IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

K.Y., a minor, et al., *Plaintiffs*, v. DISTRICT OF COLUMBIA, et al., *Defendants*.	Civil Action No. 1:24-cv-03056 (CJN)

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

Plaintiffs K.Y. and D.J., by and through their respective next friends, move for a preliminary injunction on behalf of themselves and a class of similarly situated youth who are or will be committed to the custody of the Department of Youth Rehabilitation Services ("DYRS") and detained at the Youth Services Center ("YSC") awaiting placement.

INTRODUCTION

The District's juvenile delinquency system is premised on the recognition that "children . . . should not be treated like adults." *In re K.G.*, 178 A.3d 1213, 1214 (D.C. 2018). The system's focus on rehabilitation as opposed to punishment is clear: it "place[s] a premium on the rehabilitation of children with the goal of creating productive citizens." D.C. Code § 16-2301.02(5); *see also id.* § 16-2301.02(7) ("hold[ing] the government accountable for the provision of reasonable rehabilitative services" is a "goal[]" for delinquency cases). Rehabilitative goals are to be "achieve[d] . . . in the least restrictive settings necessary[.]" D.C. Code § 16-2301.02(9). After a child has been found to have engaged in a delinquent act, the juvenile system must "constantly review[] a youth's individual strengths, needs, and rehabilitative progress and ensure[] placement within a continuum of least restrictive settings within secure facilities and the community." *Id.* § 2-1515.04(6). The D.C. Department of Youth Rehabilitation Services ("DYRS") is entrusted with effectuating rehabilitation and care for children committed to its custody. *See id.* § 2-1515.02(a).

Despite the law's clear rehabilitation mandate, DYRS has a practice of extending children's detention at the Youth Services Center ("YSC"), D.C.'s youth jail, long after a judge of the Family Division of the Superior Court of the District of Columbia ("Family Court") has determined that they are in need of rehabilitative services that YSC cannot, and does not, provide. DYRS refers to these children as the "awaiting placement" population. While these children wait, DYRS keeps

them locked up at YSC[1]—which, as Sam Abed, Director of DYRS, has testified, "is not a treatment facility, it's a detention center."[2] In these additional weeks and months that they are detained at YSC, children—some as young as 13 and 14—do not receive individualized therapy services or engage in rehabilitative programming. Instead, they "sit[] . . . for a long time waiting for placement"[3] and "spend a lot of time in [their] room[s]" due to lockdowns.[4] DYRS thus leaves children to languish in detention without access to the care and rehabilitative treatment the Family Court found necessary.

This practice violates due process. Children committed to DYRS custody have not been convicted of a crime, and therefore cannot be subject to punishment. *See McAdoo v. United States*, 515 A.2d 412, 418 (D.C. 1986) (noting that "a juvenile adjudication is not the equivalent of a criminal conviction"). Their detention must be reasonably related to a legitimate government purpose, which DYRS cannot claim exists when children are held at a jail-like facility for extended periods of time and deprived of the rehabilitative services to which they are entitled. Moreover, this period of detention at YSC extends the overall amount of time that a child spends in secure detention. Over the course of a child's commitment to DYRS custody, they may be moved from secure placements to community or home placements by rehabilitating through treatment

[1] The vast majority of youth awaiting placement are held at YSC. Youth awaiting placement are occasionally held at DYRS-operated New Beginnings Youth Development Center without receiving rehabilitative services there, but the available public data does not filter for this population. *See* Ex. 5: Decl. of Clare Kruger ¶ 8.

[2] Testimony of Sam Abed, *Joint Oversight Roundtable: Public Safety & Behavioral Health Services & Support for Youth*, Council of the District of Columbia, Comm. on Health, Judiciary & Youth Affairs (Dec. 13, 2023), https://www.youtube.com/watch?v=-Md8K6vFG2k (07:01:22–26) [hereinafter "Dec. 13, 2023 Oversight Hearing"].

[3] Ex. 10: Decl. of D.J. ¶ 15.

[4] Ex. 9: Decl. of K.Y. ¶ 11.

programs—programs they cannot start until they are actually placed. Because YSC is not—as Director Abed stated—"a treatment facility,"[5] the time spent waiting there does not rehabilitate a child or contribute to the process of stepping down from more restrictive placements, and ultimately, going home. No benefit is to be gained from this additional detention, especially because detention "'can actually increase recidivism [and] pull youth deeper into the justice system.'" *In re K.G.*, 178 A.3d at 1219 (alteration in original) (citation omitted). DYRS's practice also constitutes negligence and violates statutory deadlines for providing children with initial assessments and individualized treatment plans. *See* D.C. Code § 16-2319(f).

DYRS's practice irreparably harms children awaiting placement. Every additional day that a child awaiting placement spends detained at YSC is a day they are not receiving necessary treatment and rehabilitative services. Over the days, weeks, and months that these children are forced to wait in a restrictive, carceral setting, their mental, emotional, and physical health decompensates, causing serious and long-lasting damage. Even D.C. Attorney General Schwalb, the chief prosecutor of youth in the District, has warned that the "long delays in getting appropriate treatment . . . can make [youth] more vulnerable to recidivism."[6]

At the center of DYRS's failures are the District's children and their families. The delays have caused them to "feel[] hopeless"; as one parent of a child awaiting placement has stated: "I don't even have words for it at this point. . . . One hundred percent broken."[7] Plaintiffs and putative

[5] Dec. 13, 2023 Oversight Hearing, *supra* note 2, at 07:01:22.

[6] Emily Davies, *D.C. Attorney General Targets Youth Services Agency in New Legislation*, Wash. Post (May 21, 2024), https://www.washingtonpost.com/dc-md-va/2024/05/21/dc-youth-crime-rehabilitation-legislation/.

[7] Eric Flack & Jordan Fischer, *"We need some help," Mother, Judges Say System Is Failing DC Kids Who Need Mental Health Treatment*, WUSA9 (July 12, 2024),

class members cannot afford to wait any longer for this broken system to be fixed. Judicial intervention is warranted, and this Court should grant preliminary injunctive relief.

FACTUAL BACKGROUND

I. DYRS IS RESPONSIBLE TO CARE FOR AND PROVIDE REHABILITATIVE SERVICES TO CHILDREN COMMITTED TO ITS CUSTODY.

If a child is adjudicated "delinquent," the Family Court holds a hearing to determine what disposition "will be in the best interest of the child." *See* D.C. Code §§ 16-2320(c); 16-2317(c). The court can order the child to "[p]robation under such conditions and limitations as the [court] may prescribe," *id.* § 16-2320(c)(3), or it can order the "[t]ransfer of legal custody to a public agency for the care of delinquent children," *id.* § 16-2320(c)(2). The latter is referred to as "commitment" to DYRS. *Id.* § 2-1515.01(2).

If the court commits a child to DYRS custody, DYRS becomes entirely responsible for meeting the child's rehabilitative needs, as well as for the overall care of the child. *See* D.C. Code § 2-1515.01(2) ("'Committed' means . . . placement [of a youth] in the care and custody of [DYRS]."); *id.* § 16-2320 (c)(2) (Family Court may "transfer . . . legal custody to [DYRS] for the care of delinquent children"); *id.* § 16-2301 (21) ("legal custody" means vesting of "the responsibility for the custody of a minor"). DYRS acquires "authority to make all decisions pertaining to the child's rehabilitation." *In re P.S.*, 821 A.2d 905, 911 n.11 (D.C. 2003). The purpose of commitment is not to detain or punish children, but to rehabilitate them: The "goals" for delinquency cases include the "rehabilitation of children with the goal of creating productive citizens," and "hold[ing] the government accountable for the provision of reasonable rehabilitative services." D.C. Code §§ 16-2301.02 (5), (7). The statute defines a "delinquent child" as a "child

---

https://www.wusa9.com/article/news/crime/mother-judges-say-system-is-failing-dc-kids-who-need-mental-health-treatment/65-f1d4540c-27b9-46d6-97de-ea627e432f77.

who has committed a delinquent act and *is in need of care or rehabilitation*." *Id.* § 16-2301(6) (emphasis added). And DYRS is responsible for effectuating these goals. DYRS was created to "[i]mprove the security, supervision, and rehabilitation services provided to committed and detained juvenile offenders." *Id.* § 2-1515.02(a)(1). Its primary duties include operating a "juvenile justice system of care, rehabilitative service delivery, and security that meets the treatment needs of youth within the juvenile justice system[.]" *Id.* § 2-1515.04. This includes "[a]ssessing the risks and needs of youth, and determining and providing the services needed for treatment for substance abuse and other services," and "[e]stablishing a system that constantly reviews a youth's individual strengths, needs, and rehabilitative progress and ensures placement within a continuum of least restrictive settings[.]" *Id.* §§ 2-1515.04(6), (7).

Following disposition, DYRS is required to "conduct an evaluation of the child to determine the appropriate services and to develop an individualized treatment plan for the child." D.C. Code § 16-2319(d). District law provides a strict timeline for DYRS to "complete an initial assessment" and "develop the individualized treatment plan": The former must be completed "within 3 days of taking legal custody" and the latter "within 14 days of completing the initial assessment." *Id.* § 16-2319(f). As part of commitment, DYRS determines where to place a child (a "placement") in order to receive rehabilitative services.[8] Types of placements vary by levels of restrictiveness—from low-level placements, which can include placement at home with a parent, to high-level placements, which are "secure" placements, *i.e.*, "locked residential placement[s] which provide[] treatment and/or educational programs within the facility and do[] not allow for

[8] *See* DYRS, *DC Juvenile Justice System*, https://dyrs.dc.gov/page/dc-juvenile-justice-system (DYRS is "responsible for all decisions regarding the youth's placement.").

unsupervised movement within or outside of the facility." D.C.M.R. § 29-1299.1.[9] High-level placements include the DYRS-operated New Beginnings Youth Development Center ("New Beginnings"),[10] residential treatment centers, and out-of-state psychiatric residential treatment facilities ("PRTFs"). *See* Ex. 1: Decl. of Whitney Louchheim ¶ 10. As former DYRS Director Hilary Cairns states, the "differences in the levels of restriction between high, medium, and low security placements are vast," and "[i]t is important for young people to move from higher to lower security facilities to prepare for returning to the community." Ex. 4: Decl. of Hilary Cairns ¶ 11. Because "every child in DYRS' custody will return to the community by the age of 21," it is the "agency's goal . . . [to] return[] children to the community with the ability to succeed." *Id.* ¶ 12.

