Module 18: Due Process and Procedural Drift

Child Protective Services, Administrative Emergency Power, and the Collapse of Constitutional Process

Section 1: Module Summary & History

Core Overview

This module examines the structural integrity of due process as a condition precedent to the exercise of governmental power. At its core, the material argues that due process is not merely a set of procedures provided after an act occurs, but a structural requirement that connects delegated authority to a specific person or controversy. The module defines due process through the historical lens of the "Law of the Land," emphasizing that a deprivation of liberty, property, or legal status must proceed through preexisting law and neutral judgment. This structural framework ensures that government power is restrained by rules established before a controversy arises, rather than by the official will of the actor at the moment of execution.

A significant structural friction exists between the original constitutional baseline of settled process and modern institutional practices. Modern governance often operates through "procedural administration," where institutions act first (seizing property, removing children, or making arrests) and provide hearings or reviews only afterward. This reversal of the constitutional sequence shifts the burden from the government—which must prove its authority—to the citizen, who must navigate administrative hurdles to challenge an action already taken. Consequently, the module centers on a singular, decisive "Firewall Question": **Was lawful due process preserved before power was exercised?**

The Timeline of Drift (1776 to Present)

- **The Law of the Land Baseline (1776–1856):**
    - **Era:** Foundational American Jurisprudence.
    - **Developments:** This phase relied on the historical "Law of the Land" principle, where government action required a preexisting legal basis, accountable accusation, and neutral judgment. *Murray's Lessee v. Hoboken Land and Improvement Company* (1856) exemplified this, testing procedures against "settled usages and modes of proceeding" inherited from common law.
    - **Procedural Impact:** Maintained a strict sequence where the lawful condition (the gate) had to be fulfilled before the governmental effect (the deprivation) could follow.
- **The Substantive Drift (1857–1937):**
    - **Era:** Post-Jacksonian and Reconstruction Era.
    - **Developments:** The Supreme Court in *Dred Scott v. Sandford* (1857) shifted the due process inquiry from procedure to the substance of legislation. This continued through *Lochner v. New York* (1905), where the Court used the Due Process Clause to protect judicially identified economic liberties like "liberty of contract."

- **Procedural Impact:** Transformed the Due Process Clause from a procedural restraint on how government acts into a source of substantive judicial authority to determine what government can enact.

- **The Educational/Case Method Shift (1870–Present):**
  - **Era:** Professionalization of Legal Education.
  - **Developments:** Dean Christopher Columbus Langdell introduced the "case method" at Harvard Law School, replacing treatises and maxims with inductive reasoning from appellate opinions.
  - **Procedural Impact:** Altered the lawyer's mental starting point from antecedent law and maxims to judicial precedent. This normalized "doctrinal development," allowing judicial opinions to become the source of law rather than just records of its application.
- **The Procedural Merger (1873/1938–Present):**
  - **Era:** The Modern Administrative Era.
  - **Developments:** England's Judicature Acts (1873–1875) and the U.S. Federal Rules of Civil Procedure (1938) abolished the distinction between courts of Law and Equity. Rule 2 consolidated all actions into a single "civil action."
  - **Procedural Impact:** Weakened the boundary between fixed legal rights (juries/settled law) and discretionary management (equitable balancing). It allowed courts to manage cases through flexible authority rather than strict adjudication.
- **The Era of Procedural Administration (1957–Present):**
  - **Era:** Contemporary Governance.
  - **Developments:** Doctrinal shifts in pleading (*Twombly/Iqbal*) and summary judgment (*Celotex Corp. v. Catrett*) moved the focus to institutional gatekeeping.
  - **Procedural Impact:** Procedure became a tool to control access to adjudication. Claims are now filtered for "plausibility" before discovery, and the burden of proof is often shifted to the non-moving party at the summary judgment stage.

Core Operational Concepts

- **The Burden Shift:** In a settled due process system, the party asserting injury or authority (*actor affirmanti incumbit probatio*) carries the burden of proof. In modern procedural administration, the burden moves from the institution to the citizen. Mechanisms like *Celotex* allow government actors to prevail by pointing to a lack of evidence from the opponent, forcing citizens to disprove institutional assertions or satisfy technical thresholds before the government has fully established its own authority.
- **The Operational Mechanism:** Administration normalizes procedural drift by prioritizing institutional regularity over constitutional conformity. By merging law and equity and adopting managerial procedures (sanctions, settlement pressure, and summary dispositions), the system determines whether a controversy will ever reach a jury or full adjudication. The process becomes a gatekeeping system that protects institutional efficiency rather than the "law of the land."

Glossary of Key Terms

Term	Definition
Conditio præcedens adimpleri debet priusquam sequatur effectus	A condition precedent must be fulfilled before the dependent effect may lawfully follow.
Nemo debet esse judex in propria causa	No person should judge his own cause; the requirement for a neutral reviewer separate from the accuser/investigator.
Law of the Land	The original due process standard requiring that deprivation proceed through preexisting law and neutral judgment rather than official will.
Substantive Due Process	A doctrinal theory where the Due Process Clause is used to evaluate the substance of legislation rather than the lawfulness of the procedure.
Procedural Administration	A system where procedure is used to manage, delay, or prevent adjudication through institutional gatekeeping and discretionary rules.
Notice Pleading	A regime (established by *Conley v. Gibson*) where a complaint only needs to provide notice of a claim; later narrowed by the "plausibility" standard of *Twombly/Iqbal*.
Writ Practice	The verified presentation of facts, duties, and jurisdictional questions to a court seeking narrow, prospective relief (e.g., Mandamus).
Due Process Sequence Audit	The operational tool used to reconstruct a case timeline and test the twelve structural conditions against the record.

Section 2: Assessment and Review

Multiple-Choice Quiz

1. **What is the central "Firewall Question" posed by Module 18?** A) Did the citizen receive a hearing after the act? B) Was lawful due process preserved before power was exercised? C) Did the institution follow its internal administrative guidelines? D) Was the outcome of the proceeding beneficial to all parties?
2. **The maxim *Conditio præcedens adimpleri debet priusquam sequatur effectus* governs what aspect of due process?** A) The impartiality of the judge. B) The burden of proof. C) The chronological sequence of safeguards. D) The right to an attorney.
3. **In *Murray's Lessee v. Hoboken Land and Improvement Company* (1856), how did the Court determine if a procedure was lawful?** A) By balancing the interests of the government against the individual. B) By asking if the procedure was efficient. C) By checking if it was consistent with settled usages and modes of proceeding. D) By determining if the law served a compelling state interest.
4. **Which case is identified as the first major breach where due process was used to control legislative substance?** A) *Lochner v. New York* B) *Dred Scott v. Sandford* C) *Allgeyer v. Louisiana* D) *West Coast Hotel Co. v. Parrish*
5. **What was the primary structural consequence of Christopher Columbus Langdell's "case method"?** A) It prioritized common law maxims over judicial opinions. B) It

made the jury the central focus of legal education. C) It shifted the center of gravity from antecedent law toward judicial exposition. D) It abolished the distinction between law and equity.

6. **The Federal Rules of Civil Procedure (1938) Rule 2 is significant because it:** A) Established the "plausibility" pleading standard. B) Mandated the use of juries in all administrative hearings. C) Abolished the separate forms of action at law and in equity. D) Required a sworn accusation for all civil arrests.
7. **The *Celotex Corp. v. Catrett* decision reshaped summary judgment by:** A) Increasing the burden of proof for government actors. B) Allowing a party to prevail by pointing to the absence of evidence in the opponent's case. C) Requiring a full jury trial for all constitutional claims. D) Mandating that all accusations be sworn under the pains and penalties of perjury.
8. **Which of the following is NOT one of the twelve structural conditions of due process?** A) Accountable Accusation B) Neutral Review C) Substantive Judicial Policy D) Impartial Adjudication
9. **In the Chain of Authority, where does "Jurisdiction" appear?** A) Before Law and Delegation. B) After Due Process but before Judgment. C) At the very end after Accountability. D) Simultaneously with the first exercise of power.
10. **A "Demonstrated" condition in a Due Process Sequence Audit means:** A) A document states the condition occurred, but no evidence is provided. B) The record contains authenticated evidence showing the condition occurred in the required form and sequence. C) The student assumes the condition occurred because of institutional regularity. D) The condition is not legally required for the proceeding.

Answer Key and Explanations Table

Question	Answer	Explanation
1	B	The module emphasizes that the timing of due process—occurring *before* power—is the critical firewall.
2	C	This maxim translates to "a condition precedent must be fulfilled before the effect," establishing the required sequence.
3	C	This reflects the "Law of the Land" method, testing acts against historically bounded, external standards.
4	B	The Court used the 5th Amendment to invalidate legislation based on its substance rather than a procedural failure.
5	C	The case method trained lawyers to derive law from precedent (judicial opinions) rather than antecedent principles/maxims.
6	C	Rule 2 created the single "civil action," merging Law and Equity into a single procedural system.
7	B	This creates a practical "Burden Shift," allowing the moving party to bypass the adjudication of facts.
8	C	Substantive policy is a result of "Drift"; the twelve conditions are strictly structural/procedural.
9	B	Jurisdiction does not arise until the process that creates the authority to proceed (Due Process) is completed.

