

1 Charlie Z. (SBN #: 000001)

2 Attorney for Minor:
3 Leilani F.

4 SUPERIOR COURT OF THE STATE OF CALIFORNIA
5 FOR THE COUNTY OF LOS ANGELES,
6 JUVENILE COURT

7
8 In the Matter of:

9 Leilani F.,
10 Minor

CASE NUMBER: 21CCJP00001(A)

MOTION SEEKING RELEASE OF
THE CHILD AT DETENTION AND
REQUEST FOR AN
ADMINISTRATIVE REVIEW

Date: November 4, 2021
Time: 9:00 a.m.
Department: 409

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16 TO THE ABOVE ENTITLED COURT AND TO THE PARTIES HEREIN
17 AND TO THEIR ATTORNEYS OF RECORD:

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19 COUNSEL FOR MINOR, LEILANI F., submits the following points and
20 authorities requesting the Court release the child to her mother. This motion
21 will be based on the petition in this action and references to subsequent reports
22 filed by the Department of Children and Family Services¹ and the attached
23 memorandum of point and authorities.
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26 **FACTS:**

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¹ Hereinafter referred to as “the Department.”

1 The family came to the attention of the Department after an altercation
2 between Leilani and her adult brother, John. At the time of the incident,
3 John was drunk and started arguing with Leilani. The argument escalated
4 and while outside, John struck Leilani. Neighbors heard and observed the
5 altercation. Mother immediately intervened and separated the siblings.
6 Leilani then contacted the police and requested their assistance in removing
7 John from the home. John left the home before law enforcement arrived.
8 Leilani and Mother reported this was the first instance of John becoming
9 physically aggressive after drinking. The neighbors corroborated Leilani's
10 and mother's statement.

14 The Department developed a safety plan with the family, which
15 required John to move out of the home so Leilani would not be in physical
16 danger. John complied with the safety plan and moved out of the home but
17 was unable to take all his belongings. During a scheduled visit, the social
18 worker observed some of John's belongings still present in the home. Leilani
19 and her mother denied John was living in the home but explained that John
20 did not have enough space at his new place for all his belongings. Fijian
21 neighbors also vehemently denied seeing John at the home since the incident
22 with the police. Despite the lack of evidence that John was still residing in
23 the home, the social worker believed John continued to reside in the home
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1 and his imminent return to the home posed an immediate threat to Leilani's
2 safety.

3 The social worker, along with another white social worker, proceeded to
4 attempt to remove Leilani from the home. Leilani and her mother again
5 repeatedly denied John was living in the home and even invited the worker to
6 search the home. Rather than search the home, the social workers called law
7 enforcement to assist with Leilani's removal. Six police vehicles arrived; all
8 the officers were also white. The social workers informed law enforcement
9 that Leilani refused to leave with them. The police officers handcuffed
10 Leilani and transported her to the Children's Receiving Home in the back of a
11 police vehicle; all the while the social workers stood silently. It was not until
12 the following day at 5pm that Leilani was placed in her sister's home.

13 After her removal, Leilani reported being "distraught" and "angry" for
14 being removed in such a violent manner and feels. She maintains that her
15 brother no longer resides in the home, and she wishes to return to her
16 mother. She feels that the social workers' and the officers' acted in a racially
17 insensitive manner.
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ARGUMENTS

1 Welfare and Institutions Code² Section 319 governs detention hearings
2 and placement issues at detention. Pursuant to Section 16010.6, subdivision
3 (a), as soon as a placing agency makes a decision with respect to a placement
4 or a change in placement of a dependent child, but not later than the close of
5 the following business day, the placing agency shall notify the child's
6 attorney and provide the child's attorney information regarding the child's
7 address, telephone number, and caregiver.
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10 Section 319 impliedly favors family reunification as can be seen in its
11 provisions for release of a minor from custody unless a prima facie showing is
12 made that the child comes within section 300. (*In re Richard H.* (1991) 234
13 Cal.App.3d 1351, 1368.) Maintenance of the familial bond between children
14 and parents – even imperfect or separated parents – comports with our
15 highest values and usually best serves the interests of parents, children,
16 family and community. Because the courts so abhor the involuntary
17 separation of parent and child, the state may disturb an existing parent-child
18 relationship only for strong reasons and subject to careful procedures. (*In re*
19 *I.R.* (2021) 61 Cal.App.5th 510, 519 - 520.)
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24 I. The Department Failed to Make Reasonable Efforts to Prevent or
25 Eliminate the Need for Removal.
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27 ² Hereinafter all further statutory references are to the Welfare and
28 Institutions Code unless otherwise specified.