II. DYRS SYSTEMATICALLY DELAYS PLACING CHILDREN AT FACILITIES TO RECEIVE REHABILITATIVE SERVICES.

DYRS has been systematically failing to timely place children at facilities that meet their rehabilitative needs. Though D.C. Code § 16-2319(f) requires DYRS to "complete an initial assessment of the child within 3 days of taking legal custody" and "develop the individualized treatment plan within 14 days" of the assessment, these assessments and plans are almost never competed on time, if completed at all. *See* Ex. 1: Louchheim Decl. ¶ 12; Ex. 5: Kruger Decl. ¶¶ 11–12. Instead, after commitment, children wait weeks to even meet with the DYRS staff who coordinate the assessment and placement plan. *See* Ex. 1: Louchheim Decl. ¶ 15; Ex. 2: Decl. of Raymond Ngu ¶ 5; *see also* Ex. 8: Decl. of D.D. Davis ¶ 11 ("It is challenging to find out which DYRS employee is even assigned to your client's case, and it also often changes.").

---

[9] *See* DYRS, *FY23 Performance Oversight Pre-Hearing Question Responses* 41 (Feb. 12, 2024), https://dccouncil.gov/wp-content/uploads/2024/08/DYRS-FY23-24-Oversight-Pre-Hearing-Questions_FINAL.pdf (describing a "high-level placement" as "a secured detention facility") [hereinafter, "FY23 Performance Oversight Pre-Hearing Question Responses"].

[10] DYRS, *New Beginnings Youth Development Center*, https://dyrs.dc.gov/page/new-beginnings-youth-development-center.

Children wait months after disposition for DYRS to place them in a facility that can provide the rehabilitative services and care they have been found by a court to need—this is referred to as "awaiting placement." *See* Ex. 6: Decl. of William Mount ¶ 9 ("When one of my clients is committed, I now expect that they will wait *at least* 60 to 90 days to be transferred to a placement." (emphasis added)). While awaiting placement, children are detained at YSC, which is not a substitute for a placement because it does not provide for long-term treatment. Instead, it functions as a youth jail, designed to house children pending adjudication or disposition. As Director Abed has stated, YSC is a "detention center," "akin to a jail in the adult system" that is designed to hold someone "pre-trial."[11] It is "not a treatment facility."[12]

DYRS's process for placing children has entirely broken down. In most cases, DYRS is aware even before the dispositional hearing that a child is likely to be committed because a Notice of Intent to Recommend Commitment ("Notice of Intent") is filed; according to DYRS's own website, this is intended to jumpstart the "pre-commitment phase," where DYRS's care coordination team is connected to a child and begins to "thoroughly assess and determine the most appropriate rehabilitation plan," including a child's placement.[13] In the past, "packets to potential placements would have already been sent out and a young person might have already gotten an acceptance into a placement facility" by the dispositional hearing. Ex. 1: Louchheim Decl. ¶ 14; *see also* Ex. 6: Mount Decl. ¶ 7. Today, none of the pre-commitment work appears to be occurring. Instead, children are committed to DYRS custody, and then DYRS—despite having been aware that commitment was a possibility—scrambles to find a placement. *See* Ex. 3: Decl. of Hannah

[11] Dec. 13, 2023 Oversight Hearing, *supra* note 2, at 07:02:05–18.

[12] *Id.* at 07:01:22.

[13] DYRS, *Care Coordination*, https://dyrs.dc.gov/page/care-coordination.

McElhinny ¶ 3 ("I am aware of 18 cases in the past year where a Notice of Intent . . . was filed. In 13 of those 18 cases (or 72%) of them, DYRS had no plan for placement at the time of the dispositional hearing."); *see also* Ex. 8: Davis Decl. ¶¶ 5- 6; Ex. 6: Mount Decl. ¶ 8. Attorney General Schwalb, who oversees prosecution of delinquency cases in the District, has stated that despite "put[ting] the parties and the court on written notice that [the OAG] intend[s] to seek commitment," "the current practice is for DYRS to wait until after commitment formally begins before conducting an assessment and forming a treatment plan."[14]

The resultant delays are dramatic. Despite Director Abed's "assertion that all children should be placed within, ideally, 30 days of commitment," *see* Ex. 7: Letter to Abed at 1, DYRS fails to complete *planning* for placement within 90 days—three times longer than the agency believes it should take to place a child. In Fiscal Year 2023, only 45.3% of newly committed youth—*less than half*—underwent "a complete case planning process within 90 days of their commitment start date."[15] This is a drop of over 50% from Fiscal Year 2022, during which 92.5% of newly committed youth underwent a complete case planning process within 90 days.[16] DYRS's delays are well known to the District's leadership. On November 13, 2023, Mayor Bowser declared a public emergency, finding that "[t]he District needs to take additional action, on an immediate basis, to provide youth in custody with the appropriate resources and supports" and "broaden and

---

[14] Statement of Brian L. Schwalb, Att'y Gen. for D.C., *Public Hearing on B25-826, Recidivism Reduction, Oversight, And Accountability for DYRS Act of 2024 (ROAD Act)*, at 2 (Sept. 25, 2024), https://lims.dccouncil.gov/downloads/LIMS/55504/Hearing_Record/B25-0826-Hearing_Record3.pdf?Id=199168 [hereinafter, "Attorney General Schwalb Statement"].

[15] DYRS, *FY 2024 Performance Plan* 7 (Dec. 1, 2023), https://oca.dc.gov/sites/default/files/dc/sites/oca/page_content/attachments/Department%20of%20Youth%20Rehabilitation%20Services_2023-12-01.pdf [hereinafter, "FY 2024 Performance Plan"].

[16] *Id.*

enhance existing youth public safety programming."[17] The Mayor's Order specifically instructed DYRS to "take measures to increase capacity across the continuum of placements for youth in DYRS's custody," including "[p]rocuring additional placements for youth at . . . psychiatric residential treatment centers."[18] Despite this directive nearly a year ago, DYRS has made little to no progress in placing youth.

On February 14, 2024, a collective of juvenile attorneys wrote to Director Abed to "express [their] grave concern regarding the pattern and practice of [DYRS] warehousing committed children at [YSC] for months as they await placement at appropriate facilities." Ex. 7: Letter to Abed at 1. They stated that "[d]espite [his] assertion that all children should be placed within, ideally, 30 days of commitment," they "have witnessed the wait times grow longer and longer while the communication between DYRS staff, families and attorneys of record continues to deteriorate." *Id.* at 2. The resulting harms were spelled out to Director Abed: "[T]he agency takes weeks and sometimes more than a month to even meet with a committed youth. Prolonged detention is incredibly detrimental to a child's psychological wellbeing, especially when that detention is not accompanied by individualized and clinically appropriate services and has no apparent end date." *Id.*

That same month, at a DYRS oversight hearing, the D.C. Council Committee on Recreation, Libraries, and Youth Affairs heard testimony regarding the "40 committed youth . . . awaiting placement," and the "missteps that arise when DYRS youth await placement," including DYRS's "squander[ing] weeks of prep time needed to determine rehabilitative care, find and

[17] Office of the Mayor, *Mayor's Order 2023-141*, at 3 (Nov. 13, 2023), https://mayor.dc.gov/sites/default/files/dc/sites/mayormb/release_content/attachments/2023-141_joint_p-e_declarations-opioid_crisis_youth_violence.pdf.

[18] *Id.* at 4.

implement an appropriate program, order assessments and coordinate care."[19] Director Abed was at the hearing, and had submitted pre-hearing responses confirming his awareness of the problem: He specified that one of the agency's "top five priorities" is "reducing the length of stay . . . for youth awaiting placement and housed at Youth Services Center."[20] At the hearing, Director Abed reiterated a commitment to "[r]educing length of stay for awaiting placement youth."[21]

Months later, in May 2024, the problem remained so widespread and egregious that the Office of the Attorney General—the agency tasked with prosecuting delinquency cases—introduced legislation to force DYRS to move more quickly, expressing "'concern[] about [DYRS's] direction'" and dissatisfaction with its delays.[22] The proposed legislation would require DYRS to complete assessments and develop individualized rehabilitation plans prior to disposition, then, "within 3 days after entry of the dispositional order" committing a child to DYRS, "assign a case manager, and implement the individualized rehabilitation plan."[23] These proposals were "made necessary by long delays in getting appropriate treatment for young people

[19] Sam P.K. Collins, *DYRS Budget Oversight Hearing Sheds Light on Treatment, Staffing Gaps*, Wash. Informer (Feb. 20, 2024), https://www.washingtoninformer.com/dyrs-budget-oversight-hearing-sheds-light-on-treatment-staffing-gaps/.

[20] Sam Abed to CM Trayon White, Chair of Comm. on Rec. Libraries & Youth Affairs, *DYRS FY23 Perf. Oversight Pre-Hrg, Question Responses* 12 (Feb. 12, 2024), https://dccouncil.gov/wp-content/uploads/2024/08/DYRS-FY23-24-Oversight-Pre-Hearing-Questions_FINAL.pdf.

[21] Testimony of Sam Abed, *Fiscal Year 2023 Perf. Oversight Hrg. on D.C. Dep't of Youth Rehab. Servs.* 5 (Feb. 15, 2024), https://dyrs.dc.gov/sites/default/files/dc/sites/dyrs/release_content/attachments/DYRS%20FY23%20Performance%20Oversight%20Hearing%20Testimony_2.15.24.pdf.

[22] Davies, *supra* note 6.

[23] *Recidivism Reduction, Oversight, and Accountability for DYRS Act of 2024 (ROAD Act)*, Bill 25-0826, at 3:69–75, 5:124–125, https://lims.dccouncil.gov/Legislation/B25-0826.

convicted of crimes, which can make them more vulnerable to recidivism."[24] As Attorney General Schwalb subsequently testified before the D.C. Council, "youth committed to DYRS are waiting far too long to get necessary rehabilitative services" and those youth are "being securely detained, lingering without individualized rehabilitative services, therapies, or appropriate placement."[25]

Again, nothing changed. In a "series of hearings," a judge of the Family Division of the Superior Court of the District of Columbia "repeatedly ordered DYRS officials to explain delays in care and rehabilitation for the young people coming before her."[26] The court had seen that "[y]oung people "determined needed to stay at a psychiatric treatment facility would continue to wait, prompting strong words from the judge" regarding DYRS's delays.[27]

These failures continue to this day. As of October 30, 2024, there were 21 children committed to DYRS's custody sitting at YSC awaiting placement. Of those 21 children, one has been waiting 29-60 days, three have been waiting 61-90 days, and nine have been waiting 91-180 days.[28] In other words, 43% of the children at YSC who are committed to DYRS's custody have—as of the date of this filing—been waiting *over three months* and some up to six months to be provided rehabilitative services in an appropriate placement.

---

[24] Davies, *supra* note 6.

[25] Attorney General Schwalb Statement, *supra* note 14, at 2.

[26] Keith Alexander, *Lawsuit Alleges D.C. Youth Languish in City's Secure Detention Facilities*, Wash. Post (Oct. 28, 2024), https://www.washingtonpost.com/dc-md-va/2024/10/28/dyrs-lawsuit-dc-youth-languishing/.

