

**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 REPLY IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

In reams of filings, the parties have likely made the facts of this case seem sprawling and unmanageable. But with the standard for summary judgment in focus, the only facts that matter are the undisputed material facts.

Plaintiffs Josh Sabey and Sarah Perkins outline the undisputed material facts below. They provide a list of the key facts that the parties agree on, with comprehensive citations. In this way, Plaintiffs provide the Court with a roadmap for reviewing the content of more than a dozen statements of fact. The result is a factual record that is mostly uncontested, reasonably clear, and straightforward.

This factual record dictates the outcome on key legal issues discussed in Plaintiffs opening brief. First, the Sabey's breezeway was within the curtilage of their home because—like the porch in *Jardines*—it was open to the public for a brief knock on the door, but no more. *Jardines*

recognizes the Fourth Amendment’s prohibition on remaining at the entrance to a home, without a warrant, after being told to leave. The status of the Sabeys’ breezeway is also determined by how it functioned in the real world—not based on the terms of their lease. *See* Pls.’ Mem. in Supp. of MSJ (Doc. No. 208) at 4–7.

Second, the Sabeys surrendered their children to DCF based on threats of forcible removal. Again, the constitutional test is objective, based on all the circumstances, and determined in the real world. *See id.* at 7. The Sabeys were clearly not free to keep their children at home overnight. With police on their doorstep, DCF agents demanding immediate custody, and specific threats of force, the Sabeys had no choice but to wake their sleeping children and hand them over. Otherwise, the police would have used force to remove the children. There was no “peaceful resolution” other than the one the Sabeys chose: surrender.

Third, no constitutional exigency required the warrantless removal in this case. Forty-eight hours passed between when DCF first learned of C.S. 2’s rib injury and his (and his brother’s) “emergency” removal. In that time, both children received clean bills of health from their doctors. Multiple pediatricians and social workers concluded that the boys should be released to the care and custody of their parents. When DCF ordered “emergency removal,” C.S. 1 had been home for two days and C.S. 2 for one. That was more than ample time to get a warrant. Instead, DCF waited 48 hours—during which DCF social workers twice visited the family and twice determined the children were safe at home for the time being—and *then* ordered “emergency removal.” Under the correct constitutional standard, these circumstances clearly were not “exigent.” *See id.* at 9–16.

I. Summary of Undisputed Material Facts

Plaintiffs summarize the undisputed material facts below. The facts of this case are covered extensively in (1) Plaintiffs' Statement of Material Facts, Doc. No. 210 ("Pls.' Facts"); in (2) Defendants' three responses to that document:

- DCF Defendants' Responses to Plaintiffs' Statement of Material Facts (Doc. No. 237) ("DCF Resp.");
- Waltham Police Defendants Responses to Plaintiffs' Statement of Material Facts and Additional Statement of Material Facts (Doc. No. 233) ("WPD Resp."); and
- Chief Kevin O'Connell's Responses to Plaintiffs' Statement of Material Facts (Doc. No. 244) ("O'Connell Resp.");

and (3) the Reply to Defendants' Responses to Statement of Material Facts and Responses to New Statement of Facts (Doc. No. 265), which Plaintiffs filed today ("Pls.' Reply Facts").

Each of the bullets below summarizes a fact that is (in every meaningful way) *undisputed* and *material*. The undisputed and material nature of each proposition can be confirmed by comparing the cited paragraphs from Plaintiffs' Statement of Facts, Defendants' three responses and, where necessary, Plaintiffs' Reply to Defendants' Responses to Statement of Material Facts. This list provides the Court with everything it needs to rule for Plaintiffs and against Defendants on summary judgment.

1. Delay

- There was a 48-hour delay between the time DCF became aware of C.S. 2's rib injury and the time of removal. *See* Pls.' Facts (Doc. No. 210) ¶¶ 42–56, 72, 79–80, 99, 110–12, 146; *cf.* DCF Resp. (Doc. No. 237) ¶¶ 42–56, 72, 79–80, 99, 110–12, 146; WPD Resp. (Doc. No. 233) ¶¶ 42–56, 72, 79–80, 99, 110–12, 146; O'Connell Resp. (Doc. No. 244) ¶¶ 42–56, 72, 79–80, 99,

110–12, 146; *see also* Pls.’ Reply Facts (Doc. No. 265) ¶¶ 43–44, 51, 99, 112, 146 (discussing the evidence in detail where at least one Defendant arguably disputes a fact or contests materiality).

