UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOSHUA SABEY, SARAH PERKINS, JOSHUA SABEY and SARAH PERKINS on behalf of C.S. 1 and C.S. 2, minors,

Plaintiffs,

v.

KATHERYN BUTTERFIELD, AARON GRIFFIN, CAROLYN KALVINEK, BONNIE ARRUDA, ANTHONY SCICHILONE, RICHARD COUTURE, ELIAS MAKRIGIANIS, STEFANO VISCO, KEVIN O'CONNELL, and CANDICE GEMSKI,

Defendants.

Civil Action No.
1:23-cv-10957-PBS

PLAINTIFFS' CONSOLIDATED RESPONSE IN OPPOSITION TO THE WALTHAM POLICE DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

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INTRODUCTION

Just after midnight on July 16, 2022, Waltham police officers and Massachusetts Department of Children and Families ("DCF") workers came to the Sabeys' home to take their children. The officers entered the enclosed breezeway, refused to leave when told to do so, and made clear they would not depart without the children—even threatening forced entry. There was no warrant, and no one sought one.

The Police Defendants now say they were merely "keeping the peace" for a DCF removal decision made miles away. They disclaim any responsibility for entering the Sabey home and forcibly taking the Sabey children against their parents' will. But the Fourth Amendment draws "a firm line at the entrance to the house," and where circumstances would allow officers to obtain a warrant, they must do so. *See Payton v. New York*, 445 U.S. 573, 590 (1980); *Mincey v. Arizona*, 437 U.S. 385, 393–95 (1978); *Missouri v. McNeely*, 569 U.S. 141, 149–50 (2013); *Lange v. California*, 594 U.S. 295, 301–13 (2021). Shortcuts—like the claimed "DCF removal" exemption in this case—do not absolve officers of their constitutional duty to weigh all the circumstances and seek a judicial warrant whenever practicable. Therefore, the officers' occupation of the curtilage without consent, their threats to breach the door, and their participation in the ensuing seizure of two small children violated clearly established Fourth and Fourteenth Amendment law.

The three police officers and Chief O'Connell have filed two separate motions for summary judgment. *See* Doc. No. 203; Doc. No. 200. The motions rest on a nonexistent "DCF removal" exception, an invented exigency, and an attempt to pin responsibility elsewhere. Plaintiffs make the following consolidated response, demonstrating why both motions should be denied and why Plaintiffs' cross-motion for summary judgment should be granted.

FACTS

The facts of this case are set out in Plaintiffs' Statement of Material Facts, Doc. No. 210, and the twin responses to Defendants' statements of fact, Doc. Nos. 238–39, which Plaintiffs filed today. Those documents are incorporated here by reference. Although the total fact statements and responses from all the parties cover many pages, there is no *material* fact in dispute.

The parties agree that, in the early morning hours of July 16, 2022, two police officers, Ofcs. Makrigianis and Visco, accompanied by two DCF workers, arrived at the Sabey home, seized the Sabey children, and placed the young boys in DCF custody. Pls.' Statement of Material Facts ("Pls.' Facts") ¶¶ 171–92, 196, 204, 209, 216, 220, 332; Pls.' Resp. to O'Connell's Statement of Material Facts("Resp. to O'Connell") ¶¶ 1–5; The officers entered through the front entryway into the breezeway of the home, where they knocked on the door and talked to Joshua Sabey through a closed door for over an hour. Pls.' Facts ¶¶ 171–92, 196, 204, 209, 216, 220, 332; Resp. to O'Connell ¶¶ 13–23. There was no warrant, and no one ever considered getting one.

During the doorway confrontation, Ofcs. Makrigianis and Visco called Sgt. Scichilone for assistance. Pls.' Facts ¶ 194. Scichilone arrived on scene and took charge, entering the breezeway of the home and speaking to Joshua Sabey. Joshua's uncontested testimony is that he asked to see a warrant, asked to speak to a judge, and told Scichilone and the other officers to leave—but the officers remained in the breezeway of the home for over an hour. *Id.* ¶¶ 187–213, 311, 329.[1] After DCF officials revealed their purpose to seize the children, Joshua called his attorney, Paul Moraski. *Id.* ¶ 225.

[1] The Officers assert that the request to leave is a mere "suggestion" in the record. *See* Officers' Br. at 10–11. But the request to leave is not only shown by uncontested testimony from Joshua, Sarah, and Lisa Sabey, *see* Facts ¶ 192, it was specifically admitted by Scichilone in response to a request for admissions. *Id.* ¶ 209 (citing Roper Decl., Ex. 35, Scichilone RFA No. 15).

