of Black children entering out of home care between 2021 and 2023 ranged from 33% to 37% in Hennepin County, 30% to 33% in Ramsey County, and 12% to 13% statewide in Minnesota Email from the Child. and Fam. Servs. Data Request Team, Minn. Dep’t of Hum. Servs., to Martina Tiku, Assistant Gen. Couns., NAACP Off. of the Gen. Couns. (Jan. 23, 2024, 17:15 EST) (on file with NAACP) (providing response to 6/14/23 data request for “Child Welfare Involvement Data” and “Child Welfare & Juvenile Detention Placement Data”) (analysis by Children’s Rights’ Advocacy and Policy Department). These rates are an underestimate of actual disproportionality. There are children categorized by Minnesota’s system as Hispanic but are also Black, children categorized under two or more races that may come from Black families, and children categorized under Unknown/declined that may be Black or come from Black families. Children under these categories are not reflected in the disproportionality data included in this report unless explicitly stated otherwise. See *Minnesota’s Child Maltreatment Report, 2020*, MINN. DEPT. OF HUM. SERVS., (Jan 2022), at 16,

Minnesota’s knowing, ongoing failure to address its child welfare system’s discrimination against and disproportionate and disparate harms to Black families.

5. As further set forth herein, specific drivers of Minnesota’s unlawful discriminatory conduct include: the known discriminatory use of “emergency” removals of children from Black families; the known discriminatory lack of services to support Black families and prevent removal; and the use of “safety and risk assessment” tools that discriminate against Black families in certain non-safety categories being weighed against those families.

6. The State’s pattern and practice of utilizing federal funds to discriminatorily surveil and separate Black families, specifically in Hennepin and Ramsey counties, as detailed herein, clearly warrant investigation into the violations of Title VI and its implementing regulations. Accordingly, NAACP Minneapolis respectfully requests that your office promptly open an investigation and otherwise act to bring the State into compliance with civil rights laws.

I. THE KNOWN DISCRIMINATION AGAINST AND DISPARATE IMPACT OF HARMFUL CHILD WELFARE PROGRAMS IN THE UNITED STATES ON BLACK FAMILIES

7. The United States (U.S.) child welfare system purports to protect children’s safety and well-being. However, decades of research, data, and lived experiences reveal that the system instead has a long history of harming children and families of color, particularly Black families, because of unjust and racist policies and practices.⁶

<https://www.lrl.mn.gov/docs/2022/mandated/220199.pdf> (“Of children who identify with more than one race...64.6% identified at least one race as African American/Black” in 2020).

⁶ *Child Maltreatment 2019*, CHILD.’S BUREAU, ADMIN. FOR CHILD. & FAMILIES, U.S. DEP’T OF HEALTH & HUM. SERVS. (2021), at 115, <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf>.

8. The majority of children are separated from their families by the child welfare system due to “neglect,” a broad and poorly defined category that often results in children being removed for concerns related to poverty rather than abuse.⁷

9. According to a January 2021 memo by the U.S. Administration for Children and Families, “neglect” removals—including removals for “inadequate housing” or “failure to provide adequate nutrition”—are often the result of families living in conditions of poverty.⁸ Research also shows that “inadequacy of income, more than any other factor, constitutes the reason that children are removed.”⁹ President Biden himself acknowledged, in April 2021, “too many children are removed from loving homes because poverty is often conflated with neglect,” and that “the enduring effects of systemic racism and economic barriers mean that families of color are disproportionately affected.”¹⁰

10. Laws that penalize poverty discriminate against and disproportionately harm Black families because they are overrepresented in the under-resourced communities that the child welfare system targets.¹¹ Black children are over three times more likely to live in poverty than white children.¹² According to government data, around 70% of all children in the U.S. removed

⁷ See Hina Naveed, *If I Wasn't Poor, I Wouldn't Be Unfit: The Family Separation Crisis in the US Child Welfare System*, AM. C.L. UNION AND HUM. RTS. WATCH (Nov. 17, 2022), <https://www.hrw.org/report/2022/11/17/if-i-wasnt-poor-i-wouldnt-be-unfit/family-separation-crisis-us-child-welfare>.

⁸ *Civil Legal Advocacy to Promote Child and Family Well-Being, Address the Social Determinants of Health, and Enhance Community Resilience*, CHILD.'S BUREAU, ADMIN. FOR CHILD. & FAMILIES, DEP'T OF HEALTH & HUM. SERVS. (Jan. 14, 2021), at 4-5, <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2102.pdf>.

⁹ DUNCAN LINDSEY, *THE WELFARE OF CHILDREN* 175 (2d ed. 2003).

¹⁰ *A Proclamation on National Foster Care Month*, 2021, THE WHITE HOUSE (Apr. 30, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/04/30/a-proclamation-on-national-foster-care-month-2021/>. See also White et al., *supra* note 4, at 4.

¹¹ Alan J. Dettlaff & Reiko Boyd, *Racial Disproportionality and Disparities in the Child Welfare System: Why Do They Exist, and What Can Be Done to Address Them?*, THE ANNALS. AM. ACAD. POL. & SOC. SCI. 253, 260 (2020), at 253, 260, <https://doi.org/10.1177/000271622098032> (“Enduring consequences of racism, including residential segregation, discrimination in labor markets, unequal access to quality education, and implicit and explicit biases perpetuate the disproportionate concentration of Black families among the poor.”); DOROTHY E. ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD* 39 (2022) [hereinafter ROBERTS, *TORN APART*] at 288.

¹² In 2019, 26.4% of Black children were living in poverty compared to 8% of white children. Jessica Semega, et al., *Income and Poverty in the United States: 2019*, U.S. CENSUS BUREAU (Sept. 2020), <https://www.census.gov/data/tables/2020/demo/income-poverty/p60-270.html>. See also Deja Thomas & Richard Fry, *Prior to COVID-19, Child Poverty Rates Had Reached Record*

from their families, including 63% of Black children, were separated from their families in 2020 because of “neglect.”¹³ This means that a significant percentage of the Black children forcibly removed from their homes in 2020 experienced family separation for reasons related to poverty, not because of abuse.

11. The U.S. Administration for Children and Families, the federal agency responsible for overseeing national child welfare policy, itself acknowledged in 2021 that Black children and other racial minorities are disproportionately represented in the child welfare system.¹⁴ The causes, it found, were harmful policies and “structural racism.”¹⁵

12. Black families encounter racial discrimination at each stage of the child welfare system. As a result, they are not only “more likely to become involved in child protective services” than white families, but also “experience worse outcomes once they become involved.”¹⁶

13. Nationally, over 50% of Black children are investigated by child welfare services, compared to 28% of white children.¹⁷ Nearly 20% of Black children will have a substantiated child maltreatment case before they turn eighteen, compared to 10% of white children.¹⁸ Despite making up only 14% of the general child population, Black children represent 22% of the child welfare

Lows in U.S., PEW RSCH. CTR. (Nov. 30, 2020), <https://www.pewresearch.org/fact-tank/2020/11/30/prior-to-covid-19-child-poverty-rates-had-reached-record-lows-in-u-s>.

¹³ Adoption & Foster Care Analysis & Reporting System (“AFCARS”) 2020 Data Set (analysis by Children’s Rights’ Advocacy & Policy Department).

¹⁴ *Child Welfare Practice to Address Racial Disproportionality and Disparity*, CHILD.’S BUREAU, ADMIN. FOR CHILD. & FAMILIES, DEP’T OF HEALTH & HUM. SERVS. (Apr. 2021) at 2-3, <https://www.childwelfare.gov/resources/child-welfare-practice-address-racial-disproportionality-and-disparity/>.

¹⁵ *Id.* at 7.

¹⁶ Elisa Minoff & Alexandra Citrin, *Systemically Neglected: How Racism Structures Public Systems to Produce Child Neglect*, CTR. FOR THE STUDY OF SOC. POL’Y (Mar. 2022), <https://cssp.org/resource/systemically-neglected/> (citing Youngmin Yiet al., *Cumulative Prevalence of Confirmed Maltreatment and Foster Care Placement for US Children by Race/Ethnicity, 2011-2016*, AM. J. PUB. HEALTH 704, 707 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7144424/pdf/AJPH.2019.305554.pdf>).