[27] *Id.*

[28] Off. Indep. Juv. Justice Facilities Oversight ("OIJJFO"), *DYRS Secure Facilities Population Data Over Time*, https://oijjfo.dc.gov/page/dyrs-secure-facilities-population-data-over-time (in "Population" chart, filter start date and end date to 10/30/2024, then click "Additional Filters" and click the drop-down menu for "Status At Entry" to select only "Commitment," then "Apply All Filters") (in "Length of Stay" chart, click the drop-down menu to change "Average" to "Range").

While children wait for placements, they are detained at YSC—a jail-like facility that does not and cannot meet their treatment needs. YSC also has problems of its own. In May 2024, the "long-troubled facility" saw 14 assaults in ten days, as well as several positive tests for opioids and other substances, including an incident "so severe DYRS medical personnel administered NARCAN."[29] This followed a February 2024 report regarding an "internal investigation . . . into alleged drug smuggling, including fentanyl" at the facility.[30] The Office of Independent Juvenile Justice Facilities Oversight ("OIJJFO"), which maintains data regarding YSC, documented 25 assaults and 21 critical incidents, or "incident[s] that pose[] a risk of serious harm to youth and/or staff," at YSC in the month of September 2024.[31] And, reflecting the harm of detention on youth, the OIJJFO also found six self-injurious incidents in September 2024.[32]

III. DYRS'S FAILURES IMPOSE SIGNIFICANT HARMS ON THE CHILDREN IN ITS CUSTODY.

YSC is a "detention center," "akin to a jail in the adult system,"[33] and so it is incapable of serving as a rehabilitative placement for children committed to DYRS, like Plaintiffs and putative class members. Because DYRS's "goal" is to "return[] children to the community with the ability

[29] Ted Oberg, *14 Fights, 8 Arrests, 4 Positive Drug Tests in Recent Days at D.C.'s Secure Youth Services Center*, NBC4 (May 15, 2024), https://www.nbcwashington.com/investigations/14-fights-8-arrests-4-positive-drug-tests-in-recent-days-at-dcs-secure-youth-services-center/3616123/.

[30] Delia Goncalves, *Fentanyl Inside D.C. Youth Detention Center*, WUSA9 (Feb. 15, 2024), https://www.wusa9.com/article/news/local/dc/fentanyl-inside-dc-youth-detention-center/65-c7fad83a-450d-4145-9223-c691559658ff.

[31] OIJJFO, *Incident Rates*, https://oijjfo.dc.gov/page/incident-rates (in the drop-down menu for "Show As:," click "Table").

[32] *Id.*

[33] Dec. 13, 2023 Oversight Hearing, *supra* note 2, at 07:02:09–12.

to succeed," it "is important to make sure young people are placed quickly after commitment" to begin their rehabilitative programming. Ex. 4: Cairns Decl. ¶¶ 5, 12. By failing to timely act, DYRS subjects children to prolonged detention at YSC that does not meet the rehabilitative purposes of their commitment. YSC does not provide the programming and treatment that children awaiting placement require. What services exist at YSC are "not treatment services."[34] As Deputy Mayor Lindsey Appiah recently testified in front of the D.C. Council, YSC is "not the right place for many of our young people with psychiatric needs, but they are there."[35]

Moreover, languishing at YSC extends the length of a child's *overall* secure detention. Through the course of a commitment, a child in DYRS custody may be moved from an initial placement at a secure facility to a less secure one *if* they progress through the treatment goals of the placement. Ex. 4: Cairns Decl. ¶ 10; Ex. 1: Louchheim Decl. ¶ 19. As they progress, children can even be released to community-based placements, and ultimately rejoin their families. Ex. 1: Louchheim Decl. ¶ 19. But this process cannot begin until the child leaves YSC and enters a placement where they can begin programming. Indeed, the time spent at YSC following commitment is colloquially referred to as "dead time" because it does not rehabilitate and does not count toward earning less-secure, community-based placements. *See* Ex. 6: Mount Decl. ¶ 11. As a result, DYRS's delays in placing children not only delay the beginning a child's rehabilitation, but also prolong the time they spend in secure detention—through no fault of the child's.

Extending the time that children are in secure detention is harmful to their wellbeing and growth. The negative effects of detention on youth are well-documented. A report from the Justice

[34] Testimony of Sam Abed, *Public Hearing on Bill 25-826, the "Recidivism Reduction, Oversight, and Accountability for DYRS Act of 2024*," Council of the District of Columbia, Comm. of the Whole (Sept. 25, 2024), https://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=9003 (04:18:39, note that audio syncing is off) [hereinafter "Sept. 25, 2024 ROAD Act Hearing"].

[35] *Id.* at 04:31:50.

Policy Institute found that incarcerating youth can "facilitate increased crime by aggravating the recidivism of youth who are detained," "pull[] youth deeper into the juvenile and criminal justice system," "slow or interrupt the natural process of 'aging out of delinquency,'" "make[] mentally ill youth worse," and "put[] youth at greater risk of self-harm."[36] Incarceration during adolescence leads to poorer health in adulthood.[37] Placing a child in secure detention, where they are cut off from their community ties and conventional opportunities for growth "hinders the juvenile's developmental process, leads to depression, and increases the risk of suicide or other self-harm."[38] This research undergirded the D.C. Council's decision to limit the use of pre-disposition detention on youth.[39] Consistent with this, DYRS has a "legal mandate to place youth in the least restrictive, most homelike environment consistent with public safety."[40]

Plaintiffs and putative class members face compounding harm every day that they spend at YSC awaiting placement. Plaintiffs are two children who have been committed to DYRS and

---

[36] Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* 4–6, 8–9, Justice Policy Institute, https://justicepolicy.org/wp-content/uploads/2022/02/06-11_rep_dangersofdetention_jj.pdf [hereinafter, "*Dangers of Detention*"]. Similarly, the Office of the Attorney General, in introducing legislation targeted at DYRS's handling of committed children, noted that "long delays in getting appropriate treatment . . . can make them more vulnerable to recidivism." Davies, *supra* note 6.

[37] Richard Mendel, *Why Youth Incarceration Fails: An Updated Review of the Evidence*, The Sentencing Project (Mar. 1, 2023), https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/.

[38] Off. Juv. Just. Delinquency Prevention, *Literature Review: Alternatives to Detention & Confinement* (Aug. 2014), https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/alternatives_to_detection_and_confinement.pdf.

[39] *See* Comm. on the Judiciary, *Report on Bill 21-0683, the "Comprehensive Youth Justice Amendment Act of 2016"* 8–10 (Oct. 5, 2016), https://lims.dccouncil.gov/downloads/LIMS/35539/Committee_Report/B21-0683-CommitteeReport1.pdf?Id=61801.

[40] DYRS, *Committed Youth*, https://dyrs.dc.gov/page/committed-youth.

have been detained at YSC awaiting placements. Plaintiff K.Y, age 16, has been in awaiting placement status since July 29, 2024, and Plaintiff D.J., age 16, has been in awaiting placement status since September 4, 2024. Ex. 9: K.Y. Decl. ¶ 1; Ex. 10: D.J. Decl. ¶ 1. Plaintiff D.J. states that it "feels depressing because you're just here for no reason . . . like [DYRS is] taking their time." Ex. 10: D.J. Decl. ¶ 20. K.Y., who "ha[s] trouble sleeping at night because of [his] PTSD," has needs such that DYRS has informed him that he will be required to "go to a PRTF" so he can "get therapy," but has instead been waiting at YSC for three months after commitment—he "just want[s] to leave to start [his] program." Ex. 9: K.Y. Decl. ¶¶ 3, 9, 14.

ARGUMENT

Plaintiffs seeking a preliminary injunction must establish that they are (1) "likely to succeed on the merits," (2) "likely to suffer irreparable harm in the absence of preliminary relief," (3) "that the balance of equities tips in [their] favor," and (4) "that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); *see also Singh v. Berger*, 56 F.4th 88, 95 (D.C. Cir. 2022). Here, Plaintiffs have met their burden on all four factors.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.

Plaintiffs need only show likelihood of success "on at least one count of [the] underlying Complaint." *Adams v. District of Columbia*, 285 F. Supp. 3d 381, 390 (D.D.C. 2018). Here, they are likely to succeed on all of them: due process, D.C. Code § 16-2319, and negligence.

A. Plaintiffs are likely to succeed on their due process claims.

DYRS is violating the due process rights of Plaintiffs and putative class members by failing to timely provide them rehabilitative services at placements and instead subjecting children to prolonged detention in a jail-like facility. It further and independently violates their due process rights because it unlawfully extends the overall amount of time they spend in secure facilities for

no legitimate reason. This Court may enjoin these violations through its inherent equitable power, or pursuant to 42 U.S.C. § 1983.

1. *Due Process governs the confinement of individuals who have not been convicted of crimes, including children adjudicated delinquent.*

Plaintiffs' claims are governed by the Fifth Amendment's Due Process Clause.[41] Plaintiffs and putative class members are children who have been adjudicated delinquent by a Family Court judge; they have not been convicted of a crime. *See McAdoo*, 515 A.2d at 418 ("[A] juvenile adjudication is not the equivalent of a criminal conviction."). The lack of a criminal conviction "entitles [youth] to closer scrutiny of their conditions . . . than that accorded convicted criminals." *Santana v. Collazo*, 714 F.2d 1172, 1179 (1st Cir. 1983); *see generally Ingraham v. Wright*, 430 U.S. 651, 671 n. 40 (1977) ("Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions.").

Courts have generally been in agreement that the "'more protective' Due Process Clause" protections apply in evaluating youth confinement. *See Reed v. Palmer*, 906 F.3d 540, 549, 550 (7th Cir. 2018) (noting cases from the Ninth, Eighth, First, and Tenth Circuits); *see, e.g.*, *Eastwood on behalf of M.E. v. Yamhill County*, 2022 WL 15523099, at *1 (9th Cir. Oct. 27, 2022) (evaluating claims under "the Fourteenth Amendment because [plaintiff] was confined in a juvenile detention facility, which is a 'noncriminal and nonpenal' institution outside the scope of the Eighth Amendment"); *R.G. v. Koller*, 415 F. Supp. 2d 1129, 1152 (D. Haw. 2006) (applying due process to youth correctional facility conditions because youth in custody were "adjudicated delinquent and have not been convicted of a crime"); *Alexander S. by and through Bowers v. Boyd*, 876 F. Supp. 773, 796 (D.S.C. 1995) (applying due process "because the juveniles incarcerated . . . have,

[41] Because the District is not a state, its Due Process Clause protections arise under the Fifth Amendment rather than the Fourteenth. *See Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

with few exceptions, not been convicted of a crime" but rather "have merely been adjudicated to be juvenile delinquents"); *cf. Doe 4 by and through Lopez v. Shenandoah Valley Juvenile Ctr. Comm'n*, 985 F.3d 327, 342 (4th Cir. 2021) (applying due process in evaluating adequacy of mental health care for immigrant children in juvenile detention facility).

