UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2025

(Argued: December 1, 2025 Decided: May 19, 2026)

Docket No. 24-3042

K.W. on behalf of himself and his infant child K.A.,
Plaintiffs-Appellants,

v.

THE CITY OF NEW YORK, AMAR MOODY, CHILDREN'S AID SOCIETY, BRIAN GOMEZ,
Defendants-Appellees.

Before: SACK AND PÉREZ, *Circuit Judges*, BRICCETTI, *District Judge.*[*]

Appeal from final judgment of the United States District Court for the Southern District of New York (Buchwald, *J.*) dismissing all claims brought by a father who had lost custody of his infant son, both on his own behalf and on behalf of the child.

When newborn K.A. was six days old, the Administration for Children's Services separated him from the custody of his father, K.W., without a court order. This removal was allegedly motivated by concerns about the mother's neglect and abuse of other children from other fathers. Subsequently, officials obtained an order from the family court, but only as a result of alleged omissions and false statements in their petition. The resulting order thus ignored the father. K.W. was granted limited visitation rights and did not regain custody for nearly three years.

The district court concluded that the plaintiffs had not successfully stated a claim. Assuming the facts alleged in the complaint are true, as we must on

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[*] Vincent L. Briccetti of the United States District Court for the Southern District of New York, sitting by designation.

a motion to dismiss, we largely disagree. The plaintiffs have stated claims for unlawful seizure under the Fourth Amendment and for a violation of the right to procedural due process under the Fourteenth Amendment on behalf of the infant, K.A. We further conclude that qualified immunity does not shield the individual defendant Moody. But we agree that the father, K.W.'s, procedural due process claim should be dismissed, as should all claims against both the Children's Aid Society and the individual defendant Brian Gomez.

REVERSE the district court's judgment in part and REMAND for further proceedings consistent with this opinion. AFFIRM in part.

ALAN E. SCHOENFELD (Sophia Caroline Brooks, Tom White, Allyson Pierce, Sean Kim, Samuel E. Weitzman, Maria Elizabeth Trujillo, Austin Chavez, Hannah Hoffman, Dan Toubman, Hailey E. Kruger, *on the brief*), Wilmer Cutler Pickering Hale and Dorr LLP, Boston, MA & New York, NY *for Plaintiffs-Appellants*;

DAVID SHALLECK-KLEIN (Lewis Bossing, Eliza J. McDuffie, Anna Belle Newport), Family Justice Law Center, *for Plaintiffs-Appellants*;

EVAN BRUSTEIN, Brustein Law PLLC, *for Plaintiffs-Appellants*;

MAYA RISMAN, Risman & Risman P.C., New York, NY, *for Plaintiffs-Appellants*;

SHERYL A. SANFORD, Black Marjieh & Sanford LLP, Elmsford*for Appellees The City of New York & Amar Moody*;

PATRICIA A. ROONEY, The Law Offices of James Cammarata, Oyster Bay, NY, *for Appellees Children's Aid Society & Brian Gomez.*

SACK, *Circuit Judge*:

On October 18, 2022, New York City resident K.W. brought this action on behalf of himself and his son, K.A., in the United States District Court for the Southern District of New York.[1] The defendants are the City of New York and Amar Moody, an employee of the New York City Administration for Children's Services ("ACS"), together referred to as the "City Defendants," and the nonprofit Children's Aid Society ("CAS") and its caseworker Brian Gomez, together referred to as the "Nonprofit Defendants."

According to the allegations in the plaintiffs' complaint (the First Amended Complaint is cited throughout as the "FAC"), K.A. was born on or about March 2, 2017, in Bronx Lebanon Hospital, Bronx County, New York. On March 7, 2017, when K.A. was five days old and living with K.W., Moody visited their home to conduct a "welfare check." Special App'x 4 (citing FAC ¶ 23).[2]

[1] The plaintiff-father has throughout this litigation been identified by his initials, "K.W."; his infant son, on whose behalf he also brings this suit, by his initials, "K.A."
[2] Citations to the Special Appendix are to the district court's opinion, which has not been published.

During the visit, Moody asked K.W. to bring his son to ACS's office the following day.

K.A.'s *mother* was suspected by the ACS of abuse and neglect of her ten other children, all fathered by men other than K.W. *See* Special App'x 1. She had had interactions with ACS in connection with her alleged mistreatment of these children. But K.W., K.A.'s *father*, had not been accused of any abuse or neglect—with respect to K.A. or any other child.

The following day, March 8, 2017, K.W. brought K.A. to ACS's office as instructed. Soon after they arrived, ACS employees physically removed K.A. from K.W.

Later that day, the City Defendants initiated a child protective proceeding in New York County Family Court. In their petition, they named K.A.'s mother as the respondent, charging her with neglect based on her past ACS history, including alleged findings of neglect and terminations of parental rights in connection with her other children. K.W., however, was not a party to the proceeding. He was advised that he would be a "Non-Respondent," meaning that he was "accused of no wrongdoing or child protective concern." Special App'x 5 (quoting FAC ¶ 43). Indeed, the petition made no allegations of

wrongdoing against K.W. at all. Thus, the family-court order that the court subsequently issued disregarded his role in caring for K.A.

Although an allegation of unfitness was never filed against K.W., K.A. was not returned to his father K.W.'s custody for nearly three years—from his removal on March 8, 2017, until they were reunited on December 16, 2019. K.W. was granted only limited visitation and was required to complete a "service plan" to attempt to earn his parental rights.

The district court (Buchwald, *J.*) granted a motion to dismiss all of the plaintiffs' claims and decided that the individual defendant Moody was entitled to qualified immunity.

On appeal, the plaintiffs have narrowed their case to two claims:

First, they contend that Moody's removal of K.A. from his father's care without a court order or the requisite emergency circumstances violated K.A.'s Fourth Amendment protection from unreasonable seizure; and that Moody's subsequent material misrepresentations to, and withholding of key facts from, the family court also violated K.A.'s Fourth Amendment rights.

Second, they maintain that by removing K.A. without a pre-deprivation hearing or any evidence of immediate danger to K.A., the City Defendants

deprived K.A. of his right to procedural due process under the Fourteenth Amendment. They further propose that, by keeping K.A. in state custody for nearly three years without initiating proceedings against K.W., Moody deprived both K.W. and K.A. of notice and an opportunity for a full hearing to adjudicate K.W.'s fitness as a parent, violating the reciprocal due-process rights of both parent and child. The plaintiffs have also pursued a parallel procedural Due Process claim against the Nonprofit Defendants.[3]

We emphasize that this is an appeal from the grant of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), which requires us to construe a plaintiff's "complaint liberally, accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in the plaintiff's favor." *Moreira v. Soci̇́té Gé̇nérale, S.A.*, 125 F.4th 371, 387 (2d Cir. 2025). With this in mind, we largely disagree with the district court and reverse the grant of the motion regarding most of the plaintiffs' claims. We also conclude that the district court erred by deciding that Moody was entitled to qualified immunity. Regarding the

[3] CAS is a not-for-profit corporation and "authorized agency"—as defined by New York Social Services Law § 371—that works to place children in foster care and is "responsible for the appointment, training, supervision, promotion and discipline of case workers and supervisory case workers," including Gomez, who was employed by CAS as a Case Planner and was assigned to K .A.'s case. Special App'x 3 (citing FAC ¶¶ 14–17).

claims against the City Defendants, we reverse the district court's judgment and remand the matter to the district court for further proceedings consistent with this opinion. We do agree, however, that the claims against the Nonprofit Defendants should be dismissed, and to that extent, we affirm the district court's judgment.[4]

BACKGROUND

I. Factual Background

Generally, in adjudicating a motion to dismiss, the court must "accept[] as true the factual allegations in the complaint and draw[] all inferences in the plaintiff's favor." *Biro v. Conde Nast*, 807 F.3d 541, 544 (2d Cir. 2015). But here the district court relied on documents from the family court to recast the narrative presented in the FAC.[5] The factual landscape looks substantially

[4] Unless otherwise indicated, we omit all internal quotation marks, alteration marks, emphases, footnotes, and citations when quoting cases.