Around the same time, Scichilone contacted Lt. Couture for direction and advice. *Id.* ¶ 230. Couture spoke with DCF and called Chief O'Connell. *Id.* ¶ 259. Couture and O'Connell discussed breaching the Sabey's door, forcing entry into their home, involving a hostage negotiation and SWAT team, and the need to assist DCF in forcibly seizing the children, if necessary. *Id.* ¶¶ 261–75. O'Connell ordered Couture to tell the Sabeys and their lawyer that the police were not leaving without the children, and that they would be escalating their use of force unless the Sabeys handed them over. *Id.* ¶ 276.

Moraski and Couture then spoke by telephone. Couture advised him that if the Sabeys did not cooperate, "we may have to breach the door and it's going to make it look a lot worse on them" and that they were going to call in NEMLEC (the regional hostage negotiation and SWAT unit). *Id.* ¶¶ 287–92. Yielding to this, Moraski advised the Sabeys to surrender their two young children, who were seized by DCF workers and taken into temporary foster care.

The parties emphasize different details in this narrative, but the basic facts are uncontested. However, the parties disagree on whether these facts suffice for Plaintiffs to prevail against the Officers, Sgt. Scichilone, Lt. Couture, or Chief O'Connell. The parties further disagree about whether qualified immunity protects any of the Defendants.

LEGAL STANDARD

Summary judgment is appropriate if the moving party "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Uncle Henry's, Inc. v. Plaut Consulting Co.*, 399 F.3d 33, 41 (1st Cir. 2005). The Court considers the undisputed material facts and all reasonable inferences from those facts in the light most favorable to the nonmoving party. *Avery v. Hughes*, 661 F.3d 690, 693 (1st Cir. 2011).

ARGUMENT

I. The Officers and Chief O'Connell Violated the Sabeys' Constitutional Rights

A. The Officers and Chief O'Connell violated the Sabeys' Fourth Amendment rights

The home is the most sacred space in constitutional law. At the Fourth Amendment's "very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States*, 365 U.S. 505, 511 (1961). Because "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed," *United States v. U.S. Dist. Ct. for the E. Dist. of Mich.*, 407 U.S. 297, 313 (1972), the Supreme Court "has drawn a firm line at the entrance to the house [and] absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Payton*, 445 U.S. at 590.

There was no warrant here. The officers entered the breezeway and remained there for over an hour despite being told to leave. Couture spoke to the Sabeys' lawyer and relayed Chief O'Connell's message: The police would remain at the Sabeys' door until the children were seized, by force if necessary, and the next step would be the involvement of a hostage negotiation and SWAT team. Faced with violence, the Sabeys relented, and the officers assisted DCF in removing the children.

Despite these facts, the officers argue that they did not violate the Fourth Amendment because: (1) the breezeway was not within the curtilage of the home; (2) if it was within the curtilage of the home, there was an exigency justifying their presence; and (3) they did not direct the seizing the children. Officer's Br. at 8–13. Chief O'Connell argues, in addition, that even if the Fourth Amendment was violated, he did not cause the violation. O'Connell Br. at 7–12. These arguments each fail under the governing law.

1. The breezeway was within the home's curtilage

If the breezeway was within the curtilage of the home, the officers violated the Fourth Amendment when they refused to leave after being asked, unless there were exigent circumstances. The officers make two primary arguments they think justify their presence in the breezeway. First, they assert that, as a matter of law, individuals have no "reasonable expectation of privacy in the common areas of an apartment building." Officer's Br. at 9–10. Since the upstairs tenant had the legal right to access the breezeway, they reason, there can be no Fourth Amendment violation. *Id.* Second, the Officers list a handful of facts that, they assert, indicate the area was a "common area," including: the lack of signage on the exterior door indicating otherwise, the lack of an apparent attempt to bar the upstairs tenant from the use of the area, and the only "sporadic attempts" to exclude outsiders from accessing the area (presumably by locking the door). *Id.* at 10.

These arguments apply the wrong law. Since *Jones* and *Jardines* "a person's Fourth Amendment rights do not rise or fall with the *Katz* [reasonable expectation of privacy] formulation." *Florida v. Jardines*, 569 U.S. 1, 11 (2013) (quoting *United States v. Jones*, 565 U.S. 400, 406 (2012)). Rather, the *Katz* reasonable-expectations test has been added to a traditional property-based understanding of the Fourth Amendment. *Id.* Accordingly, reasonable expectations no longer factor into the analysis when the government physically intrudes on constitutionally protected areas—including the curtilage at issue in both *Jardines* and this case. The cases the Officers rely on—primarily *United States v. Hawkins*, 139 F.3d 29, 32–33 (1st Cir. 1998)—predate *Jones* and *Jardines* and therefore do not discuss the relevant question. *Hawkins* in particular concerns a basement area of an apartment complex and does not even discuss the scope of the curtilage of a home.