Due process analysis is especially appropriate here because the goals of District's juvenile delinquency system reflect an explicit "desire . . . to pursue rehabilitation, not punishment." *In re K.G.*, 178 A.3d at 1216. In light of the "expressly non-penal, non-criminal" nature of this system, children who have been adjudicated delinquent are entitled to the protections of due process, not merely the Eighth Amendment right to avoid punishment that is "cruel and unusual." *See J.S.X. through D.S.X. v. Foxhoven*, 361 F. Supp. 3d 822, 827, 832–33 (S.D. Iowa 2019) (finding that claims related to conditions in a "state institution for male juveniles that have been adjudicated delinquent" "more appropriately arise under the [Due Process Clause] only" given the nature of the juvenile system). The Fifth Amendment applies here.

2. DYRS's delay in placing children and providing them with necessary rehabilitative services violates due process.

The Fifth Amendment's Due Process Clause provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. The "'touchstone of due process is protection of the individual against arbitrary action of government," which includes "the exercise of power without any reasonable justification in the service of a legitimate governmental objective." *County of Sacramento v. Lewis*, 523 U.S. 833, 845–46 (1998) (internal citation omitted). In general, whether an individual's "constitutional rights have been violated" is "determined by balancing his liberty interests against the relevant state interests." *Youngberg v. Romeo*, 457 U.S. 307, 321 (1982). How this balancing occurs is informed by three different, interrelated standards from the Supreme Court: those of *Jackson v. Indiana*, 406 U.S. 715 (1972);

Youngberg, 457 U.S. at 307; and *Bell v. Wolfish*, 441 U.S. 520 (1979). Courts evaluating detention of youth have employed all three, depending on the nature of the claim. *See, e.g., Doe 4*, 985 F.3d at 342 (employing *Youngberg* to claim involving failure to provide adequate mental health care); *R.G.*, 415 F. Supp. 2d at 1154 (applying *Bell* to claim involving placing plaintiffs in isolation); *Alexander S.*, 876 F. Supp. at 796–99 (discussing all three). Under any of these standards, Plaintiffs' due process rights have been violated because DYRS is subjecting children to continued detention in a jail-like facility and depriving them of timely access to the rehabilitative services that both DYRS and a Family Court judge have determined are necessary.

a. Plaintiffs' continued detention is not reasonably related to the purpose of their commitment.

Start with *Jackson*. In *Jackson*, the state indefinitely committed "a criminal defendant solely on account of his incompetency to stand trial." 406 U.S. at 731. It did not consider the state's "ability to aid [the individual] in attaining competency through custodial care or compulsory treatment, the ostensible purpose of the commitment." *Id.* at 738. The Court held that any "continued commitment must be justified by progress toward" the goal of standing trial because "due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." *Id.* This rationale has led courts "to hold that where . . . the purpose of incarcerating juveniles . . . is treatment and rehabilitation, the Due Process Clause 'requires that the conditions and programs at the school must be reasonably related to that purpose.'" *Alexander S.*, 876 F. Supp. at 796 (quoting *Morgan v. Sproat*, 432 F. Supp. 1130, 1135 (S.D. Miss. 1977)).

Here, the nature and duration of Plaintiffs' confinement at YSC does not bear any reasonable relation to the purpose of confinement. Children who have been committed to DYRS custody have been adjudicated "delinquent," or "in need of care or rehabilitation," D.C. Code § 16-

2301 (6), which the Family Court has tasked DYRS with carrying out in transferring legal custody to the agency. *See* D.C. Code § 16-2320(c)(2) (requiring the court to find that commitment "will be in the best interest of the child"). *See In re P.S.*, 821 A.2d at 911 n.11. But YSC does not and cannot provide the necessary rehabilitative services that children need. As a result, their continued confinement at YSC is not "justified by progress toward" rehabilitation. *Jackson*, 406 U.S. at 738.

In a similar context, the Ninth Circuit relied on *Jackson* in finding "significant, ongoing violations of . . . due process" where the state held "incapacitated criminal defendants in jail for weeks or months" while awaiting openings at a mental hospital because such incarceration bore "no reasonable relation to the evaluative and restorative purposes for which courts commit those individuals." *Oregon Advocacy Center v. Mink*, 322 F.3d 1101, 1122 (9th Cir. 2003) (affirming an injunction requiring them to be admitted to the hospital within seven days). The court found that the delays in admitting individuals to the hospital violated due process as "only a mental hospital[,] . . . not a county jail, can fulfill [the] purposes" of commitment: "to evaluate, treat and restore their mental health." *Id.* In contrast, the jails were "simply unable to provide restorative treatment, and the jails' disciplinary systems may exacerbate . . . mental illnesses." *Id.* For that reason, detaining individuals "in jail for weeks or months violates their due process rights." *Id.* The court further noted that a "[l]lack of funds, staff or facilities cannot justify the State's failure to provide . . . treatment necessary for rehabilitation." *Id.* at 1121 (internal citation omitted).

The same is true here. DYRS is detaining Plaintiffs and putative class members at YSC—a secure facility that DYRS itself has acknowledged *cannot provide them with the necessary services for their care and rehabilitation*. If anything, as former DYRS Director Cairns states, this prolonged period of detention runs "*counter* to [DYRS's] goal of returning children to the community with the ability to succeed" because additional time spent languishing in detention

"increases the well-known harms of incarceration and makes them less able to succeed in their rehabilitative programming." Ex. 4: Cairns Decl. ¶ 12 (emphasis added); *see also* Ex. 1: Louchheim Decl. ¶ 20 ("The longer the youth spends awaiting placement at YSC, the less time they spend engaging in rehabilitation during the course of their commitment."). Indeed, while these children sit in detention for weeks and months—including some for close to a year—their mental health deteriorates, and the need for services grows even stronger. *See* Ex. 7: Letter to Abed at 2. Children may "be angry or act out" as the awaiting placement period "wears on them" and their "mental health . . . deterior[ates.]" Ex. 1: Louchheim Decl. ¶ 23. As D.J. describes it: "This feels depressing because you're just here for no reason." Ex. 10: D.J. Decl. ¶ 20. This detention does not and cannot bear any reasonable relation to the purpose of Plaintiffs' confinement.

b. Plaintiffs' continued detention violates *Youngberg*.

DYRS's practices also violate Plaintiffs' due process rights under *Youngberg*. There, the Court recognized that involuntarily committed mentally ill individuals have "substantive rights" under the Due Process Clause to "safe conditions," "freedom from bodily restraint," and "minimally adequate care and treatment," including reasonable training, or habilitation,[42] which will allow them to achieve "safety and freedom from undue restraint." *Youngberg*, 457 U.S. at 314–316, 319.[43] In determining what is "reasonable" to meet the required conditions, courts should defer to the judgment of a "qualified professional," but—critically—not where "the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such

[42] Habilitation means the development of needed skills. *Youngberg*, 457 U.S. at 316.

[43] *Youngberg*'s recognition of a right to "conditions" that would "comport fully with the purpose of [an individual's] commitment" is related to the principles recognized in *Jackson*, which *Youngberg* cites in passing. *See id.* at 324.

a judgment." *Id.* at 322–23. Though *Youngberg* addressed civil commitment, its "analysis is appropriate in a juvenile correctional setting because juvenile delinquents, like mental[ly ill individuals], have been deprived of their liberty because of their status." *Alexander S.*, 876 F. Supp. at 798 n. 44; *see also Doe 4*, 985 F.3d at 342 (applying *Youngberg* and noting it was "particularly warranted . . . given the unique psychological needs of children and the state's corresponding duty to care for them").

Here, Plaintiffs are detained—a restraint on their liberty—for prolonged periods of time. Their substantive rights under *Youngberg* include freedom from undue restraint and access to rehabilitative services that will allow them to achieve less-restrictive placements. *See Nelson v. Heyne*, 491 F.2d 352, 358, 360 (7th Cir. 1974) (holding that the district court "did not err in deciding that the plaintiff juveniles have the right under the . . . due process clause to rehabilitative treatment"); *Morgan v. Sproat*, 432 F. Supp. at 1135 ("[J]uveniles who are involuntarily committed to [a state training school] have a constitutional right to individualized care and treatment to enable them to become productive members of society."). This right is even more important here, because children in DYRS custody are moved to less-secure placements, including community placements, by completing rehabilitative programming. *See* Ex. 4: Cairns Decl. ¶¶ 9–10. Just as mentally ill, civilly committed individuals are constitutionally entitled to reasonable training, or habilitation, that will allow them to achieve "safety and freedom from unreasonable restraints," *Youngberg*, 457 U.S. at 322, children committed to DYRS custody are constitutionally entitled to rehabilitation that will allow them to attain less-restrictive placements. In other words, children must "be housed under conditions that provide them with a reasonable opportunity to correct their behavior" including "services that are minimally necessary to give the Plaintiffs a reasonable opportunity to accomplish the purpose of the confinement[.]" *Alexander S.*, 876 F. Supp. at 798; *cf. K.H. through*

Murphy v. Morgan, 914 F.2d 846, 851 (7th Cir. 1990) (noting that *Youngberg* "made clear . . . that the Constitution requires the responsible state officials to take steps to prevent children in state institutions from deteriorating physically or psychologically").

Here, DYRS is violating Plaintiffs' rights under *Youngberg* by delaying rehabilitative services in a manner that is—by Director Abed's own lights—a "substantial departure from accepted professional judgment." 457 U.S. at 323. Director Abed has stated that YSC "is not a treatment facility, it's a detention center"[44] and elsewhere asserted that all children should be placed within 30 days of commitment.[45] Plaintiffs and putative class members have waited far longer than 30 days to be placed for rehabilitative services—K.Y. has waited three months, and D.J. has waited almost two months. Ex. 9: K.Y. Decl. ¶ 1; Ex. 10: D.J. Decl. ¶ 1. Other similarly-situated children have waited even longer—nine have waited over three months, and some up to six as of the date of this filing.[46] This is "such a substantial departure from accepted professional judgment, practice, or standards"—here, the very standards that DYRS has set for itself—that it violates due process. *Youngberg*, 457 U.S. at 323.

c. Plaintiffs' due process rights are being violated under *Bell*.

Finally, because they have "not been adjudged guilty of any crime," Plaintiffs are entitled to be free from "conditions and restrictions" that "amount to punishment." *Bell*, 441 U.S. at 536–37. Under *Bell*, punishment may arise from intent to punish, but it may equally well be established on a purely objective basis "by showing that the actions are not 'rationally related to a legitimate nonpunitive governmental purpose' or that the actions 'appear excessive in relation to that

[44] Dec. 13, 2023 Oversight Hearing, *supra* note 2, at 07:01:22.