10	B	"Demonstrated" requires authenticated evidence of both form and sequence in the record.

Essay Format Questions

1. **Analytical Synthesis of Procedural Merger:** Explain how the 1938 merger of Law and Equity altered the constitutional function of the jury. In your response, contrast "adjudication according to fixed law" with "discretionary management according to equitable judgment."
2. **The Evolution of the Burden of Proof:** Trace the shift in the burden of proof from the "Law of the Land" baseline to the "Procedural Administration" era. Use the *Celotex* standard and the concept of "institutional circularity" to explain how modern systems test a citizen's ability to navigate rules rather than the government's authority to act.
3. **Precedent vs. Antecedent Law:** Analyze the structural impact of the "Langdellian Shift" on constitutional analysis. How does starting with a judicial opinion rather than a common-law maxim facilitate the growth of substantive due process?

Section 3: Exemplars Summary and Relevance

Exemplar	Summary	Relevance to Material
1: Intake & Accusation	Analysis of DCF reports (Feb 6 and Mar 7) regarding medical neglect and household expansion.	Tests the first two conditions: **Actual Injury** and **Accountable Accusation**. Distinguishes hearsay and professional concern from sworn, traceable facts.
2: Escalation & Custody	Transition from a non-emergency intake to felony kidnapping charges based on a custody order.	Demonstrates the **Condition Precedent** of a custody foundation. Highlights the requirement for service/notice before conduct can be treated as criminal.
3: Criminal Process	Review of police incident reports, criminal complaint applications, and warrants.	Evaluates **Neutral Review** and **Sufficient Cause**. Tests if probable cause exists for every element of the offense before a warrant issues.
4: Execution & Later Process	Analysis of the arrest, removal of children, and subsequent court hearings.	Distinguishes **Original Authorization** from **Later Continuation**. Tests if later hearings can retroactively justify a sequence that began with a defect.

Section 4: Expanded Homework Assignment and Practical Application Exercise

Case File / Background

An administrative agency (Department of Children and Families) receives an anonymous report of medical neglect. Without a sworn affidavit or a court order, the agency classifies the report as a "non-emergency" but subsequently requests police assistance to remove the children from the home after the parents miss a follow-up appointment. The police arrest the parents for "unlawful retention" based on an emergency custody order that was entered into the court system three hours *after* the removal occurred. No proof of service for the custody order exists in the record.

Procedural Review Assignment
Perform a step-by-step operational audit of the scenario above:

1. **Step One: Identify the Act.** Document the first exercise of power (the physical removal/arrest) and record the actor, date, and time.
2. **Step Two: Preserve Chronology.** Map all documents (Intake Report, Police Report, Custody Order) on a timeline. Note any gaps between the act and the authorization.
3. **Step Three: Test the Conditions.** Apply the twelve structural conditions. Specifically, test for "Accountable Accusation" (was the anonymous report sworn?) and "Condition Precedent" (did the order exist before the removal?).
4. **Step Four: Classify the Evidence.** Mark each condition as *Demonstrated*, *Asserted*, or *Unestablished*.

Required Document Preparation

Draft a **Verified Writ Complaint** for declaratory and injunctive relief. The document must record and preserve:

- **The Nature of the Action:** Explicitly state the purpose is to determine if a ministerial duty/lawful authority existed.
- **Factual Chronology:** Use the Audit results to list verifiable facts tied to exhibits (e.g., "The removal occurred at 2:00 PM; the order was signed at 5:00 PM").
- **Claim for Relief:** Identify the specific legal duty (e.g., the duty to have a signed warrant/order *prior* to seizure).
- **Verification:** Ensure the document is signed under the pains and penalties of perjury.

Final Review Question

Upon completion of the audit and writ, answer the following: **If the record demonstrates that the governmental act occurred before the lawful condition was fulfilled, can a later hearing or order retroactively establish jurisdiction for the original act, or does the chain of authority remain broken at the point of the first material defect?**

Fitchburg Police Department
Incident Report

Incident #: 25-9484-E-OF
Call #: 25-9484

EXHIBIT 1A

Backwritten

Date/Time Reported: 03/05/2025 1221
Report Date/Time: 03/06/2025 1454
Status: Incident Open

Involves: Juveniles
Reporting Officer: Detective TABITHA PEPPLE
Approving Officer: Detective Lt DANIEL BELLOFATTO

Signature: ______________________ x NO Signatures

Signature: ______________________ x NO Signatures

#	SUSPECT(S)	SEX	RACE	AGE	SSN	PHONE
1	ENCARNACION, RUTH M [redacted] FITCHBURG MA 01420	F	B	30	[redacted]	[redacted]

Military Active Duty: N
HEIGHT: 504 WEIGHT: 250 HAIR: BROWN EYES: BROWN
BODY: NOT AVAIL. COMPLEXION: NOT AVAIL.
DOB: 12/20/1994 PLACE OF BIRTH: NOT AVAIL.
LICENSE NUMBER: MA [redacted] ETHNICITY: HISPANIC

[CONTACT INFORMATION]

Home Phone (Primary) [redacted]

[APPEARANCE]

GLASSES WORN: NO

#	OFFENSE(S)	ATTEMPTED	TYPE

LOCATION TYPE: Residence/Home/Apt./Condo Zone: Crew 5

[redacted]

#	OFFENSE(S)	ATTEMPTED	TYPE
1	KIDNAPPING MINOR BY RELATIVE 265/26A/A 265 26A OCCURRED: 03/05/2025 1221 WEAPON/FORCED USED: None	N	Felony
2	KIDNAPPING MINOR BY RELATIVE 265/26A/A 265 26A OCCURRED: 03/05/2025 1221 WEAPON/FORCED USED: None	N	Felony
3	KIDNAPPING MINOR BY RELATIVE 265/26A/A 265 26A OCCURRED: 03/05/2025 1221 WEAPON/FORCED USED: None	N	Felony

Incident #: 25-9484-E-OF
Call #: 25-9484

#	OFFENSE(S)	ATTEMPTED	TYPE
4	KIDNAPPING MINOR BY RELATIVE * See Custody Ex Parte 265/26A/A 265 26A OCCURRED: 03/05/2025 1221 WEAPON/FORCED USED: None	N	Felony
5	KIDNAPPING MINOR BY RELATIVE * See Custody Ex Parte 265/26A/A 265 26A OCCURRED: 03/05/2025 1221 WEAPON/FORCED USED: None	N	Felony

Not Valid

#	VICTIM(S)	SEX	RACE	AGE	SSN	PHONE
1	RIVERA, [redacted] DOB: [redacted] INJURIES: None ETHNICITY: Hispanic RESIDENT STATUS: Resident VICTIM CONNECTED TO OFFENSE NUMBER(S): 1 RELATION TO: ENCARNACION RUTH — Child CONTACT INFORMATION: Home Phone (Primary) [redacted]	M	W	10	NOT AVAIL	[redacted]
2	RIVERA, [redacted] DOB: [redacted] INJURIES: None ETHNICITY: Hispanic RESIDENT STATUS: Resident VICTIM CONNECTED TO OFFENSE NUMBER(S): 2 RELATION TO: ENCARNACION RUTH — Child CONTACT INFORMATION: Home Phone (Primary) [redacted]	M	W	9	NOT AVAIL	[redacted]
3	RIVERA, [redacted] DOB: [redacted] INJURIES: None ETHNICITY: Hispanic RESIDENT STATUS: Resident VICTIM CONNECTED TO OFFENSE NUMBER(S): 3 RELATION TO: ENCARNACION RUTH — Child CONTACT INFORMATION: Home Phone (Primary) [redacted]	M	W	5	NOT AVAIL	[redacted]

No Injury, No Victim = No Crime, No Predicate

Incident #: 25-9484-E-OF
Call #: 25-9484

#	VICTIM(S)	SEX	RACE	AGE	SSN	PHONE
4	HIDALGO, [redacted]	F	W	4	NOT AVAIL	[redacted]

DOB: 02/18/2021
INJURIES: None
~~ETHNICITY: Hispanic~~
RESIDENT STATUS: Resident
VICTIM CONNECTED TO OFFENSE NUMBER(S): 4
RELATION TO: ENCARNACION RUTH Child
CONTACT INFORMATION:
Home Phone (Primary) [redacted]

#	VICTIM(S)	SEX	RACE	AGE	SSN	PHONE
5	RIVERA, [redacted]	M	W	BB	NOT AVAIL	[redacted]

DOB: 05/25/2024
INJURIES: None
~~ETHNICITY: Hispanic~~
RESIDENT STATUS: Resident
VICTIM CONNECTED TO OFFENSE NUMBER(S): 5
RELATION TO: ENCARNACION RUTH Child
CONTACT INFORMATION:
Home Phone (Primary) [redacted]

#	PERSON(S)	PERSON TYPE	SEX	RACE	AGE	SSN	PHONE
1	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]					
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]					
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
	[redacted]	[redacted]					

Entered: 03/12/2025 @ 0939 Entry ID: 93
Modified: 03/12/2025 @ 0958 Modified ID: 93
Approved: 03/12/2025 @ 1403 Approval ID: 135

Wednesday 05 March 2025
Ruth Mari Encarnacion (12/20/1994)
[redacted]
M.G.L. c 265 §26A-Custodial Interference By Relative/Minor (5 Counts)

On Wednesday 05 March 2025, I, Detective Tabitha Pepple was assigned to follow-up in regards to five (5) missing children, [redacted] ([redacted]), [redacted] ([redacted]), [redacted] ([redacted]), [redacted] ([redacted]) and [redacted] ([redacted]).