[5] This recasting depended on two related propositions: judicial notice and the integral document rule. *See* Special App'x 2–3, 15. Regarding judicial notice, we have explained that a court may take judicial notice of documents filed in other courts "not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings." *Glob. Network Commc'ns, Inc. v. City of New York*, 458 F.3d 150, 157 (2d Cir. 2006); *accord Dixon v. von Blanckensee*, 994 F.3d 95, 103 n.6 (2d Cir. 2021) ("We take notice only of the indisputable fact that the state court dismissed King's claims on specified grounds. . . ."). Regarding the integral document rule, a document may only be considered "integral" to a complaint in a "narrow set of circumstances,

different if we take these disputed documents into account. We conclude that, although it was permissible to note the existence of these documents, it was not proper to use them for the truth of their contents.[6] Thus, the factual background we present here is drawn from the plaintiffs' operative complaint and does not accept the facts detailed in the family court documents as true.

According to the operative complaint, on or about March 2, 2017, K.A. was born in Bronx Lebanon Hospital, Bronx County, New York. He was the only child of his father, K.W. Although K.A.'s mother had an "extensive" history of interactions with child-protective services regarding her other children by other fathers, Appellants' Br. at 5 (citing FAC ¶ 198), K.W. had no such history. When K.A. was born, K.W. was present at the hospital, and the same day, he executed an acknowledgement of paternity. After the infant was discharged from the

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where the plaintiff relies heavily on the document's terms and effect in pleading his claims and there is no serious dispute as to the document's authenticity." *United States ex rel. Foreman v. AECOM*, 19 F.4th 85, 107 (2d Cir. 2021). The family court documents do not fit into either of these exceptions.

[6] The district court could have properly converted the motion into a motion for summary judgment and permitted adversarial discovery. *See Pearson v. Gesner*, 125 F.4th 400, 407 (2d Cir. 2025) (noting that a court "must either ignore [extraneous] materials and resolve the motion [to dismiss] on the basis of the complaint alone or convert the motion to one for summary judgment and give the parties the opportunity to conduct appropriate discovery"). It did not do so.

hospital, he was released into K.W.'s custody, and the new father brought K.A. back to his residence.[7] Appellants' Br. at 5 (citing FAC ¶¶ 21–23).

Five days after the child was born, Moody and another ACS employee allegedly appeared at K.W.'s residence to conduct a "welfare check" with respect to K.A. Special App'x 4 (citing FAC ¶ 23).[8] Although the two caseworkers gave no reason for the visit, K.W. allowed them to inspect his apartment and examine K.A. During their visit, the caseworkers did not indicate to K.W. that they doubted his ability to protect K.A. or care for the child's safety. Before leaving, they allegedly instructed K.W. that he, K.A., and K.A.'s mother were required to attend a meeting at ACS's office the following day. But they allowed the child to remain with his father overnight, suggesting that, as of March 7, 2017, they did not regard K.A.'s safety as requiring immediate removal from K.W.'s custody.

[7] The FAC does not make clear whether K.A.'s mother also lived in the same residence. *See, e.g.*, Joint App'x 23 (FAC ¶ 45), 28 (FAC ¶ 93).

[8] ACS automatically initiates a child-protective "investigation" whenever a mother with other children in foster care gives birth. *See* Appellants' Br. at 5 n.2 (citing N.Y.C. Admin. for Children's Servs., *Child Safety Alert #14: Safely Planning for Newborns or Newly Discovered Children Whose Siblings Are in Foster Care* l (June 8, 2008), https://perma.cc/L2CZ-Z64X).

The next day, March 8, 2017, K.W. brought his son to ACS's office.[9] Moody and another ACS employee allegedly instructed him to leave K.A. with ACS staff during the meeting. After K.A. had been separated from his father, ACS personnel informed K.W. that his son was being removed from his custody. They gave K.W. no chance to say goodbye.

Moody did not assert any wrongdoing by K.W., even though, according to the plaintiffs, Moody knew that K.W. was K.A.'s father. Appellants' Br. at 6 (citing FAC ¶¶ 32, 40). Instead, Moody told K.W. that he was removing K.A. from K.W.'s custody on an emergency basis—without prior judicial authorization—because of K.A.'s *mother's* history with ACS.[10] Despite these purported concerns, moreover, Moody had not sought a court order authorizing removal during the six days between K.A.'s birth and the removal.[11]

[9] There is no indication that K.A.'s mother attended this meeting.

[10] Although K.W. alleges that the defendants failed to consider whether K.A.'s staying with K.W. was in K.A.'s best interest, he does acknowledge that they told him that his home was too small for him to live there with K.A. Special App'x 5 (quoting FAC ¶¶ 49, 51).

[11] Nor, as the plaintiffs assert, did the City Defendants explore alternatives. They did not, for instance, seek an order of protection, barring contact with K.A.'s mother but allowing K.W. to care for his son. Appellants' Br. at 6–7 (citing FAC ¶¶ 47–48, 60–61).

Later that day, March 8, 2017, the City Defendants filed a child protective petition in the New York County Family Court. The petition named K.A.'s mother as the respondent, charging her with neglect based on her past ACS history, which the City Defendants alleged included findings of neglect and terminations of parental rights with respect to her other children. K.W. was advised that he would be a "Non-Respondent," meaning that he was "accused of no wrongdoing or child protective concern." Special App'x 5 (quoting FAC ¶ 43). The petition asserted no factual findings with respect to K.W.

In the petition, the City Defendants alleged that, "pursuant to Family Court Act Section (1024)," they removed K.A. because "[t]here was not sufficient time to obtain a court order." Joint App'x 147. They attached an addendum to the petition stating that "[t]he circumstances necessitating the removal of the child prior to filing a neglect or abuse petition are as follows," but then left the "as follows" section blank. Joint App'x 152. Similarly, they left blank the section which called for an explanation of why "there was insufficient time to obtain a court order pursuant to [Family Court Act Section] 1022." Joint App'x 153. They also failed to complete the section where they were instructed to describe

their "[r]easonable efforts to prevent or eliminate the need for the above-described removal" before the hearing. Joint App'x 154.

Then, at the family-court appearance, which also took place on March 8, 2017, the City Defendants requested that K.A. be remanded to government custody on an ongoing basis. They claimed (falsely according to the plaintiffs) that continued removal was necessary to avoid imminent risk to K.A.'s life or health. Appellants' Br. at 8 (citing FAC ¶ 58). The family court granted this request on the understanding that, based on ACS's allegations against the *mother*, K.A.'s remaining in K.W.'s (the *father's*) custody would be "contrary to [K.A.'s] welfare and best interests," Joint App'x 154, because K.A.'s *mother* had "not engaged in services to address the risk posed to the child's siblings," Joint App'x 155. Making no mention of the fact that K.W. had been caring for K.A. since his birth, the family court found that "there is no suitable person related to the child with whom [K.A.] may appropriately reside." Joint App'x 156. K.A. was remanded to ACS custody and placed in "non-kinship" foster care.

For nearly three years, from that day, March 8, 2017, until December 16, 2019, K.W. did not have custody of his son. The child was housed in a "non-kinship" foster home operated by CAS. At the beginning of this period of

separation, K.W. was limited to "a few hours of supervised visits [with K.A.] per week." Special App'x 7 (citing FAC ¶ 67).

On April 6, 2017, about a month after the removal, the family court entered an order continuing K.A.'s temporary placement in ACS custody until the completion of the next permanency hearing or pending further order of the court. Although K.W. had executed an acknowledgement of paternity at the hospital, when he appeared at the family court in April, the court instructed him to file a paternity petition.[12] Even though K.W. had not been accused of misbehavior, he was also required to complete a "service plan," consisting of numerous parenting and safety classes and assessments. K.W. completed the program, and over time, the family court expanded K.W.'s visitation opportunities. CAS reported positive bonding between the two, noting that K.A. appeared excited and joyful when K.W. entered the room. But for long after K.W. had completed his assigned program, the child remained in foster care.

It was not until December 2019 that the family court discharged K.A. back into his father's care. K.A. was nearly three years old when K.W. regained

[12] K.W. attempted to file this petition that same day, but it was dismissed without prejudice. FAC ¶ 69. On or about May 26, 2017, K.W. successfully refiled his petition before the New York County Family Court. FAC ¶ 73.

custody—after two years, eight months, and seven days in non-kinship foster care. The petition for full custody that he had filed in August 2018 was not granted until August 14, 2020. Appellants' Br. at 10 (citing FAC ¶¶ 123–24). ACS never alleged that K.W. was unfit.