The question presented by this case, then, is simply whether the Sabeys had a constitutionally protected interest in the breezeway. "At common law, the curtilage is the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life.'" *Oliver v. United States*, 466 U.S. 170, 180 (1984) (citation omitted). The scope of the curtilage is defined by four factors:

> [T]he proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.

United States v. Dunn, 480 U.S. 294, 301 (1987).

The Sabeys' breezeway is just like the front porch in *Jardines*. Directly appurtenant to the home, the breezeway was completely enclosed and was frequently used as an extension of the home; the Sabeys stored their children's toys, stroller, athletic gear, car seat, and other household items there, prompting Josh's mother to nickname it their "walk-out closet." Pls.' Facts ¶¶ 99, 102.

Curtilage turns on proximity, enclosure, use, and shielding—not formal title or exclusive possession. *See Dunn*, 480 U.S. at 301. For example, in *French v. Merrill*, the First Circuit ruled that police officers violated the Fourth Amendment and were not entitled to qualified immunity when they entered the curtilage of an apartment home that French shared with three other adult males and aggressively knocked on the front door and refused to leave. 15 F.4th 116, 122 (2021). In line with *Jardines*, the Court did not consider whether the front porch was a "common area."

As the Court explained in *Jardines*, the curtilage analysis "is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters." 569 U.S. at 8. There is no question that a Girl Scout at the Sabeys door at 1:00 a.m. for over two hours, after being told to leave, would be trespassing. The facts emphasized by the Officers—such as the lack of signage and the fact that the door was unlocked that evening—play no role in the *Dunn* factors. Officers' Br. at 10; *cf.*

O'Connell Br. at 8. And even if the officers were permitted to enter the breezeway temporarily, that license was revoked when they were told to leave. This is even worse than *French v. Merrill*—there the officers were simply ignored, not actively told they were unwelcome. The Court should reach the same conclusion here as in *French*—and protect the sanctity of the entire home.

2. There were no exigent circumstances justifying the officers' presence

The Officers next assert that their presence was permissible because "they were possessed of information from the totality of circumstances that spoke to exigency." Officers' Br. at 11. The officers assert that, because the DCF officials appeared after midnight and asserted emergency custody of a child based on a rib fracture, this is sufficient to justify entry into a home. *Id.* (citing *Wilmot v. Tracey*, 938 F. Supp. 2d 116, 138 (D. Mass. 2013), and *Hill v. Walsh*, 884 F.3d 16, 22 (1st Cir. 2018)). This is far too vague.

The Officers' analysis fails to grapple with the actual standard. "Warrantless searches of a residence presumptively violate the Fourth Amendment to the United States Constitution and art. 14 of the Declaration of Rights of the Massachusetts Constitution." *Commonwealth v. Tyree*, 455 Mass. 676, 683 (2010). An exception from the warrant requirement is only available in cases where someone is in danger of imminent physical harm or requires immediate emergency assistance, such that there is no time to get a warrant. *Brigham City v. Stuart*, 547 U.S. 398, 403, 406 (2006). The Supreme Court has expressly stated on numerous occasions that exceptions to the warrant requirement only apply "when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable," such that it "enables law enforcement officers to handle . . . situations presenting a compelling need for official action and no time to secure a warrant." *Lange*, 594 U.S. at 301 (citation modified).

This standard is focused on objective facts in the here and now. In the context of emergency aid, which is the exception the officers purport to rely on, the government bears the burden to establish an "objectively reasonable basis for believing" both "the existence of an emergency" and a concrete "reason for linking the perceived emergency with the area or place into which [the officers] propose to intrude." *United States v. Giambro*, 126 F.4th 46, 54–55 (1st Cir. 2025) (citation modified) (quoting *Brigham City*, 547 U.S. at 406, and *Mincey*, 437 U.S. at 392). The inquiry turns on what officers knew at the time, not on hindsight or generalized concerns. *Giambro*, 126 F.4th at 61.