On Tuesday 04 March 2025, I had also been assigned to follow-up with missing adult Ruth M Encarnacion ([redacted]) who is the mother to the five (5) missing children. Ruth and her live-in boyfriend and father of four of her children, and a step father to one of her children, Isael Rivera ([redacted] did disappear with their five children and were tracked and located out of state.

On Tuesday 04 March 2025, I did call Ruth ([redacted]) at 0909 hours, leaving her a message to call me and providing my contact information. *Before the texas trip

On Tuesday 04 March 2025, I did call both owners of [redacted] where the family lives and did leave both of them a message to call me and did provide both with my contact information. The owners [redacted] are, [redacted] ([redacted] and [redacted] ([redacted]). I did leave a message for [redacted] at 0939 hours, and I did leave a message for [redacted] at 1002 hours.

On Tuesday 04 March 2025, I did send Ruth an email, [redacted] at 1007 hours asking her to contact me and making it known that I would like to help her in any way I can.

On Tuesday 04 March 2025, Ruth's live-in boyfriend and father of her children, Isael R Rivera ([redacted] is also believed to be with Ruth and the children.

On Tuesday 04 March 2025, I did call Gillian Shultz from the Department of Children and Families (978-353-3893) at 1221 hours and did leave her a message to call me and providing my contact information.

On Tuesday 04 March 2025, I did attempt to call Isael at 1225 hours ([redacted]) but this phone number is a non-working phone number. I did attempt to call Isael at 1226 hours ([redacted], but this number is also a non-working phone number.

On Tuesday 04 March 2025, I did attempt to call Ruth's sister, [redacted] ([redacted] who is Ruth's sister and the reporting party but her mail box is full.
On Tuesday 04 March 2025, [redacted] did call me back at 1500 hours and did tell me that she and her brother ([redacted]) own [redacted] could not answer any of my questions and stated that it is her brother that handles everything. [redacted] will have [redacted] call me.

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EXHIBIT 1B

Information on Reporter

Name	Behzad Goharfar	**Report Source**	Medical Personnel
Type	Mandated		
Address	(B) 19 Pierce Avenue, Pediatrics West Pc Fitchburg, MA 01420	**Phone**	(B) (978) 577-0437
Other contact information			

What is the reporter's relationship to the child(ren)? No Relationship

Relationship description: Pediatrician

Incident date and description: 02/06/2025 - Medical neglect *

When was the reporter's last contact with the family? 2/6/25

Does the reporter have knowledge of prior abuse/neglect in this family? No

Has the reporter informed the family that s/he is making the report? Yes

*Neglect requires harm. This report contradicts itself. "look well and is healthy."

Reported Concern(s) or Reason(s) for Intake

Mandated reporter alleges the neglect of Adonis Rivera age 8 months by father Isael Rivera and mother Ruth Encarnacion. Reporter is unsure if parents live together but father did bring the child into reporters office today. Also in the home but not reported are [redacted] age 10, [redacted] age 9 , and Alonzo E. Rivera age 5.

* to note when case last closed the parents were not together, 2021.

Reporter stated that child is medically neglected.* Reporter stated that the parents did bring the child into the office for his initial newborn visit, and he was seen 2 two days later for a weight check. This was May 29th and May 31st. They had not seen them after this date.
Reporter stated he needs a followup for a 1 month and 2 month well child.

Reporter stated that the parents had refused vaccinations but still wanted to have him seen for growth and development. They have not showed up to any scheduled appointments. Reporter stated in July of 2024 there was a no show and then on July 18th they sent a letter and have made calls that he needs to be seen. No responses and then on August 7th called again but nothing.

Reporter stated that then they got a call from father stating that they are going to Reliant Medical. Reporter stated okay and went over with them how to go about it.

Reporter stated that in January of 2025, father called asking for a letter for Adonis for SSI. Reporter stated no and that he needs to be seen and that his records were still at their office and he is still their patient.

Reporter was able to see in his virtual records of Er's, that in October of 2024, he was seen in the ER for cold like symptoms, and then on Nov 17th was in the ER , and then he was sent to UMASS on the Nov 17th to Nov 19th due to Pneumonia. It was recommended that he follow up with his pediatrician and that never happened.

Reporter stated again last week, father called to get him seen but for the SSI letter. Father said he is healthy and he did not know about the hospital stay and why they did not follow up. Father was told of the 51A.

[redacted] looks well and is healthy.* Reporter stated that the parent's wanted the letter and that is why they came today. Reporter tried to find out where the other three children go but could not find out where and they do not come to reporter's practice. No further appointment was made.

EXHIBIT 1C

Care and Protection Order

Issued March 12, 2025

Custody granted after seizure and backdated to February 26, 2025

EXHIBIT 1D

Date/Time Printed: 03-06-2025 16:50:35 Revised: 07/16

CRIMINAL COMPLAINT DEFENDANT COPY	DOCKET NUMBER 2516CR000220	NO. OF COUNTS 5	Trial Court of Massachusetts District Court Department

DEFENDANT NAME & ADDRESS Isael Rivera [redacted]	COURT NAME & ADDRESS Fitchburg District Court 100 Elm Street Fitchburg, MA 01420 (978)345-2111

DEFENDANT DOB	COMPLAINT ISSUED	DATE OF OFFENSE	ARREST DATE
[redacted]	03/06/2025	03/05/2025	

OFFENSE CITY / TOWN	OFFENSE ADDRESS	NEXT EVENT DATE & TIME
Fitchburg	[redacted]	WARRANT

POLICE DEPARTMENT	POLICE INCIDENT NUMBER	NEXT SCHEDULED EVENT
Fitchburg PD	25-113-WA	

OBTN	PCF NUMBER	DEFENDANT XREF ID	ROOM / SESSION
	3107847	12641836	

The undersigned complainant, on behalf of the Commonwealth, on oath complains that on the date(s) indicated below the defendant committed the offense(s) listed below and on any attached pages.

COUNT CODE DESCRIPTION

1 265/26A/A KIDNAPPING MINOR BY RELATIVE c265 §26A

On 03/05/2025, being a relative of A.R. (10 yrs old) a child less than 18 years old, did, without lawful authority, hold or intend to hold such child permanently or for a protracted period, or did take or entice such child from such child's lawful custodian, in violation of G.L. c.265, §26A.

PENALTY: house of correction not more than 1 year; or not more than $1000; or both.

2 265/26A/A KIDNAPPING MINOR BY RELATIVE c265 §26A

On 03/05/2025, being a relative of A.R. (9 yrs old), a child less than 18 years old, did, without lawful authority, hold or intend to hold such child permanently or for a protracted period, or did take or entice such child from such child's lawful custodian, in violation of G.L. c.265, §26A.

PENALTY: house of correction not more than 1 year; or not more than $1000; or both.

3 265/26A/A KIDNAPPING MINOR BY RELATIVE c265 §26A

On 03/05/2025, being a relative of A.R. (5 yrs old), a child less than 18 years old, did, without lawful authority, hold or intend to hold such child permanently or for a protracted period, or did take or entice such child from such child's lawful custodian, in violation of G.L. c.265, §26A.

PENALTY: house of correction not more than 1 year; or not more than $1000; or both.

4 265/26A/A KIDNAPPING MINOR BY RELATIVE c265 §26A

On 03/05/2025, being a relative of A.H. (4 yrs old), a child less than 18 years old, did, without lawful authority, hold or intend to hold such child permanently or for a protracted period, or did take or entice such child from such child's lawful custodian, in violation of G.L. c.265, §26A.

PENALTY: house of correction not more than 1 year; or not more than $1000; or both.

5 265/26A/A KIDNAPPING MINOR BY RELATIVE c265 §26A

On 03/05/2025, being a relative of A.R. (9 months old), a child less than 18 years old, did, without lawful authority, hold or intend to hold such child permanently or for a protracted period, or did take or entice such child from such child's lawful custodian, in violation of G.L. c.265, §26A.

PENALTY: house of correction not more than 1 year; or not more than $1000; or both.

* this Document was printed 3/6/25 4:50pm after 9am hearing. NO Judge Signature on complaint or warrant.

SIGNATURE OF COMPLAINANT	SWORN TO BEFORE CLERK-MAGISTRATE/ASST.CLERK/DEP. ASST. CLERK	DATE
X	X	
NAME OF COMPLAINANT	A TRUE COPY ATTEST: CLERK-MAGISTRATE/ ASST. CLERK X	DATE

Notice to Defendant: *42 U.S.C. § 3796gg-4(e) requires this notice: If you are convicted of a misdemeanor crime of domestic violence you may be prohibited permanently from purchasing and/or possessing a firearm and/or ammunition pursuant to 18 U.S.C. § 922 (g) (9) and other applicable related Federal, State, or local laws.*

STEVEN D. GIANNINI
CHIEF OF POLICE

CITY OF FITCHBURG POLICE DEPARTMENT

20 Elm Street
Fitchburg, Massachusetts 01420-3204
www.fitchburgpolice.com

DEPARTMENT / OPERATIONS
978-345-4355
FAX: 978-345-4088

DETECTIVE BUREAU
978-345-9650

RECORDS BUREAU
978-345-9643
FAX: 978-342-7608

CHIEF OF POLICE
978-345-9656

Exhibit 1E

PRESS RELEASE

The Fitchburg Police Department is attempting to locate Ruth Encarnacion, Isael Rivera, and the five children that they reside with, ranging in age from 10 years old to 9 months old. Anyone with information regarding their whereabouts is urged to contact the Fitchburg Police Department Detective Bureau at (978) 345-9650.