K.W. was later diagnosed with dysthymic disorder, a type of chronic depression; the plaintiffs allege that this depression stemmed from the separation and years-long fight for reunification. They further allege that both K.W. and K.A. were harmed by the sudden, prolonged family separation, which made it difficult for them to bond and caused psychological damage, and emotional pain and suffering. *Id.* (citing FAC ¶¶ 202–04).

II. Procedural History

On October 18, 2022, K.W. commenced this action in the United States District Court for the Southern District of New York on behalf of himself and K.A. Joint App'x 2–3. The plaintiffs filed their FAC on May 26, 2023. Joint App'x 6.[13]

[13] In the FAC, the plaintiffs asserted nine causes of action: (1) interference with the right to intimate association against all defendants; (2) federal false arrest asserted only by K.A. against Moody; (3) race discrimination under the Fourteenth Amendment against the City; (4) race discrimination under Article I, Section 11 of the New York

The City Defendants moved to dismiss all claims against them except K.A.'s substantive-due-process claim. Joint App'x 56–85. But the Nonprofit Defendants elected to answer. Joint App'x 48–55.

After the motion was fully briefed, the district court ordered the City Defendants to provide "the Family Court filings and orders referenced in the First Amended Complaint and motion papers." Joint App'x 138. The court said it was soliciting these documents "[f]or purposes of resolving the City Defendants' pending motion to dismiss." *Id.* Although the City Defendants' submission included documents not referred to in the FAC or motion papers, the court did not invite a response from the plaintiffs.

The district court granted the City Defendants' motion to dismiss. In addition, acting *sua sponte*, the court also dismissed the sole remaining claim against the City Defendants: K.A.'s substantive due process claim. *See* Special App'x 2; 17 n.9, 44–45. The court dismissed the procedural due process and

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Constitution against the City; (5) violation of procedural due process under the Fourteenth Amendment against all defendants; (6) procedural due process under the New York Constitution against all defendants; (7) gender discrimination in violation of the New York City Human Rights Law ("NYCHRL"), N.Y.C. Admin. Code §§ 8-101 *et seq.*, against all defendants; (8) race discrimination in violation of the NYCHRL against all defendants; and (9) another procedural due process violation under the Fourteenth Amendment against Moody.

Fourth Amendment claims based on K.A.'s initial removal and rejected K.A.'s post-removal claims for failure to rebut the presumption of probable cause. Special App'x 22–36.

Finally, the court ordered the plaintiffs to show cause why their claims against the Nonprofit Defendants should not be dismissed for similar reasons. Special App'x 46–47. After an exchange of letter briefs, the court dismissed these claims on substantially the same grounds on which it dismissed the plaintiffs' claims against the City Defendants. Special App'x 48–52.

This appeal followed. The plaintiffs appeal only the dismissal of K.A.'s Fourth Amendment seizure claim against Moody, K.A.'s and K.W.'s procedural-due-process claims against Moody, and K.A.'s and K.W.'s procedural due-process claims against the Nonprofit Defendants. Appellants' Br. at 11 n.3. Although the plaintiffs initially pleaded K.A.'s Fourth Amendment seizure claim as a false-arrest claim, the district court appropriately treated the false-arrest claim as a Fourth Amendment seizure claim. Special App'x 28–29.[14]

[14] We therefore refer to this claim as K.A.'s Fourth Amendment seizure claim.

STANDARD OF REVIEW

We "review *de novo* a district court's dismissal of a complaint pursuant to Rule 12(b)(6), construing the complaint liberally, accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in the plaintiff's favor." *Moreira*, 125 F.4th at 387. In considering a Rule 12(b)(6) motion to dismiss, "the court's task is to assess the legal feasibility of the complaint; it is not to assess the weight of the evidence that might be offered on either side." *Lynch v. City of New York*, 952 F.3d 67, 75 (2d Cir. 2020). This court also "review[s] a district court's determination as to qualified immunity on a motion to dismiss *de novo*." *Liberian Cmty. Ass'n of Conn. v. Lamont*, 970 F.3d 174, 186 (2d Cir. 2020). Since we are reviewing a motion to dismiss, although the plaintiffs' allegations have not yet been proven, we proceed as if the truth of the plaintiffs' account of the facts has been established.

DISCUSSION

"Parents . . . have a constitutionally protected liberty interest in the care, custody and management of their children." *Tenenbaum v. Williams*, 193 F.3d 581, 593 (2d Cir. 1999); *see also Southerland v. City of New York*, 680 F.3d 127, 142 (2d Cir. 2012); *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000) (plurality opinion)

(collecting cases about the "fundamental right of parents to make decisions concerning the care, custody, and control of their children"). Children have a parallel right—a "constitutionally protected liberty interest in not being dislocated from the emotional attachments that derive from the intimacy of daily family association." *Kia P. v. McIntyre*, 235 F.3d 749, 759 (2d Cir. 2000).

When children are removed from their parents' care, the removal generally triggers two categories of claims. First, a child may bring a Fourth Amendment claim, which a parent has standing to assert on the child's behalf. *Southerland*, 680 F.3d at 143.[15] Second, parents and children may assert Fourteenth Amendment claims "under a theory of denial of procedural due process." *Id.* at 142. With both, the analysis is bifurcated: Distinct considerations are implicated before and after a family court order, and we must engage in separate analyses of qualified immunity with respect to each.

[15] This supersedes any Fourteenth Amendment substantive due process claim: "Where another provision of the Constitution provides an explicit textual source of constitutional protection, a court must assess a plaintiff's claims under that explicit provision and not the more generalized notion of substantive due process." *Kia P.*, 235 F.3d at 757–58.

I. Fourth Amendment Seizure[16]

"[W]hen a child is taken into state custody, his or her person is 'seized' for Fourth Amendment purposes." *Id.* at 143. The Fourth Amendment ensures "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and further mandates that "no Warrants shall issue, but upon probable cause." U.S. Const. amend. IV. "To establish that a seizure violated the Fourth Amendment, a plaintiff must show that the seizure was unreasonable—*i.e.*, that it was not supported by probable cause." *Smith v. Tkach*, 844 F. App'x 414, 416 (2d Cir. 2021) (summary order) (citing *Tenenbaum*, 193 F.3d at 602); *see also Mara v. Rilling*, 921 F.3d 48, 69 (2d Cir. 2019) ("For a seizure to be reasonable, it must generally be supported by probable cause."); *New York v. Class*, 475 U.S. 106, 117 (1986) ("This test generally means that searches must be conducted pursuant to a warrant backed by probable cause."). A seizure "without a warrant bypasses the safeguards provided by an objective predetermination of probable cause, and substitutes instead the far less reliable procedure of an after-the-event justification." *Beck v.*

[16] Because these claims belong only to the child, there is no issue with respect to the expiration of the statute of limitations. It is tolled until he reaches maturity. *See* N.Y. C.P.L.R. § 208.

State of Ohio, 379 U.S. 89, 96 (1964). Although the warrant requirement has exceptions, they are narrow.

"In the context of a seizure of a child by the State during an abuse investigation," a family court order can serve as "the equivalent of a warrant." *Tenenbaum*, 193 F.3d at 602; *see also Southerland*, 680 F.3d at 144 n.15. Thus, ACS officers may separate a child from a "custodial parent" by first obtaining an order from the family court, based on probable cause, authorizing the separation. *See Nicholson v. Scoppetta*, 344 F.3d 154, 159 (2d Cir. 2003). Where the state removes a child without a court order or parental consent, there must be extraordinary circumstances that justify a departure from the baseline warrant requirement. *Southerland*, 680 F.3d at 157.

As the district court rightly pointed out, "the probable cause analysis takes on a different shape depending on whether a 'neutral magistrate,' such as a family court judge, has entered an order authorizing the seizure in question." Special App'x 29 (citing *Smith*, 844 F. App'x at 416). Therefore, to evaluate K.A.'s Fourth Amendment claim, we divide it into two parts: first, K.A.'s allegedly unlawful seizure before the Family Court entered an order on March 8, 2017, separating him from his father for several hours before the issuance of the order

and, second, his separation from K.W. after the issuance of that order, which lasted for nearly three years. Special App'x 29–30. With respect to both claims, we conclude that, if the underlying allegations are substantiated, the City Defendants violated K.A.'s Fourth Amendment rights. Moreover, as explained in Section III below, the City Defendants are not entitled to qualified immunity.