Under this standard, the uncontested historical facts show that there was no way the officers could have believed there was an imminent or ongoing emergency at the time they were in the breezeway or later, when they assisted in the seizure of the children. The record, in fact, describes repeated delay and a calm, measured encounter at the door. Officers entered the breezeway after midnight, were told to leave, and nevertheless remained for over an hour while phoning supervisors, discussing breaching the door and summoning a tactical team, and pressing for surrender—without seeking a warrant. Pls.' Facts ¶¶ 194, 259–76, 287–92. They reported no sounds of distress, no unfolding violence, and no crisis. This is insufficient as a matter of law to show an "ongoing emergency" requiring immediate entry or continued occupation of the home's curtilage. *See Brigham City*, 547 U.S. at 403–06; *Mincey*, 437 U.S. at 393–95 (time to obtain warrant defeats exigency). *See also Kovacic v. Cuyahoga Cnty. Dep't of Child. & Fam. Servs.*, 724 F.3d 687, 696 (6th Cir. 2013) (In the context of a warrantless removal of children from a home, holding that "reliance on weeks-old incidents . . . simply do[es] not constitute exigent circumstances as a matter of law.").

To make matters worse, the facts the Officers rely on for this supposed exigency were not known to them at the time. Makrigianis and Visco testified they deferred entirely to DCF's assertion of an emergency. Pls.' Facts ¶ 98. Sergeant Scichilone did not even know the nature of C.S. 2's injury (he believed it was a broken wrist). *Id.* ¶¶ 113–15. None of the officers reviewed the 51A or 51B reports that detailed DCF's rational for emergency removal. None of the officers knew anything about supposed "medical experts" and their opinions on C.S. 2's rib injury. All they knew about the "emergency" is what they saw that day, and what they saw that day was a family woken from peaceful sleep to an hours-long confrontation at their door.

The Officers' conduct in this case is only consistent with a nonexistent *per se* exception to the warrant requirement for DCF removals. Indeed, Chief O'Connell argues as much in his brief. O'Connell Br. at 13–15 (arguing that officers are never constitutionally required to obtain a warrant during a 51B(c) child removal). But for all the reasons explained in Plaintiffs' Memorandum in Support of Motion for Summary Judgment, Doc. No. 208, determinations of DCF administrators miles away do not absolve an officer of the Fourth Amendment's exigency requirement.

B. The Officers and Chief O'Connell violated the Sabeys' substantive due process rights

The Officers argue there was no substantive due process violation because, "the right to familial integrity clearly does not include a constitutional right to be free from child abuse investigations." Officers' Br. at 14 (quoting *Watterson v. Page*, 987 F.2d 1, 8 (1st Cir. 1993)). In other words, the Officers argue that the state's interest in obtaining custody of C.S. 1 and C.S. 2 outweighed the need for prompt judicial involvement.

Again, the Officers are using the wrong legal standard. To justify the prehearing removal of children, the government must have "an objectively reasonable suspicion of abuse." *Hatch v. Dep't for Children, Youth & Their Families*, 274 F.3d 12, 21 (1st Cir. 2001). And "[i]t is clearly

established that a parent cannot be deprived of custody of a child absent notice and a hearing unless there are exigent circumstances of abuse or neglect." *Suboh v. Dist. Att'y's Off. of Suffolk Dist.*, 298 F.3d 81, 94 (1st Cir. 2002).

> [O]fficials may remove a child from the custody of the parent without consent or a prior court order only in "emergency" circumstances . . . . Emergency circumstances mean circumstances in which the child is immediately threatened with harm, . . . or where the child is left bereft of care and supervision, . . . or where there is evidence of serious ongoing abuse and the officials have reason to fear imminent recurrence.

Hurlman v. Rice, 927 F.2d 74, 80 (2d Cir. 1991); *cf. Doe v. Kearney*, 329 F.3d 1286, 1293 (11th Cir. 2003) (acknowledging need for threat of "imminent harm" and "emergency circumstances").

Under the correct standard, this removal fails. The only predicate articulated to the Sabeys that night was a previously diagnosed rib fracture which was at least 10 days old and possibly several months old; there was no report of ongoing violence, no observation of present danger in the home, and no indication that the children were "immediately threatened with harm" or "bereft of care and supervision." *See Hurlman*, 927 F.2d at 80. Rather than acting as they would in a true emergency, the Officers occupied the Sabeys' breezeway for over an hour, consulted supervisors, threatened forced entry and SWAT deployment, and never sought judicial process. *See Hatch*, 274 F.3d at 21 (prehearing removal requires an objectively reasonable basis to suspect abuse); *Suboh*, 298 F.3d at 94 ("clearly established" that custody cannot be taken without notice and hearing absent exigent circumstances). The absence of contemporaneous facts showing an *immediate* risk defeats any claim of exigency.