Fitchburg Police immediately initiated an investigation after receiving a missing person report for Ms. Encarnacion on March 3. The Department of Children and Families (DCF) subsequently reported her five children missing on March 5. Following the DCF report, Massachusetts State Troopers assigned to the Worcester County District Attorney's Office joined the investigation.

Preliminary information indicates that the family are traveling in a black 2018 Infiniti QX60 with Massachusetts registration 5GCX18. *These warrants issued by the court, were not supported by the necessary sworn affidavits rendering them legally deficient and void*

Police have obtained warrants for five counts of Custodial Kidnapping of a Minor by a Relative against both Ruth Encarnacion and Isael Rivera.

Although Police explored the possibility of an AMBER Alert, AMBER Alerts are not intended for missing child incidents involving parental kidnapping or child custody situations that lack specific information about the children in imminent danger of serious bodily harm or death.

The Fitchburg Police Department Bureau of Criminal Investigation, in collaboration with the Massachusetts State Police Detectives assigned to the Worcester County District Attorney's Office, is actively investigating this matter.

Exhibit 1F

~~EXHIBIT "A"~~

(Cancellation of all powers of attorney)

From the Desk of:

Isael Rivera

[redacted]

CUSIP ATTACHING NUMBER CAUSE NO25CP0051I

Cancellation of All Prior Powers of Attorney

"All prior Powers of Attorney granted by ISAEL ROBERTO RIVERA are removed, cancelled, and permanently revoked, and reccessioned effective February 25, 1994."

I ISAEL ROBERTO RIVERA, appoint **Isael Roberto Rivera,** the living man as Attorney-in-Fact for all purposes related to the administration of the ISAEL ROBERTO RIVERA estate trust, and the trust of his minor children and all correspondence should be addressed to:

ISAEL ROBERTO RIVERA,

[redacted]

Fitchburg, Massachusetts [01420]

* Revocation of consent prior to action.

I reserve all my God-given rights

by Isael Roberto Rivera my autograph/my seal

Isael Roberto Rivera

State of Massachusetts

Before me, Gurdeep Randhawa, a notary public, on this day personally appeared Isael Roberto Rivera, and showed me necessary identification. I witnessed his autograph on this document on 27th day, month of February year of our Lord 2025.

[signature] Commission expires 05/26/2028.

Public Notary seal

GURDEEP RANDHAWA
Notary Public
Massachusetts
My Commission Expires
May 26, 2028

Isael Roberto Rivera Cancellation of all previous attorneys Page 1 of 1

EXHIBIT 2

CERTIFICATE OF SERVICE

BE IT KNOWN BY ALL MEN, the affiant shall make every attempt of service to the principals, noting that **NOTICE TO AGENT IS NOTICE TO PRINCIPAL, and that, NOTICE TO PRINCIPAL IS NOTICE TO AGENT(s).** INASMUCH, the Affiant is NOT responsible for the qualification of service to every trustee/respondent, as **AGENTS MUST NOTIFY PRINCIPALS, AND PRINCIPALS MUST NOTIFY AGENTS. THIS INCLUDES NOTIFICATION TO ALL COMPANIES THAT PROVIDE BONDING AND SURETIES FOR AGENTS OR PRINCIPALS.**

Whoever knowingly and willfully obstructs or retards the passage of the mail and the timely delivery of this notice to the following principals and agents shall be held liable for a penalty of $5,000 per incident and may be subject to imprisonment not more than six months.

To All Trustees/Respondents, in their personal and professional capacity

1. DCF North Central Area Office (Leominster)

Address: 640 North Main Street, Leominster, MA 01453

Phone: 978-353-3600

Fax: 978-353-3800

Child At-Risk Hotline: 1-800-792-5200

2. Massachusetts DCF Central Office

Commissioner: Staverne Miller

Phone: (617) 748-2000

Email: DCFCommissioner@state.ma.us

3. Leominster Police Department

Chief: Ryan Malatos

Address: 116 Central Street, Leominster, MA 01453

Phone: 978-534-7560

Fax: 978-534-7558

Email: RMalatos@leominster-ma.gov

4. Worcester County Sheriff's Office

Sheriff: Lewis G. Evangelidis

Address: 5 Paul X. Tivnan Drive, West Boylston, MA 01583

Phone: (508) 854-1800

Fax: (508) 854-1899

5. Massachusetts Attorney General's Office

Attorney General: Andrea Joy Campbell

Address: One Ashburton Place, Boston, MA 02108

Phone: (617) 727-2200

Fax: (617) 727-5762

Email: ago@mass.gov

6. Office of Governor Maura Healey

Address: Massachusetts State House, Room 280, Boston, MA 02133

Phone: (617) 725-4005

Fax: (617) 727-9725

Email: constituent.services@state.ma.us

****NATIONWIDE****

NOTICE TO CHILD PROTECTIVE SERVICES OF LACK OF JURISDICTION AND ATTACKS THROUGH ADMINISTRATIVE TRIBUNALS

Notice to Principal is Notice to Agent and Notice to Agent is Notice to Principal

I, [redacted]______, one of the People, (as seen in the 50 State Constitutions), Sui Juris, do bring this notice to you, demanding that you and your agents provide immediate due care.

Please take notice that thorough research conducted by the People reveals that, through Title 42 programs, which have never been duly enacted by Congress, government officials in every state are unlawfully collaborating without proper authorization to forcibly separate children from their parents under non-positive legislative acts. Congress, lacking subject matter jurisdiction over the people, is bound by Article 1 Section 8 of the Constitution, which prohibits the enactment of legislation beyond its granted authority. Additionally, Section 1101 (6)(d) of the 1935 Social Security Act makes it abundantly clear that the Legislature never originally intended to authorize the removal of children against parental objections. *(The following authorities are cited below:)*

> ***Maxim of Law 11e.*** *"Power can never be delegated which the authority said to delegate never possessed itself."* ***N.J. Steam Co. v. Merch Bank, 6 How. (47 U.S.) 344, 407.***

> ***U.S. Constitution, Amendment X*** *"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."*

> ***1935 Social Security Act 1101 (6)(d) [Original Intent of Legislature]***
> *(d) Nothing in this Act shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this Act, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child.*

> ***Maxim of Law 86j.*** *The right of blood and kindred cannot be destroyed by any civil law.* ***Dig. 50, 17, 9; Bacon, Max. reg. 11; Broom, Max. 533; Jackson v. Phillips, 14 Allen (Mass.) 562.***

Please take notice that government authorities have instituted legislative tribunals in lieu of courts of record, thereby violating the essential property and liberty interests of the people, breaching their trust indenture, and exceeding constitutional boundaries. Additionally, these officials exploit such abuses of power for personal financial gain through federal programs.

It's worth emphasizing, as illustrated by Justice Gorsuch's recent dissent, that administrative tribunals are unlawful and fail to uphold constitutional due process and deprive the people of their Seventh Amendment rights secured under the Constitution, preventing judges from presiding as they would in courts of record. Gorsuch's dissent underscores the inherent conflict of interest in cases related to federal programs where states, federal entities, or political subdivisions stand to gain financially, ultimately compromising the fundamental rights of the people. The Supreme Court's cessation of the Chevron doctrine contributes to the restoration of justice. This restoration serves as a deterrent against bureaucrats concocting new and unfounded schemes, as well as erroneous legal concepts, in an attempt to deprive the people of their property and rights. *(The following authorities are cited below:)*

> ***Maxim of Law 86j.*** *The right of blood and kindred cannot be destroyed by any civil law.* ***Dig. 50, 17, 9; Bacon, Max. reg. 11; Broom, Max. 533; Jackson v. Phillips, 14 Allen (Mass.) 562.***

> ***Securities and Exchange Commission V. George R. Jarksey, Jr., et al., 22-859, 2022*** *"We do not usually say that government can avoid a constitutional mandate merely by relabeling or moving things around.", "Congress cannot eliminate a party's Seventh Amendment right to a jury trial by relabeling the cause of action in an administrative agency."*

Please take notice that the sole and only legitimate end of government is to secure the natural rights of the people and every other function is usurpation and oppression; For when those in a limited government, go beyond the bounds that the Constitution sets for their powers, every act is an instance of usurpation against the sovereignty of the people and therefore treason. *(The following authorities are cited below:)*

> ***"Objective of government.*** *That the sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty, and property, and when the government assumes other functions, it is usurpation and oppression."* ***Alabama Constitution, Article I, § 35***