¹⁷ Hyunil Kim et al., *Lifetime Prevalence of Investigating Child Maltreatment Among U.S. Children*, 107 AM. J. PUB. HEALTH 274, 277 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5227926/pdf/AJPH.2016.303545.pdf>. These disparities persist, with some variation, across local jurisdictions. Frank Edwards et al., *Contact with Child Protective Services is Pervasive but Unequally Distributed by Race and Ethnicity in Large U.S. Counties*, 118 PROC. NAT’L ACAD. SCIS. 1 (2021), <https://www.pnas.org/doi/epdf/10.1073/pnas.2106272118>.

¹⁸ Youngmin Yi et al., *Cumulative Prevalence of Confirmed Maltreatment and Foster Care Placement for U.S. Children by Race/Ethnicity, 2011-2016*, 110 AM. J. PUB. HEALTH 704, 707 (2020), <https://pubmed.ncbi.nlm.nih.gov/32191517/>.

population.¹⁹ Black children whose cases are substantiated are 15% more likely than white children to be separated from their families and placed in out-of-home foster care.²⁰ Nearly 10% of Black children “will experience foster care placement by their eighteenth birthday,” compared to 5% of white children.²¹ Once they are placed in the system, Black children receive inferior services,²² are moved more often,²³ and are four times less likely to be reunified with their families than white children.²⁴ Black youth experience worse outcomes once they leave the foster system as well—23% of Black youth who age out of the system experience homelessness, and 29% experience incarceration, far higher rates than for non-Black youth.²⁵ These disparities are mirrored in Minnesota’s child welfare system, where Black children and their families are disproportionately harmed at rates similar to, or exceeding, national trends. For example, the rates at which Ramsey and Hennepin counties remove Black children from their homes, and Minnesota terminates Black parents’ rights, surpass national disproportionality rates.²⁶

¹⁹ Black children are not only disproportionately represented in the child welfare system at a national level, but also in 41 out of 52 U.S. jurisdictions. Adoption & Foster Care Analysis Reporting System (“AFCARS”) 2021 Data Set (analysis by Children’s Rights’ Advocacy & Policy Department); *Child Population by Race in the United States*, ANNIE E. CASEY FOUND., <https://datacenter.kidscount.org/data/tables/103-child-population-by-race>. The disproportionate involvement of Black children in the child welfare system has been evident for decades. In 2000, for example, Black children comprised only 15% of the general child population, but represented 36.6% of children in foster care. Robert B. Hill, *Synthesis of Research on Disproportionality in Child Welfare: An Update*, CASEY-CSSP ALL. FOR RACIAL EQUITY IN THE CHILD WELFARE SYS. (Oct. 2006), at 15, <https://www.issueab.org/resources/11355/11355.pdf>.

²⁰ Kathryn Maguire-Jack et al., *Child Protective Services Decision-Making: The Role of Children’s Race and County Factors*, 90 AM. J. ORTHOPSYCHIATRY 48, 55 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7430035/pdf/nihms-1603218.pdf>.

²¹ Minoff & Citrin, *supra* note 15 at 5.

²² ROBERTS, TORN APART, *supra* note 10; *Shifting the Perceptions and Treatment of Black, Native, and Latinx Youth Involved in Systems of Care*, LINKING SYS. OF CARE FOR CHILD. & YOUTH PROJECT, CTR. FOR THE STUDY OF SOC. POL’Y, NAT’L COUNCIL OF JUV. & FAM. CT. JUDGES (Jan. 2022) [hereinafter *Shifting Perceptions and Treatment*], at 10, <https://cssp.org/wp-content/uploads/2022/01/Shifting-the-Perception-of-Black-Latinx-Native-Youth-in-Systems-of-Care.pdf>.

²³ *Id.* In FFY 2021, Black children in care experienced, on average, more frequent placements compared to white children. Adoption & Foster Care Analysis & Reporting System (“AFCARS”) 2021 Data Set (analysis by Children’s Rights’ Advocacy & Policy Department).

²⁴ Robert B. Hill, *Synthesis of Research on Disproportionality in Child Welfare: An Update*, CASEY-CSSP ALL. FOR RACIAL EQUITY IN THE CHILD WELFARE SYS. (Oct. 2006), at 24, <https://www.issueab.org/resources/11355/11355.pdf>.

²⁵ National Youth in Transition Database Outcomes 2020 Cohort Wave 1 (analysis by Children’s Rights’ Advocacy & Policy Department).

²⁶ Percentages of removals involving Black children between 2019 and 2021 ranged from 33% to 38% in Hennepin County and 33% to 37% in Ramsey County compared to 14% to 15% statewide and 23% to 24% across the U.S. During the same period, termination of parental rights percentages for Black children ranged from 32% to 39% in Hennepin County, 45% to 54% in Ramsey County, and 32% to 39% statewide, compared to 18% to 19% across the U.S. Email from the Child. and Fam. Servs. Data Request Team to Martina Tiku, Assistant Gen. Couns., NAACP Off. of the Gen. Couns., *supra* note 5 (analysis by Children’s Rights’ Advocacy and Policy Department).

14. Children who are forcibly separated from their families experience emotional and psychological harm stemming from the disruption of attachments, trauma from the very act of removal, and grief and loss. In the short term, children can experience intense anxiety, depression, and disruptive behaviors. Long-term consequences of involuntary family separation can include poor developmental health and adult involvement with the criminal legal system.²⁷

15. In 2022, the United Nations Committee on the Elimination of Racial Discrimination (CERD) reviewed U.S. compliance with its treaty obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and questioned the Biden administration representatives on racial discrimination in the U.S. child welfare system. A deputy assistant secretary in the U.S. Department of Health and Human Services acknowledged in her response that “structural racism denigrates equity and equality” and recognized “that racial disparities occur at nearly every decision-making point along the child welfare continuum.”²⁸

16. In its concluding observations on the U.S., CERD expressed concern with the “disproportionate number of children of racial and ethnic minorities removed from their families and placed in foster care, in particular children of African descent and Indigenous children ... [and] that families of racial and ethnic minorities are subjected to disproportionately high levels of surveillance and investigation and are less likely to be reunified with their children,” and urged the U.S. to “take all appropriate measures to eliminate racial discrimination in the child welfare system, including by amending or repealing laws, policies and practices that have a disparate

²⁷ Adrianna Wechsler-Zimring et al., *Posttraumatic Stress Disorder and Removal from Home as a Primary, Secondary, or Disclaimed Trauma in Maltreated Adolescents*, 27 J. FAM. VIOLENCE 813, 814 (2012), <https://doi.org/10.1007/s10896-012-9467-8>.

²⁸ 2900th Meeting, 107th Session, Committee on the Elimination of Racial Discrimination (CERD), UNITED NATIONS (UN) WEB TV (Aug. 12, 2022), at 01:30, <https://webtv.un.org/en/asset/k1c/k1c08hhq97>.

impact on families of racial and ethnic minorities... [and] to hold hearings, including congressional hearings, to hear from families who are affected by the child welfare system.”²⁹

17. The UN Human Rights Committee, which oversees the International Covenant on Civil and Political Rights (ICCPR), reviewed U.S. treaty compliance with the ICCPR in 2023 and in its concluding observations raised similar concerns about the disproportionate harms of the U.S. child welfare system on Black and Indigenous children and families.³⁰ The committee echoed and expanded upon the CERD recommendations to include adoption of “measures to reduce the harmful impact of child welfare interventions, increase due process protections for parents, and review poverty-related circumstances or lack of financial resources as factors that can trigger child welfare interventions”³¹

18. It has been 60 years since the enactment of the Civil Rights Act of 1964, which, under Title VI, extended the Commission on Civil Rights to prevent discrimination in federally assisted programs. The historic, ongoing, and pervasive discriminatory harms of the U.S. child welfare system, and specifically the harms to Black children and families in Hennepin and Ramsey counties, which at times outpace national trends, warrant investigative action by the Office of Civil Rights, and such further actions that will continue the fulfillment of that promise.