- Over those two days, DCF knew that Josh was home alone with C.S. 1 on July 13 and knew Josh and Sarah were home with both children on July 14. *See* Pls.’ Facts ¶¶ 72, 79–80, 99; *cf.* DCF Resp. ¶¶ 72, 79–80, 99; WPD Resp. ¶¶ 72, 79–80, 99; O’Connell Resp. ¶¶ 72, 79–80, 99; *see also* Pls.’ Reply Facts ¶ 99 (discussing DCF Defendants’ partial dispute of fact).

- Put differently, the Sabeys had custody of their children for two days while DCF had all the same information that would later support an “emergency” removal decision. *See id.*

- During that 48-hour period, DCF investigated the family, performed two home visits, and concluded that the children could safely stay with their parents for the time being. *See* Pls.’ Facts ¶¶ 101–12, 128–39; *cf.* DCF Resp. ¶¶ 101–12, 128–39; WPD Resp. ¶¶ 101–12, 128–39; O’Connell Resp. ¶¶ 101–12, 128–39; *see also* Pls.’ Reply Facts ¶¶ 103, 105, 107, 112, 133–34, 136–37.

- The social worker assigned to the case prepared a safety plan on behalf of DCF. *See* Pls.’ Facts ¶¶ 101–12; *cf.* DCF Resp. ¶¶ 101–12; WPD Resp. ¶¶ 101–12; O’Connell Resp. ¶¶ 101–12; *see also* Pls.’ Reply Facts ¶¶ 103, 105, 107, 112.

- DCF now attempts to distance itself from the safety plan by pretending that it was just something the assigned social worker, Axel Rivera, created on his own. *See* DCF Resp. ¶¶ 101–12. But it is undisputed that Rivera was assigned by DCF to investigate the Sabey family and, in that role, determined there was no emergency need for removal. *See* Pls.’ Facts ¶¶ 128–39; *cf.* DCF Resp. ¶¶ 128–39; WPD Resp. ¶¶ 128–39; O’Connell Resp. ¶¶ 128–39; *see also* Pls.’ Reply Facts ¶¶ 133–134, 136–37.

- The safety plan was in place, agreed to by DCF and the Sabeys, and waiting to be finalized on Monday. *See* Pls.’ Facts ¶¶ 135–36; *cf.* DCF Resp. ¶¶ 135–36; *see also* Pls.’ Reply Facts ¶ 136 (discussing the DCF Defendants’ attempt to dispute aspects of this fact).
- Rivera had another visit scheduled for Monday, when he would again observe the Sabeys in their home and report back to DCF. *See* Pls.’ Facts ¶ 147(7); *cf.* DCF Resp. ¶ 147(7).
- Other than the rib injury to C.S. 2, DCF had no reason to believe the children were in danger. *See* Pls.’ Facts ¶ 147; *cf.* DCF Resp. ¶ 147; *see also* Pls.’ Reply Facts ¶ 147 (discussing the DCF’s Defendants’ attempt to dispute aspects of this fact). To be sure, the DCF Defendants now point to other evidence that it argues also supports the “emergency” determination—namely that C.S. 2 had fallen off the bed, gotten wedged in the railings of a bed, and roughoused with his brother. *See* Pls.’ Facts ¶ 147(1); *cf.* DCF Resp. ¶ 147(1); *see also* Pls.’ Reply Facts ¶ 147(1). They add that C.S. 1 was burned by some hot water the previous year. *See* Pls.’ Facts ¶ 147(2); *cf.* DCF Resp. ¶ 147(2); *see also* Pls.’ Reply Facts ¶ 147(2). But even considering this evidence, C.S. 1 and C.S. 2 were taken from their parents in the middle of the night for no reason other than C.S. 2’s unexplained rib fractures. *See id.*