[45] Ex. 7: Letter to Abed at 1; *see* FY23 Performance Oversight Pre-Hearing Question Responses, *supra* note 9, at 12 ("DYRS's goal is to reduce [the placement timeline] to under 30 days.").

[46] OIJJFO, *DYRS Secure Facilities Population Data Over Time*, *supra* note 28.

purpose.'" *Kingsley v. Hendrickson*, 576 U.S. 389, 398 (2015) (quoting *Bell*, 441 U.S. at 561). The Court has applied this standard to detention of children pre-adjudication. To be "compatible with the 'fundamental fairness' required by due process," such detention must "serve a legitimate state objective" and "the terms and conditions of confinement" must "in fact [be] compatible with th[at] purpose[.]" *Schall v. Martin*, 467 U.S. 253, 263–64, 269 (1984) (evaluating New York state's preventative detention scheme).

The D.C. Circuit has recognized that the *Bell* standard "will often produce the same result" as the *Youngberg* standard because "[b]oth ask whether the government's reason . . . furthers its legitimate interests." *Harris v. Bowser*, 60 F.4th 699, 702 (D.C. Cir. 2023) (examining government officials' use of physical restraints). That is the case here. For each plaintiff, DYRS has—for months now—failed to find placements that can provide them the treatment that *DYRS has itself determined is necessary*. This continued, prolonged detention at YSC serves no legitimate governmental interest, or is otherwise "excessive in relation" to it. *Kingsley*, 576 U.S. at 398. Because the purpose of the juvenile system is to rehabilitate, not punish, the government has no interest in keeping children at a facility where they cannot be rehabilitated. If anything, the government's interest is in timely placing children, so they can receive necessary services.[47] For

[47] The period of YSC detention that Plaintiffs face contrasts sharply with the type of detention the Supreme Court found lawful in *Schall*. There, the Court found a pre-adjudication detention scheme that intended to "protect[] the community from crime" complied with due process because it "strictly limited" the period of detention to 17 days, provided children with "an expedited factfinding hearing," and "screened" children to be placed in "either nonsecure or secure detention." 467 U.S. at 264, 269–271. The District's own pre-adjudication detention scheme—intended to "protect the person or property of others" and "secure the child's presence at the next court hearing"—also contains limitations. D.C. Code § 16-2310; *see* D.C. Code § 16-2310(e) (requiring expedited factfinding). But once a child has been committed to DYRS custody, there is no enforced limit on the time a child awaiting placement can be detained at YSC.

example, Plaintiff K.Y. has been informed by DYRS that he "need[s] to go to a PRTF so [he] get[s] therapy," which he is not receiving while at YSC. Ex. 9: K.Y. Decl. ¶¶ 3, 7.

Accordingly, continued detention of children at YSC serves no legitimate governmental purpose. And even if it did, keeping children locked up for months at a facility plagued with overcrowding,[48] violence, and substance abuse with no idea of when they might receive the rehabilitative services they have been found to need is excessive in relation to any legitimate, nonpunitive purpose. Conditions in a youth facility that "are both physically and psychologically unsafe for the plaintiffs . . . amount to punishment." *R.G.*, 415 F. Supp. 2d at 1156. As former DYRS Director Cairns states, "[e]xtended time in AP [(awaiting placement)] status is counter to the agency's mission and vision for young people in their care." Ex. 4: Cairns Decl. ¶ 13. Not only is YSC "not intended for long-term stays," it is "the most restrictive, least rehabilitative setting possible—jail." *Id.* ¶¶ 5, 7. Even secure placements like New Beginnings permit "young people . . . to earn higher levels of freedom of movement, home passes and other opportunities to practice more normal adolescent function; these opportunities are not available at YSC." *Id.* ¶ 11. This type of extended detention "increases the well-known harms of incarceration and makes [youth] less able to succeed in their rehabilitative programming." *Id.* ¶ 12. Plaintiffs' prolonged detention serves only to punish them—in violation of their due process rights.

3. DYRS's delay in placing children extends their total time in secure detention, punishing them in violation of the Due Process Clause.

DYRS's failure to timely place children in rehabilitative facilities independently violates their due process rights in a second way: It unlawfully extends the overall amount of time they

[48] YSC's maximum capacity is 98. This year, the population has been hovering near this maximum, with the facility being over its capacity on some days. *See* OIJJFO, *DYRS Secure Facilities Population Data Over Time*, https://oijjfo.dc.gov/page/dyrs-secure-facilities-population-data-over-time (in "Population" chart, change "Start Date" to 1/1/2024).

spend detained in a secure (highly restrictive) location. This bears no "reasonable relation to the purpose" of their confinement in violation of *Jackson*, and is a condition of confinement that amounts to "punishment" in violation of *Bell*.

A Family Court's order of commitment does not equate to a set term of secure detention, or even require initial placement at a secure facility. Rather, commitment requires DYRS to provide treatment and programming to the child in service of their eventual return to the community. *See* Ex. 4: Cairns Decl. ¶¶ 9, 13. Thus, DYRS moves children initially placed at more restrictive facilities to less restrictive facilities, including community-based placements and the family home, as they complete rehabilitative programming. Though a child remains committed to DYRS's custody during this period, a child's move to less-secure facilities and in the community constitute "meaningfully different restriction[s]" on their liberty. *Tyson v. District of Columbia*, 2021 WL 4860685, at *6 (D.D.C. Oct. 19, 2021) (noting "liberty is not an all-or-nothing binary"). However, a child cannot be moved to less secure placements until they have completed programming at their initial placement—something that is not possible while serving "dead time" at YSC. Indeed, Plaintiffs K.Y. and D.J. are waiting at YSC to begin treatment programs at high-level placements, and every day that they remain at YSC is a day they cannot begin their program and work toward a less-restrictive placement. The same is true for children who are waiting to go to a medium-level placement, and may eventually transition to a low-level placement, including placement at home with a parent. Indeed, YSC is a secure detention center, a level of restriction that DYRS has determined that some children do not warrant *at all*, but these children are also awaiting placement at YSC. *See* Ex. 5: Kruger Decl. ¶ 7. In sum, delays in placement lead to delays in children's ability to earn their way to less secure settings—as Plaintiffs and putative class members are acutely and painfully aware. Ex. 9: K.Y. Decl. ¶ 14; Ex. 10: D.J. Decl. ¶ 17. And

because YSC is a jail-like setting,[49] the time spent there awaiting placement extends the overall amount of time children spend in detention without any reasonable justification. *See* Ex. 4: Cairns Decl. ¶ 9 ("Delays in awaiting placement result in delays in a child's release to less restrictive placements, effectively extending the length of their detention.").

This extension of detention bears no reasonable relation to the purpose of confinement. The additional time spent at YSC is *not contributing to rehabilitation*. Rather, it is keeping children in a jail-like setting in contravention of the District's goal of keeping children in the "least restrictive setting necessary." D.C. Code § 16-2301.02 (9). YSC is in fact "the most restrictive setting possible." Ex. 4: Cairns Decl. ¶ 11. "It is important for young people to move from higher to lower security facilities to prepare for returning to the community," and thus minimizing delays in beginning this process is "key to the agency's rehabilitation goals." *Id.* ¶¶ 11, 13. Delaying this step-down process by not allowing children to begin progressing toward lower levels of restriction and instead subjecting them to prolonged periods of non-rehabilitative detention is not reasonably related to the purpose of their confinement. It thus violates due process under *Jackson*.

These delays in placing children also punish them, in contravention of *Bell*, by increasing the amount of overall time they spend in secure detention for no legitimate purpose. YSC is not a treatment facility, and DYRS would not keep committed children like Plaintiffs and putative class members at YSC but for its own administrative failures in placing them. This type of administrative deficiency is insufficient to justify extending the amount of time a child spends in detention. Indeed, in a similar context, courts have found that "overdetention," or detention that extends past the authorized time, fails to comport with due process. *See, e.g.*, *Dodds v. Richardson*, 614 F.3d

[49] Children at YSC cannot enter or leave the facility as they wish, and their conduct is subject to monitoring. "Doors to each cell are locked, so youth cannot enter or exit their cell unless staff opens the door with a key." *See* Ex. 5: Kruger Decl. ¶ 3.

1185, 1192, 1193 (10th Cir. 2010) (concluding that preventing an individual from posting bond for no reason other than "the assertion [of] longstanding policies or customs" violates due process). And in that setting, administrative burdens are insufficient to justify extended detention. *See Barnes v. District of Columbia*, 793 F. Supp. 2d 260, 279–80 (D.D.C. 2011) (granting summary judgment where Department of Corrections failed to release individuals "by midnight on the day that they were entitled to release" and finding that while release procedures involved "dozens of administrative steps," the "release practices" were nevertheless "deeply inadequate").

That same reasoning applies here, given that DYRS has significant notice—weeks prior to disposition—that a child will be committed to its custody and thus can relieve such administrative burdens for itself at an earlier stage. *See Barnes*, 793 F. Supp. 2d at 276 (noting that the administrative burdens of accelerating a release process was "reduced given that many, if not most, of the administrative tasks . . . can be undertaken" earlier). DYRS's own materials make clear that it can, and in fact is supposed to, complete necessary administrative tasks earlier: DYRS identifies a "pre-commitment phase" where it is meant to "thoroughly assess and determine the most appropriate rehabilitation plan for a youth, if committed to DYRS."[50] But as Attorney General Schwalb testified before the D.C. Council, "the current practice is for DYRS to wait until after commitment formally begins before conducting an assessment and forming a treatment plan" despite that fact that his office "put[s] the parties and the court on written notice that [the OAG] intend[s] to seek commitment."[51] *See also* Ex. 6: Mount Decl. ¶ 4.

DYRS has no excuse for extending children's time spent in detention by prolonging their time at YSC. The time spent at YSC is "dead time," during which youth decompensate, risk their

[50] DYRS, *Care Coordination*, https://dyrs.dc.gov/page/care-coordination.

[51] Attorney General Schwalb Statement, *supra* note 14, at 2.

health and safety, and sit around waiting to be moved to a facility for the treatment that DYRS itself has deemed necessary. This is not an "incident of [a] legitimate governmental purpose," *Bell*, 441 U.S. at 538, and even if it was, the sheer amount of additional time Plaintiffs and putative class members spend at YSC over DYRS's own administrative failures is "excessive in relation to that purpose," *id.* at 561. Accordingly, the extension of the time Plaintiffs and putative class members spend detained due to DYRS's failures violates due process.