> ***Tucker Blackstone Vol. 1 Appendix Note B [Section 3] 1803*** *"If in a limited government, the public functionaries exceed the limits which the constitution prescribes to their powers, every act is an act of usurpation in the government, and, as such, treason against the sovereignty of the people."*

> ***Maxim of Law 51r.*** *"As usurpation is the exercise of power, which another has a right to; so, tyranny is the exercise of power beyond right, which nobody can have a right to."* ***Locke, Treat. 2, 18, 199.***

Please take note that every member of the government, whether they are appointed or elected, is a trustee and servant of the people and is, by implied or expressed contract, obligated by oath or affirmation to defend the Constitutions of the United States and their State in a manner that is most consistent with and binding on their conscience from enemies of the republic, both domestic and foreign. The failure of attorneys to understand the lawful obligation inherent in the oath of office for public servants, and/or the presenting of information contrary to the universally admitted authority of fundamental law, to any government official or worker, does not excuse the government official or worker from failing to understand their duty, nor does it exempt them from properly performing it. *(The following authorities are cited below:)*

> ***Maxim of Law*** *"There is no stronger link or bond between men than an oath."* ***Jenk. Cent. Cas. 126; Id. P. 126, case 54.***

Please take notice that to prevent those, who are vested with authority, from becoming oppressors, the people have a right, to cause their public officers to return to private life and it is the people alone who have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it. When the government acts contrary to the trust reposed in them by making themselves masters or arbitrary disposers of the lives, liberties, or fortunes of the people, that government is therefore dissolved; For the society can never, by the fault of another, lose the native and original right it has to preserve itself. The state of mankind is not so miserable that they are not capable of using this remedy till it is too late to look for any. *(The following authorities are cited below:)*

> ***Two Treatises of Government by John Locke:***
> ***Section 221.*** *"There is, therefore, secondly, another way whereby governments are dissolved, and that is, when the legislative, or the prince, either of them, act contrary to their trust. First, The legislative acts against the trust reposed in them, when they endeavour to invade the property of the subject, and to make themselves, or any part of the community, masters, or arbitrary disposers of the lives, liberties or fortunes of the people."*

> ***Section 222.*** *". . . For since it can never be supposed to be the Will of the Society, that the Legislative should have a Power to destroy that, which everyone designs to secure, by entering into Society, and for which the People submitted themselves to the Legislators of their own making; whenever the Legislators endeavor to take away, and destroy the Property of the People, or to reduce them to Slavery under Arbitrary Power, they put themselves in a state of War with the People, who are absolved of further Obedience, and are left to the Common Refuge, which God has provided for all Men, against Force and Violence. . . By this breach of trust they forfeit the Power, the People had put into their hands, for quite contrary ends, and it devolves to the People, who have a Right to resume their original Liberty. . ."*

Maxim: *To deny or trespass on a Right of another [man], is an act of war.*

"The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer." ***Massachusetts Constitution, Part the First, Article XIX***

Maxim of Law 11a. *"A delegated power cannot be again delegated."* ***2 Inst. 597; Black's, 2d. 347; 2 Bouv. Inst. n. 1300.***

Supplemental Constitutional Objections In Massachusetts

In the Commonwealth of Massachusetts, CPS operates under the Department of Children and Families (DCF), a statutory agency created by M.G.L. ch. 18B and ch. 119. However, this administrative structure directly violates the Massachusetts Constitution:

• Article I affirms the inherent liberty and property rights of the people.

• Article II protects religious conscience from government intrusion, including medical mandates.

• Article X prohibits the taking of property without consent or due process.

• Article XII guarantees trial by jury and judgment only by the law of the land.

• Article XIX provides the People with the right to instruct their representatives and seek redress.

• Article XXX mandates separation of powers, which DCF violates by acting as legislator, enforcer, and judge.

Thus, DCF acts under color of law and without constitutional authority. Any action taken by DCF without a court of record and jury trial is null, void, and constitutes a trespass on the rights of the People.

Rule of Law, Due Process, And Court of Record Requirements

The Rule of Law is not based on policy, statute, or bureaucratic interpretation. It is based on immutable maxims, common law, and constitutional command. Webster's 1806 defined it as: 'That which is fixed and unchanging, binding upon all persons and institutions alike, and superior to the will of men.'

Black's Law Dictionary 4th affirms due process as a right rooted in maxims—not policy discretion. Cooley confirms: 'Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction.'

A court of record is required to lawfully adjudicate any matter involving life, liberty, or property. As per 8 Coke 60 and Maxim 65h: 'No court which has not a record can impose a fine, or commit any person to prison.'

Notice of Liability

Please take notice that the Massachusetts Department of Child and Family has not been officially authorized to partake in proceedings that encroach upon the rights of individuals. Furthermore, the Supreme Court, in a unanimous 9-0 ruling, has made it explicit that agencies lack Sovereign Immunity and are subject to legal action by the public. If there are any subsequent involvement or collaboration in illegitimate tribunals that unlawfully strip individuals of their biological property without due process, trial by jury, or adherence to common law procedures, it will be construed that you are participating with complete awareness, purpose, and malicious intent.

Furthermore, if you hold a different perspective and contest the validity of any of these assertions, or you believe it is within your authority to encroach upon any of the People's individual rights, you are required to respond within ten (10) business days through an affidavit sworn under penalty of perjury. This response should include constitutional provisions that grant you the authority to infringe upon the People's rights or disregard our instructions. Failure to provide such evidence within the specified timeframe constitutes a tacit agreement that all stated claims are accurate.

Recognizing that persistent violations fueled by ambition, oppression, usurpation, fear, foolishness, or corruption, which adversely impact the lives and freedoms of individuals, constitute an infringement, considering that the law serves as a standard of justice demanding redress for any harm or injury suffered. Consequently, you shall be individually accountable for $250,000.00 per individual, per occurrence, encompassing all fines, fees, penalties, and sanctions warranted under Commercial Law and Natural Law. I reserve the right to address this issue through an arbitrator of my choice, with the decision being binding. Additionally, no court is authorized to reconsider this matter; it shall remain as substantiated evidence, truth, and law in all courts of record.

This Notice is sent to you in peace and with the love of Christ, so that you may provide immediate due care to those in whom all political power is inherent, the People.

07-19-2025

Signed at:
2025-07-19 05:22:00

[redacted]

Jotform SIGN

Audit Trail

TITLE	CPS NOTICE TO CHILD PROTECTIVE SERVICES OF L/
DOCUMENT ID	251993369217064
DOCUMENT PAGES	6
STATUS	COMPLETED
TIME ZONE	America/Los Angeles

DOCUMENT HISTORY

Signed	Jul 19, 2025 05:22 AM	Signed IP: 174.245.65.3

EXHIBIT 3

CERTIFICATE OF SERVICE

BE IT KNOWN BY ALL MEN, the affiant shall make every attempt of service to the principals, via USPS Certified Mail, with Return Receipt Requested, noting that **NOTICE TO AGENT IS NOTICE TO PRINCIPAL, and that, NOTICE TO PRINCIPAL IS NOTICE TO AGENT(s).** INASMUCH, the Affiant is NOT responsible for the qualification of service to every trustee/respondent, as **AGENTS MUST NOTIFY PRINCIPALS, AND PRINCIPALS MUST NOTIFY AGENTS. THIS INCLUDES NOTIFICATION TO ALL COMPANIES THAT PROVIDE BONDING AND SURETIES FOR AGENTS OR PRINCIPALS.**

Whoever knowingly and willfully obstructs or retards the passage of the mail and the timely delivery of this notice to the following principals and agents shall be held liable for a penalty of $5,000 per incident and may be subject to imprisonment not more than six months.

To All Trustees/Respondents, in their personal and professional capacity as employees of the Massachusetts Department of Children and Families, 280 Merrimack Street, Lawrence, MA 01843:

1. **Staverne Miller, as Acting Commissioner** — **Starverne.miller@mass.gov**
2. **Laurie McNeil, as Head Supervisor** — **laurie.mcneil@mass.gov**
3. **Faith Coddon, as Social Worker** — **faith.coddon@mass.gov**
4. **Lindsey Burgess, as Supervisor** — **lindsey.burgess@mass.gov**
5. **Lisa Marcheterre, as Supervisor** — **lisa.marcheterre@mass.gov**

Affidavit of Correction & Maladministration to DCF Agents & Subagents of the Commonwealth of Massachusetts

Notice to Agent is Notice to Principal and Notice to Principal is Notice to Agent

Comes now Affiant, [redacted], one of the people (as seen in 50 State Constitutions), Sui Juris, in this court of record. You, being trustees of the people, must provide due care and remember your oath, which binds you. I, the affiant, make the following statements and claims:

Please take notice that the people have taken the time to conduct proper studies to unite collectively in an organized manner, instructing our agents and representatives. We insist that all government agents and trustees refrain from any additional acts of maladministration. I am aware of the dispatching of hordes of government agents and officers to harass the people and unlawfully kidnap my offspring, [redacted] without constitutional, legal, or lawful authority. I am also aware that the legal system is being manipulated and protracted as a political weapon, to charge innocent people with fictitious crimes to kidnap their offspring, then denying equal justice under the law.