2. No evidence of abuse

- There is one injury in this case alleged to be abuse: C.S. 2’s rib fracture. Everyone agrees that the fracture happened at least 10 days to six weeks before removal. *See* Pls.’ Facts ¶ 27; *cf.* DCF Resp. ¶ 27; WPD Resp. ¶ 27; O’Connell Resp. ¶ 27; *see also* Pls.’ Reply Facts ¶ 27 (discussing the DCF Defendants’ attempt to dispute this fact).
- There were no other injuries to either child. *See* Pls.’ Facts ¶¶ 23–28, 88–89; *cf.* DCF Resp. ¶¶ 23–28, 88–89; WPD Resp. ¶¶ 23–28, 88–89; O’Connell Resp. ¶¶ 23–28, 88–89; *see also* Pls.’ Reply Facts ¶¶ 23, 25–27, 89.

- There is no evidence whatsoever of injury to C.S. 1. *See* Pls.’ Facts ¶¶ 87–89; *cf.* DCF Resp. ¶¶ 87–89; WPD Resp. ¶¶ 87–89; O’Connell Resp. ¶¶ 87–89; *see also* Pls.’ Reply Facts ¶¶ 88–89 (addressing O’Connell’s dispute about materiality). Physical examinations and testing of C.S. 1 revealed nothing unusual, and his pediatrician had “no concerns” about abuse. Pls.’ Facts ¶ 86; *cf.* DCF Resp. ¶ 86; WPD Resp. ¶ 86, O’Connell Resp. ¶ 86.
- The burns suffered by C.S. 1 the previous year were not caused by abuse and, while known to the child protection team at the time, were not deemed evidence of abuse or neglect. *See* Pls.’ Facts ¶¶ 87, 147(2); *cf.* DCF Resp. ¶¶ 87, 147(2); WPD Resp. ¶¶ 87, 147(2); O’Connell Resp. ¶¶ 87, 147(2); *see also* Pls.’ Reply Facts ¶¶ 147(2) (addressing the DCF Defendants’ quibbles with these paragraphs).
- Other than his rib injury, there is zero evidence of abuse to C.S. 2. *See* Pls.’ Facts ¶ 147; *cf.* DCF Resp. ¶ 147; WPD Resp. ¶ 147; O’Connell Resp. ¶ 147; *see also* Pls.’ Reply Facts ¶ 147 (discussing the DCF Defendants’ attempt to dispute aspects of this fact).
- There is no evidence that C.S. 2 was ever injured from falling off the bed, getting stuck between slats, or roughhousing. *See id.* But in any case, DCF knew about these things before C.S. 2 was released from the hospital into the custody of his parents. *See* Pls.’ Facts ¶¶ 21, 32, 34, 71–72; *cf.* DCF Resp. ¶¶ 21, 32, 34, 71–72; *see also* Pls.’ Reply Facts ¶ 21.
- The Sabeys were calm and measured throughout the encounter at their front door. *See* Pls.’ Facts ¶¶ 192, 222; *cf.* DCF Resp. ¶¶ 192, 222; WPD Resp. ¶¶ 192, 222; O’Connell Resp. ¶¶ 192, 222; *see also* Pls.’ Reply Facts ¶ 192.
- The video of that encounter shows calm, sober adults. *See* Pls.’ Facts ¶¶ 184, 188, 222, 300; *cf.* DCF Resp. ¶¶ 184, 188, 222, 300; WPD Resp. ¶¶ 184, 188, 222, 300; O’Connell Resp. ¶¶ 184, 188, 222, 300.

