

FAMILY POLICING AS WELFARE THEATRE

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Every year, Child Protective Services (CPS) agencies across the United States conduct more than 2,000,000 investigations into allegations of maltreatment—investigations that are invasive, traumatic, and disproportionately concentrated in poor Black and Brown communities. And yet 84 percent of these investigations fail to substantiate the allegations that prompted them. Of those that do, the overwhelming majority identify poverty-correlated neglect rather than intentional abuse. Why, then, does American society spend billions of dollars a year on this investigative apparatus, which can cause families significant harm, with so little to show for it?

This Essay introduces a novel framework for answering that question: welfare theatre. Drawing on the concept of security theatre—policies designed to produce a feeling of safety regardless of their actual effectiveness—this Essay argues that CPS investigations function as a welfare theatre: a system of agencies, practices, norms, and popular narratives that perform a collective concern for child welfare irrespective of its actual impact on the children it claims to protect or the families it targets. This Essay traces the origins of the welfare theatre to a particular political moment in which the organized abandonment of Black and Brown communities was reconstituted as a child protection imperative, and in which the tools of investigation and surveillance were substituted for structural investments that might have materially addressed the conditions now labeled as neglect.

This Essay identifies three central functions of family policing's welfare theatre: communicating to the non-policed public that the government is committing its resources to doing right by its children, individualizing collective harm by scrambling structural shortcomings into parental failure, and securitizing race-class marginalized families—compelling their compliance as the theatre's objects. This Essay concludes by surveying how impacted families have already begun to break the fourth wall and by proposing legal and policy reforms to shrink the stage.

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INTRODUCTION

She needs to understand—just like every other Black family in Brooklyn, she needs to let me in to do my job.

—Caseworker,

New York City Administration for Children’s Services (ACS)

Each year, Child Protective Services (CPS) investigators across the United States conduct over 2,000,000 investigations in pursuit of compliance with state and federal law.¹ Statutes usually require CPS agents to conduct home searches when an allegation of neglect or abuse is called in to a state hotline, regardless of the allegation’s source, accuracy, or provenance.² In conducting these searches, investigators routinely go down a checklist of places to search (bedrooms, bathrooms, kitchen, living room, etc.), people to interview (every adult and every child in the home), and questions to ask them (for the parents: How often do you drink? Are you depressed? How often do you go to the doctor? What medications do you take? What medications do the other adults in the home take? And for the children: How would you rate your relationship with mommy from 1–10? How would you rate mommy and daddy’s relationship? Would you lift your shirt up so I can see your

1. U.S. DEP’T OF HEALTH & HUM. SERVS., CHILD MALTREATMENT 2023, at xiii (2025) [hereinafter CHILD MALTREATMENT 2023], <https://acf.gov/sites/default/files/documents/cb/cm2023.pdf> [<https://perma.cc/8AXG-FEFP>] (noting that “2,107,473 [screened-in referrals] received a disposition”).

2. See Tarek Z. Ismail, *Family Policing and the Fourth Amendment*, 111 CALIF. L. REV. 1485, 1498–1501 (2023) (describing the authority for CPS home searches).

back?).³ CPS agents are trained to follow the checklists as a matter of course, regardless of the allegations called in to the hotline.⁴ These detailed steps are usually mandated—if not by statute or regulation, then by federal, state, or local training manuals.⁵ There is some optionality for an even more pointed investigation—a particularly ambitious CPS agent might prefer to ask a family member under investigation to sign Health Insurance Portability and Accountability Act (HIPAA) release forms to access medical or therapy records (for adults and children), to sign Family Educational Rights and Privacy Act (FERPA) release forms to access educational records, or for the parent to submit to drug screening—again, often regardless of the allegations. Releases in hand, CPS agents might seek out additional information from various service providers and others who have close knowledge of the family.

A central part of an investigative CPS agent's job is to fastidiously record their impressions of these encounters into a vast network of documentation. Some of this information is systematized and fed into a series of databases used to comply with state or federal reporting requirements.⁶ Other details of these intimate interactions are transcribed into the records kept by the state CPS—sometimes under seal, and sometimes not; sometimes expunged after years of inactivity, and sometimes not. Dozens of pages recounting the results of the weeks-long investigation loom ominously. While they are usually never touched or looked at again, the records can be dredged up in future run-ins with CPS, including when a child subject to protection in one investigation becomes a parent under investigation in the next.⁷

At their most constitutive level, CPS investigations are as invasive as they are inconvenient. By many accounts, though, they are traumatic and leave an enduring impact on each member of the investigated family,

3. In working on hundreds of cases from the New York City Administration for Children's Services (ACS), each client I represented—regardless of the allegations against them—had a nearly identical set of questions to which the child protective specialist sought answers. *See* KELLEY FONG, *INVESTIGATING FAMILIES: MOTHERHOOD IN THE SHADOW OF CHILD PROTECTIVE SERVICES* 109 (2023) [hereinafter FONG, *INVESTIGATING FAMILIES*] (referring to a CPS risk instrument as “a checklist of family needs”). Those questions appeared in a template in Connections, the database ACS uses to enter information on a case. *See* SUNY TRAINING STRATEGIES GRP. & CONNECTIONS TRAINING PROJECT, *CONNECTIONS: BUILD 18 RESOURCE GUIDE FOR MANAGERIAL STAFF 1* (2004).

4. *See* FONG, *INVESTIGATING FAMILIES*, *supra* note 3, at 91 (describing how agents are trained to question families identically, even in “lower-risk” cases).

5. *See* Ismail, *supra* note 2, at 1499–1501 (describing the federal, state, and local framework for investigations).

6. *See* 42 U.S.C. § 5106a(a)(5); *see also infra* notes 85–87 (explaining the widespread practice of document and information retention among child protective agencies).

7. *See* FONG, *INVESTIGATING FAMILIES*, *supra* note 3, at 110–11.

undermining trust in the most intimate of family relationships and leaving lasting impressions for years to come. Because CPS agents are primarily investigators—that is, because they are engaged in suspicion-based inquiries designed to gather evidence of guilt—most attempts to offer material support to a family necessarily fall short. Families experience these offers of support as conditional at best or coercive at worst.⁸

So, what gives? Why has American society decided to run more than two million investigations per year—investigations disproportionately focused on Black, Brown, and poor families, and overwhelmingly focused on allegations of neglect stemming from familial, generational, and communal poverty? It would be one thing if the investigations helped families. But as a practical matter, there is little evidence that families investigated are safer as a result of investigations—even on CPS’s own terms. An astonishing 84 percent of investigations do not substantiate the allegations that CPS agents are investigating.⁹ Around two-thirds of the less than 16 percent of substantiated cases found evidence of neglect alone.¹⁰ Around 3 percent of all investigated leads substantiated allegations of abuse as distinct from neglect.¹¹ For the fraction of cases where CPS does in fact determine that there was some sort of maltreatment, decades of work and research led by impacted families and supplemented by scholars, journalists, and advocates have demonstrated that court involvement and foster care are not the remedies legislators had hoped them to be—court and foster care involvement results in comparatively greater harm to children, their parents, families, and the communities they come from, as well as in fewer material resources directed where they would be most impactful.¹²

So, why do all of this? Why expend the resources necessary to compel consent in this way? Why do legislators and bureaucrats continue to spend billions of dollars annually to pay state agents across the country to force their way into families’ homes and disturb their most intimate relationships—with so little to show for it?

This Essay suggests a novel framework for understanding the mechanics and impacts of obligation and coercion of the family policing investigation and suggests a new lens through which to view CPS

8. *Id.* at 142 (“CPS might aspire to be a vehicle for social services, but its child maltreatment focus and its coercive power undermine[] this goal . . .”).

9. *See* CHILD MALTREATMENT 2023, *supra* note 1, at 25 (breaking down statistics by disposition in Exhibit 3–A).

10. *See id.* at 28. This number is a slight overcount, as it includes the 1.1% of cases that were “indicated” on the grounds that while there was insufficient evidence to substantiate after investigation, there was “reason to suspect” a child may have been maltreated or at risk of maltreatment. *Id.* at 23.

11. *See id.* at 48 (reflecting that of the 3,081,715 cases investigated, 107,040—3.4%—were affirmatively substantiated for some type of abuse).

12. *See infra* Section I.C.

investigations: *welfare theatre*. To do this, I draw on the concept of security theatre: a set of policies or practices designed to evoke a feeling of safety or security in a subset of the population, regardless of its material impact or technical effectiveness.¹³ The term became popular in the years after September 11, 2001, as the United States government scrambled to flex its muscles to account for security lapses, seeking to prevent further breaches.¹⁴ The paradigmatic example of security theatre is the American airport, where travelers ceremonially walk through checkpoints, body scanners, and canine runs; we dutifully empty our bags and take off our shoes. This is despite the fact that probe after probe of the airport security apparatus demonstrates that it is both woefully ineffective and that it serves as an entry point for additional searching and screening of target communities.¹⁵

I argue that like other security theatres, CPS's *welfare theatre* is discriminatory (in that it tends to target particular communities for investigation), harmful (and especially so to those communities that it targets), and largely ineffective in achieving its purported goal of safeguarding children from harm, often affecting the opposite outcome. Unlike other security theatres, I argue that CPS's welfare theatre does not rest on claimed emergency legal authority to function. While the federal government relies heavily on the border search exception as a foundational text for the border security theatre,¹⁶ CPS does not have a similar emergency authority to stand on. Instead, both CPS agents and the families being policed by them believe that they are required to play their roles in the theatre.

This Essay suggests that CPS spends billions of dollars annually flouting the de minimis constitutional requirements of millions of families each year in pursuit of a collective impression that our society is doing right by its children. I argue that families subject to consent-proof CPS home searches are the welfare theatre's *securitized objects*. Through welfare theatre, the government communicates to the non-policed public that it is doing its job by protecting children; it communicates to the policed public that it has no choice but to play a central role in the production, resulting in unsaid trauma to generations of disproportionately Black individuals, families, and communities alike. By exploring how consent-proof investigations constitute a broader CPS welfare theatre, this Essay unsettles the dominant narrative that policed families are willing subjects of CPS surveillance. Instead, this Essay

13. See *infra* Section II.B.

14. See *infra* Section II.B.

15. See *infra* Section II.B.

16. HILLEL R. SMITH & KELSEY Y. SANTAMARIA, CONG. RSCH. SERV., R46601, SEARCHES AND SEIZURES AT THE BORDER AND THE FOURTH AMENDMENT 1-2 (2021).

explores how welfare theatre conceals both the ineffectiveness of CPS investigations in providing for the needs of families rendered disposable by intentional policy decisions on the one hand, and the devastating impact of CPS investigations on policed families on the other hand. This Essay argues that the material impact of the welfare theatre and its communications is the individualization of collective harm, obscuring broader social solutions through the moral construction of poverty and facilitating the organized abandonment of policed populations. In this way, the welfare theatre is all that remains.

Ultimately, this Essay points to ways that this framing can help elucidate the harms of CPS's welfare theatre. Affected families—policed parents, children, and former foster youth—have already begun to break the fourth wall by unapologetically communicating the harms of CPS intervention into their families. Following their lead, this Essay proposes concrete legal and policy changes that would increase the well-being of children and families and move toward ending the harms described here.

Part I lays out the background necessary to understand the mechanics of CPS investigations. It provides a brief history of the family policing investigative scheme, including its main features, CPS's claimed legal authority, and the material outcomes of CPS. Having reviewed these parameters, Part I poses the question at the heart of this Essay—given such poor outcomes, the prevalence of “neglect,” and the harms to the families involved, why do we spend tens of millions of dollars investigating families for largely poverty-driven harms? Part II of this Essay introduces the concept of security theatre in response to that question. It lays out the Essay's central argument: As currently constituted, CPS investigations are consent-proof searches, which operate in service of a broader welfare theatre, obscuring its ineffectiveness on the one hand and its harm to policed families on the other. Part II explores the features of family policing's welfare theatre and introduces the concept of *the securitized family*, synthesizing literature on the psychological and physical impacts of forced entry on a policed family and on how those impacts are magnified at the community level when constitutional privacy is treated with disdain across disproportionately poor Black communities. Part III describes efforts by securitized families and their allies to disrupt the welfare theatre. Part III also discusses what it would mean for practitioners, judges, scholars, and broader society to adopt this disruption, and it explores tools that they might wield in an effort to do so.

I. FAMILY POLICING

Family policing¹⁷ involves the work of thousands of agencies and tens of thousands of agents spread across the country to investigate allegations of child maltreatment allegedly caused by parents and caretakers.¹⁸ The work of family policing agencies is critically underappreciated by wide swathes of the modern American public, especially those who are untouched by its project.¹⁹ In the metaculture, therefore, CPS is often perceived as benevolent in its finest form, or benign in its most ineffectual²⁰—taking on the thankless and crucial task of giving a voice to the voiceless and protecting child victims from the harm caused to them by their neglectful or abusive parents.

Decades of critique and organizing led by affected families²¹ and amplified by scholars, journalists, and advocates has chipped away at that perception by highlighting the seedier—and more substantial—face of the family policing enterprise that leaves countless families hurt rather than helped, marginalized rather than supported, and separated rather than unified. This Part first defines and describes family policing as a project that took on its most recognizable form in the mid-twentieth century, concurrent with the organized abandonment of many of the communities that it would eventually police. This Part sketches out the history of family policing and then describes the structure and practice of modern family policing, particularly focused on the nearly 2,000,000

17. This Essay adopts the term “family policing” to describe the not-entirely-distinct investigative and surveillance function of the child protective or child welfare system. Family policing is sometimes used interchangeably with “family regulation.” See Emma Ruth, *‘Family Regulation,’ Not ‘Child Welfare’: Abolition Starts with Changing Our Language*, IMPRINT (July 28, 2020, at 23:45 CT), <https://imprintnews.org/opinion/family-regulation-not-child-welfare-abolition-starts-changing-language/45586>. Here, I intend to treat them as overlapping but distinct, the former to do with the investigative and coercive executive function, and the latter to include the no less coercive judicial and administrative functions. For further explanation, see Dorothy Roberts, *How I Became a Family Policing Abolitionist*, 11 COLUM. J. RACE & L. 455, 459, 461 (2021).

18. See CHILD MALTREATMENT 2023, *supra* note 1, at 10.

19. See *infra* Section II.C.

20. See, e.g., Christian Leber & Craig W. LeCroy, *Public Perceptions of the Foster Care System: A National Study*, 34 CHILD. & YOUTH SERVS. REV. 1633, 1636 (2012) (finding general support for the foster care system, with a significant majority of respondents expressing doubt as to its effectiveness); see also *infra* Section II.C (describing a core function of welfare theatre as communicating this sort of benevolence).

21. See, e.g., UNJUST CHILD REMOVAL COMM., MASS. CHILDBEARERS RTS. ALL. (MCRA), STAYING TOGETHER: A GUIDE FOR PARENTS ACCUSED OF CHILD NEGLECT OR ABUSE 25–28 (1982) (pamphlet dedicated to defending childbearing rights—the rights of all people to decide if, when, and under what conditions to raise children); DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 67–74 (2001) [hereinafter ROBERTS, SHATTERED BONDS] (describing efforts of mothers in Chicago in the 1990s organizing to protect themselves against family policing).

investigations that child protective workers conduct each year across the United States.

A. History

Family policing is the continuous investigative function of the child protective, or family regulation, system. Through a substantial network of reporters—both mandatory and voluntary, confidential and anonymous—the family policing system enlists both the public and private sector as the eyes and ears of a collective effort to identify children maltreated by their parents. This investigative effort usually begins with a call to a central hotline, but a family policing investigation usually lasts for months beyond that call.²²

The modern child protective investigation²³ first emerged as a stand-alone element of the foster system in the early 1960s at a moment when Black communities in the United States were demanding access to the burgeoning social welfare system. A few decades earlier, the Mother's Pension Movement had blossomed as a welfare program for “deserving” mothers—husbandless, primarily white widowed or unmarried women—with the express goal of incentivizing women to stay home and care for their children.²⁴ By 1920, forty states had passed mother's pensions for mothers of worthy character.²⁵ By 1931, 96 percent of recipients of mother's pensions were white; 3 percent were Black.²⁶ Over time, as the federal government sought to broaden the New Deal safety net, Black Americans and their allies struggling for co-liberation sought to secure socioeconomic standing, access to the ballot box, and the schoolhouse.

22. U.S. DEP'T OF HEALTH & HUM. SERVS., MAKING AND SCREENING REPORTS OF CHILD ABUSE & NEGLECT 2, 5 (2021), https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/making-screening-reports-child-abuse-neglect_0.pdf [<https://perma.cc/KE88-DFQ6>] (noting that most states specify a thirty to sixty day timeframe for completing an investigation).

23. The history of the family regulation system, and its family policing arm, date back to the earliest days of the republic with roots in the transatlantic slave trade and European colonization of the inhabited American continent. DOROTHY ROBERTS, TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD 85–122 (2022) [hereinafter ROBERTS, TORN APART]. Scholars have painstakingly documented the links between that history and today's family regulation system, as its modern manifestation. *Id.*; see also LAURA BRIGGS, TAKING CHILDREN: A HISTORY OF AMERICAN TERROR 48–54 (2020) (describing the use of family separation as a tool of coercion against native families); THIS LAND: *Solomon's Sword* (Crooked Media, Aug. 23, 2021), <https://crooked.com/podcast/1-solomons-sword/>. This Essay deals most directly with the modern iteration of family policing.