Please take notice that research conducted reveals that, through Title 42 programs, which have never been duly enacted by Congress, government officials in every state are unlawfully collaborating without proper authorization to forcibly separate children from their parents under non-positive legislative acts. Congress, lacking subject matter jurisdiction over the people, is bound by Article 1, Section 8 of the Constitution, which prohibits the enactment of legislation beyond its granted authority. Additionally, Section 1101(6)(d) of the 1935 Social Security Act makes it abundantly clear that the legislature never originally intended to authorize the removal of children against parental objections. *(The following authorities are cited below:)*

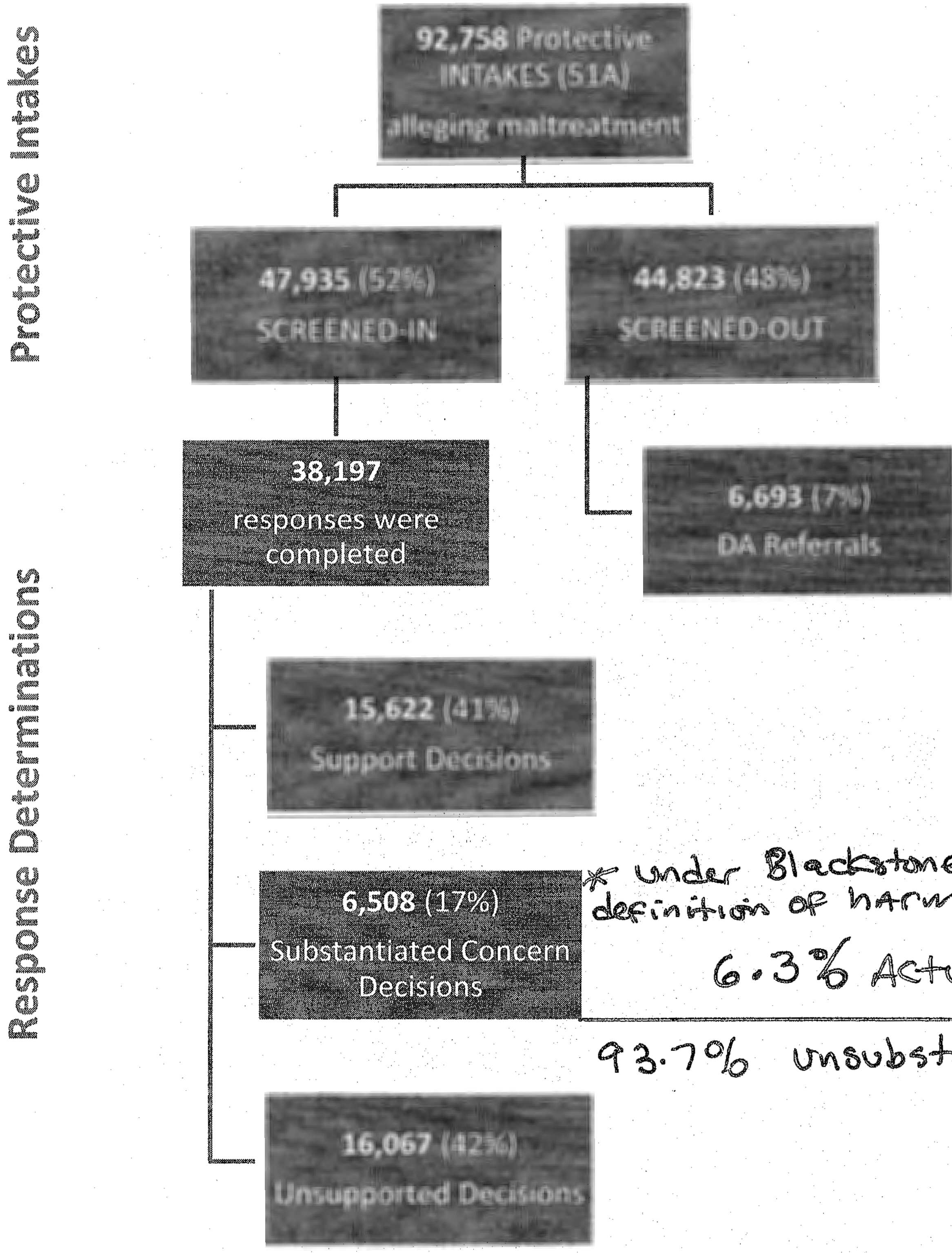
> ***Maxim of Law 11e.*** *"Power can never be delegated which the authority said to delegate never possessed itself." **N.J. Steam Co. v. Merch Bank, 6 How. (47 U.S.) 344, 407.***
>
> ***U.S. Constitution, Amendment X*** *"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."*
>
> ***1935 Social Security Act 1101 (6)(d) [Original Intent of Legislature]***
> *(d) Nothing in this Act shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this Act, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child.*
>
> ***Maxim of Law 86j.*** *The right of blood and kindred cannot be destroyed by any civil law.* ***Dig. 50, 17, 9; Bacon, Max. reg. 11; Broom, Max. 533; Jackson v. Phillips, 14 Allen (Mass.) 562.***

Please take notice that government authorities have instituted legislative tribunals in lieu of courts of record, thereby violating the essential property and liberty interests of the people, breaching their trust indenture, and exceeding constitutional boundaries. Additionally, these officials exploit such abuses of power for personal financial gain through federal programs.

It's worth emphasizing, as illustrated by Justice Gorsuch's recent dissent, that administrative tribunals are unlawful, fail to uphold constitutional due process, and deprive the people of their Seventh Amendment rights secured under the Constitution, preventing judges from presiding as they would in courts of record. Gorsuch's dissent underscores the inherent conflict of interest in cases related to federal programs where states, federal entities, or political subdivisions stand to gain financially, ultimately compromising the fundamental rights of the people. The Supreme Court's cessation of the Chevron doctrine contributes to the restoration of justice. This restoration serves as a deterrent against bureaucrats concocting new and unfounded schemes, as well as erroneous legal concepts, in an attempt to deprive the people of their property and rights.

EXHIBIT 4

- **Protective Intake (51A) Statistics at a Glance FY2023**



* under Blackstone's definition of harm

6.3% Actual

93.7% unsubstantiated

- **Protective Intakes (51As), Responses (51Bs), and Child Victims – Allegations**

TABLE 29a. Count of Intakes (51As) and Allegations

	FY2023	%
Neglect	67,552	72.8%
Physical Abuse	20,271	21.9%
Sexual Abuse	10,666	11.5%
Human Trafficking-Labor	12	*
Human Trafficking-Sexually Exploited Child	1,415	1.5%
Neglect-Substance Exposed Newborn (SEN)	1,392	1.5%
Neglect-Substance Exposed Newborn (SEN) -Neonatal Abstinence Syndrome (NAS)	61	.1%
Invalid Allegation	1,066	1.1%
Total 51A Reports [1]	**92,758**	

[1] An Intake (51A) may include one-or-more allegations. *Less than 0.1% after rounding.

As evidenced in Table 29a, 72.8% of the 92,758 reports of child maltreatment included an allegation of neglect. Physical abuse was evident in 21.9% of reports, sexual abuse in 11.5%, and SEN/SEN-NAS in 1.6%.

TABLE 29b. Count of Supported Responses (51Bs) and Allegations

	FY2023	%
Neglect	13,523	86.6%
Physical Abuse	1,681	10.8%
Sexual Abuse	730	4.7%
Human Trafficking-Labor	3	*
Human Trafficking-Sexually Exploited Child	392	2.5%
Neglect-Substance Exposed Newborn (SEN)	692	4.4%
Neglect-Substance Exposed Newborn (SEN) -Neonatal Abstinence Syndrome (NAS)	44	.3%
Invalid Allegation	-	-
Total Supported 51B Responses [2]	**15,622**	

[2] A response (51B) may include one-or-more supported allegations. *Less than 0.1% after rounding.

Table 29b reveals that 86.6% of the 15,622 supported responses included a finding of neglect. Physical abuse was evident in 10.8% of the supported responses, sexual abuse in 4.7%, and SEN/SEN-NAS in 4.7%.

TABLE 29c. Unduplicated Child Victims by Supported Allegation [3]

	FY2023	%
Neglect	19,952	87.2%
Physical Abuse	1,860	8.1%
Sexual Abuse	758	3.3%
Human Trafficking-Labor	3	*
Human Trafficking-Sexually Exploited Child	359	1.6%
Neglect-Substance Exposed Newborn (SEN)	704	3.1%
Neglect-Substance Exposed Newborn (SEN) -Neonatal Abstinence Syndrome (NAS)	46	.2%
Invalid Allegation	-	-
Unduplicated Child Victims [4]	**22,873**	

[3] A child victim may have one or more supported allegations. *Less than 0.1% after rounding.
[4] A child victim may have one or more supported allegations within a specific allegation type. These counts are unduplicated (i.e., a child with 2 or more supported NEGLECT allegations is only counted once in this table.

Table 29c shows that 87.2% of 22,873 unique children found to have experienced maltreatment were victims of neglect. Physical abuse was evidenced for 8.1% of the child victims, sexual abuse for 3.3%, and SEN/SEN-NAS for 3.3%.