3. *Removal*

- Area Program Manager Katheryn Butterfield got involved late on Friday, July 15. *See* Pls.’ Facts ¶ 122; *cf.* DCF Resp. ¶ 122.
- Butterfield directed Rivera to make an unannounced visit to check on the children before the end of the day. *See* Pls.’ Facts ¶ 128; *cf.* DCF Resp. ¶ 128; WPD Resp. ¶ 128; O’Connell Resp. ¶ 128.
- For the second time in as many days, Rivera visited the Sabey home and found no danger to the children or any cause for concern. *See* Pls.’ Facts ¶¶ 128–34; *cf.* DCF Resp. ¶¶ 128–34; WPD Resp. ¶¶ 128–34; O’Connell Resp. ¶¶ 128–34; *see also* Pls.’ Reply Facts ¶¶ 133–34.
- For the second time, Rivera concluded the Sabey children should stay with their parents. *See* Pls.’ Facts ¶ 138; *cf.* DCF Resp. ¶ 138; WPD Resp. ¶ 138; O’Connell Resp. ¶ 138.
- Another Area Program Manager, Nicolas Holahan, agreed with Rivera’s decision to leave the Sabey children with their parents for the weekend. *See* Pls.’ Facts ¶¶ 125, 138–39; *cf.* DCF Resp. ¶¶ 125, 138–39; WPD Resp. ¶¶ 138–39; O’Connell Resp. ¶¶ 138–39.
- After the close of business, however, Butterfield and the Regional Director, Candice Gemski, overrode those decisions from afar, ordering immediate emergency “B3” removal of both Sabey children. *See* Pls.’ Facts ¶¶ 143–50; *cf.* DCF Resp. ¶¶ 143–50; WPD Resp. ¶¶ 143–50; O’Connell Resp. ¶¶ 143–50; *see also* Pls.’ Reply Facts ¶¶ 146–48.
- Still, more than four and a half hours passed between the time of the removal decision and the police and DCF’s arrival at the home. *See* Pls.’ Facts ¶¶ 143, 146, 159, 179; *cf.* DCF Resp. ¶¶ 143, 146, 159, 179; WPD Resp. ¶¶ 143, 146, 159, 179; O’Connell Resp. ¶¶ 143, 146, 159, 179; *see also* Pls.’ Reply Facts ¶¶ 146, 159.

- No one on the scene saw any indication the children were in danger. *See* Pls.’ Facts ¶¶ 183–86, 200–01, 246; *cf.* DCF Resp. ¶¶ 183–86, 200–01, 246; WPD Resp. ¶¶ 183–86, 200–01, 246; O’Connell Resp. ¶¶ 183–86, 200–01, 246; *see also* Pls.’ Reply Facts ¶¶ 185–86, 200–01, 246.
- The sergeant in charge knew only what DCF had told him. He likewise saw nothing indicating child abuse in the Sabey home and personally never felt that C.S. 1 or C.S. 2 were in any danger. *See* Pls.’ Facts ¶¶ 200–01, 246; *cf.* DCF Resp. Facts ¶¶ 200–01, 246; WPD Resp. Facts ¶¶ 200–01, 246, O’Connell Resp. Facts ¶¶ 200–01, 246; *see also* Pls.’ Reply Facts ¶¶ 200–01, 246.
- In other words, the police had no reason to believe the children were in danger other than what DCF was telling them. *See* Pls.’ Facts ¶¶ 169–70, 183–86, 200–01, 246; *cf.* DCF Resp. ¶¶ 169–70, 183–86, 200–01, 246; WPD Resp. ¶¶ 169–70, 183–86, 200–01, 246; O’Connell Resp. ¶¶ 169–70, 183–86, 200–01, 246; *see also* Pls.’ Reply Facts ¶¶ 185–86, 200–01, 246.
- The police relied entirely on DCF’s emergency removal decision. *See* Pls.’ Facts ¶¶ 170, 280–87, 370–71; *cf.* WPD Resp. ¶¶ 170, 280–87, 370–71; O’Connell Resp. ¶¶ 170, 280–87, 370–71.
- The highest-ranking officer on the scene, Sergeant Scichilone, was uncomfortable removing the children without paperwork authorizing the removal. *See* Pls.’ Facts ¶¶ 194–95, 202–07, 309; *cf.* DCF Resp. ¶¶ 194–95, 202–07, 309; WPD Resp. ¶¶ 194–95, 202–07, 309; ¶¶ 194–95, 202–07, 309; *see also* Pls.’ Reply Facts ¶¶ 205–07.
- None of the officers present had ever heard of “B3” removal, but they understood it to require the immediate removal of the children without a warrant. *See* Pls.’ Facts ¶¶ 164, 198, 238, 280–87; *cf.* DCF Resp. ¶¶ 164, 198, 238, 285; WPD Resp. ¶¶ 164, 198, 238, 280–87; O’Connell Resp. ¶¶ 164, 198, 238, 280–86; *see also* Pls.’ Reply Facts ¶ 164. Likewise, Lieutenant