24. JILL QUADAGNO, THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY 119 (1994).

25. *Id.*

26. ROBERTS, TORN APART, *supra* note 23, at 115.

Gradually, Black families began to receive welfare benefits.²⁷ State by state, the social safety net tightened in response. Black families just beginning to benefit from access to basic necessities were subjected to suitable home laws designed to target Black mothers.²⁸ Suitable home laws “arbitrarily denied benefits to African Americans because their homes were seen as immoral,” limiting aid to unmarried women, children born out of wedlock, and homes where men other than the biological father were identified as caring for the children.²⁹ These reactions were especially prominent in states where the struggle for Black liberation was most obviously contentious. Nearly 23,000 children were bumped from the welfare rolls in Louisiana.³⁰ Ninety-eight percent of them were Black.³¹ Tens of thousands of other Black families were stripped of their public benefits using suitability laws in Florida, Arkansas, Georgia, Texas, and Virginia.³²

In what would be a consequential attempt to address state-driven racial discrimination around welfare benefits, the Secretary of the U.S. Department of Health, Education, and Welfare imposed new rules on caseworkers responsible for certifying the distribution of welfare funds.³³ Rather than cut off families from support when their homes were deemed ineligible—which civil rights advocates had worked hard to frame as unfairly punishing those families’ children³⁴—caseworkers making determinations on whether to disburse funds were now required to refer families to law enforcement or a judge in cases where they believed children were at risk and where the caseworker determined family separation might be necessary. Just as important, the federal government—for the first time—reimbursed states for the placement of

27. Ismail, *supra* note 2, at 1505; *see also* QUADAGNO, *supra* note 24, at 119 (discussing mother’s pensions as a form of welfare benefits).

28. *See* Andrew Pope, *Making Motherhood a Felony: African American Women’s Welfare Rights Activism in New Orleans and the End of Suitable Home Laws, 1959–1962*, 105 J. AM. HIST. 291, 291–92 (2018).

29. Claudia Lawrence-Webb, *African American Children in the Modern Child Welfare System: A Legacy of the Flemming Rule*, 76 CHILD WELFARE 9, 11 (1997); *see also* Pope, *supra* note 28, at 293, 303, 307 (describing the use of suitability home laws to police and regulate Black mothers in Louisiana).

30. Lawrence-Webb, *supra* note 29, at 12; *see also* Pope, *supra* note 28, at 291 (unpacking the impact of such a policy in Louisiana, and the popular response to it).

31. Pope, *supra* note 28, at 292.

32. Lawrence Webb, *supra* note 29, at 10–12.

33. *Id.* at 10–11; *see also* Ismail, *supra* note 2, at 1505–07 & nn.112–20 (laying out this history in further detail).

34. Pope, *supra* note 28, at 294 (describing the movement work of impacted Black mothers in Louisiana to force the predominantly male-dominated Urban League of Greater New Orleans to form a national coalition, “Operation Feed the Children,” in response to the loss of welfare support).

poor children into foster care.³⁵ The impact of these policies was swift. Instead of booting families from the rolls, welfare caseworkers—ordinarily tasked with administrative compliance checks—were now calling in law enforcement to place children in foster care at a breakneck pace. The number of children in foster care increased dramatically, with Black children disproportionately impacted.³⁶

Around the same time, a parallel concern emerged—first in medical circles and then in the popular consciousness—for American children growing up in poor families. In 1962, Dr. Henry Kempe, then-chair of the Department of Pediatrics at the University of Colorado, co-authored *The Battered-Child Syndrome* in *The Journal of the American Medical Association*.³⁷ The article coined battered-child syndrome (BCS) as “a clinical condition in young children who have received serious physical abuse, generally from a parent or foster parent.”³⁸ The authors came to this conclusion based on survey research regarding serious injuries reported at hospitals and prosecutors’ offices.³⁹ The study raised concerns about a vast scourge of undetected, abused children across the country suffering in silence, often at the hands of their parents.⁴⁰ One of Kempe’s contemporaries observed that the report’s findings were “just the tip of the iceberg.”⁴¹ While the study identified just over 700 children with BCS, the authors argued that far more children were suffering than had been discovered.⁴² *The Battered-Child Syndrome* proposed that

35. Lawrence-Webb, *supra* note 29, at 14.

36. Ismail, *supra* note 2, at 1507 & n.121.

37. C. Henry Kempe, Frederic N. Silverman, Brandt F. Steele, William Droegemueller & Henry K. Silver, *The Battered-Child Syndrome*, 181 JAMA 17, 17 (1962). Kempe and his co-authors treated “abuse as a ‘hidden’ phenomenon” that could only be found through investigation. MICAL RAZ, ABUSIVE POLICIES: HOW THE AMERICAN CHILD WELFARE SYSTEM LOST ITS WAY 55 (Allan M. Brandt, Larry R. Churchill & Jonathan Oberlander eds., 2020).

38. Kempe, Silverman, Steele, Droegemueller & Silver, *supra* note 37, at 17.

39. *Id.* (noting that the survey asked seventy-one hospitals and seventy-seven district attorneys across the country to track incidence of the newly defined condition over the course of the year, in which the hospitals and district attorneys returned 302 and 447 cases, respectively, involving broken bones and other serious injury). The paper’s findings and parallel suggestion that BCS be treated as a medical condition were initially rejected as unscientific by the American Academy of Pediatrics (AAP). Donald C. Bross & Ben Mathews, *The Battered-Child Syndrome: Changes in the Law & Child Advocacy*, in C. HENRY KEMPE: A 50 YEAR LEGACY TO THE FIELD OF CHILD ABUSE AND NEGLECT 39, 41 (Richard D. Krugman & Jill E. Korbin eds., 2013) [hereinafter C. HENRY KEMPE]. Kempe became the chairman of the AAP Scientific Committee a year later, and it was then accepted. *Id.*

40. Kempe, who came from a background in virology, thought about BCS as an epidemic. Bross & Mathews, *supra* note 39, at 41–43. Some of his co-authors wrote about it as being transmitted intergenerationally. *Id.* at 43.

41. Richard D. Krugman, *Introduction and Commentary: The Battered Child*, in C. HENRY KEMPE, *supra* note 39, at 21, 21.

42. *See id.*

physicians identify and then report concerns of “willful trauma to the police department or any special children’s protective service that operates in [the] community.”⁴³

Within three years of the publication of *The Battered-Child Syndrome*, 300 medical articles had weighed in echoing similarly grave concern;⁴⁴ within four and a half years, all fifty states had voluntarily adopted a statutory or regulatory scheme “requiring physicians to report reasonably suspected non-accidental serious physical injury.”⁴⁵ The medical, social science, and colloquial understanding of harm to children expanded beyond severe physical abuse to other, less severe or less immediately obvious forms of maltreatment. States slowly broadened mandated reporting statutes, sweeping in additional reporters, such as teachers and social workers, and additional bases for concern, with some of these bases more broadly scoping the notion of maltreatment to include neglect.⁴⁶

For nearly a decade after the Kempe study, the agents tasked with investigating the reports generated by these statutes—and the sort of maltreatment they were looking for—varied from state to state. Some states maintained the federal model requiring welfare workers to simultaneously conduct funding eligibility assessments and parental fitness evaluations, relying on law enforcement to bring criminal charges when appropriate or to remove children from their parents’ care through dependency courts. Other states tasked criminal police with conducting investigations when reports came in.⁴⁷ With disparate state reporting and investigation schemas firmly in place, allegations of maltreatment

43. Kempe, Silverman, Steele, Droegemueller & Silver, *supra* note 37, at 23–24 (suggesting that physicians will need to overcome their own feelings of reluctance and their difficulty in playing an investigative role).

44. Thomas L. Hafemeister, *Castles Made of Sand? Rediscovering Child Abuse and Society’s Response*, 36 OHIO N.U. L. REV. 819, 838 (2010). Accounts suggest that media reporting on the matter perpetuated the outcome. Monrad Paulsen, Graham Parker & Lynn Adelman, *Child Abuse Regulation Laws—Some Legislative History*, 34 GEO. WASH. L. REV. 482, 490 (1966) (“Several national magazines have run stories calling for legislative action and attracting public attention with eye-catching headlines and photographs of dreadfully abused children.”).

45. Bross & Mathews, *supra* note 39, at 44; *see also* Ismail, *supra* note 2, at 1511 nn.149–50 (tracing the contemporary impact of Dr. Kempe’s study).

46. Monrad G. Paulsen, *Child Abuse Reporting Laws: The Shape of the Legislation*, 67 COLUM. L. REV. 1, 6–7, 12 (1967) (noting that by 1967, only three states—New York, Ohio, and Tennessee—had required the reporting of neglect as such and advising against it because the “emotional and social behavior” involved gave “general medical practitioners . . . little reason to be wise”); Natalie K. Worley & Gary B. Melton, *Mandated Reporting Laws and Child Maltreatment: The Evolution of a Flawed Policy Response*, in C. HENRY KEMPE, *supra* note 39, at 103, 104 (describing a system overburdened by an ever-ballooning set of issues to respond to).

47. Ismail, *supra* note 2, at 1511–12.

skyrocketed.⁴⁸ Even at this early phase, however, it became clear that the incidence of neglect—and in particular poverty-related neglect—far outstripped the prevalence of the sort of intentional, malicious abuse described in *The Battered-Child Syndrome*.⁴⁹

As the 1960s came to a close, Black liberation movements sought to build on civil rights victories by demanding significant infrastructural expenditures to revive urban enclaves whose housing, schools, and healthcare options had been devastated by decades of disinvestment.⁵⁰ At that precise moment, the postwar economic boom came to a halt. The national mood soured on social welfare programs associated with President Lyndon B. Johnson’s War on Poverty,⁵¹ and especially the sorts of investments necessary to address racialized inequality in the United States.⁵² As recession hit in the early 1970s, even ostensibly well-intentioned policies took the form “of law and order and the restoration of authority.”⁵³

Adjusting to the moment—and responding to Kempe’s consistent framing and the advocacy it inspired—Democratic Minnesota Senator Walter Mondale proposed a solution to the broadly defined phenomenon of child maltreatment as an investigative process.⁵⁴ Wary of charges that he intended “to Sovietize” America, Mondale, in developing the legislation, worked closely with organizations largely made up of middle-class white mothers intent on defining the poverty-driven conditions we now associate with neglect as driven by a parent’s personal failings.⁵⁵ As historian and physician Mical Raz writes, “[d]epicting child abuse as a psychological problem, thus circumventing the need to address structural

48. In Florida, the first state to implement and subsequently advertise a hotline, “reports increased from 17 in 1970 to 19,120 the following year” and over 29,600 in 1972. RAZ, *supra* note 37, at 57. Half of all reported cases within 1971–72 (over 48,000) were investigated. *Id.*

49. See Angela J. Narayan, Michelle P. Brown & Jamie M. Lawler, *The Future of Childhood Maltreatment Research: Diversity and Equity-Informed Perspectives for Inclusive Methodology and Social Justice*, 36 DEV. & PSYCHOPATHOLOGY 2091, 2092, 2095–96 (2024) (noting that the incidence of “neglect was by far the most common subtype” of substantiated maltreatment cases between 1967 and 1971).

50. KEEANGA-YAMAHTTA TAYLOR, FROM #BLACKLIVESMATTER TO BLACK LIBERATION 53 (2016).

51. Scott J. Spitzer, *Nixon’s New Deal: Welfare Reform for the Silent Majority*, 42 PRESIDENTIAL STUD. Q. 455, 468 (2012).

52. TAYLOR, *supra* note 50, at 53.

53. John Whitlow, *The Real Estate State and Group-Differentiated Vulnerability to Premature Death: Exploring the Political-Economic Roots of Covid-19’s Racially Disparate Deadlines in New York City in the Spring of 2020*, 35 J. CIV. RTS. & ECON. DEV. 247, 267 (2022).

54. See RAZ, *supra* note 37, at 10–11, 13.

55. *Id.* at 10, 12–14, 25 (“Rejecting that perceived neglect could be a consequence of extreme poverty, [the leader of one such organization] instead portrayed neglect as a choice made by irresponsible parents.”).

risk factors such as poverty, racism, and isolation, helped dissociate child abuse from the unpopular War on Poverty interventions of the 1960s.”⁵⁶

The passage of the 1974 Child Abuse Treatment and Protection Act (CAPTA) signaled that the most appropriate solution for the maltreatment of poor children in the United States was to fund the reporting, surveillance, and investigation of their families. To receive federal funding, CAPTA required states to (1) require mandatory “reporting of known and suspected instances of child abuse and neglect,”⁵⁷ and (2) investigate every allegation of maltreatment.⁵⁸ In this way, CAPTA is an embodiment of the laws and policies issued from a particular moment of the postwar turn to neoliberalism: a collective effort to hollow out state public welfare programs and bulk up states’ coercive apparatuses.⁵⁹

CAPTA left some specifics of the design to the states, including who was required to report and how to define neglect and abuse. To support states endeavoring to meet these requirements, the Federal Office of Child Development sponsored experts to develop guidelines for legislation.⁶⁰ Having considered their task closely, scholars expressed reservations about the focus of the project as they made narrow reservations on implementation: “[U]ndue emphasis on reporting may serve to direct attention away from more pervasive social problems of which child maltreatment may be a symptom,” including poverty or lack of childcare, health care, or housing.⁶¹ They added that such an emphasis would lead reporters and the public to the misleading belief that “once a report is made, care and treatment will be extended automatically to those in need.”⁶² This was untrue, they suggested, because the requisite care was “substandard and underfunded.”⁶³ Their warnings were largely ignored, and states implemented increasingly broad reporting schemes

56. *Id.* at 13.

57. Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, § 4(b)(2)(B), 88 Stat. 4, 6 (1974) (codified as amended at 42 U.S.C. § 5103), *repealed by*, Child Abuse Prevention and Treatment Act Amendments of 1996, Pub L. No. 104-235, § 103, 110 Stat. 3063, 3066.

58. § 4(b)(2)(C), 88 Stat. at 6.

59. See Ruth Wilson Gilmore, *In the Shadow of the Shadow State*, SCHOLAR & FEMINIST ONLINE: BARNARD CTR. FOR RSCH. ON WOMEN (2016), <https://sfonline.barnard.edu/ruth-wilson-gilmore-in-the-shadow-of-the-shadow-state/> [https://perma.cc/B9XH-KH77].

60. RAZ, *supra* note 37, at 64, 66.

61. *Id.* at 66 (quoting ALAN SUSSMAN & STEPHAN J. COHEN, REPORTING CHILD ABUSE AND NEGLECT: GUIDELINES FOR LEGISLATION xxiv (1975)).

62. *Id.* (quoting SUSSMAN & COHEN, *supra* note 61, at xxiv).

63. *Id.* (quoting SUSSMAN & COHEN, *supra* note 61, at xxiv).

with their own broad definitions of neglect. Reports increased by more than 1,700 percent in the first six years after CAPTA's passage.⁶⁴

With CAPTA, then, Congress enshrined a consequential policy choice which, more than fifty years later, persists as a central pillar of the family policing apparatus. By propping up hundreds of stand-alone law enforcement agencies whose *raison d'être* was the investigation and substantiation of allegations of abuse and neglect, Congress overdetermined the role of state government—and state and local child protective agencies under their purview—who may otherwise have been interested in providing the sorts of resources and support that would alleviate the most prevalent forms of neglect they identify.

The instinct—indeed, the requirement—to approach the consequences of the organized abandonment⁶⁵ of Black, Brown, and poor families as a law enforcement problem was at once paradigmatic of the era from whence CAPTA emerged and symptomatic of the prescription proposed by Dr. Kempe. This instinct predictably favored investigation, surveillance, categorization, and family separation over any default inclination toward provision of resources. It is, in this way, a foundational principle of the family policing security theatre.

B. The Modern Family Policing Apparatus

Today, just over fifty years since CAPTA became law, there are nearly 3,000 dedicated child protective services agencies around the country,⁶⁶ which employ more than 32,000 child protective agents

64. Richard D. Krugman & Lori E. Poland, *Can We Have a "Do-Over"?* *Disrupting a Half-Century Old Approach to Child Abuse and Neglect*, 3 INT'L J. CHILD MALTREATMENT: RSCH., POL'Y & PRAC. 1, 2 (2020) ("[T]he number of reports escalated 'from an estimate of a few hundred cases in the early 1960s to reports of 60,000 cases in 1974 . . . 1.1 million cases in 1980, 2.4 million cases in 1989, and nearly three million cases in 1992.'" (quoting U.S. ADVISORY BD. ON CHILD ABUSE & NEGLECT, NEIGHBORS HELPING NEIGHBORS: A NEW NATIONAL STRATEGY FOR THE PROTECTION OF CHILDREN 8 (1993))).

65. See SOAS PODCASTS: *Organized State Abandonment: A Concept for Our Times?*, at 28:10 (SoundCloud, Mar. 13, 2019), <https://soundcloud.com/soas-university-of-london/organised-state-abandonment-a-concept-for-our-times> (defining "organized abandonment as a way to understand how a range of institutions and organizations, both public and private, operate to further the objective of private profit at great cost to particular populations"); Taylor Riley, Julia P. Schleimer & Jaquelyn L. Jahn, *Organized Abandonment Under Racial Capitalism: Measuring Accountable Actors of Structural Racism for Public Health Research and Action*, 343 SOC. SCI. & MED., 2024, at 1, 2–3 (highlighting core aspects of organized abandonment: disinvestment, extraction and revenue generation, as well as carceral enforcement).