II. COMPLAINANTS

19. The National Association for the Advancement of Colored People (“the NAACP”) is the oldest civil rights organization in the country. Its mission is to ensure the political, education,

²⁹ U.N. Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth to twelfth reports of the United States of America*, ¶ 43-44, U.N. Doc. CERD/C/USA/CO/10-12 (Sep. 21, 2022), <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhspzO19YwTXeABruAM8pBAK1xYN2wdGpGmJxT4qZ%2B%2Fzh19s68flbQK27IwmDC1j6l212QsTq%2B%2FgbOEik44QID1YZdvGiNLspvbKJ1mADJtn5a1Ojg9FFaST8zoSIBL%2FEgHQ%3D%3D>.

³⁰ U.N. Human Rights Committee, *Concluding observations on the fifth periodic report of the United States of America*, ¶ 62, U.N. Doc. CCPR/C/USA/CO/5, (Dec. 7, 2023), <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhspzO19YwTXeABruAM8pBAK1xYN2wdGpGmJxT4qZ%2B%2Fzh19s68flbQK27IwmDC1j6l212QsTq%2B%2FgbOEik44QID1YZdvGiNLspvbKJ1mADJtn5a1Ojg9FFaST8zoSIBL%2FEgHQ%3D%3D>.

³¹ *Id.* at 63.

social and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination. The NAACP has a longstanding history of advocating against discrimination, specifically as it pertains to the overrepresentation of Black children in the child welfare system.³²

20. NAACP Minneapolis was founded in 1915 as part of the NAACP. Since its founding, NAACP Minneapolis has provided support for vulnerable communities including unhoused and under-resourced individuals, advocated for the rights of families in Minneapolis, and fought against racial discrimination. NAACP Minneapolis works closely with community members on issues of racial justice as it pertains to a variety of areas, including the child welfare system.

III. LEGAL BACKGROUND AND JURISDICTION

21. Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funds from discriminating against individuals on the basis of race, color, or national origin, and provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. Title VI applies to all programs and activities receiving federal financial assistance.

22. The Department of Health and Human Services’ (HHS) regulations implementing Title VI make plain that:

A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to

³² NAACP Resolution, *Over Representation of African American Children in the Child Welfare and Foster Care Systems*, (2003), <https://naacp.org/resources/over-representation-african-american-children-child-welfare-and-foster-care-systems>; NAACP Resolution, *The Unconstitutional Removal of African American Children from their Homes Under the Child Welfare System*, (2003), <https://naacp.org/resources/unconstitutional-removal-african-american-children-their-homes-under-child-welfare-system>; NAACP Resolution, *Saving our African American Children in Foster Care*, (2015), <https://naacp.org/resources/saving-our-african-american-children-foster-care>.

whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which *have the effect* of subjecting individuals to discrimination because of their race, color, or national origin, or *have the effect* of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.³³

23. Disparate impact discrimination may be present even if the agency does not intentionally discriminate on the basis of a protected class. It is recognized that disparate impact regulations are necessary to combat unconscious bias that can influence decision-making in federally funded programs.³⁴

24. As the Supreme Court decision in *Arlington Heights* established, a number of factors may serve as “evidentiary source[s]” of discriminatory purpose or intent behind decisions or actions that are facially neutral.³⁵ These factors include “[t]he impact of the official action” and “whether it bears more heavily on one race than another”; the existence of a “clear pattern, unexplainable on grounds other than race”; “the historical background of the decision”; and substantive and procedural departures from normal decision-making.³⁶ HHS has a responsibility to ensure that federal funds are not used to subsidize discrimination based on race, color, or national origin. Federally funded child welfare agencies are required under Title VI to provide

³³ 45 C.F.R. § 80.3(b)(2) (emphasis added). *See also* 45 C.F.R. § 80.3(b)(3).

³⁴ *See Child Welfare Practice to Address Racial Disproportionality and Disparity supra* note 13; *see also* Shamini Ganasarajah, et al., *Disproportionality Rates for Children of Color in Foster Care (Fiscal Year 2013)*, NAT’L COUNCIL OF JUV. AND FAM. CT. JUDGES (June 2015), <https://www.ncjfcj.org/wp-content/uploads/2015/06/NCJFCJ-2013-Dispro-TAB-Final.pdf>.

³⁵ *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977).

³⁶ *Id.* at 266-68 (citations and internal quotation marks omitted).

non-discriminatory services when fulfilling their responsibilities of protecting the children and families they serve.³⁷

25. Under existing and valid federal regulations, administrative complaints and investigations are specifically authorized concerning discrimination and disparate impact.³⁸ HHS and the U.S. Department of Justice (DOJ) issued a joint guidance letter in 2016 to state and local child welfare systems on ensuring compliance with federal civil rights laws in which they noted “[d]iscrimination under Title VI includes both intentional discrimination and disparate impact discrimination,”³⁹ and that “[the] DOJ and HHS have investigated a number of complaints alleging race, color, and national origin discrimination in the child welfare system.”⁴⁰

26. Any person may file administrative complaints that allege race-based discrimination by a recipient of federal financial assistance. The complaint must be filed in writing with the responsible department official. *See* Title VI, 42 U.S.C § 2000d; 45 C.F.R. § 80.7(b).

27. The Office of Civil Rights (OCR) is the agency within HHS responsible for determining compliance with the nondiscrimination requirement of Title VI and Section 1808(c). Pursuant to 45 C.F.R. § 80.7(a) of the Title VI regulations, OCR is authorized to conduct periodic compliance reviews of the practices of recipients of federal financial assistance from HHS to determine whether their programs and activities are being conducted without discrimination on the basis of race, color, or national origin.

28. HHS-OCR requires that complaints must meet the following requirements: (1) be filed via mail, fax, e-mail or via the OCR Complaint Portal; (2) name the health care or social

³⁷ *See* 45 C.F.R. § 80.3(b)(2)-(3).

³⁸ *See supra* note 32.

³⁹ *Georgia State Conf. of Branches of NAACP v. State of Ga.*, 775 F.2d 1403, 1417 (11th Cir. 1985) (“regulations promulgated under Title VI permit the filing of suits alleging a disparate impact theory”).

⁴⁰ *See Title VI Child Welfare Joint Guidance*, U.S. DEP’T OF HEALTH & HUM. SERVS., OFF. FOR C.R. & U.S. DEP’T OF J., C.R. DIV. (Oct. 2016), <https://www.justice.gov/opa/file/903996/dl?inline>.

service provider involved and the acts or omissions that allegedly violate relevant civil rights laws or regulations, including Title VI of the Civil Rights Act of 1964; and (3) be filed within 180 days of the alleged act or omission detailed in the complaint.⁴¹

29. Those involved in the acts and omissions that allegedly violate relevant civil rights laws include entities of the State of Minnesota who receive and disburse federal funding from the federal HHS and are thus required to comply with Title VI and HHS's Title VI implementing regulations, but continually fail to do so. They include the Minnesota Department of Human Services (DHS), the Hennepin County Department of Human Services, and the Ramsey County Department of Social Services. The acts and omissions that comprise the alleged violations are set forth in this letter complaint, and have created severe, and ongoing discriminatory, disproportionate, harmful impacts to individuals protected under Title VI.

30. This complaint meets each of the requirements for a complaint filed with HHS-OCR. This written complaint is timely filed because the discriminatory impact of Minnesota's child welfare system is ongoing and continues to this day.

IV. FACTUAL BACKGROUND

A. Minnesota's Child Protection Program is Federally Funded

31. Minnesota has a state run, county administered child welfare system. Seventy-seven local child protection agencies (representing Minnesota's 87 counties) and 3 tribal child protection agencies are responsible for the delivery of child welfare services in Minnesota.⁴² These agencies receive reports alleging child maltreatment, assess child safety in response to those reports, and provide case management services to children and their parents. Although the child

⁴¹*How to File a Civil Rights Complaint*, OFF. FOR CIV. RTS., DEP'T OF HEALTH & HUM. SERVS., <https://www.hhs.gov/civil-rights/filing-a-complaint/complaint-process/index.html>.