A. Pre-Order Seizure

Since we first addressed the issue in *Tenenbaum*, 193 F.3d at 603–05, we have emphasized that the critical question when evaluating ACS's extrajudicial removal of a child is "whether there [was] time to obtain a court order" beforehand, *id.* at 594–95. "If the danger to the child is not so imminent that there is reasonably sufficient time to seek prior judicial authorization, *ex parte* or otherwise, for the child's removal, then the circumstances are not emergent; there is no reason to excuse the absence of the judiciary's participation in depriving the parents of the care, custody and management of their child." *Id.* at 594.

But "[t]his Court . . . has yet to articulate definitively the legal standard that applies to a Fourth Amendment unlawful-seizure claim brought by a child alleging that his or her removal without parental consent or prior judicial authorization was not supported by sufficient cause." *Southerland*, 680 F.3d at

157. In *Tenenbaum*, we described, albeit in dicta, three possible "modes of determining whether a seizure was 'reasonable' under the Fourth Amendment . . . in cases where the state seizes a child in order to prevent abuse or neglect": (i) a "probable cause" standard, (ii) an "exigent circumstances" standard, and (iii) a less stringent "special needs" standard.[17] *Kia P.*, 235 F.3d at 762 (citing and discussing *Tenenbaum*, 193 F.3d at 603–05). We then, in *Southerland*, seemed to narrow the options to two: (i) a "probable-cause" standard and (ii) an "exigent-circumstances standard." *Southerland*, 680 F.3d at 159 (suggesting that a "special needs" approach would not apply and citing precedent from other circuits concluding such a standard is "never applicable in this context"); *see also Schweitzer v. Crofton*, 935 F. Supp. 2d 527, 551 (E.D.N.Y. 2013) (noting that the Second Circuit has not definitively embraced a standard and relying on exigent circumstances).

In practice, however, the two remaining standards, "probable cause" and "exigent circumstances," require the same showing. Both require the presence of emergent, imminent danger to the child, such that there is no time to obtain a

[17] This standard would have subjected the removal to a "less stringent reasonableness requirement" due to the "special needs" of child protection agencies, *Kia P.*, 235 F.3d at 762, but it appears that we have never applied this standard.

court order without endangering the child's health and safety. *See Tenenbaum*, 193 F.3d at 604–05. Under either, to engage in a "reasonable" seizure without a court order, an agent of the state needs an objective basis to conclude that there is immediate risk of harm to the child that forecloses the possibility of obtaining a court order before removal. As we explained in *Tenenbaum*, if "there [i]s reasonably sufficient time, entirely consistent with [the child's] safety, to seek a court order," then "there [i]s no emergency" to justify a pre-order removal for purposes of the Fourth Amendment. *Id.* at 595. The court must therefore focus on the presence or absence of exigent circumstances.

"Reasonably sufficient time" is the key phrase. In *Tenenbaum*, for instance, we resolved that the warrantless removal of a five-year-old child was unconstitutional because "a court order could have been obtained in one day," but "[t]he decision to remove [the child] . . . was made as early as Monday," and "[s]he was not taken . . . until Tuesday at noon." *Id.* at 595. Thus, "a properly instructed jury could [have] conclude[d] that at the time the caseworkers decided

to remove [the child], there was reasonably sufficient time, entirely consistent with [the child]'s safety, to seek a court order." *Id.*[18]

The defendants make two arguments as to why the initial removal was appropriate: First, they suggest that exigent circumstances justified the removal and, second, they contend that the subsequent entry of the Removal Order created a backward-looking presumption that there had been probable cause for the initial removal. We find neither argument convincing.

Instead of recounting the relevant exigent circumstances, the district court noted that "the exigent circumstances standard employed here, in the Fourth Amendment context, bears a striking resemblance to the emergency circumstances exception used to assess plaintiffs' procedural due process

[18] We are not alone in focusing on the time it would take to obtain a court order. There is a line of cases in the Ninth Circuit denying qualified immunity to child services officials who conducted removals without obtaining warrants when they would have had time to seek a court order. *See Rogers v. County of San Joaquin*, 487 F.3d 1288, 1295–98 (9th Cir. 2007) (concluding dire conditions, even if dangerous enough to justify a court-ordered removal, did not present an imminent risk "during the few hours that it would take [child services officials] to obtain a warrant," and emphasizing agents had "delayed in investigating the case and in removing the children," and their "prior willingness to leave the children in their home militate[d] against a finding of exigency"); *see also Kirkpatrick v. County of Washoe*, 843 F.3d 784, 790 (9th Cir. 2016) (denying qualified immunity to child services officials when they removed a newborn from her mother's care at the hospital where the circumstances did not provide "reasonable cause to believe that the child [was] likely to experience serious bodily harm in the time that would be required to obtain a warrant").

claims," and thus relied on the factual account in their procedural due process section (here discussed below). Special App'x 32; *see E.D. ex rel. V.D. v. Tuffarelli*, 692 F. Supp. 2d 347, 366–67 (S.D.N.Y. 2010) ("Whatever Fourth Amendment analysis is employed, then, it results in a test for present purposes similar to the procedural due-process standard."), *aff'd sub nom. E.D. ex rel. Demtchenko v. Tuffarelli*, 408 F. App'x 448 (2d Cir. 2011) (summary order). But the district court pointed to no facts that indicate why the officers felt an acute sense of urgency justifying removal before they could obtain a court order.[19] Citing family court documents, the court simply pointed to doubts about K.W.'s paternity, along with "well-founded concerns that K.W. would not be able to keep K.A. physically distanced from his mother, who was reasonably considered to be the source of imminent harm to K.A." Special App'x 27. The facts, even as asserted by the defendants, do not support the conclusion that the officers did not have

[19] As an initial matter, the court suggested that the New York Family Court Act § 1027 "allows a child to be removed 'without court order' so long as a family court hearing is held 'no later than the next court day after the filing of a petition.'" Special App'x 24 (quoting N.Y. Fam. Ct. Act § 1027(a)(1)). But this provision is simply a backstop, mandating that "[i]n any case where the child has been removed without court order," there must then be a hearing. N.Y. Fam. Ct. Act § 1027(a)(1). It says nothing about when officials may conduct such a removal in the first place. Regardless, "our assessment of the lawfulness of the removal of [K.A.] . . . is controlled by federal, not state, standards." *Southerland*, 680 F.3d at 157 n.26.

sufficient time to obtain a family court order. This is true regardless of whether the officers considered removal to be urgent.

The events leading to K.A.'s removal began five days after he was born, *i.e.*, on Tuesday, March 7, 2017, when Moody and another ACS employee appeared at K.W.'s residence to perform a "welfare check." Special App'x 4 (citing FAC ¶ 23). Although they saw K.W. and K.A.'s living situation, Moody and the other officer did not decide while in K.A.'s home that immediate removal was necessary to prevent imminent risk to the child. Instead, they departed, leaving K.W. with responsibility for bringing K.A. to ACS's office the following day. Consistent with ACS's instructions, the child remained with his father in their home that night. The next day, K.W. brought K.A. to the meeting. Only at this point did the defendants assume custody of K.A. Nothing in the operative complaint or in the family court documents suggests that the officers acquired new information between their "welfare check" and the child's removal the next afternoon. *Cf. Hollenbeck v. Boivert*, 330 F. Supp. 2d 324, 327, 332–34 (S.D.N.Y. 2004) (finding that lack of exigency was sufficiently alleged where "lag of time" existed between home visit and warrantless removal later that day). Indeed, later the same day, the defendants filed a petition for removal and

obtained a court order, suggesting that it would have been feasible to obtain such an order before the removal. This undercuts the defendants' assertion that circumstances were exigent.

Advised of these facts, a properly instructed jury could have concluded that "there was reasonably sufficient time, entirely consistent with [K.A.]'s safety, to seek a court order" before taking him into state custody. *Tenenbaum*, 193 F.3d at 595. There would have been time for the defendants to seek a court order on Tuesday, March 7, after they completed their "welfare check," or on the following Wednesday morning, March 8.[20] And they had time to seek a court order while K.A. and K.W. were in ACS's office, where K.A. was at virtually no risk, let alone an "imminent" one. *Cf. Kirkpatrick*, 843 F.3d at 792 (concluding that a child's welfare was not in "jeopardy" for Fourth Amendment purposes in a maternity ward). It took the defendants only hours to obtain a court order after they filed their petition requesting one. As courts have repeatedly concluded, when a caseworker obtains a court order several hours after an extrajudicial seizure, that is evidence that no exigency existed. *See, e.g.*, *Southerland v. Woo*, 44

[20] The defendants also likely had time to seek a court order in the first six days of K.A.'s life, when they were already aware of his mother's ACS history.