4. This Court can enjoin these violations under its inherent equitable power.

Plaintiffs have validly invoked two independent sources of legal authority for this Court's enjoining DYRS's violation of Plaintiffs' constitutional rights—inherent equitable power (Claims 3 and 4) and 42 U.S.C. § 1983 (Claims 1 and 2). Turning to the former, as the Supreme Court instructed in *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320 (2015), federal courts may use their inherent equitable powers to enjoin violations of federal law by "public officer[s]":

> [W]e have long held that federal courts may in some circumstances grant injunctive relief against state officers who are violating, or planning to violate, federal law. *See, e.g.*, *Osborn v. Bank of United States*, 9 Wheat. 738, 838–839, 844 (1824); *Ex parte Young*, *supra*, at 150–151 (citing *Davis v. Gray*, 16 Wall. 203, 220 (1873)). . . . What our cases demonstrate is that, "in a proper case, relief may be given in a court of equity . . . to prevent an injurious act by a public officer." *Carroll v. Safford*, 3 How. 441, 463 (1845).
>
> The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England.

575 U.S. at 326–27.[52] And as this Court recently explained, "by default, federal courts have jurisdiction in equity. And the full scope of this jurisdiction is to be recognized and applied, absent

[52] Although the Court held that the plaintiffs in *Armstrong* could not invoke the federal courts' equitable powers to enjoin an alleged violation of a particular statutory provision, § (30)(A) of the Medicaid Act, that conclusion rested on Congress's "exclusion of private enforcement" of that provision. *Id.* at 328. There is no such congressional exclusion here.

only the clearest command otherwise in a statute." *Mathis v. U.S. Parole Comm'n*, 2024 WL 4056568, at *11 (D.D.C. Sept. 5, 2024) (quotation marks omitted).

Employing this Court's equitable power to enforce Plaintiff's federal rights here accords with a long tradition of the enforcement of federal rights in equity (separate and apart from § 1983) against municipalities. *See, e.g.*, *Cuyahoga River Power Co. v. City of Akron*, 240 U.S. 462, 463 (1916) (reversing dismissal of suit "in equity" asserting Fourteenth Amendment claim against Ohio town's regulation of property; § 1983 never mentioned); *Vill. of Norwood v. Baker*, 172 U.S. 269, 271, 292 (1898) (affirming injunction declaring unconstitutional a municipal ordinance levying an assessment on property; the Court cited approvingly the principle that "equity may properly interfere to restrain the operation of this unconstitutional exercise of power" (quoting *Cummings v. Merchants' Nat'l Bank*, 101 U.S. 153, 154 (1879)), and never mentioning § 1983)).

Indeed, even during the roughly two decades when the Supreme Court adhered to the view that § 1983 could not be used against municipalities at all—from *Monroe v. Pape*, 365 U.S. 167, 191 (1961) (so holding) to *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978) (overruling *Monroe* on this point and permitting § 1983 suits against municipalities) —the Court continued to recognize federal courts' authority to enjoin unconstitutional actions by municipal actors. For instance, in *Griffin v. Cnty. School Bd. of Prince Edward Cnty.*, 377 U.S. 218, 231 (1964), the Court held that a Virginia county school board had violated equal protection by closing all its public schools in order to avoid desegregation. The Court emphasized the power of the district court to enjoin the county board of supervisors, school board, and superintendent, among other defendants: "We have no doubt of the power of the court to give this relief to enforce the discontinuance of the county's racially discriminatory practices. It has long been established that actions against a county can be maintained in United States courts in order to vindicate federally

guaranteed rights." *Id.* at 232–33. Unsurprisingly (in light of the *Monroe* holding that municipalities could not be sued under § 1983), the Court made no mention of § 1983. *See also Wright v. Council of City of Emporia*, 407 U.S. 451, 452 (1972) (upholding, without reference to § 1983, district court's injunction against municipal defendant that attempted to create a new school system to thwart desegregation).

In more recent years, following the Court's clarification in *Armstrong* of the contours of courts' powers in equity, courts of appeals have reconfirmed federal courts' inherent equitable power to enjoin violations of federal law by municipalities and their agents. For instance, in *Moore v. Urquhart*, 899 F.3d 1094 (9th Cir. 2018), the plaintiffs, without invoking § 1983, sought to enjoin the sheriff of King County, Washington, from executing eviction orders without court hearings. *Id.* at 1097. The sheriff argued that because plaintiffs failed to state a claim under § 1983, they could not proceed at all, but the Ninth Circuit rejected that argument as "plainly without merit," holding that because plaintiffs sought only equitable relief, not damages, "plaintiffs do not need a statutory cause of action. They can rely on the judge-made cause of action . . . which permits courts of equity to enjoin enforcement of state statutes that violate the Constitution or conflict with other federal laws." *Id.* at 1103 (citing *Armstrong*). Further, the court underscored that the cause of action existed in equity against the sheriff specifically as a municipal official (rather than, for instance, an instrumentality of the state): "[I]t is unnecessary for us to resolve the parties' dispute over whether the Sheriff acts on behalf of King County or the State of Washington when he executes writs of restitution," the court explained, because actions in equity "can be brought against both state and county officials." *Id.* at 1103.

In *Crown Castle Fiber, L.L.C. v. City of Pasadena*, 76 F.4th 425 (5th Cir. 2023), the court held that a plaintiff could invoke the federal courts' equitable power alone to enjoin a city from

enforcing land-use standards in a manner the plaintiffs alleged would violate a federal statute. *See* 76 F.4th at 433–34. The equitable power question was squarely presented, the court observed, because the plaintiff "is not seeking a legal remedy through § 1983" but instead "seeks declaratory and injunctive relief, bringing the suit in equity." *Id.* The Fifth Circuit held that such a suit was permitted under *Armstrong*, "[e]ven though [the statute] does not confer a private right" enforceable via § 1983. *Id.* at 434–35. In sum, this Court's inherent equitable power provides a straightforward basis to enjoin DYRS's due process violations.

5. The District is liable for its constitutional violations under 42 U.S.C. § 1983.

The Court may also independently enjoin DYRS's violations under § 1983, under which the District is liable for the constitutional torts of its employees when a municipal "policy or custom" is the "moving force behind the constitutional violation." *Baker v. District of Columbia*, 326 F.3d 1302, 1306 (D.C. Cir. 2003) (cleaned up). "There are a number of ways in which a 'policy' can be set by a municipality to cause it to be liable under § 1983. . . ." *Id.* One way is through "the existence of a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988) (plurality opinion) (cleaned up). A separate, independent basis for municipal liability is failure to supervise: "A municipality can be liable 'for inadequately supervising its employees if it was deliberately indifferent to an obvious need for greater supervision.'" *McComb v. Ross*, 202 F. Supp. 3d 11, 17 (D.D.C. 2016) (quoting *Kenley v. District of Columbia*, 83 F. Supp. 3d 20, 34 (D.D.C. 2015)). A municipality is "deliberately indifferent" where "the municipality knew or should have known of the risk of constitutional violations but adopted a policy of inaction." *Id.* (cleaned up). Plaintiffs are likely to succeed as to liability based on both custom and failure to supervise.

First, the placement delays of which Plaintiffs complain amount to a custom because they are "so engrained that [they] amount[] to a standard operating procedure." *Hurd v. District of Columbia*, 997 F.3d 332, 338 (D.C. Cir. 2021) (cleaned up). As discussed, DYRS has been failing across the board to timely place children committed to its custody. Practitioners representing clients report a "systemic problem" of delay. *See, e.g.*, Ex. 6: Mount Decl. ¶ 8; *id.* at ¶ 9 ("I now expect that [my clients] will wait at least 60 to 90 days to be transferred to a placement."); Ex. 1: Louchheim Decl. ¶¶ 12, 15, 24 (noting the extent of the "urgent issue"). Even the Office of the Attorney General has expressed that "youth committed to DYRS are waiting far too long to get necessary rehabilitative services."[53] And the numbers support this observation, *supra* p. 11.

This practice thus affects dozens of children under the care of an agency with numerous employees—placing it squarely within the range of successful custom claims. *See, e.g.*, *Grandstaff v. City of Borger*, 767 F.2d 161, 171 (5th Cir. 1985) (holding municipality liable based on a single car chase involving six officers and the municipality's failure to discipline them); *Powe v. City of Chicago*, 664 F.2d 639, 651 (7th Cir. 1981) (refusing to dismiss custom claim based on four arrests on a single invalid warrant because the constitutional violations involved "various employees"); *Robinson v. District of Columbia*, 130 F. Supp. 3d 180, 196-97 (D.D.C. 2015) (custom claim based on 22 examples survived summary judgment).

Second, regarding the failure to supervise, deliberate indifference is shown where "in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *City of Canton v. Harris*, 489 U.S. 378, 390 (1989); *accord Baker*, 326 F.3d at 1306–07. Here, the

[53] Attorney General Schwalb Statement, *supra* note 14, at 2.

problem was not just obvious but actually well-known to the District. As detailed above, Defendant Abed, the Director of DYRS, has remarked on it repeatedly. So has the D.C. Superior Court. Mayor Bowser has even recognized that the problem constitutes an "emergency." *See supra*, pp. 8–11. In light of the extensive failing here, the District's failure to supervise DYRS employees to require that they speed up the placement process (or, if necessary, hire more staff), was so likely to result in the continued violation of Plaintiffs' rights that it amounts to deliberate indifference. In *McComb v. Ross*, for instance, Judge Bates concluded that deliberate indifference could be inferred from the District's failure to supervise where it knew or should have known about eleven prior instances similar to the complained violation. 202 F. Supp. 3d 11, 18 (D.D.C. 2016). *See also Muhammad v. District of Columbia*, 584 F. Supp. 2d 134, 139 (D.D.C. 2008) (similar, based on fourteen incidents); *Singh v. District of Columbia*, 881 F. Supp. 2d 76, 87 (D.D.C. 2012) (allegations of five similar incidents stated claim for municipal liability). Here, Plaintiffs have shown an even more widespread problem. "Though occasional negligent administration of a program will not establish municipal liability, the District may still be liable where the frequency of constitutional violations makes it obvious to the municipality that additional training or supervision is necessary." *McComb*, 202 F. Supp. 3d at 19 (cleaned up); *see also Matthews v. District of Columbia*, 730 F. Supp. 2d 33, 38 (D.D.C. 2010) ("Based on the number of instances of alleged unlawful misconduct, and the number of officers involved, it is plausible, that the officers' behavior resulted from the District's failure to train or supervise its employees." (cleaned up)); *accord Crudup v. District of Columbia*, 2023 WL 2682113, at *11 (D.D.C. Mar. 29, 2023). That is squarely the case here.

Thus, Plaintiffs are likely to succeed on the merits in showing that the District is liable under 42 U.S.C. § 1983 for the due process violations (1) because the violations occur as part of a

widespread custom, and independently (2) because of the District's deliberately indifferent failure to supervise DYRS employees so as to avert these constitutional violations.