⁴² *Child Protection Removals and Reunifications: 2022 Evaluation Report*, STATE OF MINN, OFF. OF THE LEGIS. AUDITOR PROGRAM EVALUATION DIV. (June 2022), at 6, <https://www.auditor.leg.state.mn.us/ped/pedrep/childprotect.pdf>.

welfare system is locally administered, state law provides the legal framework for child protection removals and reunifications.⁴³

32. The Minnesota Department of Human Services (DHS), receives significant federal funding, and provides direct oversight of its county-administered child protection agencies.⁴⁴

33. In 2020, Minnesota received more than \$232 million in federal funds to support its child welfare system, including nearly \$118 million from Title IV-E funds, more than \$9 million from Title IV-B funds, and more than \$15 million from other federal sources including the Child Abuse Prevention and Treatment Act (“CAPTA”).⁴⁵ In the same year, Hennepin County received more than \$45 million and Ramsey County received more than \$22 million in federal funds for their child protection agencies.⁴⁶

34. The Family First Prevention Services Act (FFPSA) authorized the Title IV-E Prevention Program. The Title IV-E Prevention Program includes optional funding to provide federal reimbursement for time-limited, evidence-based prevention services for children who are at risk of family separation and their parents or kin caregivers. To qualify for federal reimbursement, prevention programs and services must be reviewed and approved by the Title IV-E Prevention Services Clearinghouse.⁴⁷

35. Minnesota’s Title IV-E Prevention Plan (also referred to as “Minnesota’s Five-Year Prevention Plan”) was federally approved in January 2023.⁴⁸ Therefore, the state has not submitted

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Child Welfare Agency Spending in Minnesota in SFY 2020*, CHILD TRENDS, (May 2023), at 2-4, https://cms.childtrends.org/wp-content/uploads/2023/05/Minnesota_SF2020CWFS_ChildTrends_May2023.pdf; Minnesota’s Child Services Program Costs increased annually from \$592 million in 2016, to \$644 million in 2017, \$691 million in 2018, and \$712 million in 2019. Minnesota’s use of Title IV-E funds increased 61% from FY 2016 to FY 2018. *Child Welfare Agency Spending in Minnesota in SFY 2018*, CHILD TRENDS, (March 2021), at 2, https://cms.childtrends.org/wp-content/uploads/2021/01/Minnesota_SF2018-CWFS_03.03.2021.pdf.

⁴⁶ *Child Welfare Agency Spending in Minnesota in SFY 2020*, CHILD TRENDS, *supra* note 44, at 53-54.

⁴⁷ *Title IV-E Prevention Program*, CHILD.’S BUREAU, ADMIN. FOR CHILD. & FAMILIES, U.S. DEP’T OF HEALTH & HUM. SERVS. (June 2023), <https://www.acf.hhs.gov/cb/title-iv-e-prevention-program>.

⁴⁸ *Family First Prevention Services Act: Prevention Services FAQ*, MINN. DEP’T. OF HUM. SERVS., (Sept. 2023), https://www.dhs.state.mn.us/main/groups/county_access/documents/pub/dhs-329041.pdf.

any claims for reimbursement in the last reported year (FY 2022). While Minnesota is not the only state in this stage of implementation, 31 other states had already begun reporting claims at this time.⁴⁹

36. While it has not received any claims for reimbursement under FFPSA since its plan was approved in January of 2023, in June 2020 MN DHS received \$7,890,161 in federal funding from the Family First Transition Act, enacted to facilitate state implementation of FFPSA.⁵⁰ This allocation is for FY 2020 – FY 2025, and intended to (1) promote flexibility in developing and/or expanding child and family services that utilize community-based agencies; (2) develop, establish, expand, and operate coordinated programs of community-based family support services, family prevention services, time-limited family reunification services, and adoption promotion/support services; and (3) allow expenditures for activities directly associated with implementing FFPSA.⁵¹

B. Minnesota’s Child Welfare System Discriminates Against Black Families

37. Minnesota defines neglect to include failure to provide necessary food, clothing, shelter, and other needs.⁵² This definition is inextricably linked to poverty⁵³ and is the most common reason for child welfare system involvement.⁵⁴

⁴⁹ *Title IV-E Programs Expenditure and Caseload Data 2022*, CHILD.’S BUREAU, ADMIN. FOR CHILD. & FAMILIES, U.S. DEP’T OF HEALTH & HUM. SERVS. (Sept. 2023) (FY 2022 Title IV-E Prevention Services Claims and Caseload dataset), <https://www.acf.hhs.gov/cb/report/programs-expenditure-caseload-data-2022>.

⁵⁰ *FFPSA Transition Act Funds Draft Budget Discussion Document*, MINN. DEP’T. OF HUM. SERVS., (June 16, 2020), <http://cms5.revize.com/revize/macssa/childwellbeing/August%202020/FFPSA%20Transition%20Act%20Funds%20Draft%20Budget%20Discussion%20Document%20June%2030%202020.pdf>.

⁵¹ *Id.*

⁵² Minn. Stat. . § 260E.03 Subd. 15. (2023).

⁵³ See Hina Naveed, *If I Wasn’t Poor, I Wouldn’t Be Unfit: The Family Separation Crisis in the US Child Welfare System*, *supra* note 7.

⁵⁴ Email from the Child. and Fam. Serves. Data Request Team to Martina Tiku, Assistant Gen. Couns., NAACP Off. of the Gen. Couns., *supra* note 5 (analysis by Children’s Rights’ Advocacy and Policy Department).

38. Hennepin and Ramsey counties are the two most populous counties in Minnesota.⁵⁵ 13.3% of the population in Hennepin County and 12.0% of the population in Ramsey County is Black, respectively, compared to the Black population of 6.7% across the state.⁵⁶

39. County agencies, including Hennepin County and Ramsey County, receive reports of alleged child maltreatment, determine whether the report should be screened out or screened in, assign and conduct a family assessment or investigation for screened-in reports and, often, remove children from their homes and place them in the legal custody of the state.⁵⁷

40. The majority of reports received over the last five years, statewide and in Hennepin and Ramsey counties, included allegations of neglect.⁵⁸ Percentages ranged from 55% to 60% in Hennepin County, 57% to 63% in Ramsey County, and 64% to 67% statewide.⁵⁹

41. Black families in Minnesota are over-reported and significantly overrepresented among those who undergo investigations and assessments.⁶⁰ This disproportionality is both historic and ongoing. In 2001, Minnesota passed legislation requiring the Minnesota Department of Human Services to document and study the overrepresentation of Black children in the foster system, evaluate decision-making points that lead to different outcomes for children, and produce recommendations to reduce the disproportionality.⁶¹ As a result of the study, Minnesota found that

⁵⁵ *Population Data: Our Estimates*, MINN. STATE DEMOGRAPHIC CTR., (2022), <https://mn.gov/admin/demography/data-by-topic/population-data/our-estimates/>.

⁵⁶ *County Profile: Hennepin Co.*, MINN. DEPT. OF EMP. AND ECON. DEV. (Feb. 13, 2024), https://mn.gov/deed/assets/021224_hennepin_tcm1045-407441.pdf; *County Profile: Ramsey Co.*, MINN. DEPT. OF EMP. AND ECON. DEV. (Feb. 13, 2024), https://mn.gov/deed/assets/021224_ramsey_tcm1045-407443.pdf.

⁵⁷ *Minnesota Child Maltreatment Intake, Screening and Response Path Guidelines*, MINN. DEP'T. OF HUM. SERVS., (Oct. 2023), <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-5144-ENG>.

⁵⁸ Email from the Child. and Fam. Servs. Data Request Team to Martina Tiku, Assistant Gen. Couns., NAACP Off. of the Gen. Couns., *supra* note 5 (analysis by Children's Rights' Advocacy and Policy Department).

⁵⁹ *Id.*

⁶⁰ Reports not involving substantial child endangerment, sexual abuse or situations of serious danger may be assigned for a Family Assessment response rather than a Family Investigation. Unlike in an investigation, there is no maltreatment determination at the end of an assessment. Instead, a decision is made whether child protect services are needed or family support services are jointly agreed upon by the agency and parents. *Family Assessment response to child safety concerns*, MINN. DEP'T. OF HUM. SERVS., (July 17, 2019), <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-4242-ENG>.

⁶¹ *Children's Services Study of Outcomes for African American Children in Minnesota's Child Protection System: Report to the 2002 Minnesota Legislature*, *supra* note 5, at 6.

Black children were 16.3 times more likely to be placed in a foster home compared to white children and racial disparities were found in every stage of the child welfare system.⁶² More than two decades later, these known racial disparities persist.