66. See Childs. Bureau Admin. On Child., Youth & Fams., Admin for Child. & Fams. & Off. of the Assistant Sec'y for Plan. & Evaluation, U.S. Dep't of Health & Hum. Servs., *National Study of Child Protective Services Systems and Reform Efforts: Summary Report*, ASPE (Apr. 30, 2003), <http://aspe.hhs.gov/hsp/CPS-status03/summary/> (indicating 2,610 agencies nationally in 2001).

uniquely charged with receiving and investigating allegations of child maltreatment.⁶⁷ In 2022, “state and local child welfare agencies spent \$34.3 billion.”⁶⁸ Almost half of that money is spent on foster care; 17 percent—about \$5.8 billion annually—is spent on the investigative apparatus.⁶⁹ In 2023, reporters made 4,399,000 calls to state hotlines alleging some sort of maltreatment.⁷⁰ 2,107,473—or about 47.5%—were screened in and sent to a local CPS agency for investigation.⁷¹ The balance—roughly 2,300,000 calls—were screened out.⁷²

State statutes and processes for investigation vary significantly. In previous work, I have described extensively the nature and extent of family policing investigations⁷³ and the sources and guidelines for the ambit of their investigative work.⁷⁴ An unimpeded CPS investigation involves a period of suspicion-driven surveillance by the local child protective agency over a family. The primary goal of the investigation is to determine whether or not a report of maltreatment can be substantiated against the parents.⁷⁵ During the investigation period, agents usually (and often repeatedly) search the family’s home for any evidence of maltreatment.⁷⁶ CPS home searches range from incidental to comprehensive depending on both the policy and training of the particular CPS agency,⁷⁷ as well as the propensities of the particular agent conducting the investigation. Nonetheless, CPS home searches are usually not tailored to the allegations being investigated and tend to sweep more broadly, on the theory that maltreatment is not singular and occurs in clusters.⁷⁸ As a baseline matter, federal guidelines require CPS

67. CHILD MALTREATMENT 2023, *supra* note 1, at 21 (reporting 32,685 workers across forty-six states and territories, not including New York, Ohio, Colorado, Florida, Georgia, and North Dakota).

68. KRISTINA ROSINSKY, MEGAN FISCHER, MAGGIE HAAS, ALYSSA IBARRA & SARAH CATHERINE WILLIAMS, CHILD WELFARE FINANCING SFY 2022: A SURVEY OF FEDERAL, STATE, AND LOCAL EXPENDITURES 1 (2025), https://cms.childtrends.org/wp-content/uploads/2025/06/SFY2022CWFSMainReport_ChildTrends_July2025.pdf [<https://perma.cc/6WSB-U4NN>].

69. *Id.* at 49 (describing the proportion of total expenditure on categories of services); *id.* at app. F (defining child protective services on page 3 of the financing survey to include all elements of an investigation).

70. CHILD MALTREATMENT 2023, *supra* note 1, at 7.

71. *Id.* at 19.

72. *Id.* at 8. Most reports are made by mandated reporters. *Id.* at 8–9. For a more detailed discussion on reporting and screening, see Ismail, *supra* note 2, at 1493–94 & nn.18–28, 1496–97 & nn.45–50.

73. Ismail, *supra* note 2, at 1493–98.

74. *Id.* at 1498–1501.

75. *Id.* at 1495 & n.34.

76. *Id.* at 1500–01 & nn.77–80.

77. *See id.* at 1501–03.

78. *See, e.g.*, DIANE DEPANFILIS, U.S. DEP’T HEALTH & HUM. SERVS., CHILD PROTECTIVE SERVICES: A GUIDE FOR CASEWORKERS 67 (2018) (suggesting that a CPS

investigators to interview each person living in the home, and—usually following a generic template promulgated at the state or local level—to ask children and adults alike personal questions about themselves and their family lives, including questions about their relationships to one another.⁷⁹ Once identified by a CPS agent, each child in the home is a subject of the investigation.⁸⁰ As a matter of protocol, children are usually separated from their parents for questioning⁸¹; often, children are asked to remove their outer clothing to allow the investigator to inspect for signs of physical harm.⁸²

Beyond home searches and family inspections, in an effort to round out the investigation, CPS investigators are trained to seek out collateral evidence regarding the family. Interviews with the original reporter are a standard first step; investigators also often seek information from other professionals who have regular contact with the family by speaking with pediatricians and family doctors, teachers, and therapists.⁸³ During the initial visit to the home, parents are often encouraged to sign releases to facilitate this process.⁸⁴

All of these data points are recorded in a centralized information system usually accessible to CPS and criminal law enforcement but restricted to other members of the public.⁸⁵ CPS agencies maintain a file on a family for each investigation.⁸⁶ Even where a report is not substantiated, files can be retrieved upon future allegations of maltreatment. Agencies often consult these files when people alleged to

agent should investigate both “the alleged maltreatment and any risk of maltreatment . . . [b]ecause CPS’s purpose goes beyond just finding out what happened”).

79. Ismail, *supra* note 2, at 1499 & n.68.

80. *Id.* at 1499.

81. DEPANFILIS, *supra* note 78, at 67 (“All family members should be interviewed alone to establish rapport and a climate of trust with the CPS worker.”).

82. *See, e.g., Visual Inspection of Children*, L.A. CNTY. DEP’T OF CHILD. & FAM. SERVS.: POL’Y INST. (Feb. 22, 2024), <https://policy.dcfslacounty.gov/Policy?id=5955> [<https://perma.cc/MWX2-LBLE>] (permitting CPS agents to disrobe children up to five years old at each visit to inspect for marks); *see also* Ismail, *supra* note 2, at 1538 (describing CPS practice of removing clothing to check for marks or bruising).

83. DEPANFILIS, *supra* note 78, at 64, 68, 108.

84. *See id.* at 68, 108 (describing an interview protocol for “[c]ollateral sources . . . (e.g., neighbors, health care providers, teachers, extended family, tribe) [that] focus[es] on gathering information that can contribute to a more complete understanding of the alleged maltreatment and of risk factors”).

85. *See generally* 42 U.S.C. §§ 5106a, 671(a)(8) (describing the records maintained on families pursuant to CAPTA). *See also* N.Y. SOC. SERV. LAW § 422(4)(A) (McKinney 2025) (describing the types of records accessible to subjects of the report and other entities in New York); TEX. FAM. CODE ANN. § 261.201 (West 2025) (same in Texas); *cf.* 42 U.S.C. § 675(1) (similarly describing the requirements for maintenance of foster care case plan records).

86. *See supra* note 85.

have been mistreated as children become parents who themselves are investigated for maltreatment.⁸⁷

A CPS investigation can last months, depending on the time by which each state requires disposition.⁸⁸ At the conclusion of an investigation, the assigned agency renders its verdict on the family and reports its findings to the state recordkeeping agency charged—by CAPTA—with reporting results to the federal government.⁸⁹ In addition to the recordkeeping function, some states also maintain a central register of maltreatment that states make accessible to employers hiring adults working with children and to foster care agencies considering individuals for certification as foster parents.⁹⁰

C. Outcomes

The substantiation rate of CPS investigations is lower than might be expected given the depth and breadth previously described. In 2023, CPS agencies nationwide found evidence to substantiate allegations of maltreatment in just 15.8% of the over 2,000,000 investigations conducted,⁹¹ usually based on the relatively forgiving preponderance of the evidence standard.⁹² An overwhelming majority—a stunning 84.2% of all investigations nationally—failed to find evidence of maltreatment, thus deeming the children in those homes “nonvictims.”⁹³ The picture that emerges is one of systemic ineffectiveness, and federal oversight confirms as much: Every CPS agency in the country consistently falls short of federal benchmarks for children’s safety, permanency, and well-being outcomes.⁹⁴

The costs of investigations on the individuals, families, and communities impacted are significant and enduring. Children who

87. See Eve Stotland & Cynthia Godsoe, *The Legal Status of Pregnant and Parenting Youth in Foster Care*, 17 U. FLA. J.L. & PUB. POL’Y 1, 21, 28 (2006) (describing how a young person’s psychiatric and medical records maintained during foster care can be wielded against them as parents); see also S. Lisa Washington, *Pathology Logics*, 117 NW. U. L. REV. 1523, 1158 (2023) [hereinafter Washington, *Pathology Logics*] (noting that foster care records can be used as an investigatory tool).

88. See DEPANFILIS, *supra* note 78, at 64.

89. See 42 U.S.C. § 5104(c)(1)(C)(i).

90. Ismail, *supra* note 2, at 1496 & nn.43–44.

91. CHILD MALTREATMENT 2023, *supra* note 1, at 25 (breaking down statistics by disposition in Exhibit 3–A).

92. *Id.* at 120.

93. See *id.* at 25, 36–37.

94. U.S. DEP’T OF HEALTH & HUM. SERVS., CHILD AND FAMILY SERVICES REVIEWS AGGREGATE REPORT: ROUND 3: FISCAL YEARS 2015–2018, at iii (2020) (“The 51 states reviewed in Round 3 met few of the performance standards established by the Children’s Bureau for the [safety, permanency, and well-being] outcomes.”). Ironically, CPS agencies perform much better on regulatory compliance. See *id.*

undergo investigations can experience both immediate and long-lasting psychological damage, straining patterns of attachment and forever impacting their relationship to authority.⁹⁵ Parents, themselves traumatized by the surveillance and the threat of family separation, experience their own psychological harm after the shame of a CPS investigation and often turn inward rather than seek necessary help from external supports.⁹⁶ CPS investigations—which tend to be concentrated in certain neighborhoods and communities—further break down the vital social fabric of the communities where they are most prevalent.⁹⁷

This social and psychological cost of investigation—regardless of the investigation’s outcome—is not borne equally by all children. One in two Black children in the United States will experience a CPS investigation before their eighteenth birthday, a rate significantly higher than the rate of investigation for the general population.⁹⁸ In some jurisdictions, this rate is much higher. Indigenous children are similarly overrepresented in jurisdictions with large native populations.⁹⁹

CPS advocates might suggest that the cost borne by the families of more than 2,600,000 children who endured unsubstantiated investigations in 2023 is worth paying to protect the 546,159 children labeled “victims” where CPS investigators identified some form of maltreatment.¹⁰⁰ A small proportion of cases uncovers persistent parental substance abuse or untreated mental illness, which can lead to harm.¹⁰¹ A smaller proportion uncovers physical abuse. But the 500,000 number overstates—or, at best, obscures—the upshot of the investigative project.¹⁰² Of the 15.8% of cases where CPS did identify a child “victim,” 70 percent of investigations substantiated allegations of neglect alone—not the sort of intentional abuse inflicted by the parents described in *The Battered-Child Syndrome*.¹⁰³ And while the child protective

95. See *infra* Section II.C.

96. See *infra* Section II.C.

97. See *infra* Section II.C.

98. See Youngmin Yi et al., *State-Level Variation in the Cumulative Prevalence of Child Welfare System Contact, 2015–2019*, 147 CHILD. & YOUTH SERVS. REV. 1, 10 (2023); Hyunil Kim, Christopher Wildeman, Melissa Jonson-Reid & Brett Drake, *Lifetime Prevalence of Investigating Child Maltreatment Among U.S. Children*, 107 AM. J. PUB. HEALTH 274, 274 (2017).

99. See Youngmin Yi et al., *supra* note 98, at 11, 14.

100. See *supra* note 9 and accompanying text.

101. See Kristen Seay, *How Many Families in Child Welfare Services Are Affected by Parental Substance Use Disorders? A Common Question that Remains Unanswered*, 94 CHILD WELFARE 19, 19, 33 (2015).

102. See Lindsey Palmer, Sarah Font, Andrea Lane Easman, Lillie Guo & Emily Putnam-Hornstein, *What Does Child Protective Services Investigate as Neglect? A Population-Based Study*, 29 CHILD MALTREATMENT 96, 103 (2024) (describing the murky relationship between poverty conditions and substantiated allegations of neglect).

103. CHILD MALTREATMENT 2023, *supra* note 1, at 36, 48–49.

edifice continues to apply the logic of intentional abuse to investigate allegations of neglect, research suggests that the sort of conditions labeled as neglect by most of these investigations map more closely onto poverty than any deliberate choice made by the parents.¹⁰⁴ In these cases, the more constructive course of action could be population-level solutions, rather than investigation.¹⁰⁵

II. FAMILY POLICING'S WELFARE THEATRE

The previous Part provided a broad overview of the history and modern structure of the family policing apparatus. As a federal system initially designed to incentivize the reporting, investigation, and documentation of allegations of severe abuse, the family policing apparatus expanded rapidly to encompass a vast and ostensibly well-meaning project in search of all evidence of child maltreatment across the United States, implicating the private lives of more than 2,000,000 families every year. CPS investigations are, by design, invasive, and yet even after screening for clearly erroneous reports, a supermajority of the 2,000,000 investigations is returned unsubstantiated, without evidence of maltreatment. Most of them track more closely to poverty than any parent's deliberate choice to harm a child. Still, CAPTA, the federal backbone of family policing, has been regularly reauthorized with relatively minor revisions to the reporting and investigation requirements for the past fifty years.

With this background in hand, this Part explores how to comprehend the work of today's family policing apparatus given the outcomes and impacts previously described, and the government's continued reliance on family policing as the primary tool to identify, label, and address poverty-related conditions. This Part explores the regnant rationales for family policing—how its advocates and champions understand its mechanics and limitations. This Part specifically identifies and explores moral, regulatory, and constructive rationales.

To address the shortcomings in the explanatory power of these logics, this Part suggests an additional framework for understanding the

104. Lawrence M. Berger & Jane Waldfogel, *Economic Determinants and Consequences of Child Maltreatment* 8 (OECD Soc., Emp. & Migration, Working Paper No. 111, 2011), https://www.oecd.org/content/dam/oecd/en/publications/reports/2011/04/economic-determinants-and-consequences-of-child-maltreatment_g17a1f84/5kgf09zj7h9t-en.pdf.

105. CLARE ANDERSON ET AL., CHAPIN HALL AT THE UNIV. OF CHI., CHILD AND FAMILY WELL-BEING SYSTEM: ECONOMIC & CONCRETE SUPPORTS AS A CORE COMPONENT 135 (2023), <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf> [<https://perma.cc/5L99-JLEP>] (suggesting, for example, that the “relationship between macroeconomic factors & child welfare involvement suggests the need for a population-level public health approach to prevention” (cleaned up)).

work of the family police: *welfare theatre*. It first introduces security theatre's key features and offers a brief overview of the traditional function, motives, and impacts of a security theatre, using post-9/11 policies as a model. The Part moves on to apply the security theatre frame to the family policing context by exploring what I call family policing's welfare theatre. It examines its particular features and goals, and the role of the various stakeholders in perpetuating welfare theatre: the non-policed public, mandated reporters, CPS investigators, and the *securitized family*—the theatre's central object.

A. Regnant Rationales

In this Section, I identify three rationales that officials, agents, and advocates use to justify the scope and mechanics of the family policing investigative apparatus. The first, and most familiar, is the moral rationale: The state has a compelling interest in identifying and addressing harm to children within families. The second is the regulatory rationale: CPS agents and agencies are bound by federal and state law to investigate every screened-in report, regardless of its provenance or the family's willingness to engage. The third is the constructive rationale: Families subject to investigation voluntarily consent to it, neatly resolving any constitutional tension. As the following subsections demonstrate, while each rationale carries some explanatory weight, none of them—individually or in combination—adequately account for the breadth, cost, and persistence of the investigative apparatus in light of its documented harms and failures and in the face of the persistent needs of race-class marginalized families in the United States. That gap, this Essay argues, is where the welfare theatre framework does its most important work.

1. Moral Rationale

The central rationale for today's family policing apparatus is perhaps its most familiar: child protection. A subset of American children is suffering in the custody of their caregivers, and the government should play a pivotal role in alleviating the harm by identifying and addressing it.¹⁰⁶ This logic seems sound, as far as it goes, and there is some enduring evidence for it. In their 1962 straw poll, the authors of *The Battered-Child Syndrome* identified 749 children who had injuries consistent with serious physical abuse by a caregiver; 78 of those children died, and 114 suffered permanent brain damage.¹⁰⁷ While research in the intervening

106. Elizabeth Bartholet, *Creating a Child-Friendly Child Welfare System*, 60 BUFF. L. REV. 1323, 1325–26 (2012).

107. Kempe, Silverman, Steele, Droegemueller & Silver, *supra* note 37, at 17.

years has called into question some of the science behind Kempe's proposed diagnoses,¹⁰⁸ some children continue to experience harm within their families. Sometimes that harm is severe. In 2023, according to the Department of Health and Human Services (HHS), maltreatment contributed to the tragic death of 1,968 children in the United States.¹⁰⁹ And yet, child fatalities due to maltreatment have not increased over time,¹¹⁰ despite a significant increase in spending on the child welfare system over the same period.¹¹¹

The moral rationale considers neglect, broadly defined, as a less severe but no less serious extension of the harm that the family policing system seeks to root out through investigation. For family policing proponents, the significant proportion of investigations that substantiate neglect, as compared to abuse, is a feature of the investigative project's design—an opportunity to define and address problems at the granular family level. To the extent that, as previously described, those problems are closely tethered to poverty, it might be simplest to understand the policing of families for neglect as a species of poverty's moral construction.¹¹² Proponents of family policing offer two rejoinders. First, they argue that many states exclude poverty from the statutory definition of neglect,¹¹³ such that a parent who is not financially able to provide for their child is not subject to legal opprobrium. Second, they may argue that, even in cases where there was not sufficient evidence to substantiate

108. GOOD ON PAPER: *The Scientific Controversy That's Tearing Families Apart* (Atlantic, Mar. 11, 2025), <https://www.theatlantic.com/podcasts/archive/2025/03/the-scientific-controversy-of-shaken-baby-syndrome/681994/>.