B. Plaintiffs are likely to succeed on the statutory and negligence per se violations.

Plaintiffs are also likely to succeed on their claim that DYRS is violating D.C. Code § 16-2319. Under that provision, when a child "has been adjudicated delinquent and a dispositional order has been entered . . . transferring legal custody of a child to the custody of the Youth Services Administration, the Youth Services Administration shall conduct an evaluation of the child to determine the appropriate services and to develop an individualized treatment plan for the child." D.C. Code § 16-2319(d); *see* D.C. Code § 2-1515.08(b) (transferring "authority and functions . . . relating to the Youth Services Administration" to DYRS). DYRS's obligation "to determine the appropriate services and to develop an individualized treatment plan" is subject to strict timelines. It "shall complete an initial assessment of the child within 3 days of taking legal custody of the child and receipt of the social file from the Director of Court Social Services." D.C. Code § 16-2319(f). It then "shall develop the individualized treatment plan within 14 days of completing the initial assessment of the child." *Id.* A longer timeline is permissible if "a longer diagnostic phase is needed," but that must be "justified in writing in the child's initial assessment." *Id.*

DYRS fails to complete timely assessments or develop individualized treatment plans after such assessments. When DYRS completes an assessment, it does so "using the Youth Level of Service/Case Management Inventory" instrument ("YLS") "to help . . . determine the appropriate services and level of care to meet a committed child's needs." Ex. 5: Kruger Decl. ¶ 11. A records request to DYRS regarding Plaintiffs turned up "no YLS Assessments . . . completed" as of October 18, 2024—far past the three days after each Plaintiff's commitment date. *Id.* ¶ 13. Practitioners representing children post-commitment have also not seen individualized treatment

plans at all, let alone in a timely manner. *See* Ex. 2: Ngu Decl. ¶ 13; Ex. 5: Kruger Decl. ¶ 12; Ex. 1: Louchheim Decl. ¶ 12. DYRS's own data confirms this is a widespread problem. Compared to 93.3% in FY 2021 and 92.5% in FY 2022, only *45.3%* of "newly committed youth" in FY 2023 underwent "a complete case planning process within 90 days of their commitment start date."[54] So, in a majority of cases, DYRS is failing to complete case planning in 90 days—a time period that is more than five times longer than the statute's prescribed 17 days for initial assessment and development of an individualized treatment plan.

Defendants' violation of D.C. statutory mandates is redressable by injunctive relief. *See District of Columbia v. Sierra Club*, 670 A.2d 354, 358 (D.C. 1996) (noting that a court "may entertain claims for equitable relief from allegedly unlawful action by public officials," an authority that "existed at common law"); *accord Baumann v. District of Columbia*, 744 F.Supp.2d 216, 226–27 (D.D.C. 2010) (request for injunctive relief to compel compliance with a D.C. statute was "within the Court's equitable powers").

Additionally and independently, Plaintiffs are likely to succeed in showing that DYRS is negligent per se. An unexcused violation of a statute that proximately causes the plaintiff's injuries constitutes negligence per se if the statute "[1] is meant to promote safety, . . . [2] the plaintiff is a member of the class to be protected by the statute, and . . . [3] the defendant is a person upon whom the statute imposes specific duties." *Night & Day Mgmt., LLC v. Butler*, 101 A.3d 1033, 1039 (D.C. 2014) (cleaned up). The time requirements of D.C. Code § 16-2319 straightforwardly fulfill all three criteria. They exist to promote the safety of the children in DYRS custody by ensuring that they do not languish at the dangerous, crowded, jail-like YSC for longer than necessary. Accordingly, Plaintiffs are precisely the people whom the statute protects by requiring that the

[54] FY 2024 Performance Plan, *supra* note 15, at 7.

District develop plans for placements promptly so they can begin their rehabilitation, and the statute imposes specific duties on Defendants via its reference to the "Youth Services Administration," which was the predecessor agency to DYRS. Finally, negligence per se may be invoked based on a statute where it "provides specific directions that go beyond a mere admonition of reasonable care." *Sibert-Dean v. Wash. Metro. Area Transit Auth.*, 721 F.3d 699, 704 (D.C. Cir. 2013). That is clearly the case here: D.C. Code § 16-2319 mandates that DYRS provide an assessment and a treatment plan within specified time periods, thus conveying "specific directions" rather than merely instructing the District to act "reasonably." Accordingly, D.C. Code § 16-2319 may be enforced via negligence per se as well as by this Court's inherent equitable power. And, like the underlying statutory violation itself, negligence may be enjoined by the Court. *See Women Prisoners of D.C. Dep't of Corr. v. District of Columbia*, 899 F. Supp. 659, 666 (D.D.C. 1995).

C. DYRS is negligent toward the children in its custody.

Plaintiffs are also likely to succeed on their negligence claim. Plaintiffs must show "(1) that the defendant owed a duty to the plaintiff, (2) breach of that duty, and (3) injury to the plaintiff that was proximately caused by the breach." *Hoodbhoy v. District of Columbia*, 282 A.3d 1092, 1096 (D.C. 2022) (cleaned up). "When the District or its agents take action that directly harms an individual, the law of negligence applies to it as it would to any other tortfeasor." *Id.* (cleaned up).

Here, DYRS owes a duty of care to Plaintiffs and the putative class, which it is violating by failing to provide them necessary rehabilitative services. Plaintiffs are children who have been committed to DYRS, meaning it has "legal custody" over them. D.C. Code § 16-2320(c)(2). Legal custody "vests in a custodian"—here, DYRS—"the responsibility for the custody of a minor which includes . . . physical custody and the determination of where and with whom the minor shall live; [] the right and duty to protect, train, and discipline the minor; and [] the responsibility to provide

the minor with food, shelter, education, and ordinary medical care." D.C. Code § 16-2301 (21). These duties necessarily include providing rehabilitative services: DYRS must "plan, program, operate, manage, control, and maintain a juvenile justice system of care, *rehabilitative service delivery*, and security that meets the treatment needs of youth within the juvenile justice system and that is in accordance with national juvenile justice industry standards and best practices." D.C. Code § 2-1515.04 (emphasis added). These duties further include "[p]roviding services for committed and detained youth . . . that balance the need for rehabilitation and holding youth accountable for their actions in the context of public safety," "[e]stablishing through . . . agreements a system of secure and community-based facilities and rehabilitative services . . . that will provide intervention, individualized assessments, continuum of services, safety, and security," and "[e]stablishing a system that constantly reviews a youth's individual strengths, needs, and rehabilitative progress and ensures placement within a continuum of least restrictive settings within secure facilities and the community." *Id.* §§ 2-1515.04(1), (3), (5), (6). These provisions clearly set forth DYRS's duty to provide rehabilitative services. Indeed, as DYRS's own website proclaims: "Once a judge commits a youth to DYRS, the agency *is responsible for all decisions regarding the youth's placement and rehabilitation plans.*"[55]

Consequently, DYRS's failure to provide rehabilitative services breaches the duty of care owed to Plaintiffs and putative class members. DYRS has acknowledged that it must "ensure that the *commencement* of a youth's treatment process is not stagnated by interruptions in administrative processes while they are awaiting placement."[56] Yet, DYRS has failed to place class members in the appropriate facilities to receive necessary rehabilitative services. Plaintiff K.Y. has

[55] DYRS, *Care Coordination*, https://dyrs.dc.gov/page/care-coordination (emphasis added).

[56] FY 2024 Performance Plan, *supra* note 15, at 6 (emphasis added); *see also supra* pp. 8–11 (noting DYRS's continuing recognition of the seriousness of the awaiting placement issue).

waited three months since his commitment and still has not been placed. Ex. 9: K.Y. Decl. ¶ 1. Plaintiff D.J. has waited almost two months. Ex. 10: D.J. Decl. ¶ 1. Other class members have waited longer. As of the date of filing, nine committed children at YSC have waited three to six months for a placement.[57] And as discussed, YSC is not a treatment facility and not a substitute for rehabilitative placements. Plaintiffs' experiences bear this out. *See* Ex. 9: K.Y. Decl. ¶ 7.

DYRS's failures have proximately caused Plaintiffs and putative class members injury. Youth awaiting placement at YSC are decompensating: their treatment needs are not being met, their security is at risk, and their overall time spent in secure facilities is extended. *See* Ex. 1: Louchheim Decl. ¶ 24. All of these produce serious, ongoing harm for these children.

II. PLAINTIFFS HAVE DEMONSTRATED IRREPARABLE HARM.

The harm to Plaintiffs and putative class members is irreparable in several respects. First, "[i]t has long been established that the loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (cleaned up).

Second and more specifically, Plaintiffs and putative class members face irreparable harm in the form of damage to their mental, emotional, and physical wellbeing. This harm is caused by DYRS's deprivation of the rehabilitative treatment that both DYRS and the Family Court have deemed necessary, and compounded by the unnecessary periods of detention at YSC, which extend Plaintiffs' and putative class members' exposure to the harms associated with detention of children. Every additional day that these children await placement is a day that they are not receiving necessary rehabilitative services—harming their physical and psychological wellbeing. Courts "often find a showing of irreparable harm where the movant's health is in imminent

[57] OIJJFO, *DYRS Secure Facilities Population Data Over Time*, *supra* note 28.

danger." *Al-Joudi v. Bush*, 406 F. Supp. 2d 13, 20 (D.D.C. 2005). These concerns regarding health are not limited to the physical, as "[e]motional injuries, psychological distress, and risk of suicide may constitute irreparable harm." *Porretti v. Dzurenda*, 11 F.4th 1037, 1050 (9th Cir. 2021).

Here, the lack of rehabilitative services is causing Plaintiffs and putative class members to decompensate. Practitioners have observed their clients' "mental health . . . deteriorating while they wait," Ex. 6: Mount Decl. ¶ 10, and sometimes, clients may "be angry or act out" as a result, Ex. 1: Louchheim Decl. ¶ 23. The awaiting placement period can "wear" on children so much that they will take the first placement available—even if inappropriate—because they "just want[] to get out of YSC." *Id.* Clare Kruger, an attorney with the Juvenile Services Program at the Public Defender Service—an office that meets with "close to 100% of the youth at YSC" on a weekly basis—has observed "many children waiting for placement become depressed, agitated, anxious, and emotional." Ex. 5: Kruger Decl. ¶ 10. She has "observed youth get increasingly involved in incidents the longer they wait for placement," and "youth decompensate, engage in self-harm, and experience suicidal ideations due to lengthy wait times at YSC." *Id.* Indeed, Director Abed "agreed" at a recent D.C. Council hearing that the time that youth spend waiting for placement is "deleterious to their rehabilitation."[58]

These concerns are particularly acute here because Plaintiffs and putative class members are children, a particularly vulnerable group. *See Al-Joudi*, 406 F. Supp. 2d at 20 ("[W]here the health of a legally incompetent or vulnerable person"—like a child—"is at stake, irreparable harm can be established."). The court recognized the significance of any period of lost time to children in need of services in *Blackman v. District of Columbia*, where it found that the District had violated the Individuals with Disabilities Education Act by failing to "timely implement" special

[58] ROAD Act Hearing, *supra* note 34, at 03:58:04.

education plans. 185 F.R.D. 4, 5 (D.D.C. 1999). It reasoned that such failures "resulted . . . in significant delays both in the placement of children in appropriate educational settings and in the provision of crucial medical services, delays that have the potential to permanently harm the physical and emotional health of many young children." *Id.* In recognizing that the failure to "provide appropriate educational placements can have a devastating impact on a child's well-being," the court specifically noted that "to a young, growing person, time is critical. While a few months in the life of an adult may be insignificant, at the rate at which a child develops and changes, especially one at the onset of biological adolescence . . ., a few months can make a world of difference in the life of that child." *Id.* at 7 (internal quotation omitted).