1 The court shall make a determination on the record, whether the social
2 worker made reasonable efforts to prevent or eliminate the need for removal
3 of the child from their home. (§ 319(f).) Effort would require some controlled
4 mental process, requiring some intention or conscious awareness to be
5 enacted. (Klek, *The Evolving Science of Implicit Bias*, March 2021, p. 4.) On
6 the other hand, all unconscious mental processes, are unintentional,
7 involuntary, and effortless. (Richardson & Goff, *Implicit Racial Bias in*
8 *Public Defender Triage* (2013) Yale Law Journal 122, 2625.) Implicit Racial
9 Bias is an unconscious mental process in which “we are generally not always
10 fully aware of all the activity our minds are undertaking to help us detect,
11 process, and act on information.” Klek, *The Evolving Science of Implicit*
12 *Bias*, March 2021, p. 4.

13 Here, the social worker’s implicit bias prevented her from making any
14 efforts to prevent or eliminate the need for removal. The worker’s responses
15 toward Leilani and judgment about the imminent risk John posed stemmed
16 from an automatic association that Leilani must be at risk because her
17 Fijian brother would be returning to the home. Such unconscious
18 associations are often made about racial groups and are activated by racial
19 cues present in the environment. (Richardson & Goff, *Implicit Racial Bias*
20 *in Public Defender Triage* (2013) Yale Law Journal 122, 2626.) “The problem
21 is that when the brain automatically associates certain characteristics with
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1 specific groups, the association is not accurate for all members of the group.”
2 (Klek, *The Evolving Science of Implicit Bias*, March 2021, p. 4.) Nonetheless,
3 “[i]mplicit racial bias can cause individuals to unknowingly act in
4 discriminatory ways.” (Maryfield, *Justice Research and Statistics*
5 *Associations*, December 2018, p. 1.)
6

7 In this case, the racial cues were the Fijian family and neighbors. The
8 problem is that there was no evidence to support that John was still in the
9 home. Leilani and her mother even invited the worker into the home. Since
10 there was no evidence that John was in the home, it would have been
11 reasonable for the worker to inspect the home to verify whether John was
12 there. However, the worker’s automatic association resulted in an
13 immediate response to remove Leilani for fear that John, a Fijian male,
14 would return. Furthermore, it caused the worker to call law enforcement
15 and to stand idling while Leilani was handcuffed and forced into the back
16 seat of a police car.
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18 Failure to enter the home to verify John’s absence was a failure to
19 make reasonable efforts to prevent or eliminate the need for removal.
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21 Failure to intervene to keep Leilani from being handcuffed and placed in the
22 police car was a failure to make reasonable efforts to prevent the need for
23 removal. Failure to recognize that the social worker’s response was not due
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1 to an imminent risk of harm to Leilani, but rather to the racial cues present
2 in the environment, was a failure to protect Leilani's well-being.

3 II. The Department has Failed to Prove by Prima Facie Evidence that the
4 Child is at Risk of Harm if Returned to Her Mother.

5 The court shall order the release of the child from custody unless a
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7 prima facie showing has been made that the child comes within section 300
8 and continuance in the parent's or guardian's home is contrary to the child's
9 welfare. (§ 319(c).) In the present case, the Department assert detention is
10 warranted because Mother failed to protect Leilani from John and allowed
11 John to reside in the home after the incident. In both instances, the
12 Department is wrong.

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15 A. Mother Acted Appropriately and Protected Leilani Once John
16 Became Physically Aggressive.

17 The Department argues Mother failed to protect Leilani from her
18 brother. However, the evidence before the Court shows Mother acted swiftly
19 to ensure Leilani's safety. Mother and Leilani both reported this was the first
20 instance of John becoming physically aggressive. She did not fail to protect
21 Leilani, once she observed John becoming physically aggressive, mother
22 intervened and kicked John out of the home.
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25 Child abuse includes not only a parent's own physical abuse of his or
26 her child, but also a failure to protect from harm caused by others. (*In re Rico*
27 *W.* (1986) 179 Cal.App.3d 1169.) In *In re Rico W.*, a mother refused to face the
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1 fact that her children had been molested by her husband and the children
2 were removed from her custody. (*Id.* at pp. 1177 - 1178.) Child abuse includes
3 more than a parent's physical abuse. In a given case, the term may involve a
4 failure to protect the child from harm caused by others. (*In re Angelia P.*
5 (1981) 28 Cal.3d 908, 924 [overruled on other grounds].)
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8 In the present case, mother did not ignore a known risk, nor was she
9 was unaware of a risk due to her own negligence. Here, John unfortunately
10 drank too much and acted in a manner foreign to his typical character.
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12 Mother acted appropriately in protecting Leilani and removing John from the
13 home.

14 B. The Department's Assertion that John Resides in the Home is
15 Insufficient to Meet the Prima Facie Standard Due to the Existence
16 of Contrary Evidence.

17 Prima facie evidence is that which suffices for the proof of a particular
18 fact, until contradicted and overcome by other evidence. It may, however, be
19 contradicted, and other evidence is always admissible for that purpose. The
20 words "prima facie" mean literally, "at first view," and a prima facie case is
21 one which is received or continues until the contrary is shown and can be
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overthrown only by rebutting evidence adduced on the other side. (*In re*
Raymond G. (1991) 230 Cal.App.3d 964, 972.)