109. CHILD MALTREATMENT 2023, *supra* note 1, at 63.

110. USAFacts Team, *How Many Children Experience Abuse or Neglect in the US?* USAFACTS (Dec. 5, 2025), <https://usafacts.org/articles/how-many-children-are-victims-of-abuse-or-neglect-in-the-us/> [<https://perma.cc/SNS3-4XNM>]. See also Frank Edwards, Kelley Fong & Robert Apel, *Foster Care and Child Maltreatment Rates in the US*, 8 JAMA NETWORK OPEN e2551677 (2025), <https://doi.org/10.1001/jamanetworkopen.2025.51677> (finding no evidence that decreases in foster care entry rates are associated with increases in child mortality rates).

111. Compare SHELLEY WATERS BOOTS, ROB GEEN, KAREN C. TUMLIN & JACOB LEOS-URBEL, STATE CHILD WELFARE SPENDING AT A GLANCE: A SUPPLEMENTAL REPORT TO THE COST OF PROTECTING VULNERABLE CHILDREN 6 (1999), <https://www.urban.org/sites/default/files/publication/69626/309108-State-Child-Welfare-Spending-at-a-Glance.PDF> [<https://perma.cc/25J2-PC9S>] (stating that states spent \$14.4 billion dollars in 1996), with Rosinsky, Fischer, Haas, Ibarra & Williams, *supra* note 68, at 1 (stating that “state and local child welfare agencies spent \$34.3 billion” in 2022).

112. See HUM. RTS. WATCH & ACLU, “IF I WASN’T POOR, I WOULDN’T BE UNFIT”: THE FAMILY SEPARATION CRISIS IN THE US CHILD WELFARE 3, 6, 61 (2022) [hereinafter IF I WASN’T POOR, I WOULDN’T BE UNFIT], https://www.hrw.org/sites/default/files/media_2022/11/us_crd1122web_3.pdf [<https://perma.cc/M2FX-BSNT>].

113. TORIA HERD ET AL., DISENTANGLING NEGLECT FROM POVERTY (Taylor Scott ed., 2022), https://evidence2impact.psu.edu/wp-content/uploads/dlm_uploads/2024/01/RPC-Disentangling-Neglect-from-Poverty.pdf (stating that twenty-nine states have “explicit statutory exclusions” for neglect caused by poverty).

a claim of neglect, there may still have been some; and regardless, through the investigation, CPS would have been able to provide some resources and support.

Even if the moral rationale provides compelling bases for identifying individual families who are of concern to the state, or for identifying families who would ostensibly benefit from state resources, it does not account for the expansive *investigative* project itself—nor for families who would prefer to access necessary resources without a home search and probing interviews. Neither does it account for the trauma inflicted on those who undergo an investigation without evidence of wrongdoing.

2. Regulatory Rationale

Proponents of the family policing apparatus might, in response, cite a secondary rationale—fidelity to the rule of law. Even in cases where it quickly becomes evident that investigation would be unnecessary, repetitive, or harmful,¹¹⁴ CPS agents and officials argue that federal and state statutes, regulations, and manuals require agencies to follow through and respond to every screened-in report—regardless of its provenance or reliability—to keep federal funding flowing and to ensure statutory and regulatory compliance.¹¹⁵ While CPS agencies may motivate the public and their workers emotionally using the moral rationale, CPS training and practice often reflects the regulatory rationale. Caseworkers have lengthy investigative checklists; overworked with heavy caseloads, they insist that parents and families have no choice but to help them tick through.¹¹⁶

This approach, naturally, can lead to wonky results. Abusive partners wield CPS reports as weapons against mothers who are told that they and their children have no choice but to endure repeated engagement with state agents;¹¹⁷ reports errantly naming an adult child still result in

114. *Public Hearing on the Statewide Central Register of Child Abuse and Maltreatment Before the N.Y. State Assemb. Standing Comm. on Child. & Fams.*, 2024 Leg. (N.Y. 2024) [hereinafter *Public Hearing*] (statement of Amanda Pumarejo, Impacted Parent, CUNY Sch. of L.’s Fam. Def. Practicum), https://nystateassembly.granicus.com/player/clip/8612?view_id=10%20&redirect=true (“I understand these investigations have to happen, but when they are repeated so many times like this, and unfounded so many times, and ACS themselves have hinted they have believed some of these calls are malicious, there should be some type of red flag system to prevent families like mine from having to go through a traumatic investigation every time.”).

115. *See* Ismail, *supra* note 2, at 1488.

116. FONG, INVESTIGATING FAMILIES, *supra* note 3, at 96, 99–100, 105.

117. Susanti Sarkar, *New York Governor Signs Law to End Anonymous Reporting of Child Maltreatment*, IMPRINT (Dec. 20, 2025, at 15:08 CT), <https://imprintnews.org/child-welfare-2/new-york-governor-signs-law-to-end-anonymous-reporting-of-child-maltreatment/269804> (“Anonymous calls are often made by abusive former partners and in some cases vindictive landlords and neighbors.”);

an ongoing investigation as a matter of protocol if a second child lives in the home, even if that child was never alleged to be at risk of harm.¹¹⁸ Investigations into a family continue even after the death of the parent alleged to have maltreated their child.¹¹⁹ The regulatory rationale is why one frustrated worker from ACS told CUNY Law's Family Defense Practicum representing a mother under investigation that "she needs to understand—just like every other Black family in Brooklyn, she needs to let me in to do my job."¹²⁰

Acknowledging these unfortunate outcomes, CPS officials might offer up "assessments" as an alternative to full investigation, which still achieves their statutory requirement to respond.¹²¹ First introduced in the 1990s, the assessment response "was intended to decrease the potentially adversarial nature of interactions between CPS and parents" in cases with a low or moderate risk of maltreatment.¹²² While implemented differently across jurisdictions, the core difference between assessments and investigations is that in most assessments, "[a] determination of maltreatment is not made and a perpetrator is not determined."¹²³ By the 2010 reauthorization of CAPTA, Congress required states to include assessment responses in their implementation plans and to submit data in their annual reports specifying the number of families that receive assessment responses.¹²⁴ In 2023, of the 3,728,421 children whose families were approached by CPS agents, 510,891 received some form

see also David Ward, *In Her Words: Recognizing and Preventing Abusive Litigation Against Domestic Violence Survivors*, 14 SEATTLE J. SOC. JUST. 429, 442–43 (2015) (describing perpetrators' use of false reports to CPS as a mode of continued abuse).

118. Ismail, *supra* note 2, at 1545 & n.351.

119. See, e.g., *Chapter 2 : Section 6: Investigation Allegation Findings*, ARIZ. DEP'T OF CHILD SAFETY (Sep. 14, 2024), https://extranet.azdcs.gov/DCSPolicy/Content/Program%20Policy/02%20Investigation_Assessment_Case%20Planning/CH2_S06%20Substantiating%20Maltreatmen.htm (providing guidance for further steps investigators must take when an alleged perpetrator is deceased). CUNY Law's Family Defense Practicum has handled such cases in New York City.

120. This came from a 2023 interaction with a case worker in Brooklyn, New York. Notes are on file with the author.

121. CHILD.'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., DIFFERENTIAL RESPONSE TO REPORTS OF CHILD ABUSE AND NEGLECT 2 (2014) [hereinafter DIFFERENTIAL RESPONSE], https://www.govinfo.gov/content/pkg/GOVPUB-HE23_1200-PURL-gpo84530/pdf/GOVPUB-HE23_1200-PURL-gpo84530.pdf [<https://perma.cc/6JL2-NYAU>]. Assessment response is also known as differential response, family assessment response, alternative response, multiple track, and dual track. *Id.*

122. *Id.* at 3.

123. CHILD MALTREATMENT 2023, *supra* note 1, at 24; see also DIFFERENTIAL RESPONSE, *supra* note 121, at 3 (describing differential responses' "strengths-based approach[]").

124. DIFFERENTIAL RESPONSE, *supra* note 121, at 3.

of an assessment.¹²⁵ By definition, none of their cases were substantiated for maltreatment.

For families dealing with a CPS knock at the door—and for many of the CPS agents knocking—there is little difference between the substance of an assessment and an investigation.¹²⁶ In both, family members are interviewed about a particular allegation, homes are searched, and collaterals are contacted.¹²⁷ The questionnaires used in the assessment response are often identical to those used in the investigation.¹²⁸ Records are entered into databases. As the Children’s Bureau of HHS acknowledges, “child welfare agencies across the nation are integrating family engagement and strengths-based approaches into their everyday practice. In those jurisdictions, there may be less distinction between [investigations] and [assessment responses].”¹²⁹ CPS agents always reserve the option of escalating an assessment to an investigation if they deem it necessary.¹³⁰ More to the point, the assessment response is only available if a family affirmatively agrees to work with CPS.¹³¹ The alternative to an assessment response is not dropping the case entirely; the alternative is investigation.

CPS agencies depend on families’ open engagement with state intervention to conduct their investigations. In previous work, I established that this dependence was in tension with the Fourth Amendment’s protection against unreasonable searches.¹³² CPS agents are required to obtain warrants based on probable cause to enter, but they rarely do. In New York City, for example, ACS agents conduct over 50,000 home searches a year.¹³³ They obtain warrants in just 0.2% of

125. CHILD MALTREATMENT 2023, *supra* note 1, at 36–37.

126. FONG, INVESTIGATING FAMILIES, *supra* note 3, at 92.

127. *Id.* at 92, 96, 105.

128. *Id.* at 92.

129. DIFFERENTIAL RESPONSE, *supra* note 121, at 3.

130. See, e.g., *The Collaborative Assessment, Response, Engagement & Support (CARES) Approach*, N.Y.C ADMIN. FOR CHILD.’S SERVS., <https://www.nyc.gov/site/acs/child-welfare/cares.page> [<https://perma.cc/PR3Q-FRFU>] (last visited Feb. 12, 2026) (clarifying that ACS reserves the right at any moment to switch approaches).

131. *Id.*

132. Ismail, *supra* note 2, at 1527–28; see also Complaint ¶¶ 12–18, *Gould v. City of New York*, No. 24-CV-01263 (E.D.N.Y. Feb. 20, 2024) (federal lawsuit brought by New York City families against the ACS alleging violations of Fourth Amendment protections for, inter alia, conducting searches without consent); Anna Arons, *Family Regulation’s Consent Problem*, 125 COLUM. L. REV. 769, 796 (2025) (analyzing the unconstitutionality of tactics used by CPS to compel consent during investigations).

133. See Eli Hager, *Child Welfare Officials Have Searched Her Home and Her Son Dozens of Times. She’s Suing Them to Stop.*, PROPUBLICA (Nov. 16, 2023, at 08:00 CT), <https://www.propublica.org/article/nyc-child-welfare-agency-warrantless-searches-lawsuit> [<https://perma.cc/7UZH-PYRP>].

those investigations.¹³⁴ Data is similar for CPS investigations in other states. How are we to understand this constitutional predicament?

3. Constructive Rationale

In response, agencies offer up the constructive rationale: consent. We investigate, they say, because we are invited in. While CPS does not get warrants most of the time, they claim that parents subject to search largely agree to the terms of the investigation. In New York City, the argument goes that, at least 99.8% of the time and usually twice a month over the course of sixty days, parents voluntarily agree to allow credentialed government agents to search through their bedrooms and medicine cabinets, to ask their children questions in separate rooms, and to sign medical and educational releases.¹³⁵ More jarring still, families under investigation are usually aware of the invasive nature of the investigations, concentrated and repeated in Black communities and neighborhoods.¹³⁶ Nonetheless, by CPS's account, they voluntarily choose to comply.

This technical explanation from CPS brass belies an entirely different reality on the ground. We know from the lived experiences and testimony of investigated families and from the work of scholars and researchers on this topic that parents are not voluntarily consenting to investigations—not in practical, legal, or psychological terms.¹³⁷ Unlike criminal police officers, CPS agents are not trained to obtain voluntary consent as they seek entry into a family's home.¹³⁸ Many CPS agents do not believe that they need a parent's consent to enter, and they often communicate that to the families they are investigating.¹³⁹ CPS agents tell families that there is no other option, that the law requires them to conduct the investigation, and that, in keeping with the *regulatory* response, they need to do their jobs which require them to follow the law. CPS tells parents that if they do not let them in, they will be required

134. See Eli Hager, *Police Need Warrants to Search Homes. Child Welfare Agents Almost Never Get One*, PROPUBLICA (Oct. 13, 2022, at 08:00 CT) [hereinafter Hager, *Police Need Warrants*], <https://www.propublica.org/article/child-welfare-search-seizure-without-warrants> [<https://perma.cc/ZN9N-FZPL>].

135. *Id.*

136. See ANGELA BUTEL, NEW SCH.: CTR. FOR N.Y.C. AFFAIRS, DATA BRIEF: CHILD WELFARE INVESTIGATIONS AND NEW YORK CITY NEIGHBORHOODS 3–4 (2019), <https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5d12746c3cdad000017dfc2a/1561490541660/DataBrief.pdf> [<https://perma.cc/EAJ9-BJ6P>].

137. See, e.g., Complaint, *supra* note 132, ¶¶ 67–80 (describing coercive tactics used to conduct investigations).

138. Complaint, *supra* note 132, ¶¶ 118, 121; Hager, *Police Need Warrants*, *supra* note 134.

139. Arons, *supra* note 132, at 798–99.

to call on the police for backup.¹⁴⁰ CPS sometimes even threatens to remove parents' children as a consequence of their alleged intransigence.¹⁴¹ In short, we know that parents are compelled to let CPS into their lives in ways that likely violate even the most permissive Fourth Amendment tests for voluntary consent. For their part, families have a hard time imagining anything but compliance.¹⁴² Saying no can feel escalatory or dangerous, both because noncompliance may be legally forbidden and because refusal evinces a deficit in the sort of parental judgment at issue.¹⁴³

At bottom, both parties—the CPS agent and the family under investigation—are unable to imagine anything other than going through the motions; they each must play their part.

B. Security Theatre

Most familiar in the modern context of the vast domestic security apparatus erected in the United States' post-9/11 War on Terror, *security theatre* describes a system of agencies, practices, and norms which, operating together, are designed to provide a feeling of safety without regard for the system's actual impact—neither as measured by effectiveness in reducing harm nor by the material harm to the securitized objects of its machinery.¹⁴⁴ Scholars have used security theatre to describe the presence of police officers in schools with predominantly Black and Brown student populations,¹⁴⁵ the use of medical practices that

140. *Id.* at 800.

141. *Id.*

142. Complaint, *supra* note 132, ¶¶ 135, 144, 153, 161.

143. *See infra* Section II.C.

144. Scholars attribute the term security theater to Bruce Schneier. *See, e.g.*, Barbara A. Fedders, *The End of School Policing*, 109 CALIF. L. REV. 1443, 1447 (2021); Govind Persad, *Health Theater*, 48 LOY. U. CHI. L.J. 585, 588 (2016) (citing BRUCE SCHNEIER, *BEYOND FEAR: THINKING SENSIBLY ABOUT SECURITY IN AN UNCERTAIN WORLD* 28 (2003)).

145. Fedders, *supra* note 144, at 1453, 1462.

provide little actual benefit to patients,¹⁴⁶ the deployment of the National Guard to New York City subways,¹⁴⁷ and sex offender registries.¹⁴⁸

That said, the paradigmatic manifestation of security theatre is the Transportation and Security Administration (TSA), propped up as a stand-alone agency just weeks after September 11, 2001, to give Americans a sense that it was safe to fly before the holidays.¹⁴⁹ What began as a statutory mandate for screening passengers and luggage metastasized over time, retroactively adding new layers to address highly publicized threat incidents. After a young man attempted to ignite explosives in his shoe on an international flight from Paris to Miami in December 2001, TSA began asking travelers to voluntarily remove their shoes for screening.¹⁵⁰ A few years later, Congress legislated taking your

146. Persad, *supra* note 144, at 591–92.

147. Alex S. Vitale, *Hochul's Militarization of NYC Subway Is About Politics, Not Public Safety*, TRUTHOUT (Mar. 20, 2024), <https://truthout.org/articles/hochuls-militarization-of-nyc-subway-is-about-politics-not-public-safety/> [https://perma.cc/UM94-DB57] (describing the tactic as “law enforcement theater”); *see also* NYCLU, COMMENTS OF THE NEW YORK CIVIL LIBERTIES UNION REGARDING DRAFT NEW YORK POLICE DEPARTMENT IMPACT AND USE POLICY FOR ELECTROMAGNETIC WEAPONS DETECTION SYSTEM 1 (2024), <https://www.nyclu.org/uploads/2024/05/2024-Comments-ElectromagneticWeaponsDetection.pdf> [https://perma.cc/XD37-DPF2] (describing Governor Hochul’s deployment of the National Guard to the NYC subways as a “security theater”).

148. *In re TD.*, 823 N.W.2d 101, 113 (Mich. Ct. App. 2011) (Krause, J., concurring) (referencing *Schneir* in describing the Sex Offenders Registration Act as “a pointlessly life-destroying piece of ‘security theater’”), *vacated as moot*, 821 N.W.2d 569 (Mich. 2012).