Couture had never heard of a removal of this type, despite having handled more than 50 DCF removals. *See id.*

- DCF Defendants Butterfield and Gemski made the “B3” removal decision with full knowledge of the facts. *See* Pls.’ Facts ¶¶ 143–50; *cf.* DCF Resp. ¶¶ 143–50; WPD Resp. ¶¶ 143–50; O’Connell Resp. ¶¶ 143–50; *see also* Pls.’ Reply Facts ¶¶ 146–48. They knew the children had been discharged to their parents’ care. *See* Pls.’ Facts ¶ 99; *cf.* DCF Resp. ¶ 99; *see also* Pls.’ Reply Facts ¶ 99. They knew the Sabeys had been caring for their children at home. *See* Pls.’ Facts ¶¶ 110–12; *cf.* DCF Resp. ¶¶ 110–12; *see also* Pls.’ Reply Facts ¶ 112. And they knew about the two favorable home visits. Pls.’ Facts ¶¶ 73–77, 128–39; *cf.* DCF Resp. ¶¶ 73–77, 128–39; *see also* Pls.’ Reply Facts ¶¶ 133–34, 136–37.

- Butterfield directed the on-duty supervisor, Aaron Griffin, to take immediate emergency custody of the Sabey children. Griffin likewise had not met the Sabeys. He worked over the phone, interfacing with the social workers and police officers on the scene to carry out Butterfield and Gemski’s order. *See* Pls.’ Facts ¶¶ 151–70; *cf.* DCF Resp. ¶¶ 151–70; WPD Resp. ¶¶ 151–70; O’Connell Resp. ¶¶ 151–70; *see also* Pls.’ Reply Facts ¶¶ 152, 157, 159–60, 162, 164.

- DCF social workers Arruda and Kalvinek were on the scene. *See* Pls.’ Facts ¶¶ 154–70; *cf.* DCF Resp. ¶¶ 143–50; WPD Resp. ¶¶ 143–50; O’Connell Resp. ¶¶ 143–50; *see also* Pls.’ Reply Facts ¶¶ 146–48. They told police that there was a “B3” emergency removal order for the Sabey children based on an unexplained rib fracture that was deemed non-accidental. *See* Pls.’ Facts ¶ 164; *cf.* DCF Resp. ¶ 164; WPD Resp. ¶ 164; O’Connell Resp. ¶ 164; *see also* Pls.’ Reply Facts ¶ 164.

4. *The breezeway*

- All Defendants on the scene entered the Sabey’s breezeway and remained there after being told to leave. *See* Pls.’ Facts ¶¶ 182, 187–92, 208–09, 301; *cf.* DCF Resp. ¶¶ 182, 187–92, 208–09, 301; WPD Resp. ¶¶ 182, 187–92, 208–09, 301; O’Connell Resp. ¶¶ 182, 187–92, 208–09, 301; *see also* Pls.’ Reply Facts ¶¶ 192, 301.

- The breezeway was directly adjacent to the Sabeys’ apartment door. *See* Pls.’ Facts ¶ 172; *cf.* DCF Resp. ¶ 172; WPD Resp. ¶ 172; O’Connell Resp. ¶ 172; *see also* Pls.’ Reply Facts ¶ 172.

- There was no separation between the breezeway and the entrance to the apartment. *See id.*

- The breezeway was enclosed on all sides and accessible only through a lockable door. *See* Pls.’ Facts ¶¶ 172–75; *cf.* DCF Resp. ¶¶ 172–75; WPD Resp. ¶¶ 172–75; O’Connell Resp. ¶¶ 172–75; *see also* Pls.’ Reply Facts ¶¶ 172, 174–75. It was not open to the public. *See id.* It was not open for deliveries. *See id.* It was not even open to the U.S. Postal Service. *See id.*

- On a daily basis, the breezeway was used exclusively by the Sabeys. *See* Pls.’ Facts ¶¶ 176–78; *cf.* DCF Resp. ¶¶ 176–78; WPD Resp. ¶¶ 176–78; O’Connell Resp. ¶¶ 176–78; *see also* Pls.’ Reply Facts ¶¶ 176–78. They treated it as a kind of “walk-out closet,” where they stored toys, a stroller, and car seats. *See id.* Only the Sabeys cleaned and maintained the space. *See id.*

- The door to the breezeway was normally locked, especially at night. *See* Pls.’ Facts ¶ 172; *cf.* DCF Resp. ¶ 172; WPD Resp. ¶ 172; O’Connell Resp. ¶ 172; *see also* Pls.’ Reply Facts ¶ 172.