Furthermore, to the extent there were facts suggesting abuse, none of those facts related to C.S. 1. Indeed, the physical examination of C.S. 1 revealed nothing which might be indicative of child abuse, Pls.' Facts ¶ 53, and his personal physician stated that she had "not shown any concerns" of child abuse or neglect, *id.* ¶ 51. Accordingly, the seizure of C.S. 1 was not supported

by anything but a mere and uncorroborated suspicion of abuse—this violated the Sabeys' due process rights. *Tenenbaum v. Williams*, 193 F.3d 581, 594 (2nd Cir. 1999).

C. There was no consent to take the children or enter the home

Finally, the officers argue that the Sabeys' rights were not violated because they consented to everything during the confrontation at the door. Officers' Br. at 11–12. When the government relies on consent to justify a search or seizure, it bears "the burden of proving that the consent was, in fact, freely and voluntarily given." *Bumper v. North Carolina*, 391 U.S. 543, 548 (1968). It is well settled that an officer leaves no room for consent when he claims the lawful authority to search or seize or otherwise applies coercion. *Id.* at 548–50; *Schneckloth v. Bustamonte*, 412 U.S. 218, 233 (1973) ("[I]f . . . the consent . . . was coerced by threats or force, or granted only in submission to a claim of lawful authority[] then [the Court] ha[s] found the consent invalid and the search unreasonable."). "When a law enforcement officer claims authority to search a home . . . he announces in effect that the occupant has no right to resist the search." *Bumper*, 391 U.S. at 550; *see also Pagan-Gonzalez v. Moreno*, 919 F.3d 582, 598 (1st Cir. 2019) (officers violated clearly established law by coercing consent to enter home based on falsehoods, such that a resident "felt he had no choice but to allow the agents access to his home and computer"). The presence of coercion is a question of fact based on the totality of the circumstances, including the consenting party's knowledge of the right to refuse; the consenting party's possibly vulnerable state; and evidence of inherently coercive tactics. *See United States v. Twomey*, 884 F.2d 46, 51 (1st Cir. 1989). Here there is, again, no question as to the facts—the Officers and the Chief participated in coercing Joshua Sabey with express threats to break the door down and take the children by force.

The Officers response is twofold. First, they assert that there can be no constitutional violation from the threat of force. Officers' Br. at 12. Even if this is true, it is not the claim at issue—the claim is that the force was used to coerce consent to an illegal search and seizure.

Second, the officers argue that the threat, to the extent there was one, came from the Sabeys' attorney misunderstanding. *Id.* This simply mischaracterizes the record. In fact, the Chief and Couture, and Couture and DCF, in talking amongst themselves openly acknowledged that breaking down the door was on the table. *See, e.g.*, Pls.' Facts ¶¶ 149–50 (conversation between Griffin and Couture where Griffin instructs Couture to "let them know we're going to force entry"); ¶¶ 159–60 (conversation between Chief O'Connell and Couture giving permission to call NEMLEC but ordering further conversations "before we kick the door"). Scichilone, the sergeant on the scene, expressly told the Sabeys that though he did not want to "go in the home," DCF had authority to forcibly take the children because there were "exigent circumstances to enter the home." Pls.' Facts ¶ 144. Furthermore, the call with the Sabeys' attorney was transcribed. On the transcript, Couture plainly says that the police believed there was an "exigent circumstance;" that they intended to call the NEMLEC team in if the Sabey's refused to open the door; and that "we may have to breach the door and it's going to make it a lot worse on them"; and if they did not open the door, "this could turn into crazy." Pls.' Facts ¶¶ 167–71. The Sabeys' attorney understood the gist of this conversation as being "very, very clear . . . if they didn't comply with giving the children to DCF, they were going to make entry into that home, and it was going to be a forceful entry." *Id.* ¶ 172. This was not a misunderstanding; it was the correct understanding. Police would not have left without the children and would have taken them by force if necessary.

"The law is clear, for example, that consent to a search is invalid if given only because of an officer's knowingly false assurance that there will soon be a lawful search anyway." *United States v. Vazquez*, 724 F.3d 15, 22 (1st Cir. 2013). Assuming the good faith of the officers, "[c]onsent pried loose by such a claim of authority is merely acquiescence. As such, it serves poorly as an independent basis for sustaining the validity of the search." *Id.* at 23. This rule makes

clear that the officers cannot use the Sabeys' ultimate acquiescence as an excuse for their unconstitutional actions.