149. Following the events of September 11, 2001, the American public was in a state of panic at the prospect of a repeat attack in the United States. When passenger airlines resumed service on September 14, 2001, few Americans were willing to get on board. Pam Belluck & Laurence Zuckerman, *After the Attacks: Transportation; Flights Are Cleared to Resume, but the Skies Remain Largely Empty*, N.Y. TIMES (Sep. 14, 2001), <https://www.nytimes.com/2001/09/14/us/after-attacks-transportation-flights-are-cleared-resume-but-skies-remain-largely.html>. To address some of the concerns about perceived weaknesses at airports and other ports of entry, Congress passed the Aviation and Transportation Security Act on November 19, 2001—just three days before Thanksgiving. *See* Aviation and Transportation Security Act, Pub. L. No. 107-71, 115 Stat. 597 (2001). President George W. Bush signed the legislation into law the same day. In his signing speech, Bush underscored that “[t]he holidays will soon be here. . . . And thanks to this bill, we have a new commitment to security in the air, and that’s good news, as Americans travel to celebrate this season with their loved ones.” *Text: President Bush Sign Aviation Security Bill*, WASH. POST (Nov. 19, 2001), https://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushtext_111901.html. The Act established the Transportation and Security Administration (TSA), later absorbed by the also-newly-minted Department of Homeland Security in 2003. *See* 6 U.S.C. §§ 111, 203.

150. Stephen Power, *U.S. Tackles Shoe-Bomb Problem*, WALL ST. J. (July 3, 2003, at 12:01 ET), <https://www.wsj.com/articles/SB105719395563747400>; David Schaper, *It Was Shoes On, No Boarding Pass or ID. But Airport Security Forever*

shoes off.¹⁵¹ In 2006, TSA banned all liquid gels and aerosols from carry-on luggage after British police announced that they had thwarted a plot in which young men planned to concoct explosives using liquids in soda bottles.¹⁵² Full-body scanners were added to the screening process in 2009 after a young man attempted to detonate explosives hidden in his underwear.¹⁵³

Despite their vastness, ubiquity, cost, and visibility, TSA's policies have been panned as ineffective by journalists, politicians, advocates, and national security professionals alike. Investigative exposés have highlighted TSA's failure to improve public safety, sometimes with particular relish for the absurdity of screening practices.¹⁵⁴ Hawkish commentators have highlighted TSA's operational missteps in the War on Terror.¹⁵⁵ In 2012, Congress held hearings on the question of whether TSA was providing "effective security or security theater."¹⁵⁶

Security theatre observers tend to use the framework in three ways. Traditional critics of security theatre are *security theatre reformists*. They generally use the security theatre framework as an appeal to law and order reform: a call for more effective, more financially efficient, and less symbolic security policies, which often retain some of the existing structural elements and problem definitions.¹⁵⁷ *Security theatre*

Changed on 9/11, NPR (Sep. 10, 2021, at 08:46 ET), <https://www.npr.org/2021/09/10/1035131619/911-travel-timeline-tsa>.

151. Schaper, *supra* note 150.

152. *Id.*; Alan Cowell & Dexter Filkins, *Terror Plot Foiled; Airports Quickly Clamp Down*, N.Y. TIMES (Aug. 11, 2006), <https://www.nytimes.com/2006/08/11/world/europe/11plot.html>.

153. Étienne Lombard, Comment, *Bombing Out: Using Full-Body Imaging to Conduct Airport Searches in the United States and Europe Amidst Privacy Concerns*, 19 TUL. J. INT'L & COMPAR. L. 337, 338–39 (2010).

154. Darryl Campbell, *The Humiliating History of the TSA*, VERGE (Aug. 31, 2022), <https://www.theverge.com/c/23311333/tsa-history-airport-security-theater-homeland> [<https://perma.cc/Q4RE-M4WR>]; Eric Levenson, *The TSA Is in the Business of 'Security Theater,' Not Security*, ATLANTIC (Jan. 31, 2014), <https://www.theatlantic.com/national/2014/01/tsa-business-security-theater-not-security/357599/>; Jason Edward Harrington, *Dear America, I Saw You Naked*, POLITICO (Jan. 30, 2014), <https://www.politico.com/magazine/story/2014/01/tsa-screener-confession-102912/>.

155. Ben Brandt, *Terrorist Threats to Commercial Aviation: A Contemporary Assessment*, CTC SENTINEL, Nov. 2011, at 4, 7, <https://ctc.westpoint.edu/wp-content/uploads/2011/12/CTCSentinel-Vol4Iss11-122.pdf>.

156. Press Release, Comm. on Oversight & Gov't Reform, TSA: Effective Security or Security Theater? (Mar. 23, 2012), <https://oversight.house.gov/release/tsa-effective-security-or-security-theater/> (cleaned up).

157. See SCHNEIER, *supra* note 144, at 38–39; Jeffrey Goldberg, *The Things He Carried*, ATLANTIC (Nov. 2008), <https://www.theatlantic.com/magazine/archive/2008/11/the-things-he-carried/307057/>; Mark Miller & Daniel Woislaw, *Security Theater Instead of Safety: New York's Militarized Subway Checkpoints Are a Political Scam*, HILL (Apr. 26, 2024, at 12:00 ET), <https://thehill.com/opinion/national->

proponents—of which there are fewer—suggest, without much evidence, that security theatre can be an effective form of deterrence against would-be threats;¹⁵⁸ other proponents have maintained that when risk cannot be reduced to zero, security theatre should be deployed as an important method of demonstrating the government’s effort to address a problem, even if admittedly ineffective.¹⁵⁹ The third group, *security theatre abolitionists*, have used the security theatre framework as a lens into the political economy in which the theatre operates. With this approach, the security theatre framework helps demonstrate the limitations of the problem definition as currently constructed—and the actual tools and resources available to government officials tasked with addressing them. This approach leads some of its critics to call into question the problem the theatre purports to solve and ultimately opens up space for reimagination.¹⁶⁰

While the first two approaches focus largely on the costs to the entities enacting the security theatre—the law and lawmakers, the state agents, and the public who collectively organize the theatre toward a particular goal—the final approach requires an analytical move largely absent from the first two. In addition to inquiring after its subjects, security theatre abolitionists engage in an inquiry into the costs to the *securitized objects* of the theatre—the individuals and communities whose bodies, identities, and presumed intentions are targeted as a problem or a threat.¹⁶¹ By looking into the impact on securitized objects, security

security/4622122-thehill-com-opinion-national-security-4622122-new-york-subway-kathy-hochul-national-guard-security-theater/; see also Persad, *supra* note 144, at 606–07 (comparing success in security theatre with shortcomings when taking cost into account).

158. See Samuel J. Rascoff, *Counterterrorism and New Deterrence*, 89 N.Y.U. L. REV. 830, 847–48 (2014).

159. Benjamin H. Friedman, *Managing Fear: The Politics of Homeland Security*, 126 POL. SCI. Q. 77, 104 (2011) (“People tend to dismiss this [security theatre] strategy as dishonest and useless. Only the former is true.”); see also Peter Swire, *Privacy and Information Sharing in the War on Terrorism*, 51 VILL. L. REV. 956, 965–66 (2006) (arguing that security theatre itself is a reasonable goal in order to restore calm and confidence, and that security theatre is implemented primarily due to political pressure to do something when there is nothing to be done).

160. See, e.g., NYCLU, *supra* note 147, at 1–3; Vitale, *supra* note 147; Fedders, *supra* note 144, at 1462–63; see also Stephanie Brault, *The Diminished Privacy Rights of Welfare Recipients: Legitimacy Derived from Sources Beyond Legality*, 18 NEXUS: CHAP.’S J.L. & POL’Y 81, 108 (2013) (describing security theatre as “a ritualistic affirmation of the government’s efforts to promote safety and reassure the public”).

161. BARRY BUZAN, OLE WÆVER & JAAP DE WILDE, *SECURITY: A NEW FRAMEWORK FOR ANALYSIS* 23–24 (1998) (Security is not a condition but rather constructed through the political and social act of securitization, a discourse distinct from politicization where an issue has a public policy valence requiring a government decision and resource allocation. Instead, securitization suggests that the issue presents “an existential threat, requiring emergency measures and justifying actions outside the normal bounds of political procedure.”); *id.* at 25 (pointing out that securitization is only

theatre abolitionists further elucidate the theatre's role in the context in which it functions, including its role in perpetuating the securitized identities of its objects.

For example, while ineffective TSA policies are theoretically meted out universally upon all travelers, paying particular attention to the costs to the securitized objects of the theatre helps us more closely understand its role in constituting the Islamophobic logics of the War on Terror.¹⁶² The TSA theatre is stratified on class, race, and religious lines, and “secure” travelers have an easier time than unsecure ones. Travelers will be familiar with tiered security lines at airports: Wealthier travelers can pay to permanently opt out of the theatre through an ever-expanding set of programs like TSA Pre-Check, CLEAR, and Global Entry.¹⁶³ The additional layers of theatre peel back. Shoes stay on.¹⁶⁴ Laptops and liquids stay in bags. No body scanner, just a metal detector. Beyond class buy-out, airport theatrics are not borne equally. Muslims, Arabs, South Asians, and others perceived as targets of the War on Terror for their religious or political beliefs are securitized and subjected to additional and more in-depth screening—targeted questioning based on political beliefs, cell phone searches, and physical pat-downs.¹⁶⁵ The costs to these communities of these policies and others like them are real and

successful if the audience accepts it); Didier Bigo, *Security and Immigration: Toward a Critique of the Governmentality of Unease*, 27 *ALTS* 63, 73 (2002) (extending this theory by suggesting that securitization is more than discourse but actually material, “work[ing] through everyday technologies” like surveillance, risk management, and profiling, harming securitized bodies “through the effects of power that are continuous rather than exceptional”).

162. ARUN KUNDNANI, *THE MUSLIMS ARE COMING!: ISLAMOPHOBIA, EXTREMISM, AND THE DOMESTIC WAR ON TERROR* 45–48 (2014) (exploring the Islamophobic roots of the War on Terror); SPENCER ACKERMAN, *REIGN OF TERROR: HOW THE 9/11 ERA DESTABILIZED AMERICA AND PRODUCED TRUMP* 83–85 (2021) (same); *cf.* DARRYL LI, *CTR. FOR CONST. RTS. & PALESTINE LEGAL*, *ANTI-PALESTINIAN AT THE CORE: THE ORIGINS AND GROWING DANGER OF U.S. ANTITERRORISM LAWS* 6–7 (2024), <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/65d637d9f2843f3855780ae3/1708537837536/Anti-Palestinian+at+the+Core-.pdf> [<https://perma.cc/3SJ7-4UFG>] (discussing the anti-Palestinian roots of many War on Terror policies).

163. Rachel DePompa, *Up and Away: Are Expedited Screening Programs Worth the Cost?*, WSAW-TV (Oct. 6, 2025, at 13:50 CT), <https://www.wsaw.com/2025/10/06/up-away-are-expedited-screening-programs-worth-cost/> [<https://perma.cc/QT2T-CLMQ>].

164. *But see* Press Release, Transp. Sec. Admin., DHS to End “Shoes-Off” Travel Policy (July 8, 2025), <https://www.tsa.gov/news/press/releases/2025/07/08/dhs-end-shoes-travel-policy>.

165. SAHER SELOD, *FOREVER SUSPECT* 54–56 (2018); U.S. SENATE. COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFS., *MISLABELED AS A THREAT: HOW THE TSA’S WATCHLISTING SYSTEM RAISES CIVIL LIBERTIES CONCERNS* 6, 9, 28–29 (2023), https://www.hsgac.senate.gov/wp-content/uploads/Mislabeled-as-a-Threat_Public_Report-2.pdf; Complaint ¶¶ 7–11, *Kariye v. Mayorkas*, 650 F. Supp. 3d 865 (C.D. Cal. 2022) (No. 22-CV-01916) (ACLU lawsuit representing three Muslim men who faced discrimination at the airport).

measurable: Most concretely, Muslims in the post-9/11 era have become uniquely wary of flying. Their political and religious expression—at the airport and beyond—are curtailed and self-policed;¹⁶⁶ they have reported feeling communally targeted and surveilled.¹⁶⁷ “Flying While Muslim” has become a moniker familiar among both impacted communities and civil rights advocates.¹⁶⁸

Rather than examining these uniquely felt impacts of the security theatre, security theatre reformists, in critiquing TSA, reinscribe the logic underpinning the War on Terror to demonstrate the system’s failure. Consider Jeffrey Goldberg of *The Atlantic*, himself a non-Muslim, who wrote about his efforts to pose a security threat by walking through U.S. airports with “matches from hotels in Beirut” and “an inspiring collection of al-Qaeda T-shirts, Islamic Jihad flags, Hezbollah videotapes, and inflatable Yasir Arafat dolls.”¹⁶⁹ Having evaded detection, Goldberg concluded that “[a]irport security in America is a sham—‘security theater’ designed to make travelers feel better and catch stupid terrorists.”¹⁷⁰ A security theatre abolitionist asks a further question: Who is made to feel better by the theatre, from whom, and at what unique cost to the securitized objects?

The theatre’s intended message to the public is, therefore, appreciably distinct from its message to its securitized object. To the public, people like Goldberg, the function of the security theatre is to communicate an all-of-government effort at public safety—to provide the feeling of security. While sometimes a nuisance to the public, the security theatre itself can also fortify the notion that elements of the securitized community, separate from the non-policed public, are in fact the legitimate objects of the theatre. In the eyes of security theatre reformists, the theatre fails in its underlying objectives at actual security when it fails to sufficiently target the securitized object. But to the securitized objects, the theatre communicates a different and more coercive message,

166. See, e.g., DIALA SHAMAS & NERMEEN ARASTU, MAPPING MUSLIMS: NYPD SPYING AND ITS IMPACT ON AMERICAN MUSLIMS 20 (2011), <https://www.law.cuny.edu/wp-content/uploads/pageassets/academics/clinics/immigration/clear/Mapping-Muslims.pdf> (describing the experiences of New York Muslims under surveillance).

167. Leda Blackwood, Nick Hopkins & Stephen D. Reicher, ‘Flying While Muslim’: Citizenship and Misrecognition in the Airport, 3 J. SOC. & POL. PSYCH. 148, 149–50 (2015).

168. See, e.g., *id.* at 150; Michael T. Lungo, *Traveling While Muslim Complicates Air Travel*, N.Y. TIMES (Nov. 7, 2016), <https://www.nytimes.com/2016/11/08/business/traveling-while-muslim-complicates-air-travel.html>; Homa Khaleeli, *The Perils of ‘Flying While Muslim,’* GUARDIAN (Aug. 8, 2016, at 13:12 ET), <https://www.theguardian.com/world/2016/aug/08/the-perils-of-flying-while-muslim> [<https://perma.cc/FM95-Z7N2>].

169. Goldberg, *supra* note 157.

170. *Id.*

achieved through the disciplinary means previously described. To participate in ordinary life, the securitized object is made to endure the humiliation and otherization of the theatre by simply playing their part.

This Essay will now turn back to the family policing investigative apparatus to apply this framework.

C. Defining Family Policing's Welfare Theatre

I submit that poor families, and particularly the poor Black and Brown families disproportionately impacted by the family policing apparatus, are or have become the securitized objects of a family policing welfare theatre: a system of agencies, practices, and norms designed to perform a collective concern for child welfare without regard for its actual impact—neither on the welfare of the children it claims to protect, nor on the traumatic outcomes for the securitized families who are its primary objects.

The organized abandonment of the working class in the late twentieth century was central to the implementation and growth of the child protective apparatus, a reactionary response to the Black freedom struggle's demand for structural investment in a moment of broad economic downturn. Instead, the anti-state state, which emerged in the late 1970s and early 1980s, did for the child welfare system what it did best across the board, investing in and expanding a costly and traumatic prosecutorial response instead of investing in the fundamental public goods necessary to alleviate many of the problems we now call neglect.¹⁷¹ In turn, the family policing security theatre contributed significantly to the “scrambling of social identities into individual practices that obscure our ability to understand how individual behaviors are shaped by social conditions.”¹⁷² In that way, it sets out the impossible task of alleviating the intergenerational impacts of poverty and racial capitalism one family at a time, usually by treating the impacts as “neglect” ascribed to the parent. The family policing system, as such, is therefore a victim of its own design. Despite its best intentions at the point of inception to meet the needs of struggling families—and, by its own terms, to protect children experiencing harm—the child welfare system has, perhaps naturally, become a machine haplessly spinning its wheels with few results to show for it. Instead, after decades of attempts to detect those parents deemed especially dangerous to their children, or to provide them bespoke resources to correct their misguided parental instincts, the child

171. See Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1489–91 (2012).

172. Megan Feely & Emily Adlin Bosk, *That Which Is Essential Has Been Made Invisible: The Need to Bring a Structural Risk Perspective to Reduce Racial Disproportionality in Child Welfare*, 13 RACE & SOC. PROBS. 49, 58 (2021).

protective system has resigned itself to trying its best, painfully aware that its best will rarely offer better results than the status quo ante. What remains is a welfare theatre in which all players, for different reasons, feel obligated to participate and the audiences of which receive messages largely determined by their proximity to the performance.