Exhibit 6

State of Massachusetts
Final Report

Primary Review
Title IV-E Foster Care Eligibility
Report of Findings for

October 1, 2023 – March 31, 2024

Introduction

The Children's Bureau (CB) of the Administration for Children and Families conducted a primary Title IV-E Foster Care Eligibility Review (IV-E Review) of Massachusetts' foster care program under title IV-E of the Social Security Act. The IV-E Review was conducted during the week of September 16, 2024, in collaboration with the State of Massachusetts and was completed by a review team comprised of representatives from the state title IV-E agency, CB Central and Regional offices, and ACF Regional Grants Management Office.

Key purposes of the IV-E Review are (1) to determine whether Massachusetts' foster care program for title IV-E is in compliance with eligibility requirements as delineated in title IV-E of the Social Security Act (the Act) and in federal regulations; and (2) to validate the basis of Massachusetts' financial claims to ensure appropriate payments are made on behalf of its eligible children.

Scope of the Review

The IV-E Review encompassed a sample of Massachusetts' foster care cases in which a title IV-E foster care maintenance payment was claimed for an activity that occurred within the 6-month period under review (PUR) of October 1, 2023 to March 31, 2024. A computerized statistical sample of 100 cases (80 cases plus 20 oversample cases) were drawn from data the state submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. Eighty (80) cases were reviewed, which consisted of 79 cases from the original sample plus one (1) oversample case. Sample case number 39 was excluded from the original sample because no title IV-E foster care maintenance payment was made for a period of activity that occurred during the PUR. The state provided documentation (full payment history) of the case to support excluding the case from the review sample and replacing it with a case from the oversample.

In accordance with federal statutes and regulations at 45 CFR §1356.71, the state was reviewed against requirements of title IV-E of the Act and federal regulations regarding:

- Judicial determinations regarding reasonable efforts and contrary to the welfare as set forth in §472(a)(2)(A)(ii) of the Act and 45 CFR §§1356.21(b) and (c), respectively;
- Voluntary placement agreements as set forth in §§472(a)(2)(A)(i) and (d)-(g) of the Act and 45 CFR §1356.22;
- Responsibility for placement and care vested with the title IV-E agency as stipulated in §472(a)(2)(B) of the Act and 45 CFR §1356.71(d)(iii);
- Eligibility for Aid to Families with Dependent Children (AFDC) under the state plan in effect July 16, 1996, as required by §472(a)(3) of the Act and 45 CFR §1356.71(d)(1)(v);
- Child's placement in a foster family home, childcare institution, or residential family-based treatment facility for substance abuse as specified in §§472(b), (j) and (k) and §475A of the Act and 45 CFR §1356.71(g);
- Child's placement setting is fully licensed in accordance with §§ 472(c) and (j) of the Act and 45 CFR §1356.71(d)(1)(iv); and
- Safety requirements for the child's foster care placement as required at §471(a)(20) of the Act and 45 CFR §§1356.30 and 1356.71(d)(1)(iv).

The case record of each child in the selected sample was reviewed to verify title IV-E eligibility. The foster care provider's record was also reviewed to ensure the foster care setting where the child resided during the PUR was fully licensed and met applicable safety requirements. Payments made on behalf of each child were examined to verify expenditures were properly claimed under title IV-E and to identify underpayments eligible for claiming.

A sample case is assigned an error rating when the child was not eligible on the date of activity in the PUR for which title IV-E maintenance was claimed. A sample case is cited as non-error with ineligible payments when the child met eligibility requirements for the PUR, but there were periods in a child's foster care episode for which title IV-E maintenance payments were improperly claimed.

The CB and Massachusetts agreed the state could have two (2) weeks following the onsite review to submit additional documentation for any case identified during the onsite review as in error, in "undetermined" status, or not in error but with ineligible payments. Supplemental documentation submitted by the state for sample cases 29, 48, and 77 supported changing the error case findings to non-error cases. Supplemental documentation submitted by the state for sample case 49 did not satisfy the title IV-E requirement to change the error and the improper payment findings.

Compliance Finding

The CB has determined 78 of the 80 sample cases have met all eligibility requirements (i.e., are deemed non-error cases) for the PUR. Two (2) cases are determined as in error for not meeting eligibility requirements for periods only during the PUR. One (1) non-error case met eligibility requirements for the PUR but was found to have periods in a child's foster care episode for which title IV-E maintenance payments are improperly claimed.

The CB has determined Massachusetts' title IV-E foster care program is in substantial compliance with federal eligibility requirements for the PUR. Substantial compliance in a primary IV-E Review means the total number of error cases determined as not meeting eligibility requirements for the PUR is four (4) cases or less. Additional findings for non-error cases with ineligible payments are not considered in determining the state's compliance level. Because the state is in substantial compliance, a secondary review of 150 sample cases is not required. The next primary review will be held in three (3) years.

Case Summary

The following charts record improper payment cases comprised of error cases, and non-error cases with ineligible payments; reasons for improper payments; improper payment amounts; and federal provisions for which the state does not meet compliance mandates. Calculation of improper payment amounts is based on the dates specified in the chart and the federal financial participation (FFP) rates of maintenance payments at the state's Federal Medical Assistance Percentages (FMAP) for applicable year(s) for each sample case.

Error Case:

Sample Number	Improper Payment Reason & Ineligibility Period October 1, 2023 – March 31, 2024	Improper Maint. Payments (FFP)	Improper Admin. Payments (FFP)
32 *	Foster care maintenance payment was made for a period of time that the judicial determination of reasonable efforts to finalize permanency was not met for the PUR. The judicial finding was due by 10/24/2023 and was not made. [§472(a)(2)(A)(ii) of the Act; 45 CFR §1356.21(b)(2)] Ineligible Period: 11/01/2023 – 11/30/2023	$1,309	$1,222

* No reasonable efforts to prevent Removal.

Sample Number	Improper Payment Reason & Ineligibility Period October 1, 2023 – March 31, 2024	Improper Maint. Payments (FFP)	Improper Admin. Payments (FFP)
49 **	Foster care maintenance payment was made for a period of time when the safety requirements for Child Care Institution (CCI) care provider not met. The required fingerprint-based checks of the National Crime Information Databases (NCID) for all employees of the CCI where the child was placed were not completed prior to claiming title IV-E foster care maintenance payments. [§471(a)(20) of the Act and 45 CFR §1356.30] Ineligible Period: 10/01/23 – 10/09/23	$1,472	$0
-	Total Maintenance FFP and Total Administrative FFP	$2,781	$1,222

** No Judicial ably ruling, removal Illegal

Overall Total FFP: $4,003

Non-Error Cases with Ineligible Payments:

Sample Number	Improper Payment Reason & Ineligibility Period October 1, 2023 to March 30, 2024	Improper Maint. Payments (FFP)	Improper Admin. Payments (FFP)
69 ***	Foster care maintenance payment was made for a period of time the foster family home in which the child was placed was not fully licensed. [§§472(b) & (c) of the Act and 45 CFR. §§1356.30 and §§1356.71(d)(1)(iv)]. Safety requirements for the same foster care provider also not met. The required fingerprint-based check of the NCID for the foster parent was not completed before claiming title IV-E foster care maintenance payments. [§471(a)(20) of the Act and 45 CFR §§1356.30] Ineligible Period: 12/29/2022 – 02/28/2023	$1,236	$2,385
-	Total Maintenance FFP and Total Administrative FFP	$1,236	$2,385

*** No documentation, post removal hearing. No Justification

Overall Total FFP: $3,621

Areas Needing Improvement

Findings of this IV-E Review indicate Massachusetts needs to further develop and implement procedures to improve program performance in the following areas, as noted below. For each issue, there is a discussion of the nature of the area needing improvement, the specific title IV-E requirement to which it relates and the corrective action the state should undertake.

Issue #1: *Judicial Determinations Regarding Reasonable Efforts to Finalize a Permanency Plan*
One (1) case, sample #32, was deemed an error case because the judicial requirement of "reasonable efforts to finalize a permanency plan" was not satisfactorily met for the specified period. The state did not provide documentation that the judicial determination was made.

Title IV-E Requirement: For a child who is judicially removed and remains in foster care for 12 months or more, federal provisions at §472(a)(2)(A) of the Act and 45 CFR §1356.21(b)(2) require the state to obtain a judicial determination of whether the state has made "reasonable efforts to finalize a permanency plan" for the child. The judicial finding must occur at regular 12-month intervals for the duration of the foster care episode and no later than 12 months from the month in which the prior determination is obtained. If the judicial determination of "reasonable efforts to finalize" is not made or is not timely, the child becomes ineligible from the beginning of the first month after it is due and remains ineligible until the beginning of the month in which the judicial determination is made.

Recommended Corrective Action: Massachusetts, like most states, incorporated the federal requirement for a judicial determination of "reasonable efforts to finalize a permanency plan" into its court proceeding for the 12-month permanency hearing. The requisite judicial determination need not be tied to a permanency or other court hearing. Furthermore, the judicial determination may be rendered by the court at any point during the 12-month period. The state should continue to develop and implement procedures to ensure timely judicial determinations of "reasonable efforts to finalize the permanency plan" regardless of the timing of the permanency hearing. The accuracy and reliability of eligibility determinations generally are increased through training of staff to ensure eligibility decisions are based on the correct elements needed for compliance and to eliminate the authorization of payments prior to establishing compliance with requirements. In addition, the CB suggests the state continue to monitor the quality assurance system already in place for accuracy of eligibility determination and claiming processes.