II. The Officers and the Chief Are All Liable for the Constitutional Violations

A. Each officer and supervisor committed conduct connected to the deprivation of the Sabeys' constitutional rights

Section 1983 imposes liability where a defendant's conduct is a "substantial factor" in bringing about the constitutional deprivation and the injury is a reasonably foreseeable result of that conduct. *See Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553, 560–61 (1st Cir. 1989). Physical presence at the time of seizure is not required; it is enough that the defendant "set[] in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury." *Id.* at 561 (citation omitted). On this record, each Defendant contributed conduct that was both connected to, and a producing cause of, the Fourth Amendment violations and resulting seizure.

(1) Officers Makrigianis and Visco (the door officers). The two officers accompanied DCF to the home after midnight, entered the interior breezeway abutting the Sabeys' front door, and remained there after Joshua repeatedly told them to leave. Pls.' Facts ¶¶ 194, 225. Their continued presence in the curtilage—well beyond any "knock-and-talk" and after revocation of consent—was itself a Fourth Amendment trespass and an indispensable predicate to the later coerced "consent." When the escalating threats from their supervisors succeeded, they assisted DCF in carrying out the seizure. Under *Gutierrez-Rodriguez*, a reasonable jury could find (and on Plaintiffs' cross-motion the Court should conclude) that the officers' refusal to leave the curtilage, their maintenance of a police presence at the door, and their participation in the final handover were substantial factors in causing both the unconstitutional entry and the seizure.

(2) Sergeant Scichilone. After arriving and taking charge, Sgt. Scichilone entered the breezeway, spoke with Joshua, and—despite being told to leave—kept officers in position outside the door for over an hour. Pls.' Facts ¶¶ 194, 225. Most critically, he communicated a claimed authority to enter, telling the family that DCF had authority to take the children and that there were "exigent circumstances to enter the home." *Id.* ¶ 144. By maintaining the occupation of the curtilage, endorsing a nonexistent exigency, and escalating the matter up the chain of command rather than seeking judicial process, Sgt. Scichilone directly contributed to the coercive environment that produced the entry and seizure.

(3) Lieutenant Couture. Lt. Couture coordinated with DCF and the responding officers and spoke both to Sgt. Scichilone and to Chief O'Connell. *Id.* ¶ 259. He consented to the officers' presence in the home's curtilage. He then conveyed to the Sabeys' lawyer the precise threats that overcame their resistance: that police viewed the situation as an "exigent circumstance," that NEMLEC would be called if the family did not comply, and that "we may have to breach the door and it's going to make it a lot worse on them," warning that if they did not open the door "this could turn into crazy." *Id.* ¶¶ 287–92, 167–71. A reasonable finder of fact could only conclude that Couture's communications were a substantial and foreseeable cause of the coerced entry and seizure.

(4) Chief O'Connell. Finally, the Chief's real-time command decisions supplied the authorization that made the coercive threats credible. First, he expressly consented to the officers' remaining in the home's curtilage. Next, after discussing with Couture "breaching or forcing the . . . door," calling NEMLEC (including the use of a SWAT team), and the plan to remain until the children were forcibly seized, the Chief instructed Couture to tell the Sabeys and their lawyer that police were not leaving without the children and that force would be used if the family did not

cooperate. Pls.' Facts ¶¶ 261–76. Those instructions, predictably, induced the Sabeys' compliance. *Id.* ¶¶ 172, 287–92. Even though the Chief was not physically at the doorway, § 1983 does not require physical presence; authorizing and directing the coercive tactic that vitiated consent and led to the seizure supplies the necessary proximate cause. *See Gutierrez-Rodriguez*, 882 F.2d at 561 (liability where supervisor "set[] in motion" the chain of events resulting in Fourth Amendment violation).

In short, each Defendant "intentionally engaged in a series of acts" that foreseeably resulted in the unconstitutional occupation of the home's curtilage, the coerced entry, and the seizure of the children. *See* Mem. & Order at 13, Doc. No. 89 (quoting *Eldredge v. Town of Falmouth*, 662 F.3d 100, 105–06 (1st Cir. 2011)).

B. Chief O'Connell and Lt. Couture are liable as joint tortfeasors

As this Court explained in its decision on the Defendants' Motions to Dismiss, liability in the First Circuit arises through a joint tortfeasor theory when each defendant has "intentionally engaged in a series of acts that would foreseeably result in some member of the team inflicting constitutional injury." Mem. & Order at 13, Doc. No. 89 (quoting *Eldredge*, 662 F.3d at 105–06). That is exactly what happened here. The record establishes a linear chain: Couture conferred with DCF and on-scene officers, consulted the Chief, received direction, and then delivered the threats that overcame the Sabeys' refusal to give up their children; the Chief, in turn, authorized the continued occupation of the curtilage and the escalation to forced entry, including the use of a SWAT team, if the family did not comply. Pls.' Facts ¶¶ 167–71, 172, 259–76, 287–92.