The Public. A fundamental goal of family policing's welfare theatre is to communicate to the public an institutional commitment to the welfare or well-being of children—by focusing on the limitations of a child's relationship with their parents. More people in the United States learn about the child welfare system through the news media and popular culture than anywhere else,¹⁷³ usually through tragic stories highlighting outlier incidents or fatalities.¹⁷⁴ The news media, in turn, plays a central role in the theatre itself.¹⁷⁵ Rather than stepping back to report on the impacts of CPS on the communities it polices, studies have found that the news media positions itself as the champion of the children CPS aims to protect and precipitates further CPS intervention.¹⁷⁶

Meanwhile, direct experience with the system is concentrated in certain communities and areas. In addition to racial disparities, of the more than 2,000,000 families investigated for maltreatment every year, a stunning 83 percent are low income, with annual incomes below 200 percent of the federal poverty line.¹⁷⁷ Investigations are highly concentrated in impoverished and resource-deprived neighborhoods.¹⁷⁸

This is all to say that for much of the lower-middle, upper-middle, and middle-class American public, CPS investigations are something

173. HARRIS POLL, BIPARTISAN POLICY CENTER CHILD WELFARE ISSUES 60 (2023), <https://bipartisanpolicy.org/wp-content/uploads/2023/11/Harris-Poll-Top-Line.pdf> [<https://perma.cc/R2WC-LGKJ>].

174. *Id.* at 74 (noting that 82 percent say that child welfare only gets attention when something bad happens).

175. See SARAH HAN, LAURA NIXON, PAMELA MEJIA, DAPHNE MARVEL & LORI DORFMAN, THE CHILD WELFARE SYSTEM IN U.S. NEWS: WHAT'S MISSING? 18 (2019), https://www.bmsg.org/wp-content/uploads/2019/04/bmsg_child_welfare_domestic_violence_news_analysis2019.pdf (describing how the dramatic headlines around the tragic death of a child, Zymere Perkins, in New York City in 2016 “illustrated the power of generating media coverage to advance a policy agenda” by providing for additional intervention points for CPS).

176. L.A. Yelderman, S. Wood & A. Summers, *Media Reports of Child Deaths and the Relationship to Foster Care Entries and Exits*, 51 CHILD & YOUTH CARE F. 19, 28–30 (2022) (finding that news coverage of child deaths produces an increase in foster care entries and a decrease in foster care exits).

177. MELISSA DOLAN, KEITH SMITH, CECILIA CASANUEVA & HEATHER RINGEISEN, NSCAW II BASELINE REPORT: INTRODUCTION TO NSCAW II, at 3, 10 (2011), https://www.acf.hhs.gov/sites/default/files/documents/opre/nscaw2_intro.pdf [<https://perma.cc/F6FF-P92N>].

178. *Id.* at 1–2, 10.

imagined rather than textured through personal experience.¹⁷⁹ While they understand that CPS investigations could theoretically apply to them, most people living in the United States recognize that CPS is focused on poor families, as they believe it should be.¹⁸⁰ The welfare theatre therefore contributes to and reinscribes the psychic precarity of poor Black and Brown children, explicitly connecting it to their parents' misdeeds. It simultaneously lowers the cost to the general public of participating in the welfare theatre by concealing its cost to securitized families. In most states, any member of the public is encouraged to call in concerns of abuse or neglect to a central hotline; some states even require it, or allow members of the public to report anonymously.¹⁸¹ Public campaigns reinforce the notion that CPS is multifaceted in its response capacity: It at once provides support for poor families rather than unnecessary punishment, while also playing a vital role in addressing the grizzliest examples of abuse.¹⁸²

Americans have responded to this messaging. Most Americans favor a vision of CPS's mission as one of "[p]rimarily strengthening families' ability to care for their children," rather than "[p]rimarily protecting children at risk of abuse or neglect by their families."¹⁸³ Still, the welfare theatre does the work of refracting the notion of a family's strength through the lens of parental responsibility, rather than social conditions.¹⁸⁴ And while most people living in the United States say that "[t]he child welfare system does more good than harm,"¹⁸⁵ most (53 percent) also say that the child welfare "system is broken," with only 23 percent saying that it "functions the way it was designed to operate" and 15 percent saying that it is "high-functioning."¹⁸⁶ Most also believe that CPS "perpetuates the oppression of marginalized populations."¹⁸⁷

179. See FONG, INVESTIGATING FAMILIES, *supra* note 3, at 37; see also POLL, *supra* note 173, at 61 (noting that 15 percent of respondents relied most on their personal experience to inform what they know about child welfare); *id.* at 104 (noting that 18 percent reported having any personal experience with child welfare).

180. See HARRIS POLL, *supra* note 173, at 8 (noting that, when asked about contributors to child neglect, 64 percent of respondents pointed to parents' lack of financial resources, 60 percent pointed to lack of access to childcare, and 58 percent pointed to a lack of affordable housing).

181. See *supra* note 22.

182. Public campaigns have long played such a role. See RAZ, *supra* note 37, at 59.

183. HARRIS POLL, *supra* note 173, at 32 (noting that 51 percent of respondents lean toward strengthening families, while 44 percent lean toward protecting children).

184. See *id.* at 10.

185. *Id.* at 82.

186. *Id.* at 63.

187. *Id.* at 74. Seventy-three percent say that decisions of "whether the child welfare system should intervene in families are influenced by socioeconomic/poverty biases"; sixty percent say such decisions "are influenced by racial biases." *Id.* at 47.

Despite some doubt in their effectiveness, CPS investigations have broad public support; a significant majority believe that CPS should investigate every report, and a plurality of that group believe investigations should happen “even if that means that some parents might be investigated unnecessarily.”¹⁸⁸ Of course for most parents imagining investigations, they do not imagine themselves in the crosshairs.

Mandated Reporters. If we imagine proximity to the family policing investigative apparatus in concentric circles, mandated reporters are one step closer than the public at large. While the non-policed public can voluntarily opt in to interaction with the welfare theatre, mandated reporters like teachers, police officers, nurses, and therapists are, by definition, conscripted.¹⁸⁹ The family policing system depends on mandated reporters who provide the vast majority of referrals to CPS.¹⁹⁰ In 2023, they called in 70.9% of all reports to maltreatment hotlines.¹⁹¹

Like it does to the public at large, family policing’s welfare theatre communicates to mandated reporters that CPS is a manifestation of our society’s core commitment to child welfare. It further reinscribes the message that the primary harm our society is positioned to address is harm perpetrated by parents, rather than harm rooted in structural deprivation. The socialization of mandated reporters to the modern family policing system is more deliberate than the public’s. Most mandated reporters undergo training on their reporting requirements before they begin work in a particular professional field;¹⁹² state and local offices of family services offer videos, pamphlets, or informational guidance that advise reporting “the slightest suspicion of maltreatment.”¹⁹³ The barriers to reporting a child to CPS are, by design, quite low. Mandated reporters are not penalized for failing to seek less invasive means before making a call to a state hotline, and there are no penalties for false reports if made in good faith. State law is usually constructed in the opposite direction; criminal and professional consequences are meted out for failing to report.¹⁹⁴

188. *Id.* at 34 (noting that 61 percent say yes to investigating every report, while 36 percent say to only investigate with compelling evidence).

189. *What Is a Mandated Reporter?*, NAT’L ASS’N OF MANDATED REPS., <https://namr.org/news/what-is-a-mandated-reporter> [<https://perma.cc/9GT8-QR3B>] (last visited Feb. 14, 2026).

190. FONG, INVESTIGATING FAMILIES, *supra* note 3, at 52.

191. CHILD MALTREATMENT 2023, *supra* note 1, at 9.

192. CHILD.’S BUREAU, U.S. DEP’T OF HEALTH & HUM. SERVS., MANDATORY REPORTING OF CHILD ABUSE AND NEGLECT 3 (2023), <https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/mandatory-reporting-abuse-neglect.pdf> [<https://perma.cc/E96P-Z74G>].

193. *See* FONG, INVESTIGATING FAMILIES, *supra* note 3, at 62.

194. *See supra* note 72.

The selective acculturation of mandated reporters is a key feature of family policing's welfare theatre. While they are necessarily introduced to CPS and its broadly stated aims to address intrafamily harm, mandated reporters are not exposed to CPS's internal processes or the lived impacts of the securitized families it touches. Like the general public, as working professionals, most mandated reporters have no direct experience as objects of CPS investigations. And while thoroughly informed about when and what they are required to report, mandated reporters are rarely trained on or even informed of the depth, extent, or length of the investigation that they might set in motion when calling in a referral, let alone the harm it may cause or the traumatic outcomes such a call makes possible. Instead, reporters usually see "calling CPS as the safe and harmless option."¹⁹⁵ The message CPS conveys to mandated reporters—sometimes explicitly—is to act on instinct and to allow CPS to do the rest.¹⁹⁶

In general, mandated reporters take heed. Studies show that mandated reporters are not primarily driven to report for fear of criminal prosecution.¹⁹⁷ Instead, mandated reporters are motivated by their sense that CPS is as an "all-purpose agency,"¹⁹⁸ with special insight into how to appropriately support children.¹⁹⁹ Sociologist Kelley Fong found that for many mandated reporters, calls to CPS offered "an outlet for their rehabilitative aspirations"²⁰⁰—a final destination that could compensate for whatever mandated reporters lacked or were unable to offer by way of "time, resources, attention, expertise, knowledge, and coercive authority" in safeguarding the children in front of them.²⁰¹ To mandated reporters, CPS is an institution designed to meet the needs of children experiencing intrafamily harm, and is therefore more likely to have each of those assets.²⁰² Family policing's welfare theatre reinforces these instincts. Because CPS investigates parents as potential perpetrators, mandated reporters are predisposed to viewing social problems through the lens of parental responsibility. They rely on CPS investigators to exercise coercive power they themselves lack—including the authority to

195. FONG, INVESTIGATING FAMILIES, *supra* note 3, at 60.

196. Kelley Fong, *Getting Eyes in the Home: Child Protective Services Investigations and State Surveillance of Family Life*, 85 AM. SOCIO. REV. 610, 625 (2020) [hereinafter Fong, *Getting Eyes in the Home*].

197. FONG, INVESTIGATING FAMILIES, *supra* note 3, at 53 ("[R]eporting professionals, almost to a person, said that they would have reported their most recent report absent the legal mandate . . ."). Criminal prosecution for failure to report rarely happens. *Id.* at 63.

198. *Id.* at 56–57.

199. *Id.* at 55–57 ("[T]hey felt that CPS would know better how to help.").

200. *Id.* at 54.

201. *Id.* at 57.

202. See Fong, *Getting Eyes in the Home*, *supra* note 196, at 625.

involve courts, the police, or even to remove children. Mandated reporters suggest that it is often their belief in the motivational force of this coercive power to solve problems frequently perceived as neglect that drive them to call CPS.²⁰³

Reporting patterns further shed light on how family policing's welfare theatre situates poor Black and Brown families as the appropriate securitized objects of the family policing system. Mandated reporters working in the neighborhoods where CPS is most active tend to be more reliant on CPS as the proper mode by which to address the sorts of problems coded as neglect, and they are less reluctant to call in a report; outside of those neighborhoods, to the extent that similar problems arise, reporters are more keen on addressing the problems internally, regardless of legal mandates to the contrary.²⁰⁴ Researchers suggest two ways to understand this disparity, both of which can be understood through the lens of welfare theatre. First, researchers suggest that the coercive element of the CPS investigation—the theatre's unique disciplining message to securitized families—is a necessary element of the impetus to refer families of color, in that these families are perceived to “need monitoring and threats of punishment to ensure they are doing right by their children.”²⁰⁵ Second, researchers point to the consolidation of resources on racial lines—that is, by virtue of the organized abandonment project previously discussed, schools, hospitals, community centers, and the like have far fewer resources to handle issues that might arise. Instead, reporters simply call in the family police.

CPS Agents. The frontline enactors of family policing's welfare theatre are CPS investigators or the family police²⁰⁶—government agents charged by federal and state statute with investigating all reports of maltreatment that meet certain basic criteria. CPS agents are trained accordingly—they are told to fill out investigation checklists and complete questionnaires for each family member in the home with a range of intimate questions; they are instructed to search every room in a home and often to search through refrigerators, drawers, and medicine cabinets, and to record minute details about the home;²⁰⁷ and they learn from criminal police about motivational interviewing and how to examine a child's body for physical evidence of maltreatment. Investigations are

203. FONG, INVESTIGATING FAMILIES, *supra* note 3, at 56–57, 105.

204. *Id.* at 72 (describing the disparity in handling situations).

205. *Id.*

206. Notably, in a recent debate, CPS advocate Naomi Schaefer Riley adopted the notion that CPS are the family police. REASONTV, *Should CPS Intervene More?*, at 36:22 (YouTube, Jan. 6, 2026), <https://www.youtube.com/watch?v=U0462gYjkbc> (on file with author).

207. Complaint, *supra* note 132, ¶ 119; *see also* FONG, INVESTIGATING FAMILIES, *supra* note 3, at 91 (describing a training in which investigators were instructed to write down the details of the car in the driveway).

invasive and time-consuming; supervisors studiously review for compliance with policy and practice requirements.²⁰⁸

A central component of CPS agents' role as actors in the family policing welfare theatre is their sense of strict obligation to conduct these tasks within a given timeframe, and the concomitant presumption that parents under investigation will dutifully comply. They believe, in short, that the investigations have to happen. This, too, is part of their training—and a part of their lived reality. Neither CPS agents nor their supervisors are meaningfully informed of the constitutional implications of their search. They also are not adequately trained on the rights of a parent to decline to engage. Instead, they are led to believe that if a parent refuses, entry into a home or access to a child can be gained as a matter of course, "if needed."²⁰⁹ CPS agents regularly use coercive tactics to conduct investigations—including by presenting investigations as mandatory, invoking law enforcement, or threatening family separation. Scholars have demonstrated how these tactics are otherwise unconstitutional.²¹⁰ As a coolly practical matter, a forceful approach makes sense for CPS agencies keen on fulfilling their statutory duty to investigate every report. In the rare case referred to a dependency court, parents are not entitled to suppression of evidence obtained unconstitutionally;²¹¹ the vast majority of families who never make it to court may not be aware of their rights and are unlikely to have resources to sue to enforce them.²¹² To that end, CPS officials regularly oppose robust attempts to inform parents of their rights.

CPS agents are thus motivated by all three rationales for investigation: *moral*, *regulatory*, and *constructive*. They are trained and therefore self-define as a frontline bulwark against intrafamily harm, a source of safety.²¹³ They have no imagined off-ramp for families who do not need—or do not want—coercive government intervention into their lives. Understandably, then, when the parent in a securitized family

208. FONG, INVESTIGATING FAMILIES, *supra* note 3, at 94.

209. Complaint, *supra* note 132, ¶ 117.

210. See Arons, *supra* note 132, at 797–801.

211. Ismail, *supra* note 2, at 1528.

212. See LEGAL SERVS. CORP.: AMERICA'S PARTNER FOR EQUAL JUST., THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 7–9 (2022), <https://justicegap.lsc.gov/resource/executive-summary/>; IF I WASN'T POOR, I WOULDN'T BE UNFIT, *supra* note 112. Recently, civil rights organizations committed to addressing these issues have emerged, dedicated to providing this representation to low-income families. See *generally* Complaint, *supra* note 132 (civil rights class action alleging systemic constitutional violations in investigative practices of New York City's ACS).

213. FONG, INVESTIGATING FAMILIES, *supra* note 3, at 91 (describing how CPS agencies invoke the rhetoric of safety and quoting one agent: "I'll certainly work with you, but it's my job to make sure your kids are safe" (quoting Ekaterine Tchelidze & Claire Gavin, *DCF: Social Work a Difficult, but Rewarding, Profession*, CHRON. (Connecticut), Apr. 14–15, 2018, at 1)).

pushes back against any of these rationales, CPS agents reinscribe the parent's lack of cooperation as neglectful rather than protective. Failure to gamely comply with CPS is reinscribed as bad parental judgment; refusal to consent is reinscribed as lack of parental insight. As an audience of the welfare theatre, CPS agents receive this message; as its subject, CPS agents communicate it to the families they investigate. Viewed in this light, it becomes clearer why CPS agents regularly enlist coercive tactics to conduct investigations: The welfare theatre guides CPS agents to believe that resistant parents are a source of potential harm to their children, and therefore properly securitized objects.

That said, it would be a mistake to characterize CPS agents' use of coercive tactics to achieve their investigative objectives as an individual choice driven exclusively by an agent's bias or fervor to address intrafamily harm. Impacted families, scholars, and advocates around the country have decried the regular use of threats and intimidation as a key part of CPS's investigative scheme.²¹⁴ Instead, CPS's use of coercion should be understood as a logical consequence of CAPTA's treatment of the ever-expanding category of harms described as "neglect" and as a problem to be addressed with a suspicion-driven investigative law enforcement apparatus focusing on parents as perpetrators.²¹⁵ In that sense, as actors in family policing's welfare theatre, CPS agents are fulfilling the task set before them with the anti-state statist carceral tools most readily available to their agencies: surveillance, court involvement, or family separation. They could not do so otherwise.

The Securitized Family. The vast majority of 2,000,000 CPS investigations do not substantiate claims against the parent investigated, and when they do, they usually indicate poverty-correlated neglect rather than intentional abuse. Still, each investigation marks an intrusion by state agents into the intimate lives of a family; each intrusion leaves impressions that reverberate across time and space within the psychic lives of impacted children and parents, their family systems, and the communities they comprise.