F. Supp. 3d 264, 277 (E.D.N.Y. 2014) (concluding that the caseworker "knew or should have known that the plaintiff children would not have been in danger" if he had waited to carry out the removal until he could file an application with the Family Court the next day), *aff'd*, 661 F. App'x 94 (2d Cir. 2016) (summary order); *Mabe v. San Bernardino Cnty., Dep't of Pub. Soc. Servs.*, 237 F.3d 1101, 1108 (9th Cir. 2001) ("[I]t is difficult to understand how the further delay of a few hours necessary to obtain the warrant would have put [the child] in imminent danger[.]").

The City Defendants also argue that the subsequent entry of a court order creates a "presumption of probable cause," which can be read retrospectively to the time of the initial removal. But their theory appears to be made up from whole cloth. Indeed, the district court case that they cite, see City Br. at 19 (citing *Estiverne v. Esernio-Jenssen*, 833 F. Supp. 2d 356, 379 (E.D.N.Y 2011)), relies on no such theory. And there is no reason to conclude that the family court's subsequent order continuing K.A.'s removal bears on the constitutionality of the initial warrantless seizure. Nothing in the Family Court Act requires family courts to address the legality of an emergency removal, and in its order, the family court made no findings about whether K.A. was at imminent risk when

the initial warrantless removal took place. *See* Joint App'x 155–57. Moreover, the family court said nothing about whether ACS had sufficient time to seek a court order before effecting the removal. *See id.* Thus, the order is irrelevant to the constitutionality of the initial removal, which turned not on the ultimate need to separate the child from his parents, but on whether the officials could safely wait to seek a court order before removing K.A. from his father's care. *See Tenenbaum*, 193 F.3d at 595 (emphasizing question of sufficient time to obtain a court order); *see also Kirkpatrick*, 843 F.3d at 791 (concluding that there was no evidence there would be harm in time it would take to obtain an order).

Moreover, to the extent that the district court concluded that there were exigent circumstances—a conclusion which, as we have explained, we think was flawed—the threat stemmed from the mother, not the father. But K.A. was seized while under his father's care. The record gives no indication that K.W. posed any threat to K.A. or that officers had probable cause to believe that exigent circumstances justified the removal of his child from his care.

B. Post-Order Seizure

K.A.'s unlawful seizure claim is not composed only of his allegation that the pre-order seizure violated his Fourth Amendment rights. The plaintiffs also

claim that the child's yearslong separation from K.W., taking place after the issuance of the Family Court order, represents a Fourth Amendment violation.

That order is significant because its entry gives rise to a "presumption of probable cause" for the seizure that "places upon the plaintiff the burden of pleading facts sufficient to overcome it."[21] *See Johnson v. City of New York*, 20-CV-3038 (GBD) (BCM), 2022 WL 4364879, at *4 (S.D.N.Y. Sept. 21, 2022) (citing cases regarding the presumption of probable cause); *see also V.A. v. City of New York*, 22-CV-773 (LJL), 2023 WL 6254790, at *8 (S.D.N.Y. Sept. 26, 2023) (concluding that family court order directing the temporary removal of an infant "establishes a presumption of probable cause"). [22]

Here, however, the plaintiffs have met their burden. "[W]hen caseworkers, in their petition for removal, make intentionally or recklessly false statements that are necessary to a court's finding of probable cause," such behavior "subject[s] [them] to Fourth Amendment liability." *Estiverne*, 833 F.

[21] "[T]he Fourth Amendment requires a prompt judicial determination of probable cause as a prerequisite to an extended pretrial detention following a warrantless arrest." *County of Riverside v. McLaughlin*, 500 U.S. 44, 47 (1991).

[22] It seems that we have never squarely addressed whether a family court order creates a presumption of probable cause in this context. We agree with the district courts that have addressed this question. For the reasons explained herein, however, plaintiffs have pled allegations sufficient to overcome the presumption.

Supp. 2d at 379, *see also Southerland*, 680 F.3d at 148 (concluding that even where "alleged misrepresentations may turn out to be no more than accidental misstatements made in haste, the plaintiffs have nonetheless made a substantial preliminary showing that [the defendant] knowingly or recklessly made false statements in his application" for a search warrant); *Greene v. Camreta*, 588 F.3d 1011, 1034 (9th Cir. 2009) (concluding in the child-removal context that a "seizure conducted pursuant to a warrant obtained by judicial deception violates the Fourth Amendment"), *vacated in part on other grounds*, 563 U.S. 692 (2011).

Like false statements, "[i]ntentional or reckless omissions of material information" may permit a plaintiff to overcome the presumption of probable cause. *Rivera v. United States*, 928 F.2d 592, 604 (2d Cir. 1991). "[R]ecklessness may be inferred where the omitted information was clearly critical to the probable cause determination." *Id.*; *see also Washington v. Napolitano*, 29 F.4th 93, 107 (2d Cir. 2022) ("[B]y omitting the exculpatory information in the arrest warrant affidavit, [the officers] deprived the judge of the fair ability to make the necessary assessment of whether the 'story holds water' for probable cause purposes."). Courts view omissions "as a whole in determining if probable cause continues to exist," even if "one-by-one," the omissions appear to be immaterial.

Washington, 29 F.4th at 107; *see also Andrews v. Scuilli*, 853 F.3d 690, 703 n.16 (3d Cir. 2017).

In their operative complaint, the plaintiffs plausibly allege that Moody deliberately or recklessly made false statements and omitted material information to the family court in connection with the removal hearing that led the court to issue the Removal Order.[23] Assuming as we must that those assertions are true, K.A. was deprived of his Fourth Amendment rights to have the family court reliably assess probable cause for his continued removal.

First, the plaintiffs plausibly allege that Moody acted intentionally or recklessly. Moody was aware of K.W.'s role in K.A.'s life. The plaintiffs contend that Moody knew that K.W. was K.A.'s father and (other than his mother) his closest kinship connection, and that K.A. was in K.W.'s custody before and at the time of the removal. Appellants' Br. at 37–38 (citing FAC ¶¶ 40–42). Under the facts as alleged, Moody clearly understood that K.W. had cared for K.A. for the first six days of his life without incident, and that K.W. had cooperated with and

[23] The district court leaned on the family court documents in determining that the plaintiffs had not overcome the presumption of probable cause. Special App'x 34–35. As explained above, on a motion to dismiss, we do not consider them. We express no view as to whether these details may carry weight at the summary judgment stage, but the district court should evaluate them under the legal standards outline here.

followed ACS's instructions. In addition, Moody knew that, even after an ACS investigation, including, at minimum, a safety assessment of K.W. and his home, ACS determined that K.W. had done nothing wrong and was "accused of no wrongdoing or child protective concern." Appellants' Br. at 38 (citing FAC ¶¶ 32, 43). Perhaps most strikingly, Moody was aware that he had removed K.A. from K.W.'s custody, even though he had alleged wrongdoing only against K.A.'s mother. Indeed, when Moody visited K.A. and his father at their home shortly after K.A.'s birth, he raised no child-protective concerns with K.W., leaving the child in his father's care overnight. In sum, under the facts as alleged, Moody clearly should have known that K.W. was a parent likely able and willing to care for K.A.

Despite this knowledge, the petition Moody submitted to the family court contained no discussion of K.W.'s fitness as a parent. It does not mention that he cared for K.W. for days without incident, that Moody had multiple interactions with K.W., or that K.A. was in K.W.'s custody when Moody removed him. *Id.* Instead, the petition only alleged that K.A.'s mother "is the person who is responsible for neglect of said child." *Id.* Without any substantive reference to K.W., Moody simply stated that "[t]he continuation of residence by the child in

the child's home is or would be contrary to the welfare and best interests of the child." Joint App'x 154. Moody's asserted "[i]ntentional or reckless omissions of material information," *Rivera*, 928 F.2d at 604, constitute a "substantial preliminary showing" that he "knowingly and intentionally, or with reckless disregard for the truth, made a false statement in" the petition, *Golino v. City of New Haven*, 950 F.2d 864, 870 (2d Cir. 1991).