42. Between 2019 and 2021, mandated reporters in schools, law enforcement, and social services, made a greater percentage of reports about Black children than white children across Minnesota and in Hennepin and Ramsey counties.⁶³

43. In Hennepin County, Black children made up more than 53% of all reports in the last five years, the majority of which (nearly 70%) were not due to physical or sexual abuse. In comparison, 69.9% of Hennepin County's population is white⁶⁴ and white children made up less than 35% of all reports in the last five years. In the same years, Black children were the subject of more than 35% of all reports which included neglect as the allegation type, while white children constituted less than 20% of those neglect reports.⁶⁵

44. In Ramsey County, Black children made up 41% to 46% of all reports in the last five years, the majority of which (nearly 70%) were not due to physical or sexual abuse. In comparison, 63.6% of Ramsey County's population is white and white children made up less than 36% of all reports in the last five years. In the same years, Black children were the subject of between 28% to 33% of all reports which included neglect as the allegation type (nearly double

⁶² *Minnesota Child Welfare Disparities Report*, MINN. DEP'T. OF HUM. SERVS., (Feb. 2010), at 42-43, https://www.mncourts.gov/Documents/0/Public/Childrens_Justice_Initiative/Disparities_-_Minnesota_Child_Welfare_Disparities_Report_%28DHS%29_%28February_2010%29.pdf (citing *Study of Outcomes for African American Children in Minnesota's Child Protection System: Report to the 2002 Minnesota Legislature*, MINN. DEP'T. OF HUM. SERVS., (Apr. 2002), at 9, <https://www.lrl.mn.gov/docs/pre2003/mandated/020299.pdf>).

⁶³ Email from the Child. and Fam. Servs. Data Request Team to Martina Tiku, Assistant Gen. Couns., NAACP Off. of the Gen. Couns., *supra* note 5 (analysis by Children's Rights' Advocacy and Policy Department).

⁶⁴ *See supra* note 52.

⁶⁵ Email from the Child. and Fam. Servs. Data Request Team to Martina Tiku, Assistant Gen. Couns., NAACP Off. of the Gen. Couns., *supra* note 5 (analysis by Children's Rights' Advocacy and Policy Department).

Ramsey's Black population), whereas white children constituted 23% to 26% of those neglect reports, a fraction of Ramsey's white population.⁶⁶

45. In Minnesota, reports involving white children are more likely to be screened out and dismissed than those for any other race and reports involving Black children are more likely to be screened in.⁶⁷

46. Once screened in, cases involving Black children are more likely to result in an investigation or assessment, as well as removal and family separation, than cases involving white children.⁶⁸

47. In 2021, the Black child population in Minnesota was 11% (144,611) but made up 17% (5,564) of the children in completed assessments/investigations.⁶⁹ In comparison, the white population in Minnesota was 74% (989,347) but made up 49% (15,811) of the children in completed assessments/investigations.⁷⁰ In the same year, Black children composed of 23% of Hennepin County's child population⁷¹ and 20% of Ramsey County's child population.⁷² However,

⁶⁶ *Id.*

⁶⁷ Across Minnesota, in 2021, children who identify as two or more races, Black children, and children who identify as Hispanic are 4.7, 2.4 and 1.9 times more likely, respectively, to be involved in completed maltreatment assessments/investigations than white children. *Legislative Report: Minnesota's Child Maltreatment Report, 2021*, MINN. DEP'T. OF HUM. SERVS., (June 2023), [hereinafter *Minnesota's Child Maltreatment Report, 2021*], at 14, <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-5408N-ENG>.

⁶⁸ Furthermore, cases involving Black children are more likely than those involving white children to result in family investigation due to discretionary reasons, rather than mandatory statutory reasons. *Minnesota's Child Maltreatment Report, 2020*, MINN. DEPT. OF HUM. SERVS., (Jan. 2022), at 37, <https://www.lrl.mn.gov/docs/2022/mandated/220199.pdf>; Discretionary reasons are any reasons identified by the agency external to the statutory condition of sexual abuse or "substantial child endangerment" that would ordinarily mandate assignment to a family investigation. Minn. Stat. § 260E.03 Subd. 22. (2023) <https://www.revisor.mn.gov/statutes/cite/260E.03>.

⁶⁹ *Child Population by Race and Ethnicity in Minnesota*, ANNIE E. CASEY FOUNDATION KIDS COUNT DATA CENTER (2021), <https://datacenter.aecf.org/data/tables/103-child-population-by-race-and-ethnicity?loc=25&loc=2#detailed/2/25/false/2048,574/68,69,67,12,70,66,71,72/423,424>; *Minnesota's Child Maltreatment Report, 2021*, *supra* note 64, at 26.

⁷⁰ *Enrollment in School by Race and Ethnicity in Minnesota: Hennepin and Ramsey County*, ANNIE E. CASEY FOUNDATION KIDS COUNT DATA CENTER (2021), <https://datacenter.aecf.org/data/tables/11498-enrollment-in-school-by-race-and-ethnicity?loc=25&loc=5#detailed/5/3853,3888/false/2108,2051,1771,1740,1639/9,107/22682,22683>; *Minnesota's Child Maltreatment Report, 2021*, *supra* note 64, at 26.

⁷¹ *Enrollment in School by Race and Ethnicity in Minnesota: Hennepin and Ramsey County*, ANNIE E. CASEY FOUNDATION KIDS COUNT DATA CENTER (2021), <https://datacenter.aecf.org/data/tables/11498-enrollment-in-school-by-race-and-ethnicity?loc=25&loc=5#detailed/5/3853,3888/false/2108,2051,1771,1740,1639/9,107/22682,22683>.

⁷² *Id.*

they represented 40%, and 36%, respectively, of children in completed assessments/investigations.⁷³

48. As a result, Black children in Minnesota are more likely than white children to have experienced an investigation or assessment.

49. Black children in Minnesota are also more likely than white children to be removed from their homes and placed in out of home care.

50. In 2021, Black children across Minnesota were two times more likely, and biracial or multiracial children were seven times more likely than white children to be removed and placed in a foster home.⁷⁴ Between 2019 and 2021, child welfare agencies removed Black children from their homes in Hennepin and Ramsey counties with a degree of disproportionality that outpaced state and national trends. Percentages of removals involving Black children during those years ranged from 33% to 38% in Hennepin County and 33% to 37% in Ramsey County compared to 14% to 15% statewide and 23% to 24% across the U.S.⁷⁵

51. Data also demonstrate that across Minnesota, and in Hennepin and Ramsey counties, Black children are more likely to experience termination of parental rights (TPR) than white children, with disproportionality rates outpacing national trends once again. TPR percentages for Black children between 2019 and 2021 ranged from 32% to 39% in Hennepin County, 45% to 54% in Ramsey County, and 32% to 39% statewide, compared to 18% to 19% across the U.S.⁷⁶

⁷³ Email from the Child. and Fam. Serves. Data Request Team to Martina Tiku, Assistant Gen. Couns., NAACP Off. of the Gen. Couns., *supra* note 5 (analysis by Children’s Rights’ Advocacy and Policy Department.).

⁷⁴ *Legislative Report: Minnesota’s Out-of-Home Care and Permanency Report, 2021*, MINN. DEP’T. OF HUM. SERVS. (June 2023), at 6, <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-5408Na-ENG>.

⁷⁵ Adoption & Foster Care Analysis & Reporting System (“AFCARS”) 2019-2021 Data Set (analysis by Children’s Rights’ Advocacy & Policy Department).

⁷⁶ *Id.*

52. Racial disparities persist not only in terms of investigations and removals and entries into the foster system, and in terms of termination of parental rights, but also upon exit from the system. Between 2019 and 2021, Black children spent more time on average than white children in the foster system every year across Minnesota and in Hennepin and Ramsey counties.⁷⁷

53. Minnesota has engaged in a long-standing pattern and practice of intrusive interventions, causing prolonged and often permanent separation and inflicting immediate and long-term harm. The consequences of these patterns and practices in Minnesota's child welfare system have been disastrous and disproportionately suffered by Minnesota's Black and low-income population, leading to significant adverse and discriminatory effects on the basis of race that are without any legitimate justification.