As a constitutional matter, of course, families under CPS investigation have an absolute right to opt out of this intrusion;²¹⁶ agents' investigations are premised on a parent's voluntary consent. Nonetheless, a central role of the family policing welfare theatre is to communicate to its securitized families its own inescapability. Accordingly, parents rarely

214. See, e.g., Carolyn Elerding, *Victims of Family Policing Are Leading a Movement to Abolish It*, TRUTHOUT (Oct. 20, 2024), <https://truthout.org/articles/victims-of-family-policing-are-leading-a-movement-to-abolish-it/> [https://perma.cc/JC7K-KNBC].

215. See FONG, INVESTIGATING FAMILIES, *supra* note 3, at 16, 75, 93.

216. See Ismail, *supra* note 2, at 1539.

opt out, and investigations grind on.²¹⁷ In recent years, scholars have demonstrated the unconstitutional means by which CPS agents obscure the constitutional rights of securitized families, compelling their consent.²¹⁸ Often, in keeping with their training—and their own belief about their work—CPS agents communicate to parents that the elements of an investigation are not just required, but inevitable. Agencies reinforce this inevitability to parents using language of absolute modal force in publicly disseminated material about CPS investigations.²¹⁹ In New York City, for example, a jurisdiction closely watched for its child welfare practices, ACS uses definitive, mandatory language in its guide, *A Parent's Guide to Child Protective Services in New York City*. Addressing the parent directly, the guide proclaims that a CPS agent “will assess your home” and “will meet with you, your child, and other people in your household.”²²⁰ ACS repeated this information on its website, stating that “ACS is required to investigate all reports received.”²²¹ “During the investigation,” ACS continued, a CPS agent “will . . . [m]ake an unannounced visit to your home within 24–48 hours of the report,” “must see and speak to all your biological children living with you or with other caretakers,” “will . . . [c]heck to make sure your home is free of hazards, has adequate food, safe sleeping arrangements, etc.,” and “will . . . [g]o to your child’s school, talk to family members and other people who may know your child, like a neighbor, building superintendent, teacher, doctor, nurse, NYPD, etc.”²²²

217. Hager, *Police Need Warrants*, *supra* note 134.

218. See, e.g., Ismail, *supra* note 2, at 1539; Arons, *supra* note 132, at 797–802; Daniella Rohr & Melissa Friedman, *Overreporting and Investigation in the New York City Child Welfare System: A Child’s Perspective*, 15 COLUM. J. RACE & L. 1160, 1172 (2025).

219. This is true even of false reports. One state FAQ document addresses what a parent should do if they are the subject of a false maltreatment report, lamenting that “[b]oth the taking of the false report and the ensuing investigation are a misuse of valuable resources intended for the care and protection of New York State’s vulnerable or at-risk children.” *Child Protective Services FAQ*, N.Y. STATE OFF. OF CHILD. & FAM. SERVS., <https://ocfs.ny.gov/programs/cps/FAQ.php> (last visited Feb. 22, 2026). The notion that the investigation would stop is not contemplated. *Id.*

220. *A Parent’s Guide to Child Protective Service in New York City*, N.Y.C. ADMIN. FOR CHILD.’S SERVS. (emphasis added), https://www.nyc.gov/assets/acs/pdf/child_welfare/ACS_Parents_Guide_to_the_Child_Protective_Investigation.pdf [<https://perma.cc/LGU5-8ABD>] (last visited Feb. 22, 2026).

221. *A Parent’s Guide to a Child Abuse Investigation*, N.Y.C. ADMIN. FOR CHILD.’S SERVS., <https://web.archive.org/web/20240521225036/https://www.nyc.gov/site/acs/child-welfare/parents-guide-child-abuse-investigation.page> (last visited May 21, 2024).

222. *Id.* (emphasis added). Sometime between May and September 14, 2024, after ACS was sued for systemic Fourth Amendment violations in its investigations, ACS softened some of the language on its website. See *A Parents’ Guide to a Child Abuse or Maltreatment Investigation*, N.Y.C. ADMIN. FOR CHILD.’S SERVS., <https://www.nyc.gov/site/acs/child-welfare/parents-guide-child-abuse-investigation.page> [<https://perma.cc/>

As previously described, securitized families experience this language of inevitability in practice. Especially because of the concentration of CPS investigations in the same neighborhoods and communities, parents under investigation have an acute, but vague, sense of an investigation's ambit and a more specific sense of CPS's power.²²³ Accordingly, they are aware that refusal to comply comes at the significant cost of reinscribing their image as the rightfully securitized object of the theatre. Even more, the theatre's work is to reinscribe in parents, themselves, that very notion—that cooperation (or, at the very least, the performance of cooperation) with the investigation and state intervention is evidence of parental competence and that refusal to cooperate is evidence of its opposite.²²⁴ Parents in securitized communities are painfully aware that CPS's central task is investigation and that its core powers upon substantiation are further surveillance under court order or, worse, family separation. CPS agents often wield threats of these tools as a way to gain access. Accordingly, parents are compelled to join in the enactment, if only to escape substantiation and avoid the consequences.

The welfare theatre therefore socializes parental precarity and communicates to parents that enduring an investigation is the cost of family integrity—the price of a parent existing in society with their child by their side. This is the securitization of the family: the consistent, coercive reminder that they are constantly in the shadow of investigation and that, in turn, a CPS investigation lives in the shadow of CPS's true threat—its power to take your children and put them in foster care. While inconvenient, humiliating, or traumatic to allow a state agent into your most intimate spaces to interfere with your most intimate relationships, the securitized family is made to grin and bear it in order to keep their family together. They must play their part.

The securitization of the families subject to family policing's welfare theatre has devastating impacts on individuals, families, and communities alike. Children who live through CPS investigations experience stress on their most fundamental lifelong attachments, undermining trust and their sense of their parents' protective capacity, authority, and scrambling

R2GB-HU3W] (last visited Feb. 22, 2026); Jonah E. Bromwich & Andy Newman, *Child Abuse Investigators Traumatize Families, Lawsuit Charges*, N.Y. TIMES (Feb. 20, 2024), <https://www.nytimes.com/2024/02/20/nyregion/acs-nyc-family-trauma-lawsuit.html>.

223. FONG, INVESTIGATING FAMILIES, *supra* note 3, at 24–25, 31, 33.

224. S. Lisa Washington has written in depth about the family policing's system coercive power to require performance. *See, e.g.*, Washington, *Pathology Logics*, *supra* note 87, at 1576 (describing the expectation that parents “perform compliance and worthiness” for months and years); S. Lisa Washington, *Time and Punishment*, 134 YALE L.J. 536, 563–65 (2024) (“Coercing performance is one way that legal systems may further subordinate already-marginalized individuals.”).

their sense of control.²²⁵ Parents experience their own parallel harms; studies show that parents who endure CPS investigations experience higher rates of depression, anxiety, and powerlessness than those who do not, without any improvement to their or their families' material conditions.²²⁶ Beyond the individual family, the welfare theatre also weakens the communities in which it operates. Securitized families wary of triggering a report—even those who have never before been investigated—turn down voluntary services, limit interactions with state agencies, and truncate their social networks.²²⁷ In these communities, a sense of rugged self-reliance is reinscribed as a parental virtue and, perversely, a safer way to avoid CPS coercion than by resisting it lawfully. This, in turn, further strains the fabric of securitized communities, and makes it even less likely that families will push back. Relationships are atomized and social support becomes even harder to come by; families who might otherwise offer support become wary of inviting in further surveillance, or worse.

Without meaningful friction, the theatre plays on. Most of the general public, while theoretically subject to its jurisdiction, remains untouched, watching or participating from afar. Referrals continue to come in from mandated and general reporters alike. Ebbing and flowing with each tragic local news story about a child who CPS just missed, referrals generate objects for CPS agents to investigate, and securitized families continue to endure them with very little to show.

III. CURTAIN CALL

This Essay has situated the work of the family policing investigative apparatus within a security theatre framework by describing family policing's unique welfare theatre: a system of agencies, practices, and norms designed to perform a collective concern for child welfare without regard for its actual impact—neither on the welfare of the children it claims to protect, nor on the traumatic outcomes for the securitized families who are its primary objects. In so doing, this Essay has identified the theatre's three central functions: (1) *communicating* a sense of communal care for children through a sweeping network of agents ready to investigate harm; (2) *scrambling* social conditions of already-marginalized families into individual practices, thus obscuring and

225. See Complaint, *supra* note 132, ¶¶ 207–14; *supra* Section I.C; Rohr & Friedman, *supra* note 218, at 1179.

226. See Kristine A. Campbell, Lawrence J. Cook, Bonnie J. LaFleur & Heather T. Keenan, *Household, Family, and Child Risk Factors After an Investigation for Suspected Child Maltreatment*, 164 ARCHIVES PEDIATRIC & ADOLESCENT MED. 943, 943–49 (2010).

227. FONG, INVESTIGATING FAMILIES, *supra* note 3, at 39.

fortifying weighty policy decisions; and (3) *securitizing* these already-marginalized families, compelling their compliance as the theatre's object and perpetuating its necessity.

So far, this Essay has investigated these three functions and the roles of various stakeholders in fulfilling them. This Part discusses how a security theatre framework can open space for further critical discussion of the harms, misdirection, and byproducts of the family policing apparatus and identifies key ways that impacted families have already begun to make some of these connections.

A. *Breaking the Fourth Wall*

Perhaps ironically, the family policing welfare theatre functions best when its public impression is siloed from its more mechanical elements. To that end, if a core function of welfare theatre is a public display of a collective effort toward promoting child welfare, that display works best when the non-policed audience is largely ignorant of the pervasive impact of its investigations on the marginalized people, families, and communities most affected. In this way, by routinely policing in poor communities historically segregated by a legacy of both *de jure* and *de facto* segregation, the family policing investigative apparatus ensures the siloing necessary for the theatre's success—policed families and the non-policed public are kept from comparing notes, let alone from sharing communities. The same is true of mandated reporters, whose sense of CPS as a harmless all-purpose agency is necessary to keep reports flowing into the investigative apparatus.

Having identified this point of tension, impacted families have doggedly organized to break the theatre's fourth wall, resisting the malaise brought on by securitization. Decades of work by parents, their children, and adult former foster youth have methodically built the power to push the conversation into the public sphere, making the public aware of something obscured. Through participatory defense campaigns at different stages of CPS involvement, impacted families and their allies demonstrate to the agency, the court system, and the public the widespread impact of the family policing apparatus—while concurrently de-atomizing the families impacted by the theatre.²²⁸ When coupled with

228. “Participatory defense is a grass-roots movement to empower families and communities in their loved ones’ criminal defense and organize both for individual case outcomes and systemic change.” Cynthia Godsoe, *Participatory Defense: Humanizing the Accused and Ceding Control to the Client*, 69 MERCER L. REV. 715, 719 (2018); see also Janet Moore, Marla Sandys & Raj Jayadev, *Make Them Hear You: Participatory Defense and the Struggle for Criminal Justice Reform*, 78 ALB. L. REV. 1281, 1281 (2014) (describing the role and benefit of participatory defense). While initiated in the context of the criminal legal system, parents in the family regulation system have begun to engage in participatory defense. See, e.g., MYAH OVERSTREET, *To Be Invisible* (The

a media strategy, these campaigns broadcast even more widely, opening up space for other families to come forward in the face of the stigma brought on by securitization.²²⁹ Impacted families and their allies have also made use of public fora—protests, billboards, op-eds, podcasts, books, commissions, legislative hearings, and international bodies—to break the fourth wall.²³⁰ They have used legislative campaigns—whether

New Yorker Documentary, June 19, 2024), <https://www.newyorker.com/culture/the-new-yorker-documentary/the-black-mothers-fighting-to-get-their-kids-back-in-to-be-invisible> (on file with author) (depicting Amanda Wallace, founder of Operation Stop CPS in Durham, North Carolina, who supported two mothers who had been separated from their children); *Join the Movement*, OPERATION STOP CPS, <https://www.operationstopcps.com/join-the-movement> [<https://perma.cc/54HT-BBQF>] (last visited Feb. 22, 2026) (describing active and completed “operations” to reunite families). Also see the Movement for Family Power Movement Map, which depicts community-based organizations led largely by impacted families engaged in “[c]ommunity defense,” defined in the key as “[c]ommunity-based support outside of court-based attorney work,” including “court support, court watch, defense of activists, early parent defense support provided by non-attorney advocates, participatory defense, [and] know your rights trainings.” *Movement Map*, MOVEMENT FOR FAM. POWER, <https://map.movementforfamilypower.org/> (last visited Feb. 22, 2026).

229. See, e.g., OVERSTREET, *supra* note 228. An organization called Black Families Love and Unite (BLU) released a 2025 report on reparations in the family policing system. Imani Worthy, an impacted parent and BLU’s executive director, paired the release with an op-ed and a public discussion with Professor Dorothy Roberts. Imani Worthy, *Why Aren’t We Talking About Family Policing When We Talk About Reparations*, IMPRINT (Apr. 21, 2025, at 03:00 CT), <https://imprintnews.org/opinion/why-arent-we-talking-about-family-policing-when-we-talk-about-reparations/260100>; Tamar Sarai, *Reparative Justice Is Needed for Victims and Survivors of Family Policing*, *New Report Urges*, PRISM (Mar. 6, 2025), <https://prismreports.org/2025/03/06/family-policing-black-families-reparations/> [<https://perma.cc/RZY5-M4SM>] (describing the report and event on March 1, 2025).

230. The following are just a few examples to illustrate the point. Impacted parents pushed for or organized the examination of the U.S. Commission on Human Rights’ New York Advisory Committee and held half a dozen hearings. N.Y. ADVISORY COMM. TO THE U.S. COMM’N ON CIV. RTS., EXAMINING THE NEW YORK CHILD WELFARE SYSTEM AND ITS IMPACT ON BLACK CHILDREN AND FAMILIES 5 (2024), <https://www.usccr.gov/news/2024/new-york-advisory-committee-releases-report-examining-new-york-child-welfare-system-and> [<https://perma.cc/M584-TCSA>]. Impacted families also organized a campaign to seek inclusion of child welfare in the United Nations Period Review on the United States’ compliance with the Convention on the Elimination of All Forms of Racial Discrimination and testified before the body. CHILD.’S RTS. & COLUM. L. SCH. HUM. RTS. INST., RACIAL (IN)JUSTICE IN THE U.S. CHILD WELFARE SYSTEM 1–3, 11–14 (2020), <https://e1.nmcdn.io/assets/crsite/wp-content/uploads/2023/02/Childrens-Rights-2022-UN-CERD-Report-FINAL.pdf> [<https://perma.cc/8KLN-899G>]. The Repeal CAPTA Workgroup held a congressional briefing on the harms of CAPTA as currently constituted and submitted an appropriations letter seeking reform on the way to repeal. JMACFORFAMILIES, *Repeal CAPTA Coalition: Congressional Briefing / January 31, 2024* (YouTube, Apr. 15, 2024), <https://www.youtube.com/watch?v=BXVPZp6eAn0> (on file with author); Letter from the Repeal CAPTA Workgroup to Patty Murray, Chair, Senate Comm. on Appropriations, Susan Collins, Vice Chair, Senate Comm. on Appropriations, Kay Granger, Chair, House Comm. on Appropriations & Rosa DeLauro, Ranking Member, House Comm. on Appropriations

ultimately successful or still in progress—as storytelling opportunities to combat the jargon and interloping narratives provided by agencies and CPS advocates which previously predominated.²³¹ For the better part of three decades, Professor Dorothy Roberts led a small group of legal and social science scholars telling the stories of securitized families through her analysis of family regulation;²³² more recently, other scholars have joined the chorus, pushing the conversation into the halls of the academy and onto the doorsteps of future judges and policymakers.²³³ Many of these scholars have worked with parents or children directly impacted by CPS; some having experienced CPS intervention directly.²³⁴ Journalists,

(Nov. 21, 2023), <https://static1.squarespace.com/static/646e50104958a01d9d93c374/t/655cfb6095c3b102d68ea324/1700592480202/2023+Repeal+CAPTA+Appropriations+Letter.pdf> [<https://perma.cc/EP4E-EZKW>].

231. See, e.g., *Public Hearing*, *supra* note 114 (statement of Amanda Pumarejo); Lisa R. Merriweather Hunn, Talmadge C. Guy & Elaine Manglitz, *Who Can Speak for Whom? Using Counter-Storytelling to Challenge Racial Hegemony*, 2006 PROCS. ADULT EDUC. RSCH. CONF. 244, 244–45, <https://newprairiepress.org/cgi/viewcontent.cgi?article=2503&context=aerc>.

232. See generally DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION AND THE MEANING OF LIBERTY* 37 (1997) (using storytelling to detail how both American society and the government have regulated and limited Black women’s reproductive autonomy); ROBERTS, *SHATTERED BONDS*, *supra* note 21, at 5 (incorporating the personal stories of Black mothers affected by child welfare services to call attention to the system’s regulatory and policing nature).