The Department asserts detention is warranted because there is
evidence to suggest John still resides in the home. The social worker observed

1 some of John's belongings in the home. However, Mother and Leilani both
2 maintain that John has moved out of the home but did not have space to take
3 all of his belongings. Neighbors also reported John leaving the home and not
4 returning. The social worker's implicit bias kept the social worker from going
5 into the home to verify that John had left the home.
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8 Thus, the Department has failed to establish by prima facie evidence
9 that detention is warranted due to mother's alleged failure to comply with the
10 safety plan.

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12 III. Reasonable Means Exist to Prevent the Detention of Leilani from her
13 Mother.

14 At detention, the court must determine whether the agency made
15 reasonable efforts to prevent the need for the child's removal from the home
16 and whether there are services that would obviate the need for further
17 detention. Services to be considered may include case management,
18 counseling, emergency shelter care, emergency in-home caretakers, out-of-
19 home respite care, teaching and demonstrating homemaking, parenting
20 training, transportation, and referrals to public assistance (e.g., MediCal,
21 food stamps). (§ 319(d).)
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24 Reasonable means exist to avoid the detention of Leilani. First, the
25 Court could order unannounced home visits. (*In re A.F.* (2016) 3 Cal.App.5th
26 283, 293 [unannounced visits assess the situation at the time of the visit.]
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1 These visits would allow the Department to actively assess whether John is
2 residing in the home. The Court could also order Mother to seek a
3 restraining order against John in order to maintain custody of Leilani. From
4 the time the petition is filed until the petition is dismissed or jurisdiction
5 terminates, the court has the authority to issue restraining orders.³ (§ 304;
6 Cal. Rules of Court, rule 5.620(b).) Lastly, the Court could also order mother
7 into services, such as NAMI, to make sure she is aware of the risk Leilani is
8 in when her brother, John, is under the influence of alcohol. Before
9 jurisdiction, the court can issue orders detaining the child and orders
10 directing the social services agency to provide services, but it cannot order or
11 otherwise compel the parent to cooperate with the agency. A parent's
12 participation in services, whether before jurisdiction and disposition or after,
13 is always voluntary. (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1233 ["it is not
14 the court's role to force a parent to participate in services . . . "[r]eunification
15 services are voluntary, and cannot be forced on an unwilling or indifferent
16 parent.""]].)

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22 Thus, reasonable means exist to avoid detention of Leilani from her
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25 ³ The Department also failed to consider assisting the family with storing Leilani's
26 brother's belongs at a storage site. This would give the brother less reason to return to the
27 home. The Department has failed to consider the economic situation the family was in,
28 assuming Leilani's brother could find new residence and move his belongings in a short
amount of time was unreasonable. (see <https://www.sparefoot.com/self-storage/blog/7164-how-storage-helps-the-homeless/>)

1 Mother.

2 IV. The Juvenile Court Should Order an Administrative Review Due to the
3 Conduct of Social Worker Which Resulted in the Mistreatment of the
4 Child.

5 The juvenile court possess the authority to order the Department to
6 assess the conduct of their agents and order an administrative hearing. (*In re*
7 *C.P.* (2020) 47 Cal.App.5th 17 [the juvenile court has the authority to order
8 the Department to reassess a criminal exemption.]
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10 An administrative review of the case is warranted because the CSW's
11 conduct escalated the situation and traumatized the child. The CSW called
12 the police to assist and six police cars responded. Leilani was handcuffed and
13 transported to her placement in the back of a police vehicle. She was also
14 kept at the receiving home until 5pm the next day. Leilani reported being
15 "distraught" and "angry." This negative experience with law enforcement will
16 have a long lasting impact on the child.
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18 Even in the best of circumstances, police interactions can be traumatic
19 for children, according to child psychologists. All the more so if police officers
20 are the aggressors. "We know kids are traumatized by witnessing arrests,
21 witnessing accidents, witnessing someone bleeding out on the sidewalk and
22 seeing the police there, even if the police are doing everything right." (Colleen
23 Cicchetti, Center for Childhood Resilience, www.chicagoreporter.com/trauma-
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1 [of-witnessing-police-violence-is-not-lost-onchildren.](#)) As such, an
2 administrative review is required.

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5 **CONCLUSION**

6 “It is a last resort [the consideration of removal], to be considered only
7 when the child would be in danger if allowed to reside with the parent.” (*In re*
8 *A.E.* (2014) 228 Cal.App.4th 820.) Based on the above-mentioned points and
9 authorities, the court should release the child to her mother, the Department
10 has failed to meet its burden and reasonable means exist to ensure the child’s
11 well-being. An administrative review should also be ordered regarding the
12 conduct of the responding CSW.
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16 Respectfully submitted,

17 /s/ Charlie Z.

18 _____
19 Charlie Z.
20 Children’s Law Center of Los Angeles,
21 Attorney for Leilani F. (Minor)
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