C. Minnesota's Child Welfare System's Unnecessary and Harmful Overuse of Emergency Removals Discriminates Against and Disproportionately Impacts Black Families

54. Against the clear backdrop of discriminatory and disproportionate removals of Black families in Minnesota and in Hennepin and Ramsey counties, there is further strong evidence for investigation of the discriminatory and disproportionate use of "emergency" law enforcement removals of Black families in Minnesota and specifically in Hennepin and Ramsey counties. There is also strong evidence for investigation that such disproportionate "emergency" removals are frequently not for the kinds of cases that would justify an emergency removal and could lead to substantiated cases of physical or sexual abuse or extreme neglect.

55. When a law enforcement officer determines that a child's health or welfare is being endangered by the child's "surroundings or conditions," or "reasonably believes" that it will be, Minnesota statutes authorize the officer to place the child on an "emergency hold" lasting up to 72

⁷⁷ *Id.*

hours.⁷⁸ During this time, the officer may take the child to an emergency shelter, to a foster family, the home of a relative, or a placement suggested by the local protection agency. This type of emergency removal is referred to as a “law enforcement emergency hold.”

56. Law enforcement emergency holds are “the most common form of removing a child from the home in Minnesota” with “65 percent of child removals in Minnesota from 2014 through 2019 [occurring] through a law enforcement emergency hold” according to the Minnesota Office of the Legislative Auditor’s (OLA) 2022 report (OLA Report) evaluating Minnesota’s child protection removals and reunifications.⁷⁹ As further found in the same OLA report, alarmingly, there is no oversight over use and conduct of law enforcement emergency holds, unlike child protection agencies or courts who are subject to oversight.⁸⁰

57. The OLA documented an extremely large variation in the use of emergency holds across counties, ranging from 2% to 92%, and within counties, with county administrators agreeing that, given similar situations, “some law enforcement agencies were more likely than others to issue holds.”⁸¹ While the OLA Report fell short of evaluating whether emergency holds were being appropriately used, it found “the authority to remove a child from a home is among the most intrusive ways in which the government can intervene into private family life,” and expressed concern that it could not “identify statewide data on how often individual law enforcement agencies use this authority.”⁸²

⁷⁸ Minn. Stat. § 260C.175, Subd. 1(2)(ii) (2023), <https://www.revisor.mn.gov/statutes/cite/260C.175>; Minn. Stat. § 260C.178, Subd. 1 (2023) <https://www.revisor.mn.gov/statutes/cite/260C.178>.

⁷⁹ *Child Protection Removals and Reunifications: 2022 Evaluation Report*, *supra* note 41, at 27.

⁸⁰ *Id.* at 16.

⁸¹ *Id.* at 29-30.

⁸² *Id.* at 32.

58. The OLA Report specifically included concerns from administrators who felt that “sometimes law enforcement officers have placed emergency holds when removal might otherwise have been prevented.”⁸³

59. Concerns of the unnecessary use of emergency holds were expressed by Black parents impacted by Minnesota’s child welfare system who, during confidential listening sessions held in Hennepin and Ramsey counties, specifically identified the use of “emergency” removals in circumstances that were plainly not “emergencies” or supportive of situations threatening the safety of their children.⁸⁴

60. From 2014 through 2019, 49% of the children who were removed from their homes in Hennepin County, and 78% from Ramsey County, were because of a law enforcement hold.⁸⁵

61. In sum, the evidence above supports investigation into the discriminatory and disproportionate use of law enforcement emergency holds on Black families statewide and specifically in Hennepin and Ramsey counties.

D. Minnesota’s Child Welfare System’s Lack of Services Discriminates Against and Disproportionately Causes Additional Harm to Black Families

62. There is strong evidence that Minnesota’s child welfare system is unable to provide services and meet the needs of families. This, in turn, contributes to unnecessary removal and/or prolonged child welfare system involvement, discriminating against and disproportionately impacting Black families in Minnesota, specifically in Hennepin and Ramsey counties.

63. During Minnesota’s 2016 Child and Family Service Reviews, the U.S. Children’s Bureau found that Minnesota’s child welfare system failed to achieve “substantial conformity with

⁸³ *Id.* at 29.

⁸⁴ Counsel participated in a listening tour that included 26 people, many of whom were currently or very recently impacted families. Individuals who contributed during the sessions did so with the understanding that their remarks were confidential and anonymous due to considerable fears of retaliation. Consequently, we are unable to provide additional information regarding their identities or their contributions.

⁸⁵ *Child Protection Removals and Reunifications: 2022 Evaluation Report*, *supra* note 41, at 30.

any of the safety, permanency, or well-being outcomes.”⁸⁶ Concerns identified by the Children’s Bureau during the review included “lack of qualified service providers.”⁸⁷

64. A deputy assistant commissioner with DHS, acknowledged “there are substantial shortages in services” during a meeting with members of the Legislative Task Force on Child Protection in 2023.⁸⁸

65. Minnesota DHS officials have noted that some families are not getting timely access to services.⁸⁹ For example, according to the 2021 U.S. Children’s Bureau Maltreatment report, less than 23% of infants exposed to drugs prenatally in Minnesota who were screened into the child protection system had a referral to appropriate services.⁹⁰ On information and belief, this problem is also present in Hennepin and Ramsey Counties.

66. Minnesota’s family home visiting program serves at-risk households and is intended to support families. However, according to the 2022 DHS Family Home Visiting Legislative Report, DHS officials estimated only 1 in 10 Minnesota families who needed visiting services actually received them.⁹¹ On information and belief, this problem is also present in Hennepin and Ramsey counties.

67. During listening sessions conducted in Ramsey County and Hennepin County, some Black parents impacted by Minnesota’s child welfare system identified the lack of services as a reason for system involvement.⁹²

⁸⁶ *Child and Family Services Reviews: Minnesota Final Report 2016*, CHILD.’S BUREAU, ADMIN. FOR CHILD. & FAMILIES, U.S. DEP’T OF HEALTH & HUM. SERVS. (2016), at 3, <https://www.acf.hhs.gov/sites/default/files/documents/cb/mn-cfsr-r3-final.pdf>.

⁸⁷ *Id.*

⁸⁸ Jessie Van Berkel and Jeffrey Meitrodt, *Legislators examine ways to reform Minnesota’s child protection system*, STAR TRIBUNE (December 4, 2023 3:59PM), <https://www.startribune.com/legislators-examine-ways-to-reform-minnesotas-child-protection-system/600324375/>.

⁸⁹ Jessie Van Berkel, *Minnesota’s system for helping parents with addiction is full of holes. Kids pay the price.*, STAR TRIBUNE (December 1, 2023), <https://www.startribune.com/minnesota-drug-treatment-system-failing-addicted-parents-kids/600322132/>.

⁹⁰ *Id.*

⁹¹ *Family Home Visiting Legislative Report*, MINN. DEP’T. OF HEALTH, (Jan. 2022), <https://www.health.state.mn.us/docs/communities/fhv/legreport2022.pdf>.

⁹² See *supra* note 90.

68. These failures cause additional harm that disproportionately impact Black families who are overrepresented in Minnesota’s child welfare population.

69. In sum, the evidence above supports investigation into the discriminatory lack of community based supportive services disproportionately causing harm to Black families statewide and specifically in Hennepin and Ramsey counties.

E. Minnesota’s Child Welfare System’s Structured Decision Making Tools Discriminate Against and Disproportionately Impact Black Families

70. Minnesota’s structured decision making tools contain factors that serve as a proxy for race and/or socioeconomic status and have a discriminatory and disproportionate impact on Black families, including in Hennepin and Ramsey counties.

71. The Minnesota Department of Human Services Structured Decision Making Safety Assessment (SDM SA) contains “a list of factors that may be associated with a child(ren) being in immediate danger of serious harm.”⁹³ The SDM SA is used by caseworkers to “guide decision making in the removal and return of children to families. It also guides decision making on factors that, if not addressed, threaten immediate harm to children.”⁹⁴

72. The Minnesota Department of Human Services Structured Decision Making Family Risk Assessment of Abuse/Neglect (SDM FRA) is used by caseworkers to determine the disposition of all maltreatment reports that are assigned for a family investigation or family assessment and “guides the decision to close or open a case for ongoing services.”⁹⁵ The SDM FRA assigns a score to a list of family characteristics and is used to provide the caseworker an

⁹³ *The Structured Decision Making System for Child Protective Services: Policy and Procedures Manual*, MINN. DEP’T. OF HUM. SERVS., (Oct. 2018), at 5, https://mn.gov/dhs/assets/MN%20DHS%20SDM%20Policy%20and%20Proceudre%20Manual%20October%202018_tcm1053-354385.pdf.