233. See generally Peggy Cooper Davis & Guatam Barua, *Custodial Choices for Children at Risk: Bias, Sequentiality, and the Law*, 2 U. CHI. L. SCH. ROUNDTABLE 139 (1995) (recommending that a formalized model for judicial decision-making can help address the negative role that self-reinforcing status decisions and cognitive racial bias plays during child welfare proceedings); Martin Guggenheim, *How Children’s Lawyers Serve State Interests*, 6 NEV. L.J. 805 (2006) (arguing that lawyers representing children in child welfare matters further the goals of a broken child welfare system by lending professional legitimacy to removals, rarely challenging rates of intervention, and providing political cover); Clare Huntington, *Mutual Dependency in Child Welfare*, 82 NOTRE DAME L. REV. 1485 (2007) (advocating that the best approach for preserving family autonomy is for CPS to prioritize prevention-based engagement with families rather than relying on post-hoc strategies); Vivek S. Sankaran, *Parens Patriae Run Amuck: The Child Welfare System’s Disregard for the Constitutional Rights of Nonoffending Parents*, 82 TEMP. L. REV. 55 (2009) (arguing that it is unconstitutional to terminate a nonoffending parent’s rights just based on findings that the other parent mistreated their children); Josh Gupta-Kagan, *Filling the Due Process Donut Hole: Abuse and Neglect Cases Between Disposition and Permanency*, 10 CONN. PUB. INT. L.J. 13 (2010) (advocating for increased due process protections during child abuse and neglect proceedings to reduce the risk of unjust family separation); Matthew I. Fraidin, Essay, *Changing the Narrative of Child Welfare*, 19 GEO. J. ON POVERTY L. & POL’Y 97 (2012) (recommending that society reframe its perspective on families involved in the child welfare system by emphasizing their assets rather than their struggles).

234. KHIARA BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* ix (2017); Cynthia Godsoe, *Racing and Erasing Parental Rights*, 104 B.U. L. REV. 2061, 2061 (2024); Washington, *Pathology Logics*, *supra* note 87, at 1526; Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523, 523 (2019); Julia Hernandez, *Lawyering Close to Home*, 27 CLINICAL L. REV. 131, 131 (2020); Arons, *supra* note

too, have investigated and amplified these stories on national platforms.²³⁵

The increasing dissonance between the public narrative and the lived reality of securitized families has created friction, and therefore new and real opportunities to affect the day-to-day machinations of the welfare theatre, which depends, cynically, on a stratified flow of information to function efficiently. Impacted families, with legal analysis in hand, have made direct contact with mandated reporters to explain the real costs of reporting and to offer up lawful alternatives to calling CPS, inspiring new organizations like Mandated Reporters Against Mandated Reporting.²³⁶ Organizations like the CUNY Law School's Family Defense Practicum work with community-based organizations in heavily policed neighborhoods to provide "Know Your Rights" training on CPS investigations, offering a counternarrative to securitization.²³⁷ Crucially, they offer *early defense*, legal support at the earliest point of CPS

132, at 769. *See generally* Sarah H. Lorr, *Disabling Families*, 76 STAN. L. REV. 1255 (2024) (informed by her experience working with those impacted by CPS); Laura Matthews-Jolly, *Visitation as Family Regulation*, 103 N.C. L. REV. 521 (2025) (same); Chris Gottlieb, *A Path to Eliminating the Civil Death Penalty: Unbundling and Transferring Parental Rights*, 19 HARV. L. & POL'Y. REV. 43 (2024) (same).

235. *See generally* Hager, *Police Need Warrants*, *supra* note 134 (telling the story of a New York City mother's many interactions with CPS agents inspecting her home); Larissa MacFarquhar, *When Should a Child Be Taken from His Parents?*, NEW YORKER (July 31, 2017), <https://www.newyorker.com/magazine/2017/08/07/when-should-a-child-be-taken-from-his-parents> (recounting the experiences of a New York City family struggling with CPS surveillance and separation); ROXANNA ASGARIAN, WE WERE ONCE A FAMILY: A STORY OF LOVE, DEATH, AND CHILD REMOVAL IN AMERICA (2023) (relaying the story of children removed from their birth families and placed with an abusive foster family); ANDREA ELLIOT, INVISIBLE CHILD: POVERTY, SURVIVAL & HOPE IN AN AMERICAN CITY (2021) (following the life of a child as her family experiences homelessness and is frequently monitored by CPS). *Cf.* Rozina Ali, *'How Did This Man Think He Had the Right to Adopt This Baby?'*, N.Y. TIMES MAG. (Nov. 12, 2022), <https://www.nytimes.com/2022/11/10/magazine/afghanistan-orphan-baby-l.html> (describing the adoption by American parents of an infant retrieved after U.S. military strike in Afghanistan despite existing family ties in the country).

236. SHEREEN A. WHITE & JOYCE MCMILLAN, N.Y. MANDATED REPORTING WORKING GROUP (2026), <https://e1.nmcdn.io/assets/crsite/wp-content/uploads/2026/01/NY-MRWG-Who-We-Are.pdf> [<https://perma.cc/EY7L-UF2L>]; Rachel Blustain, *Revolt Against Mandatory Reporting Law Rises Among Professionals Required to Protect Children*, CITY (Apr. 28, 2025), <https://www.thecity.nyc/2025/04/28/mandatory-reporting-laws-child-neglect-abuse-reform/> [<https://perma.cc/5XWC-JVDA>].

237. Julia Hernandez and Tarek Z. Ismail, *Radical Early Defense Against Family Policing*, 132 YALE L.J.F. 659, 680–82 (2022), https://yalelawjournal.org/pdf/F7.HernandezIsmailFinalDraftWEB_xddjeja.pdf [<https://perma.cc/974L-2AM7>].

intervention, as a further de-securitizing force.²³⁸ Similar projects have begun to spring up around the country.²³⁹

B. Shrinking the Stage

Beyond the day-to-day, impacted families have leveraged this dissonance to make a significant push at state and federal levels through each branch of government to shrink the broader footprint of the investigative apparatus.

At the federal legislative level, impacted families and allies have organized under the banner of Repeal CAPTA, a campaign aiming to “normalize a caring approach to the needs and aspirations of children and families grounded in respect for family integrity and autonomy” by addressing the federal lynchpin of the family policing apparatus.²⁴⁰ The reader will recall that CAPTA requires all states accepting federal funds to implement a system of mandated reporting for both neglect and abuse, and to investigate each allegation.²⁴¹ The Repeal CAPTA coalition has suggested or supported a number of reforms, including reappropriation of federal CAPTA funding to emphasize community-based grants over money to state child welfare agencies for investigation,²⁴² decoupling supports from family policing,²⁴³ and an amendment to CAPTA that would explicitly bar CPS from separating a family on the basis of poverty.²⁴⁴ Some members of the Repeal CAPTA coalition and others beyond it have imagined even broader reforms. Some have suggested ending mandated reporting entirely, leaving an option for voluntary reporting.²⁴⁵ Others have suggested removing neglect from CAPTA’s mandated reporting requirements, leaving only the requirement to report

238. *Id.* at 672.

239. *See, e.g., Family Defense Project*, TEX. RIOGRANDE LEGAL AID, <https://www.trla.org/fdp> [<https://perma.cc/5A2L-2QG4>] (last visited Mar. 24, 2026) (“FDP helps parents navigate the complex system of law and policy while under investigation.”); *HopeLine*, L.A. DEPENDENCY LAWS., <https://www.ladlinc.org/hopeline> [<https://perma.cc/G96Q-JSV9>] (last visited Mar. 24, 2026) (offering parents a toll free number to receive free legal information when under CPS investigation); *Contact the Helpline*, REPRO LEGAL HELPLINE, <https://reprolegalhelpline.org/contact-the-helpline/> [<https://perma.cc/BX3P-6F8R>] (last visited Mar. 24, 2026) (same).

240. *The Campaign*, REPEAL CAPTA, <https://www.repealcapta.org/the-campaign> [<https://perma.cc/UMC4-WNEV>] (last visited Feb. 23, 2026).

241. 42 U.S.C. § 5106a(b)(2)(B)(i), (iv).

242. *The Campaign*, *supra* note 240.

243. *See* Letter from the Repeal CAPTA to Patty Murray, Susan Collins, Kay Granger & Rosa DeLauro, *supra* note 230.

244. *Id.* (describing the Family Poverty is Not Neglect Act, H.R. 5028, 118th Cong. (2023)).

245. *A Call for Shared Humanity Means Repealing Mandatory Reporting Laws*, CTR. FOR THE STUDY OF SOC. POL’Y (June 7, 2023), <https://cssp.org/a-call-for-shared-humanity-means-repealing-mandatory-reporting-laws/> [<https://perma.cc/2QZ7-5NDX>].

abuse.²⁴⁶ Still others have suggested mandated support, giving professionals an opportunity to address their concerns rather than directing them to CPS.²⁴⁷ Even if bold, foregrounding these proposals reintroduces the notion of welfare theatre into the broader conception of CPS's role and opens up space for conversations about the systemic inequality underlying many of the issues that CPS is fundamentally unable to solve, creating a moment for a political conversation about public goods and distribution of resources.

Impacted families and their allies have also sought to shrink the stage of the welfare theatre by taking advantage of the local option permitted in the CAPTA framework, even despite the federal requirements to report and investigate. Some have pushed to narrow their state's definitions of neglect. A 2021 Texas law amended the state's definition of neglect to require a showing of "blatant disregard" for consequences of a failure to act.²⁴⁸ California's legislature changed the state's definition of general neglect to only include situations where "the child is at substantial risk of suffering serious physical harm or illness."²⁴⁹ Other reform efforts have sought to explicitly decouple poverty from neglect. The 2022 California law explicitly excluded "a parent's economic disadvantage" as a basis for neglect;²⁵⁰ Kentucky and Mississippi passed

246. N.Y. STATE BAR ASS'N, REPORT AND RECOMMENDATIONS OF THE COMMITTEE ON FAMILIES AND THE LAW: RACIAL JUSTICE AND CHILD WELFARE 9–10, 28 (2022), <https://nysba.org/wp-content/uploads/2022/03/Committee-on-Families-and-the-Law-April-2022-approved.pdf> [<https://perma.cc/BBR7-PA9M>]; Shereen A. White, Shanta Trivedi, Shakira Paige, Meredith Giovanelli & Makena Mugambi, *Help Not Hotlines: Replacing Mandated Reporting for Neglect with a New Framework for Family Support*, FIJ Q., Spring 2024, at 132, 141–43.

247. Richard Wexler, *The Failure of Mandatory Reporting*, NAT'L COAL. FOR CHILD PROT. REFORM (Jan. 13, 2024), <https://nccpr.org/nccpr-issue-paper-16-the-failure-of-mandatory-reporting/> [<https://perma.cc/B9FH-D4YK>]; *Mandated Supporting*, JMACFORFAMILIES, <https://jmacforfamilies.org/mandated-supporting> [<https://perma.cc/S96X-37XS>] (last visited Feb. 24, 2026).

248. H.B. 567, 87th Leg., Reg. Sess. (Tex. 2021).

249. A.B. 2085, 2021–22 Assemb., Reg. Sess. (Cal. 2022). Similar laws narrowing the definition of neglect have passed in Arizona ("replacing 'unreasonable risk of harm' with 'substantial risk of harm'") and Arkansas ("limiting 'failure to protect' to situations resulting in 'serious bodily injury'"); similar narrowing laws have been introduced in four other states. STEPHEN CHRISTIAN, DEFINING AND REPORTING CHILD NEGLECT: RECENT STATE LEGISLATIVE ACTIVITY 2–3 (2025), <https://bipartisanpolicy.org/wp-content/uploads/2025/08/Child-Neglect-Issue-Brief.pdf> [<https://perma.cc/8B5D-23WW>].

250. Cal. A.B. 2085. Prior to the 2022 law, the definition did not discuss economic circumstances, but rather *only* referenced "adequate food, clothing, shelter, medical care, or supervision." *Id.* Mandated reporters were trained on the changes, and one county put in place a requirement for mandated support. Elly Yu, *Mandated Reporting Change: Poverty Alone Doesn't Warrant a Call*, LAIST (Aug. 15, 2024, at 12:00 CT), <https://laist.com/brief/news/education/early-childhood-education-pre-k/what-is-child-neglect-la-county-is-training-educators-to-see-beyond-poverty> [<https://perma.cc/K74X-HQJ4>].

similar reforms, and other states have similar or more targeted efforts passing through their legislatures.²⁵¹

Other groups of impacted families have organized to chip away at reporting requirements or capacities. In New York, the Anti-Harassment in Reporting Law barred anonymous reporting for adults. In Colorado, the legislature in 2022 created a Mandatory Reporter Task Force to examine best practices around reporting procedures.²⁵² In its 2025 Final Report, the task force made recommendations that the Colorado General Assembly pass laws explicitly barring reporting due to “a family/child’s race/ethnicity, socioeconomic status, or disability status”²⁵³ and suggested that “victim’s advocate[s]” be removed from the list of mandatory reporters.²⁵⁴ Other states have reporting legislation in the works—ranging from mandated support for neglect in California to limitations on substance-use reporting in Illinois, Massachusetts, and Texas.²⁵⁵ Still, others have focused on combatting families’ securitization by arming them with the tools necessary to push back against alienation, the knowledge of their rights to opt out of an investigation if they choose, and the support to enforce their choice.²⁵⁶

Impacted families have sought to move beyond the adjudicatory settings most familiar to—and with—the family policing welfare theatre by bringing the systemic issues they face to decision-makers who are just as unfamiliar with and usually reluctant to weigh in on family policing.

More is possible. At the local level, city administrators could allow CPS the flexibility to close an investigation, or to send malicious or obviously unfounded reports back to the hotline, saving costly resources and sparing families the trauma of investigation. The hotline might reach back out to the initial reporter and suggest a community-based organization with whom to connect the family. More imaginative rules could, as a default, restrict neglect investigations to conversations with the immediate reporter. Recognizing CPS’s coercive power and the substantial liberty interests at stake, these rules might require CPS to seek court authorization before seeking to search a family’s home or

251. CHRISTIAN, *supra* note 249, at 4. In Kentucky, Senate Bill 8 brought Kentucky’s statute in line with New York’s by adding “when financially able to do so or offered financial or other means to do so.” S.B. 8, 2022 Gen. Assemb., Reg. Sess. (Ky. 2022). Montana passed a law saying that “a parent’s inability to control a child’s behavior does not constitute neglect,” and Maryland passed a law saying that “a parent’s use of marijuana, by itself, does not constitute neglect.” CHRISTIAN, *supra* note 249, at 4, 6. Many other legislatures have made similar moves. *Id.* at 4–6.

252. CHILD PROT. OMBUDSMAN OF COLO. & KEYSTONE POL’Y CTR., MANDATORY REPORTING TASK FORCE FINAL REPORT 2 (2025), <https://coloradocpo.org/wp-content/uploads/2024/12/CPO-MRTF-report.pdf> [<https://perma.cc/5XNR-YEUS>].

253. *Id.* at 8.

254. *Id.* at 22.

255. CHRISTIAN, *supra* note 249, at 6.

256. S.B. 551, 2025–26 Leg. Sess., Reg. Sess. (N.Y. 2025).

attempting to speak with children without a parent present, and offer parents an opportunity to present their case in the matter.

With this Essay, and by expounding upon family policing's welfare theatre, I hope to elucidate the modern family policing apparatus as scripted. In seeing the welfare theatre as a script—a constricting sequence of repetitive, automatic gestures—my intention is to build upon the work of impacted families who have already begun to flip it. By engaging the family policing welfare theatre in different, more creative and collective ways, we open up the possibility for new political conversations about what might be possible and how to protect our friends and neighbors from harm.

CONCLUSION

The family policing welfare theatre emerged from a particular political moment—one in which the organized abandonment of poor Black and Brown communities was reconstituted as a child protection imperative, and in which investigation and surveillance were substituted for the structural investments that might have materially addressed the conditions now labeled neglect. Fifty years after CAPTA's passage, the investigative script remains largely unchanged, even as the evidence of its ineffectiveness and harm has accumulated to a point that can no longer be responsibly ignored.

This Essay has argued that the welfare theatre framework illuminates what the regnant rationales for family policing cannot: why a system so consistently falling short of its stated objectives continues to command billions of dollars in annual expenditure and sustained, though waning, public support. The answer lies not in the theatre's outcomes, but in the stratified nature and function of its communication. To the non-policed public, welfare theatre performs an institutional commitment to child welfare that obscures both the concentration of its investigative apparatus in race-class marginalized communities and the trauma that apparatus produces. To mandated reporters, the theatre presents CPS as an all-purpose remedial agency, concealing the coercive and often counterproductive nature of the investigations that their referrals set in motion. To the securitized family at the theatre's center, it communicates inescapability—the proposition that enduring investigation is the non-negotiable price of their formerly constitutionally protected family integrity.

These communications are not incidental to the welfare theatre's function; they are constitutive of it. By individualizing the structural conditions of poverty as parental failure, the welfare theatre forecloses political conversations about the public goods and redistributive investments that might alleviate the harms it purports to address. In this

sense, the theatre is autotelic: Its very operation reproduces the conditions that justify its continuation.

And yet the theatre is not totalizing. Impacted families—parents, children, and former foster youth—and their allies have leveraged the dissonance between the theatre’s public narrative and their lived experience to generate meaningful friction. Through legislative campaigns, participatory defense, public advocacy, and scholarly intervention, they have begun to denaturalize what the theatre presents as inevitable, opening space for new political imaginaries and concrete legal reform. Some of those proposals, previously catalogued—from narrowing neglect definitions to restructuring federal reporting mandates to arming securitized families with enforceable constitutional rights and the tools to enforce them—are neither radical nor utopian, but instead the logical consequence of taking seriously what the welfare theatre has spent decades obscuring.

This Essay’s contribution has been to provide a framework adequate to that task. By situating family policing within the broader analytic of security theatre—and by attending carefully to the costs borne by the securitized families who are its primary objects—the welfare theatre framework renders visible the mechanics of a system that has too long been insulated from the scrutiny its scale and impact demand.

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