The district court was also wrong, we think, to conclude that "questions about K.W.'s paternity" were relevant to this analysis. Special App'x 26. In their operative complaint, the plaintiffs expressly alleged that the defendants knew that he was the father. Our analysis could end there. But as further support for this view, under New York law fathers need not prove paternity before family courts treat them as fathers (or least as persons with legal responsibility for the child) in child neglect proceedings. *See generally* N.Y. Fam. Ct. Act §§ 1017–30; *cf. In re Elijah AA.*, 189 N.Y.S. 3d 812, 814 (N.Y. App. Div. 2023) (paternity test not mandated and needed to be requested by father). Thus, Moody's awareness of K.W.'s role in K.A.'s life is enough for purposes of assessing Fourth Amendment liability at this stage of the litigation.

Second, not only do the plaintiffs plausibly allege that Moody's misrepresentations and omissions were intentional or reckless, taking these allegations as true, they were also material to the decision to remove K.A. from K.W.

The Removal Order makes clear that Moody's alleged false statements and omissions in the petition had a material effect on the family court's decision to remove K.A. Allegedly based the on "the investigation conducted by the Commissioner of Social Services," here through Moody, the Removal Order stated that there was "no suitable person related to the child with whom such child may appropriately reside." Joint App'x 156. Nowhere did the order refer to K.W.'s existence, although he is K.A.'s father and had been his caretaker until Moody separated them at ACS's offices.[24] Only the mother's behavior was addressed.

[24] If Moody had included the information in his representations to the family court about how K.A. was removed from his father's care, the family court would presumably have made a determination in its Removal Order as to whether and why removal from *K.W.'s* care was "necessary to avoid imminent risk to said child's life or health." Joint App'x 155. Instead, it only explained that the removal was necessary "because . . . [t]he respondent mother has not engaged in services to address the risk posed to the child's siblings." *Id.* The family court also would have been able to consider in the Removal Order what "[r]easonable efforts" to avoid removal from the

Reading this record in the light most favorable to the plaintiffs, as we must, Moody's alleged misrepresentations and omissions were material. The petition gave the family court the impression that K.A. was removed from his mother's custody—and that K.W. was, at best, a non-custodial "alleged" parent who was not playing a caretaking role in K.A.'s life. Only in light of these misrepresentations did the family court issue its Removal Order.

Although the operative complaint is unclear as to whether K.W. and K.A.'s mother lived together, our conclusion as to materiality would not change either way. Even if the mother were dangerous to her child's health and lived with K.W., under New York law, the family court was obligated to consider alternate options to remove that danger before removing K.A. from K.W.'s custody. *See Nicholson v. Scoppetta*, 820 N.E.2d 840, 852 (2004) (noting that "the court must specifically consider whether imminent risk to the child might be eliminated by other means"). Thus, if the mother and the father were living together before the court's intervention, the court might have issued an order barring cohabitation—

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father "were made prior to the date of the hearing herein to prevent or eliminate the need for removal from the home." *Id.*

or even contact—with the mother. Without information about K.W. in the petition, however, the court had no opportunity to consider such a remedy.[25]

Because Moody is alleged to have made misrepresentations and omissions in the petition, and because those facts were material to the family court's finding of probable cause to remove K.A., the district court erred in determining that K.A. had not rebutted the presumption of probable cause.

II. Procedural Due Process

Parents and children share "parallel constitutionally protected liberty interest[s]," which guard their right to family association. *Kia*, 235 F.3d at 759. "[W]hen the coercive power of the State seeks to separate them," if the state fails to afford proper procedures, each parent and child has an independent claim under principles of procedural due process. *Id.*; *see also Southerland*, 680 F.3d at 142 ("[B]oth parents and [their] children may have a cause of action for violation

[25] The Constitution requires the same result. "[S]o long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children," giving rise to a constitutional "presumption that fit parents act in the best interests of their children." *Troxel*, 530 U.S. at 68–69. This presumption applies to *each* parent. The Constitution protects a child's right to both parental relationships, and that right is particularly important when one parent is dangerous and the other is not.

of the Fourteenth Amendment under a theory of denial of procedural due process."). The Fourteenth Amendment requires that, "except in emergency circumstances, judicial process must be accorded both parent and child before removal of the child from his or her parent's custody may be effected." *Id.* (collecting cases).

Here, the plaintiffs have advanced such a claim on behalf of K.A. regarding the removal that took place prior to the family court order and on behalf of both father and son regarding the separation (notwithstanding their occasional supervised meetings) stretching from the family court order to their ultimate reunion years later.

Because the pre-order claim belongs only to the minor K.A., it presents no statute of limitations issues; the limitations period is tolled until the child reaches majority. The post-order claim belongs to both plaintiffs, and, as we conclude, the father's claim is time-barred. Nonetheless, because this claim is also advanced on behalf of K.A., we may consider it.

A. Pre-Order Seizure

As noted above, the standard for analyzing a procedural-due-process claim challenging the unconstitutional removal of a child is "for present

purposes similar" to that employed for a Fourth Amendment unreasonable-seizure claim. *Tenenbaum*, 193 F.3d at 605; *see also Woo*, 44 F. Supp. 3d at 276 ("[T]here is no practical difference between emergency circumstances—the standard used to evaluate plaintiffs' Fourteenth Amendment claim on the plaintiff children's removal—and probable cause/exigent circumstances—the standard used to evaluate the plaintiff children's Fourth Amendment claim."). For substantially the same reasons as those discussed above with respect to the Fourth Amendment claim, the pre-order procedural due process claim survives a motion to dismiss.

B. Post-Order Seizure

i. Statute of Limitations

Although the district court concluded that the plaintiffs' substantive due process claim under Section 1983 was time-barred, *see* Special App'x 16–22, in considering the Section 1983 procedural due process claim, it chose to focus on the merits of both plaintiffs' procedural due process claims, Special App'x 23. The court speculated, however, that "a similar timeliness analysis to the one outlined above likely forecloses K.W.'s [procedural due process] claim." *Id.* We

conclude that the statute of limitations indeed bars his procedural due process claim.[26]

The plaintiffs assert their procedural due process claims pursuant to 42 U.S.C. § 1983.[27] Because Section 1983 "does not provide a specific statute of limitations," courts "apply the statute of limitations for personal injury actions under state law." *Hogan v. Fischer*, 738 F.3d 509, 517 (2d Cir. 2013). "Section 1983 actions filed in New York are therefore subject to a three-year statute of limitations." *Id.* While state law supplies the statute of limitations for claims under Section 1983, "[f]ederal law determines when a Section 1983 cause of action accrues." *Pearl v. City of Long Beach*, 296 F.3d 76, 80 (2d Cir. 2002). Under federal law, claims brought pursuant to Section 1983 "typically accrue when the plaintiff knows or has reason to know of the injury which is the basis of his action." *Barnes v. City of New York*, 68 F.4th 123, 127 (2d Cir. 2023).

[26] "[A] statute of limitations defense may be decided on a Rule 12(b)(6) motion if the defense appears on the face of the complaint." *Conn. Gen. Life Ins. Co. v. BioHealth Lab'ys, Inc.*, 988 F.3d 127, 131–32 (2d Cir. 2021).

[27] Under Section 1983, governmental actors may be held liable for damages when, acting under color of state law, they deprive a person of "any rights, privileges, or immunities secured by the Constitution." 42 U.S.C. § 1983.

With cases involving the removal of a parent's child from his custody, district courts in this Circuit have determined that the limitations period accrues "on the date a parent's children were removed." *Williams v. Savory*, 87 F. Supp. 3d 437, 453 (S.D.N.Y. 2015) (citing cases); *see also Skillings v. City of New York*, 21-CV-3034 (DG) (LB), 2023 WL 8531493, at *9 (E.D.N.Y. Jan. 19, 2023) ("The limitations period begins to accrue on the date of the child's removal."). We agree that the removal date is typically the accrual date for claims of this kind.