⁹⁴ *Id.* at 3.

⁹⁵ *Id.*

“objective appraisal of the likelihood that a family will maltreat their children in the next 18 to 24 months.”⁹⁶

73. Research demonstrates that standardized decision-making tools, *e.g.*, Minnesota’s SDM SA and SDM FRA, do not provide an “objective appraisal.” Instead, they amplify racial disproportionalities in the child welfare system and provide inaccurate risk assessments because these tools fail to account for structural factors such as race, ethnicity, and economic factors, create and overvalue proxies for these factors, and place responsibility on individuals for structural inequalities.⁹⁷

74. The SDM SA’s consideration of a caregiver’s inability to meet the child’s immediate needs for food/shelter, lack of water or utilities, and deeming space heaters for heat as unsafe, are characteristics that are proxies for both race and socioeconomic status.⁹⁸ Minnesota’s use of these factors to support a child’s removal and/or ongoing separation due to alleged neglect discriminately and disproportionately impacts Black families who are overrepresented in Minnesota’s child welfare system for neglect-related allegations.

75. Similarly, the SDM FRA’s consideration of prior assigned reports (even if not substantiated), prior CPS history (even if not substantiated), and whether either caregiver was abused as a child, are proxies for race and socioeconomic status⁹⁹ and discriminatorily and disproportionately impact Black families in Minnesota, and in Hennepin and Ramsey counties,

⁹⁶ *Id.* at 19.

⁹⁷ Megan Feely and Emily A. Bosk, *That Which is Essential has been Made Invisible: The Need to Bring a Structural Risk Perspective to Reduce Racial Disproportionality in Child Welfare*. 13 RACE SOC PROBL. 49 (2021), <https://pubmed.ncbi.nlm.nih.gov/33643476/>.

⁹⁸ “[F]amilies with low socioeconomic status are more likely to have multiple reports to CPS because structural barriers that are associated with neglect, particularly economic stability, have not been addressed. [S]ystemic racism structures the likelihood that these proxies for financial hardship are more likely to affect Black, Indigenous, and Latino families. Further, Black, Indigenous, and Latino families are more likely to come under the scrutiny of officials that would make a child welfare report linking structural factors to this item.” *Id.*

⁹⁹ *The Structured Decision Making System for Child Protective Services: Policy and Procedures Manual*, MINN. DEP’T. OF HUM. SERVS., *supra* note 100, at 3.

who experience child welfare system involvement more frequently, and are more likely to score higher under those categories.

76. The specific inclusion of unsubstantiated reports and CPS histories directs the weighting of known discriminatory and disproportionate practices against Black families, as these categories by their very terms did not involve finding safety considerations justifying investigation and/or removal.

77. The SDM FRA's consideration of a household with three or more children as a maltreatment-predicting characteristic also serves as a proxy for race and has a discriminatory and disproportionate impact on Black families who are more likely to have three or more children.¹⁰⁰

78. Additionally, Minnesota's structured decision making tools' consideration of a primary caregiver that "lacks parenting skills"¹⁰¹ or "makes inappropriate babysitting or child care arrangements"¹⁰² invites a subjective and discretionary determination vulnerable to bias and is likely to have a discriminatory and disproportionate impact on Black families.

79. The discriminatory and disproportionate harms on Black families from these tools exist in a Minnesota Child Protective System that has already been found to discriminate against Black families. According to the 2010 Minnesota Child Welfare Disparities Report, which reviewed 2008 SDM FRA data, Black children appeared more often in the moderate and high-risk categories and less often in the low-risk category than white children.¹⁰³

¹⁰⁰ "Approximately 40% of children in Black and Hispanic families live in families with three or more children compared to close to 30% for children in White and all other family groups. Greater proportions of Black and Hispanic children also live in families with four or more children in the home." Megan A. Curran, *The Efficacy of Cash Supports for Children by Race and Family Size: Understanding Disparities and Opportunities for Equity*, 13 RACE SOC PROBL. 34 (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7870025/>.

¹⁰¹ *The Structured Decision Making System for Child Protective Services: Policy and Procedures Manual*, MINN. DEP'T. OF HUM. SERVS., *supra* note 100, at 14.

¹⁰² *Id.* at 9.

¹⁰³ Black children made up 10.3% of the children in the low risk category, 53.7% of children in the moderate risk category, and 35.9% of the children in the high-risk category. In comparison, white children made up 15.0%, 51.4% and 33.4% of the children in the respective risk categories. *Minnesota Child Welfare Disparities Report*, *supra* note 59, at 49.

80. In sum, the evidence above warrants investigation into the Minnesota SDM SA and SDM FRA as drivers of discriminatory and disproportionate surveillance, investigation and separation of Black families statewide, and specifically in Hennepin and Ramsey counties.

F. Minnesota’s Child Welfare System’s Intrusive Practices Harm Black Families

81. The discriminatory and disproportionate removal of Black children from their families comes at a heavy cost to both children and parents. Children experience deep trauma and life-long harm from the removal itself and the resulting separation from their parents, families, and communities. In addition, placement in the child welfare system comes with additional risks and harms. Black parents also experience trauma and harm from family separation.¹⁰⁴

82. For most children, entry into the child welfare system is unexpected, shocking, and traumatic. Without warning, children are taken from their home by strangers, sometimes in the middle of the night and taken to a new, unfamiliar place. If a family foster home is not immediately available, as they often are not, the child is placed into a group facility. It is not uncommon for the child to be first taken to a government office and spend hours, or even days, at the office before a placement is found for them.¹⁰⁵

83. Separating children from their families breaks a critical source of attachment and support. The American Association of Pediatrics has found that family separation “can cause irreparable harm, disrupting a child’s brain architecture and affecting his or her short- and long-term health. This type of prolonged exposure to serious stress—known as toxic stress—can carry

¹⁰⁴ This includes profound grief and loss, and an increased risk for other health disorders such as mental health disorders or substance abuse disorders. See Vivek Sankaran et al., *A Cure Worse Than the Disease? The Impact of Removal on Children and Their Families*, 102 MARQ. L. REV. 1163, 1169-1170 (2019), <https://repository.law.umich.edu/articles/2055/>.

¹⁰⁵ Elizabeth Amon, *Homeless and in Foster Care: Hundreds of Washington Youth Sleeping in Offices, Hotel Rooms and Even Cars*, THE IMPRINT (Oct. 1, 2020), <https://imprintnews.org/youth-homelessness/homeless-foster-care-washington-youth-sleeping-offices-hotels-cars/47889>; Robert T. Garrett, *Texas Foster-Care Crisis: Children Sleeping in CPS Offices Again as More Removed from Homes but State Out of Places to Care for Them*, THE DALL. MORNING NEWS (Mar. 17, 2016), <https://www.dallasnews.com/news/politics/2016/03/17/texas-foster-care-crisis-children-sleeping-in-cps-offices-again-as-more-removed-from-homes-but-state-out-of-places-to-care-for-them/>.

lifelong consequences for children.”¹⁰⁶ Toxic stress can affect a child’s mental and physical health as well as their cognitive functioning—it can even alter their gene expression. Heart disease, immune dysregulation, cancer, depression, anxiety, and post-traumatic stress disorder (PTSD) are just some of the long-term adverse effects of toxic stress on children.¹⁰⁷ Importantly, for Black children, the trauma of separation includes not only the disruption of critical family and community attachments, but also the potential harm to their sense of individual and cultural identity.¹⁰⁸

84. Children are not the only ones traumatized by family separation. Parents also experience severe trauma from forced separation, as well as from a threat of removal. This trauma can result in grief, loss, and an increased risk of health disorders such as mental health or substance abuse disorders.¹⁰⁹ The deep stress of navigating a racist system causes its own additional stress and harm. Research has shown that encounters with racist institutions and events are linked to a variety of psychological and physical health concerns.¹¹⁰

85. Not only do children entering the child welfare system suffer deep trauma and harm from the removal itself, but many children suffer harm within the child welfare system. In fact, there is substantial evidence that children suffer extremely harmful conditions in the foster system, likely more than children in the general population.¹¹¹ In addition, children in the foster system are

¹⁰⁶ Colleen Kraft, *AAP Statement Opposing Separation of Children and Parents at the Border*, AM. ACAD. OF PEDIATRICS (May 8, 2018), <https://docs.house.gov/meetings/IF/IF14/20180627/108510/HMKP-115-IF14-20180627-SD011.pdf>.