Issue #2: *Foster home not fully licensed.*
One (1) non-error case, sample #69 was identified to have ineligible payments because the foster home was not fully licensed during the child's placement in the home. The child was placed in the foster home on December 29, 2022, and the foster care license was issued on

March 31, 2023. However, the Department of Children and Families (DCF) claimed foster care payments for the months the foster home was not fully licensed.

Title IV-E Requirements: Federal provisions at §§472(b) & (c) and 45 CFR §1356.71(d)(1)(iv) require a child for whom foster care maintenance payments are made to be residing in a foster family home or childcare institution that is fully licensed. The title IV-E agency must document that the child's foster care placement is fully licensed for the duration of the child's placement. The title IV-E agency may claim foster care maintenance payments for the entire month on behalf of an otherwise eligible child who is placed in a foster family home or childcare institution if the provider is fully licensed for at least one day of the month unless licensing status is lost during the month.

Recommended Corrective Action: The state must take action to ensure foster care payments are only made for otherwise eligible children in a fully licensed placement. The accuracy and reliability of eligible determinations generally are increased through training of staff to ensure agency workers make eligibility decisions based on the correct elements needed for compliance and to eliminate the authorization of payments prior to establishing compliance with requirements. In addition, the CB suggests the state continue to monitor the quality assurance system already in place for accuracy of eligibility determination and claiming processes.

Issue #3: *Safety Requirements Not Met.*
One (1) error case, sample #49, was identified to have ineligible payments, because foster care maintenance payments were claimed for a period when not all staff met safety requirements during the time the child was placed in that CCI. Another case, sample #69, was identified as a non-error case with ineligible payments because the required fingerprint-based check of the NCID for the foster parent was not satisfactorily completed before foster care maintenance payments were claimed for the child in that placement.

Title IV-E Requirement: The Family First Act modified title IV-E at §471(a)(20)(D) of the Act to add new criminal records check requirements for children placed in CCIs, with a delayed effective date of April 1, 2020, for Massachusetts. Consistent with §§471(a)(20)(A) and (D) of the Act a title IV-E agency may claim title IV-E FCMPs on behalf of a child placed in a foster family home or childcare institution only for the days that the results of the criminal record checks have been received as described in the Act. Specifically, a title IV-E agency may only claim title IV-E FCMP on behalf of an otherwise eligible child placed in a childcare institution for the days that the agency has received results of criminal records checks for all adults working in the childcare institution. Similarly, federal provisions at §471(a)(20)(A) of the Act and 45 CFR §1356.30 require the state to provide documentation that criminal records checks have been conducted on all prospective foster parents before title IV-E maintenance payments are claimed for the period of the child's stay. Fingerprint-based checks of the NCID must be conducted for all prospective foster parents licensed after October 1, 2008. Title IV-E policy only allows maintenance payments to be claimed from the day the required criminal background check requirements are met for the provider's home or for all employees of the CCI.

Recommended Corrective Action: When placing children in foster homes, or CCIs, the state agency must ensure that all required criminal background checks have been completed prior to claiming for the title IV-E maintenance payments._The CB suggests DCF strengthen its system to ensure that the required documentation is on file prior to initiating title IV-E claims on behalf of a child and to have procedures in place to monitor the accuracy of eligibility determination and claiming processes. It is also imperative that the state train all eligibility personnel to understand title IV-E policy and all requirements on what makes child title IV-E eligible, including all requirements the child's placements the child's placement must also meet in order to receive FCMP.

Program Strengths and Promising Practices

The following positive practices and processes of Massachusetts' title IV-E program were observed during the IV-E Review. These approaches seem to have led to improved program performance and successful program operations.

Judicial Determinations:

Judicial determinations required for title IV-E eligibility were explicit and clearly documented in court orders. In particular, information to support judicial determinations of "reasonable efforts to prevent removal" was child specific and well documented in the court order or by referencing the details in the initial affidavit supporting removal. Similarly, findings of "reasonable efforts to finalize" were also child specific and clearly documented either in the court order or by referencing DCF reports or permanency plans. Court orders also explicitly documented custody throughout the foster care episode which provided clear evidence of placement and care responsibility. DCF reports collaborative efforts with the courts to promote timely and quality judicial findings. Finally, DCF provided docket sheets to support the title IV-E review process which provided an excellent chronological summary of all court activities on all cases in the sample.

Management Information System:

The state has a well-integrated automated system which provides access to demographic information from DCF's i-FamilyNet and family financial information through the TANF and Medicaid automated systems operated by other state agencies. Title IV-E eligibility determinations are completed in the Title IV-E Application within i-FamilyNet and are documented in summary form on the automated worksheets. Overall, the automated worksheets provide clear, thorough documentation of the eligibility decision, basis for the decision, and period of eligibility. The automated claiming process contains edits that are intended to stop payments to a placement provider if the provider's license is not valid or if a child exits foster care. The system produced a payment history for the IV-E Review that was comprehensive and captured necessary data on the child, provider, payment amounts, funding sources, service codes and activity dates.

Eligibility Determinations:

The state's title IV-E eligibility determinations are made with contract support and oversight of DCF's legal unit to promote accurate eligibility determinations. Eligibility determinations were completed timely. Financial and deprivation factors were clearly and easily indicated, with the exception of one sample case in which additional research was required. The state's clear documentation enhanced the review process, enabling reviewers to readily identify the month of initial eligibility, the specified relative from whom the child was removed, and whom "best interest" judicial findings were being made against.

Foster Home Licensing:

Massachusetts' foster home licensing documentation was well-organized and included clear effective start and end dates. DCF's i-FamilyNet captures licensing activities to achieve and maintain. licensure including required annual reassessments. Licensing activities are also supported by DCF policy that requires monthly licensing home visits.

Disallowances

A disallowance in the amount of $2,781 in maintenance payments and $1,222 in related administrative costs of FFP is assessed for title IV-E foster care payments that are claimed for the error cases. Additional amounts of $2,236 in maintenance payments and $2,385 in related administrative costs of FFP are disallowed for title IV-E foster care payments that are claimed improperly for non-error case. The total disallowance as a result of this IV-E Review is $7,624 in FFP.

Massachusetts also must identify and repay any ineligible payments for error and non-error cases that occur for periods prior and subsequent to the PUR that are beyond those identified in this report for the improperly paid cases. No future claims can be submitted on these cases until it is determined all eligibility requirements are met.

Next Steps

As part of the state's ongoing efforts to improve its title IV-E foster care eligibility determination process, the CB recommends Massachusetts examine identified program deficiencies and develop measurable, sustainable strategies that target root causes of issues and concerns identified above.

The CB Region 1 Office will continue to work with the state in a collaborative effort to provide technical assistance to further strengthen the state's title IV-E program.

Exhibit 7

OCA MASSACHUSETTS Office of the Child Advocate

Table 1: OCA By the Numbers, Fiscal Year 2024			
Statutory Mandate	**Reports or Inquiries**	**Children Involved**	**Resulting in OCA Follow Up**
Complaint Line[30]	532	528	109 (20%)
Critical Incident Reports	278	380	148 (53%)
Foster Care Review Safety Alerts	15	17	11 (73%)
DCF-Supported Reports of Abuse and/or Neglect in Out-of-Home Settings	465	676	158 (34%)

When a complaint, critical incident report, Foster Care Review safety alert, or DCF-supported report of abuse and/or neglect in an out-of-home setting is received, the OCA quality assurance staff conduct an immediate review to learn more about the circumstances that brought it to the attention of the OCA and any state agency involvement with the child and family. When the OCA determines that the actions or inactions of an agency may have contributed to the complaint or incident, or that the child, youth, or family is not receiving the services required to meet their needs, we may request additional reports from the agency, speak with agency senior leadership staff, and/or further review case records to learn more about the family's history and involvement with the agency. Through internal review of a complaint or report received, when the OCA identifies an individual case practice concern or system-wide pattern or trend, we contact the agency involved and take necessary steps to resolve the matter.

While the OCA reviews all complaints and reports received from or about all child-serving state agencies, the OCA's mandate is to focus on the children in the care and/or custody of DCF and DYS.[31] Complaints about DCF and reports received from DCF undergo a thorough review of the family's DCF electronic record. The purpose of this review is to understand the family and their needs, to substantively review DCF's understanding of the family and their needs, and to evaluate DCF's efforts to assist and engage the family and protect the child from harm. In this context, the OCA will identify what worked well and where there are opportunities for improvement in policy and case practice across the system or with the specific family, and identify state agency policy, case practice, and service delivery concerns. **When the OCA determines follow-up with a state agency is necessary, we confirm that the agency involved received the OCA feedback and that all case practice concerns identified through the OCA's review are resolved appropriately and in a timely manner to ensure the safety and well-being of the children involved and/or to improve services for the family.**

In addition to our work improving the individual quality and delivery of services to children and families, the OCA uses the information reported to our office in these key areas to inform our

[30] This number includes both complaints and inquiries related to information and referrals. Complaint Line inquiries do not always involve a specific child, nor do individuals always share details about specific children for whom they have a concern or request.

[31] See Appendix E: Glossary of Terms for a definition of state custody. Please note, children in state custody are not always placed out-of-home.