In certain circumstances, the "continuing violation" doctrine can extend the conventional Section 1983 limitations period. This doctrine, "where applicable, provides an exception to the normal knew-or-should-have-known accrual date." *Lucente v. Cnty. of Suffolk*, 980 F.3d 284, 309 (2d Cir. 2020). We have applied the doctrine in various contexts, including cases involving Title VII, Equal Protection, Takings Clause, Eighth Amendment deliberate indifference, and *Monell* liability. *Id.* (citing examples of each). "It applies to claims composed of a series of separate acts that collectively constitute one unlawful . . . practice." *Id.*[28]

[28] "A claim will be timely, however, only if the plaintiff alleges some non-time-barred acts contributing to the violation." *Lucente*, 980 F.3d at 309.

The plaintiffs rely heavily on the reading of the continuing violation doctrine in *Remigio v. Kelly*, No. 04-CV-1877 (JGK) (MHD), 2005 WL 1950138 (S.D.N.Y. Aug. 12, 2005), to argue that K.W.'s claim is not time barred. *See, e.g.*, Appellants' Br. at 54–56. In *Remigio*, the district court determined that the continuing violation doctrine should apply to the plaintiff's procedural-due-process claim because "the injury about which he complain[ed]"—seizing and retaining custody of his car—"ha[d] a compound nature," stemming not simply from the "affirmative act of seizing and retaining his car," but also from the city's "subsequent inaction in failing to provide a hearing in which he could challenge that seizure." *Remigio*, 2005 WL 1950138, at *8.

But we conclude that the *Remigio* court misapplied the continuing violation doctrine: It "applies . . . to claims that by their nature accrue only after the plaintiff has been subjected to some threshold amount of mistreatment." *Lucente*, 980 F.3d at 309. "Accordingly, where the continuing violation doctrine applies, the limitations period begins to run when the defendant has engaged in enough activity to make out an actionable . . . claim." *Id.* Although *Remigio* points to the "recalcitrance of the defendants in failing to hold a due-process hearing" as evidence that the continuing violation doctrine is relevant, 2005 WL

1950138, at *11, the separation is not the kind of harm which must occur over time to accrue—like a claim for deliberate indifference under the Eighth Amendment or a hostile work environment claim. Instead, K.W. would have suffered his constitutional injury as soon as he lost custody of his son. *See, e.g.*, *Williams*, 87 F. Supp. 3d at 453. Thus, because the claim accrued on March 8, 2017, and this action commenced more than three years later, on October 18, 2022, K.W.'s procedural due process claim is time-barred.

Nonetheless, since the statute of limitations is tolled for K.A. until he reaches maturity, we proceed to the merits of his procedural due process claim.

ii. K.A.'s Reciprocal Rights to Procedural Due Process Were Violated

When the government "refus[es] to release" a child from ACS custody, both a parent's and a child's reciprocal rights to procedural due process are "unquestionably . . . implicate[d]." *Kia P.*, 235 F.3d at 760. "For more than a century the central meaning of procedural due process has been clear: Parties whose rights are to be affected are entitled to be heard, and in order that they may enjoy that right they must first be notified." *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972), *see also Cole v. Arkansas*, 333 U.S. 196, 201 (1948) ("No principle of

procedural due process is more clearly established" than the accused's right to "notice of the specific charge.").

Thus, the reciprocal rights that parents and children share mandate that they receive notice of the allegations that form the basis of a cause of action of parental unfitness. This notice "must set forth the alleged misconduct with particularity." *Spinelli v. City of New York*, 579 F.3d 160, 171 (2d Cir. 2009). When the State seeks to impinge on a right, "general, conclusory charges unsupported by specific factual allegations" do not provide the process that is due. *Id.* at 172. And as the "significance of the interests at stake" increases, the "required specificity" also rises. *Id.*

"The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s]." *Troxel*, 530 U.S. at 65–66 (plurality opinion). Since children share these rights with their parents, both have an equal stake in their protection.

The State bears twin obligations in relation to these rights: It has the burden of proof, and it must take responsibility for initiating judicial review against an allegedly unfit parent.

Without a court finding—or even an allegation—that K.W. "was an unfit parent," we must respect the "presumption that fit parents act in the best interests of their children." *Troxel*, 530 U.S. at 68 (plurality opinion). In light of this presumption of fitness, "there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *Id.* at 68–69. It would be error to place on K.W., the presumptively "fit custodial parent, the burden of *disproving*" what living arrangement would be in his child's best interests. *Id.* at 69 (emphasis in original). The State must prove *un*fitness.

Beyond this burden of proof, "[t]he burden of initiating judicial review must [also] be shouldered by the government." *Duchesne v. Sugarman*, 566 F.2d 817, 828 (2d Cir. 1977). The State "cannot constitutionally sit back and wait for the parent to institute judicial proceedings. It cannot adopt for itself an attitude of 'if you don't like it, sue.'" *Id.* In an "uneven situation" such as this, where the State profits from a "far greater familiarity with the legal procedures available for testing its action," it cannot leverage this advantage against "those

uneducated and uninformed in legal intricacies" and "allow [the State's actions] to go unchallenged for a long period of time." *Id.*

Here, assuming the truth of the allegations in the FAC, the State met neither of these obligations:

First, K.W. was not given sufficient notice under principles of due process; nor did the State try to give K.W. an adequate opportunity to be heard. The City Defendants told K.W. that his apartment was "too small" for him to inhabit with his son, and noted in the family court petition their view that K.A.'s *mother's* ACS history required removal. Appellants' Br. at 49 (citing FAC ¶¶ 32, 51). But these scarce tea leaves did not provide the notice that would have allowed K.W. "to marshal the facts in his defense and to clarify what the charges are, in fact." *Wolf v. McDonnell*, 418 U.S. 539, 564 (1974).

And second, Moody never charged K.W., with abuse, neglect, or any other related fault, so K.W. had no specific notice of charges against him or factual allegations that, if proved, showed that he failed to exercise the required minimum degree of care. *See* Appellants' Br. at 49.

The petition filed against K.A.'s mother cannot serve as a substitute for process directed against his father. Although the allegations in the petition

would carry weight if we were evaluating the need to keep their child away from his *mother*, they are, at best, tangential to our consideration of the removal from his *father*.[29] Moreover, the notice that the petition provided may only serve as the mother's due process, not the father's. Both of a child's parents "have an interest in the care and custody of a child," and "evidence that one has abused the child does not deprive the non-abusing parent of [his or] her familial rights." *Nicholson v. Williams*, 203 F. Supp. 2d 153, 238 (E.D.N.Y. 2002). Due process requires that interested parties be apprised of the pendency of the action and that they be given an opportunity to object. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (articulating right to be informed and have an opportunity to be heard). The parties themselves, that is, not someone else. By filing a petition only against K.A.'s mother, Moody kept K.W. and K.A. in what the plaintiffs aptly describe as a "procedural purgatory." Appellants' Br. at 50.[30]

[29] The allegations against K.A.'s mother might still be relevant to the decision to remove K.A. from K.W., but only if the petition made clear that K.W. was unwilling or unable to ensure K.A. was protected from his mother. Here, the petition included no such information, and thus, K.W. lacked sufficient notice of any charges against him.

[30] It does not matter that K.W. could have attempted other methods to regain custody of his son, for instance, filing for custody. This would invert the burden.

If the State separates a parent from their child "without some showing of unfitness and for the sole reason that to do so was thought to be in the child[]'s best interest," it "intrude[s] impermissibly on the private realm of family life which the state cannot enter." *Duchesne*, 566 F.2d at 827–28. But Moody did enter that domain, taking K.W.'s child from his custody without proving that he was an unfit parent. At least under the facts as alleged in the operative complaint, K.W. and K.A. were denied their reciprocal due process rights for nearly three years. *Cf. Schvimmer v. Off. of Ct. Admin.*, 857 F. App'x 668, 672 (2d Cir. 2021) (summary order) (recognizing procedural-due-process claim where parents were "repeatedly denied opportunities for full hearings to determine the factual issues of whether they were fit parents").

III. Qualified Immunity

Qualified immunity shields public officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Southerland*, 680 F.3d at 141. On a motion to dismiss, as here, qualified immunity is an especially "formidable hurdle." *Sabir v. Williams*, 52 F.4th 51, 64 (2d Cir.

2022).[31] When a court adjudicates qualified immunity at this stage, it must "accept as true all the material allegations of the complaint, and draw all reasonable inferences in the plaintiff's favor." *Tanvir v. Tanzin*, 120 F.4th 1049, 1058 (2d Cir. 2024).