¹⁰⁷ Hillary A. Franke, *Toxic Stress: Effects, Prevention and Treatment*, 1 CHILD. 390 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4928741/>.

¹⁰⁸ Nell Clement, *Do Reasonable Efforts Require Cultural Competence - The Importance of Culturally Competent Reunification Services in the California Child Welfare System*, 5 HASTINGS RACE & POVERTY L.J. 397, 418-22 (2008), https://repository.uchastings.edu/hastings_race_poverty_law_journal/vol5/iss2/5/.

¹⁰⁹ See Sankaran et al., *supra* note 110; ROBERTS, TORN APART, *supra* note 10 at 50-51.

¹¹⁰ See Robert T. Carter, *Racism and Psychological and Emotional Injury: Recognizing and Assessing Race-Based Traumatic Stress*, 35 THE COUNSELING PSYCH. 13, 14 (2007) https://ucebt.com/images/pdfs-doc/Carter_2007.pdf; Shawn O. Utsey, *Development and Validation of a Short Form of the Index of Race-Related Stress (IRRS)—Brief Version*, 32 MEASUREMENT & EVALUATION IN COUNSELING & DEV. 149, 149 (1999), <https://www.tandfonline.com/doi/abs/10.1080/07481756.1999.12068981>.

¹¹¹ J. William Spencer & Dean D. Knudsen, *Out-of-Home Maltreatment: An Analysis of Risk in Various Settings for Children*, 14 CHILD. & YOUTH SERVS. REV. 485 (1992), <https://www.sciencedirect.com/science/article/abs/pii/019074099290002D>; Michael B. Mushlin, *Unsafe Havens: The Case for Constitutional Protection of Foster Children from Abuse and Neglect*, 23 HARV. C.R.-C.L. L. REV. 199, 205-207 (1988), <http://digitalcommons.pace.edu/lawfaculty/467/>. See, e.g., Mem. Op. & Verdict of the Court at 56, *M.D. v. Abbott*, No. 11-CV-84 (S.D. Tex. Dec. 17, 2015) (“The Court does not base any system-wide findings solely on the Named Plaintiffs’ experiences in foster care. Their experiences, however, paint a similar picture: children often enter foster care

at far higher risk of suffering from mental health disorders. Researchers have found that 43% of children in foster care report diagnoses of depression and 29% report suffering from PTSD.¹¹² Alarming, studies also indicate that the rate of PTSD among children in foster care is almost twice as high as the rate in U.S. war veterans.¹¹³ There is also significant evidence that children in foster care are overprescribed psychotropic medication.¹¹⁴

86. The long-term effect of children's involvement with the child welfare system is severe. Study after study has demonstrated poor long-term outcomes for foster children, including greater involvement with the criminal justice system, less educational achievement, higher teenage pregnancy rates, higher rates of drug and alcohol abuse, more psychological problems as adults, and less long-term financial success.¹¹⁵ Black children transitioning out of the child welfare system experience even worse outcomes than their white peers. An estimated 23% of Black youth who age out of foster care experience homelessness and 29% experience incarceration, far higher rates than for non-Black youth.¹¹⁶

at the Basic service level, are assigned a carousel of overburdened caseworkers, suffer abuse and neglect that is rarely confirmed or treated, are shuttled between placements—often inappropriate for their needs—throughout the State, are migrated through schools at a rate that makes academic achievement impossible, are medicated with psychotropic drugs, and then age out of foster care at the Intense service level, damaged, institutionalized, and unable to succeed as adults.”)

¹¹² Delilah Bruskas & Dale H. Tessin, *Adverse Childhood Experiences and Psychosocial Well-Being of Women Who Were in Foster Care as Children*, 17 PERMANENTE J. 131, 134 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3783064/>.

¹¹³ Peter J. Pecora et al., *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study*, CASEY FAM. PROGRAMS (Mar. 14, 2005), at 32, https://www.casey.org/media/AlumniStudies_NW_Report_FR.pdf.

¹¹⁴ Angela Olivia Burton, “*They Use it Like Candy*”: *How the Prescription of Psychotropic Drugs to State-Involved Children Violates International Law*, 35 BROOKLYN J. INT’L L. 453 (2010), <https://brooklynworks.brooklaw.edu/bjil/vol35/iss2/5/>;

Stephanie S. Franklin, *Over-Medication of Psychotropic Drugs & African-American Girls in Foster Care, Submission to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*, THE FRANKLIN LAW GROUP, P.C. (Nov. 2014), https://rmozone.com/snapshots/2016/05/docs/INT_CAT_NHS_USA_18527-00.pdf.

¹¹⁵ Joseph J. Doyle, Jr., *Causal Effects of Foster Care: An Instrumental-Variables Approach*, 35 CHILD. & YOUTH SERVS. REV. 1143, 1148–49 (2013), <https://www.sciencedirect.com/science/article/abs/pii/S0190740911000983>; Catherine Roller White et al., *Alcohol and Drug Use Among Alumni of Foster Care: Decreasing Dependency Through Improvement of Foster Care Experiences*, 35 J. BEHAV. HEALTH SERVS. & RSCH. 419, 420 (2008), <https://pubmed.ncbi.nlm.nih.gov/17647108/>; Mark E. Courtney et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Ages 23 and 24*, CHAPIN HALL AT THE UNIV. OF CHI. (2010), at 22-36, 44–45, 49-53, 66-69, <https://www.chapinhall.org/wp-content/uploads/Midwest-Eval-Outcomes-at-Age-23-and-24.pdf>.

¹¹⁶ National Youth in Transition Database Outcomes 2020 Cohort Wave 1 (analysis by Children’s Rights’ Advocacy & Policy Department).

V. TITLE VI VIOLATIONS

87. NAACP Minneapolis submits this Complaint, by its counsel below, against the State, seeking investigation for their separate and collective violations of Title VI and its implementing regulations.

88. The State has failed to remedy the historic and ongoing harms caused by its child welfare system, and the discrimination against and disparate impacts upon Minnesota's Black families have been egregious and shocking. This crisis cries out for investigation and rapid and decisive federal action.

89. Minnesota's convening of yet another group to study these discriminatory and disproportionate harms¹¹⁷ does not reduce HHS OCR responsibility to investigate the State's compliance with the civil rights laws, in keeping with the commitment of the HHS Office of Civil Rights.

90. The facts and evidence asserted above overwhelmingly support an immediate investigation into the State's pattern and practice of utilizing federal funds to surveil and separate Black families, and specifically in Hennepin and Ramsey counties, and violations of Title VI and HHS's implementing regulations, which prohibit federal-funding recipients from discriminating against, or engaging in behavior that disproportionately harms, protected groups. 42 U.S.C. § 2000d; 45 C.F.R. § 80.3(b)(2).

VI. RELIEF REQUESTED

Complainants respectfully request that the HHS-OCR:

- a) Immediately accept this Complaint for investigation.

¹¹⁷ Jeffrey Meitrodt, *As Minnesota considers child protection reforms, should responsibility fall to state or counties?* STAR TRIBUNE (January 11, 2024, 4:00PM), https://m.startribune.com/as-minnesota-considers-child-protection-reforms-should-responsibility-fall-to-state-or-counties/600334247/?utm_medium=email&utm_source=govdelivery&clmob=y&c=n&clmob=y&c=n.

b) Undertake a thorough investigation of the State's discriminatory actions, including but not limited to the three drivers and practices outlined herein: law enforcement emergency holds, lack of supportive services and the use of SDM SA and SDM FRA tools.

c) Issue a formal Notice of Noncompliance and/or otherwise act to compel compliance with Title VI of the Civil Rights Act.

d) Require the State to develop procedures to assure the consideration and documentation (including data) of racial equity issues in its statewide and county Child Protective Services system.

NAACP Minneapolis appreciates your prompt and thorough consideration of this Complaint.

Respectfully submitted,

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