The Chief cannot avoid responsibility by characterizing his involvement as "only two phone calls." Those calls supplied the decisive approval for the tactic of escalating force. Pls.' Facts ¶¶ 261–76. Under the First Circuit's joint-tortfeasor standard, that is more than sufficient to

impose liability: Each intentionally engaged in acts that foreseeably resulted in a teammate inflicting the constitutional injury. *Eldredge*, 662 F.3d at 105–06.

III. Qualified Immunity Does Not Protect the Defendants

Qualified immunity shields officials from damages liability unless (1) the facts, taken in the light most favorable to Plaintiffs, show the violation of a constitutional right; and (2) the right was "clearly established" at the time of the conduct. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). Courts may address the prongs in either order, *id.* at 236, but at summary judgment the Court must credit Plaintiffs' version of the facts and draw reasonable inferences in their favor. *Tolan v. Cotton*, 572 U.S. 650, 657 (2014).

For the reasons explained above, the police officials violated the Plaintiffs' constitutional rights. The only question under qualified immunity is whether those rights were clearly established at the time.

A. The law is clearly established—no home entry without a warrant

The Chief's brief attempts to erase the warrant requirement by casting 51B(c) removals as a special circumstance to which the Fourth Amendment never applies. In effect, he asks this Court to recognize a first-of-its-kind "51B(c) child-removal" exception to the warrant requirement. That approach is irreconcilable with the Supreme Court's repeated instruction that the Fourth Amendment draws a "firm line at the entrance to the house," and that—absent an objective exigency—"that threshold may not reasonably be crossed without a warrant." *Payton*, 445 U.S. at 590. The Court has repeatedly explained that no state law can create a shortcut around that constitutional command. *See id.* at 602 n.55 (rejecting statutes that authorized warrantless home arrests); *see also Caniglia v. Strom*, 593 U.S. 195, 198–201 (2021) (rejecting "community caretaking" as a free-standing home-entry exception).

The controlling framework is settled. Warrantless entries into a home are "presumptively unreasonable;" the presumption may be overcome only by a specifically delineated, case-by-case exception such as true emergency aid, hot pursuit, or imminent evidence destruction. *Brigham City*, 547 U.S. at 403–06. The Supreme Court has repeatedly refused to endorse any per se rules of exigency. *See McNeely*, 569 U.S. at 149–56 (no categorical DUI exigency); *Lange*, 594 U.S. at 301–13 (no categorical hot pursuit for misdemeanors). That is because the touchstone is objective reasonableness under the "totality of the circumstances," with particular emphasis on whether there was time to secure a warrant. *McNeely*, 569 U.S. at 149–50; *Mincey*, 437 U.S.at 393–95. The Supreme Court's recent property-based decisions, *Jones* and *Jardines*, make clear that officers possess only a narrow, revocable license to approach, knock, wait briefly, and leave. Remaining after the resident says "leave" is an "unlicensed physical intrusion" into a constitutionally protected area. Nothing in the Fourth Amendment creates a child-welfare carve-out to that rule, and lower courts applying the same principles have rejected efforts to treat abuse investigations as categorical exceptions. *See, e.g.*, *Calabretta v. Floyd*, 189 F.3d 808, 813–15 (9th Cir. 1999) (social worker and police could not enter home without warrant or exigency during child-abuse check).

The Fourth Amendment's standards are federal, and state procedures and laws do not affect their scope, or the scope of what is "clearly established." Indeed, this case is not the first time that the warrant requirement has overcome state procedures. In such cases, state authorities always assert—as Chief O'Connell asserts—that the application of the Fourth Amendment would be "impractical" and "impede" the state's purposes. *See* O'Connell Br. at 14–15. In *Payton*, the State of New York argued that the application of the home warrant requirement to felony arrests would have a host of negative consequences. *Payton*, 445 U.S. at 602 n.55. But the answer is the same: "careful planning is possible," and in the extreme, entry without a warrant is still possible with

exigent circumstances. Here, careful planning—or any planning at all—would have made it easy for the state to attempt to obtain a warrant, without placing the children in any danger. The Court should hold the officers to this standard.