These same concerns ring true here. DYRS is failing to timely implement its own determinations as to the type of placement and treatment necessary for these children, leaving them to languish at YSC. Each day that passes without services further exacerbates Plaintiffs' already-existing needs. *See* Ex. 9: K.Y. Decl. ¶¶ 3, 7, 9 (describing his struggles with PTSD, which result in "trouble sleeping at night" and "trauma" that he is not receiving therapy for). The inability of named Plaintiffs and putative class members to obtain the rehabilitative care and services the Family Court has deemed necessary causes irreparable harm.

Third, the harms attendant to not receiving necessary rehabilitative services are further exacerbated by the fact that Plaintiffs and putative class members are being held in secure detention as they await placement, exposing them to the harms of youth detention generally and at YSC in particular. As the D.C. Court of Appeals has recognized, the District has explicitly limited the use of "juvenile detention" prior to adjudication, which is "in keeping with and . . . in part inspired by [r]ecent research . . . on the development of the brain during adolescence, which indicates that detaining children for poor decisionmaking to punish or educate them is simply ineffective and

may be counterproductive" as it "'can actually increase recidivism [and] pull youth deeper into the justice system.'" *In re K.G.*, 178 A.3d at 1218, 1219 (internal citations and quotations omitted). The harmful effects of detention on youth are well documented. Research has found that "young people with behavioral health problems simply get worse in detention, not better," and that "for one-third of incarcerated youth diagnosed with depression, the onset of the depression occurred after they began their incarceration."[59] Detention conditions and poor mental health may "conspire together to generate higher rates of depression and suicide idealization"; a study of youth detained in Oregon found that "24 percent . . . had suicidal ideations over a seven-day period, with 34 percent of the youth suffering from '*a current significant clinical level of depression*.'"[60] Detention puts youth at risk of self-harm, and "juvenile correctional facilities often incorporate responses to suicidal threats and behaviors in ways that endanger the youth further, such as placing the youth in isolation."[61] Recent data demonstrate that there are consistently incidents of "self-injurious behavior," or "[a]ny action taken by a youth with the intention of inflicting bodily harm to her/himself" at YSC: there were six such incidents in September 2024.[62]

YSC, in particular, is a long-troubled facility, where children are exposed to violence, substances, and harassment. There were 25 assaults and 21 critical incidents, or "incident[s] that pose[] a risk of serious harm to youth and/or staff," at YSC in September 2024.[63] Youth at YSC also face staff harassment and are regularly locked in their cells for extended periods of time due

[59] *Dangers of Detention*, *supra* note 36, at 8.

[60] *Id.*

[61] *Id.* at 9.

[62] OIJJFO, *Incident Rates*, https://oijjfo.dc.gov/page/incident-rates (click "Show As:," "Table").

[63] *Id.*

to the crowded nature of the facility.[64] *See* Ex. 9: K.Y. Decl. ¶¶ 10–11 (describing the lack of recreational time and "a lot of time [spent] in [his] room" due to staff shortages).

The impact of detention on youth health extends even into adulthood, with research "suggest[ing] that incarceration during adolescence and early adulthood is independently associated with worse physical and mental health outcomes during adulthood," "even when accounting for baseline health and key social determinants of health."[65] "[A]n incarceration duration of > 1 month is associated with worse adult general health, and a duration of > 1 year is associated with worse adult mental health and adult functional limitations."[66] Even beyond health-related harms, the additional, extended detention that Plaintiffs and putative class members are undergoing have cascading effects on other aspects of their lives, including "interrupt[ing] young people's education," with "youth hav[ing] a hard time returning to school" after incarceration.[67] These "negative educational outcomes"[68] include dropping out of or not reenrolling in school,[69]

---

[64] Jenny Gathright & Colleen Grablick, *"Why is my child always on lockdown?": Confinement at D.C.'s Youth Jail Worries Parents, Advocates*, WAMU (July 24, 2023), https://wamu.org/story/23/07/24/confinement-at-dc-youth-jail-has-parents-worried/.

[65] Elizabeth S. Barnert et al., *How Does Incarcerating Young People Affect Their Adult Health Outcomes?*, 139 Pediatrics 1, 7 (2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5260153/pdf/PEDS_20162624.pdf.

[66] *Id.*

[67] *Dangers of Detention*, *supra* note 36, at 9.

[68] Development Services Group, Inc., *Education for Youth Under Formal Supervision of the Juv. Justice System* 4, Off. Juv. Just. Delinquency Prevention (Jan. 2019), https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/education-for-youth-in-the-juvenile-justice-system.pdf.

[69] *Id.* A Washington State study on education outcomes for detained youth found that only 16% of detained students graduated high school, and 57% of detained students dropped out of high school, versus 14% of non-detained students. Wash. Ctr. for Court Res., *Educ. Outcome Characteristics*

and can "impact[] . . . employment opportunities as they spiral down a different direction from their non-detained peers."[70] The fact that the effects of DYRS's violations of these children's constitutional and statutory rights may extend deeply into their adulthood weighs heavily in favor of finding irreparable harm. As this Court has recognized, "a few months can make a world of difference in the life of [a] child." *Blackman,* 185 F.R.D. at 7. Preliminary relief is necessary.

III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST FAVOR INJUNCTIVE RELIEF.

The balance of equities and the public interest merge in cases against the government. Thus, where the relief sought is squarely within the public interest, there can be no harm to the government. *See Pursuing Am.'s Greatness v. FEC*, 831 F.3d 500, 511–12 (D.C. Cir. 2016).

"There is generally no public interest in the perpetuation of unlawful [government] action." *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). Instead, "there is a substantial public interest in having governmental agencies abide by the . . . laws." *Id.* (cleaned up). This is the case here. DYRS has utterly failed to meet its statutory duties and is violating children's constitutional rights and neglecting its duty to care for them. DYRS's actions are directly contrary to the rehabilitative command of its governing statute. The public interest is in ensuring that youth in the District's juvenile system receive the "care or rehabilitation" they need, D.C. Code § 16-2301 (6)—which cannot happen while DYRS continues to drag its feet on placements.

The harm to DYRS of complying with the law and providing children with rehabilitative services—which it is obligated to do—is minimal and far outweighed by the harm Plaintiffs face. As a district court stated in granting a preliminary injunction to youth in a correctional facility

---

of Students Admitted to Juv. Detention 1 (Sept. 2019), https://erdc.wa.gov/publications/justice-program-outcomes/education-outcome-characteristics-students-admitted-juvenile.

[70] *Dangers of Detention*, *supra* note 36, at 9–10.

facing a campaign of harassment, even though "requiring defendants to adopt polic[i]es, procedures, and training . . . may impose some administrative inconvenience," "any burden on the defendants is minimal when viewed in light of [their] legal responsibility to provide a safe environment, not only to the plaintiffs, but to all of the State's wards that are entrusted to [the youth facility's] custody and care." *R.G.*, 415 F. Supp. 2d at 1162. Just so here.

In any event, an injunction would not pose significant hardship to DYRS. Procedures already exist to facilitate timely placements,[71] such as planning for placement as soon as a Notice of Intent is filed, and developing placement options prior to disposition. *See* Ex. 4: Cairns Decl. ¶ 6; Ex. 1: Louchheim Decl. ¶ 14. As noted above, DYRS placed children far faster in FY 2022 than FY 2023. The Court must order the agency to reverse its recent slide into near-paralysis.

CONCLUSION

Every step of the juvenile system is focused on treating "children as children." D.C. Code § 16-2301.02. In recognition of this, the system is focused on care and rehabilitation, rather than punishment. Yet DYRS—the very agency tasked with caring for system-involved children in the District—is outright failing these children. It systematically delays and fails to place children at appropriate placements to receive rehabilitative services and treatment—including the children most in need of such services—and instead detains them for extended periods at a jail-like facility where their physical and psychological wellbeing decompensates. In doing so, DYRS violates children's constitutional rights to due process, neglects them, and transgresses the agency's own statutory mandates. Most concerningly, it causes irreparable harm to these children, who spend their days at YSC feeling "depress[ed]" and "just want[ing] to leave." Ex. 10: D.J. Decl. ¶ 20; Ex.

[71] DYRS, *Care Coordination*, https://dyrs.dc.gov/page/care-coordination.

9: K.Y. Decl. ¶ 14. Rather than care for youth, the District damages them. These unlawful practices must not be permitted to continue. This Court should grant the requested preliminary injunction.[72]

Dated: October 30, 2024

Respectfully submitted,

/s/ Megan Yan
Megan Yan, D.C. Bar No. 1735334
Hanna Perry, D.C. Bar No. 90003756
Maya Chaudhuri, D.C. Bar No. 1779875

PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA
633 3rd Street N.W.
Washington D.C. 20001
(202)-824-2201
myan@pdsdc.org
hperry@pdsdc.org
mchaudhuri@pdsdc.org

Scott Michelman, D.C. Bar No. 1006945
Aditi Shah*

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF THE DISTRICT OF COLUMBIA
529 14th Street NW, Suite 722
Washington, D.C. 20045
(202) 457-0800
smichelman@acludc.org
ashah@acludc.org

* Application for admission *pro hac vice* forthcoming; application for admission to the D.C. bar forthcoming; practice limited to federal courts.

Counsel for Plaintiffs

[72] Because the entry of an injunction will not harm the Defendants, the security required by Fed. R. Civ. P. 65(c) should be set at zero. *See, e.g.*, *Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011) ("The district court retains discretion as to the amount of security required, if any." (cleaned up)); *Doctor's Assocs., Inc. v. Stuart*, 85 F.3d 975, 985 (2d Cir. 1996) ("[T]he district court did not abuse its discretion in dispensing with the bond[.]").