"In general, public officials are entitled to qualified immunity if (1) their conduct does not violate clearly established constitutional rights, or (2) it was objectively reasonable for them to believe their acts did not violate those rights." *Southerland*, 680 F.3d at 141. A right is "'clearly established'" when "the contours of the right . . . [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Having determined that, at least under the facts alleged in the operative complaint, the defendants violated the plaintiffs' constitutional rights under the Fourth and Fourteenth Amendments, we now must consider whether the rights were clearly established and whether an objectively reasonable official infringing those rights would know that he or she was committing a constitutional violation.

[31] "Qualified immunity is an affirmative defense on which the defendant has the burden of proof." *Outlaw v. City of Hartford*, 884 F.3d 351, 367 (2d Cir. 2018).

"For a right to be clearly established, it is not necessary that courts have agreed upon the precise formulation of the standard." *Bailey v. Pataki*, 708 F.3d 391, 405 (2d Cir. 2013). Although "clearly established law should not be defined at a high level of generality for purposes of qualified immunity analysis, it is error to demand the specificity of a factual twin." *Soukaneh v. Andrzejewski*, 112 F.4th 107, 123 (2d Cir. 2024). "[C]haracterizing the right too narrowly to the facts of the case might permit government actors [wrongly] to escape personal liability." *Edrei v. Maguire*, 892 F.3d 525, 539 (2d Cir. 2018).

As we explained in *Southerland*, "even where the law is clearly established and the scope of an official's permissible conduct is clearly defined, the qualified immunity defense also protects an official if it was objectively reasonable for him at the time of the challenged action to believe his acts were lawful." 680 F.3d at 141. "[A] caseworker is also entitled to qualified immunity if officers of reasonable competence could disagree on the legality of the action at issue in its particular factual context." *Id.*; *see also Tenenbaum*, 193 F.3d at 605 (applying this principle to "child welfare workers").[32]

[32] But as we also emphasized in *Southerland*, there is a countervailing strand in our doctrine that calls this distinction into question. 680 F.3d at 141–42 (citing cases

A. Seizing K.A. Before the Family Court Order[33]

In *Tenenbaum*, we recognized qualified immunity in a case regarding a warrantless removal of a child at school for a medical examination, reasoning that, "not until today have we specifically held that where there is reasonable time consistent with the safety of the child to obtain a judicial order, the 'emergency' removal of a child is unwarranted." *Tenenbaum*, 193 F.3d at 596. But then, we decided that because "it is unconstitutional for state officials to effect a child's removal on an 'emergency' basis where there is reasonable time safely to obtain judicial authorization consistent with the child's safety, caseworkers can no longer claim, as did the defendants [t]here, that they are immune from liability for such actions because the law is not 'clearly established.'" *Id.* For the pre-order component of the plaintiffs' claims, then, the law was clearly established when the violation took place, prompting an inquiry into whether the conduct was "objectively reasonable." *Southerland*, 680 F.3d at 141.

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suggesting that whether a right is clearly established is the same question as whether a reasonable officer would have known that the conduct in question was unlawful). This distinction is not material to our analysis, however.

[33] As noted above, the calculus regarding the pre-order seizure is functionally equivalent under Fourth Amendment and procedural due process theories, so here, we consider them together.

Here, based on the facts alleged in the operative complaint, the emergency removal was not objectively reasonable. The district court concluded that it was "entirely reasonable for Moody to remove K.A. from K.W.'s custody." Special App'x 43. But for a warrantless, pre-order seizure, the question is not whether a removal was broadly "reasonable," but whether it was reasonable for the official—in the case at bar, Moody—to believe he was effectuating an *emergency* removal in a way that violated an established constitutional right. *See Southerland*, 680 F.3d at 160–61. Under the facts as alleged, it was not.

We have delineated the minimum standard for emergency removals over the course of many cases. *See, e.g.*, *Tenenbaum*, 193 F.3d at 605; *Nicholson v. Scoppetta*, 116 F. App'x 313, 316 (2d Cir. 2004) (amended summary order); *Southerland*, 680 F.3d at 149–50. They established that extrajudicial removal is only justified in situations where the child's life, or physical or emotional health, is threatened so acutely that officials would not have time to seek a court order. *See Southerland*, 680 F.3d at 149 (citing as examples "the peril of sexual abuse," "the risk that children will be left bereft of care and supervision," and "immediate threats to the safety of the child"). Reading the facts in the light most favorable to the plaintiffs, the danger did not approach that level. The

officials' initial willingness to leave the child with his father overnight and to trust him to bring his son in the next day—together with the lack of any evidence that K.W. presented an active threat and with the close proximity of the order to the removal—make clear that Moody could safely have waited to obtain a court order. Assuming for the purpose of a motion to dismiss that the facts in the operative complaint are as alleged, it was unreasonable for Moody to believe that there was imminent danger to K.A. such that an emergency removal was necessary. The district court erred in concluding otherwise.

B. Post-Order Seizure: Fourth Amendment

The City Defendants do not address whether Moody would be entitled to qualified immunity for deliberately and recklessly making false statements and omitting material information to the family court in connection with the removal hearing. **[Reply at 13]** The right not to be unreasonably seized is clearly established, and it is not objectively reasonable to misrepresent facts in a family court petition.[34] That is sufficient to warrant reversal here.

[34] In ruling on qualified immunity, the district court did not address allegations of deception or omission. Relying on family court documents, the court simply outlined the facts that purportedly "justif[ied]" the "continued separation." Special App'x 44–45.

C. Post-Order Seizure: Procedural Due Process

As far as we can determine, the precise set of circumstances presented in the case before us—with the State continuing to hold a child without initiating proceedings against a parent who wishes to claim custody—has never been considered. But it is not necessary "that the very action in question has previously been held unlawful." *Ziglar v. Abbasi*, 582 U.S. 120, 151 (2017); *see also Sabir*, 52 F.4th at 63 ("Precedent directly on point is not required[.]"). Here, the underlying rights and interests were clearly established and, we conclude, would have been evident to any "objectively reasonable" agent of the State.

Nearly fifty years ago, we determined that "[t]he burden of initiating judicial review must be shouldered by the government" in the child removal context. *Duchesne*, 566 F.2d at 828. In *Kia P.*, we "underscore[d] what should be plain": that "ten days during which parent and child were kept apart, without a hearing and a court order permitting their enforced separation" would present a "serious danger that the [] defendants would have violated the plaintiffs' procedural due process rights." 235 F.3d at 761. We are also mindful of fundamental background principles—notice and the attendant opportunity to be heard—which underpin our due process jurisprudence. *See, e.g.*, *Mathews v.*

Eldridge, 424 U.S. 319, 348 (1976) ("The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it."); *see also Fuentes*, 407 U.S. at 80 (right to notice and opportunity to be heard is "fundamental"); *Cole*, 333 U.S. at 201 (emphasizing that "no principle of procedural due process is more clearly established").

Assuming, as we must, that the facts are as alleged, by leaving the plaintiffs in procedural limbo for nearly three years, Moody evidently fell within the ranks of "the plainly incompetent or those who knowingly violate the law." *Tanvir*, 120 F.4th at 1059. He is not entitled to qualified immunity for this conduct.

IV. Procedural Due Process for the Nonprofit Defendants

Although the Nonprofit Defendants CAS and Brian Gomez were allegedly implicated in holding K.A.—erecting obstacles that impeded the reunion of father and son—there are no allegations that tie them directly to the procedural due process violation. When, as in this case, there is no allegation that a child welfare organization "proximately caused [a child] to be kept from [his or] her parents without a hearing," a procedural due process violation has not been properly alleged. *Kia P.*, 235 F.3d at 761. Here, the plaintiffs have not explained

how the Nonprofit Defendants prevented them from receiving notice and an opportunity to be heard. Nor was it the Nonprofit Defendants' choice to bring a proceeding in family court against K.W. Thus, their connection to the procedural due process violation is too attenuated to sustain a claim.

CONCLUSION

We have considered the parties' remaining arguments on appeal and conclude that they are without merit. For the foregoing reasons, we AFFIRM the district court's dismissal of the claims against the Nonprofit Defendants and of K.W.'s due process claim. We REVERSE the district court's judgment regarding the other claims and REMAND for further proceedings consistent with this opinion.