B. Defendants' cases do not justify a midnight, warrantless home intrusion

Defendants attempt to portray officers as following ordinary, everyday procedures. But in fact, as the record reveals, this situation was anything but ordinary. The Officers on the scene were uncomfortable with the unusual midnight seizure, the lack of a warrant (or any paperwork at all), and the supposed need to violently breach a peaceful home with children inside. Pls.' Facts ¶¶ 235–37; 248, 254.

Defendants try to justify the unusual posture—a midnight home raid without a warrant—with a handful of cases. But none of these cases involve facts remotely like those here. For example, *McCabe v. Life-Line Ambulance Serv., Inc.*, 77 F.3d 540 (1st Cir. 1996), involved a facial challenge to a government policy permitting warrantless entry to execute civil commitment orders. There, the court relied on the "special needs" doctrine to justify the policy of warrantless entry. *Id.* at 545. However, subsequent Supreme Court decisions have made clear that there is no free-standing caretaking or any other programmatic exception for home entry; so officers must obtain a warrant absent a true emergency based on the objective facts on the ground. *See Caniglia*, 593 U.S. at 198–201 (expressly rejecting First Circuit precedent extending "special needs" and "community caretaking" doctrine to the home); *see also McNeely*, 569 U.S. at 149–56. On the facts here, there simply was no emergency—the injury in question was weeks old. The case bears no resemblance to anything involving an urgent civil commitment order.

Another case relied on by Defendants, *Hatch*, 274 F.3d 12, involved a social worker's temporary, pre-hearing removal of a child based on information suggesting abuse. But this case did not even involve warrantless entry into a home. Instead, in *Hatch*, the First Circuit held that

temporary removal could be permissible if there was an objectively reasonable basis to suspect abuse. *Id.* at 21. And the Court did entertain the idea that this objectively reasonable suspicion may arise from a "single instance" of abuse. *Id. Hatch* does not sanction all police actions downstream of a single instance of possible abuse. Here, officers observed a quiet home, lingered for over an hour, conferred up the chain, discussed calling a tactical team—all of which suggest the need for a warrant, not an emergency demanding immediate action.

Finally, in *Wilmot v. Tracey*, 938 F. Supp. 2d 116 (D. Mass. 2013), social workers entered a residence to investigate allegations of child abuse. The Court dismissed the Fourth Amendment claim because the complaint itself alleged that the mother consented to entry and did not allege that her consent was overborne by threats. The Court did observe that child abuse investigations *could* involve exigent circumstances or, perhaps, a "special needs" rationale. *Id.* at 138–39. But the fact that a child abuse case *could* involve exigent circumstances has no relevance to whether this case did involve exigent circumstances. This case, unlike *Wilmot*, does not involve any allegations of contemporaneous or ongoing abuse requiring immediate intervention; they reported no sounds of distress, no unfolding danger, and chose to wait and confer rather than seek a warrant. If the Officers and the Chief had been familiar with the facts—they admittedly were not—they would have learned that the abuse in question took place weeks ago, the injury was healed, and an inspection of the home the previous day revealed no concerns.

Taken together, these authorities do not authorize what happened here. None of these cases can make the Police Defendants' actions reasonable in the face of the warrant presumption.

IV. The Police Defendants violated the Sabeys rights' under MCRA

The Massachusetts Civil Rights Act imposes liability on any person who "by threats, intimidation or coercion" interferes, or attempts to interfere, with the exercise or enjoyment of rights secured by federal or state law. Mass. Gen. Laws ch. 12, §§ 11H–11I. Here, after the Sabeys

revoked any implied license and refused entry, officers communicated that police would call NEMLEC and "breach the door," asserting "exigent circumstances" and that they would not leave without the children. Pls.' Facts ¶¶ 144, 167–72, 287–92. Those express threats and claims of authority constitute "threats, intimidation, or coercion" independent of the underlying Fourth Amendment trespass, and they directly produced the coerced "consent" and handover. Defendants essentially argue that MCRA does not apply because their threats were lawful. But for all the reasons shown above, threatening midnight forced entry without a warrant or exigency is not lawful on these facts; it is precisely the sort of coercion MCRA forbids. Nor does qualified immunity bar the MCRA claim where the federal law was clearly established; Massachusetts accords public officials a qualified-immunity defense coterminous with federal standards, and for the reasons set out in Part III, those standards are satisfied here. *See Duarte v. Healy*, 405 Mass. 43, 46–48 (1989).

CONCLUSION

The Court should deny the Police Defendants' motions for summary judgment and grant Plaintiffs' cross-motion for summary judgment.

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Respectfully submitted,

s/ *Wesley Hottot*

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2025, I served this document via the Court's electronic filing system to Defendants.

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