5. *Forcible removal was next*

- The standoff at the Sabeys’ front door began at 1:00 a.m. on Saturday, July 16, and lasted until after 2:30 a.m. *See* Pls.’ Facts ¶¶ 179, 310–11; *cf.* DCF Resp. ¶¶ 179, 310–11; WPD Resp. ¶¶ 179, 310–11; O’Connell Resp. ¶¶ 179, 310–11; *see also* Pls.’ Reply Facts ¶¶ 310–11.
- There would have been no “peaceful resolution” unless the Sabeys surrendered their children. *See* Pls.’ Facts ¶¶ 261, 263, 273, 307; *cf.* DCF Resp. ¶¶ 261, 263, 273, 307; WPD Resp. ¶¶ 261, 263, 273, 307; O’Connell Resp. ¶¶ 261, 263, 273, 307; *see also* Pls.’ Reply Facts ¶¶ 261, 263, 273, 307.
- The Sabeys repeatedly told the social workers and police officers to leave and come back with a warrant. *See* Pls.’ Facts ¶¶ 192, 209, 216; *cf.* DCF Resp. ¶¶ 192, 209, 216; WPD Resp. ¶¶ 192, 209, 216; O’Connell Resp. ¶¶ 192, 209, 216; *see also* Pls.’ Reply Facts ¶¶ 192.
- They remained for nearly two hours. *See* Pls.’ Facts ¶¶ 216, 311; *cf.* DCF Resp. ¶¶ 216, 311; WPD Resp. ¶¶ 216, 311; O’Connell Resp. ¶¶ 216, 311, 332; *see also* Pls.’ Reply Facts ¶ 311.
- Griffin told Couture that the police have “taken down the door” in similar removal situations. *See* Pls.’ Facts ¶ 254; *cf.* DCF Resp. ¶ 254; WPD Resp. ¶ 254; O’Connell Resp. ¶ 254.
- Griffin suggested police tell the Sabeys “we’re going to force entry.” *See* Pls.’ Facts ¶ 253; *cf.* DCF Resp. ¶ 253; WPD Resp. ¶ 253; O’Connell Resp. ¶ 253.
- Chief O’Connell and Lieutenant Couture discussed “kicking” and “breach[ing]” door. *See* Pls.’ Facts ¶¶ 262–64, 272–73; *cf.* DCF Resp. ¶¶ 262–64, 272–73; WPD Resp. ¶¶ 262–64, 272–73; O’Connell Resp. ¶¶ 262–64, 272–73; *see also* Pls.’ Reply Facts ¶¶ 262–64, 273.
- Lieutenant Couture told the Sabeys’ lawyer, Paul Moraski, that police “may have to breach the door.” *See* Pls.’ Facts ¶ 287; *cf.* DCF Resp. ¶ 287; WPD Resp. ¶ 287; O’Connell Resp. ¶ 287; *see also* Pls.’ Reply Facts ¶ 287. Couture also summarized his call with Moraski when

talking to Chief O’Connell afterwards, saying that he told him there would be a team called “and they usually bring a team to breach a door.” *See* Pls.’ Facts ¶ 333; *cf.* DCF Resp. ¶ 333; WPD Resp. ¶ 333; O’Connell Resp. ¶ 333.

- The social workers and officers on the scene would not leave without the children. *See* Pls.’ Facts ¶¶ 216, 305–07, 332; *cf.* DCF Resp. ¶¶ 216, 305–07, 332; WPD Resp. ¶¶ 216, 305–07, 332; O’Connell Resp. ¶¶ 216, 305–07, 332; *see also* Pls.’ Reply Facts ¶¶ 305–07.

- There were no circumstances under which the police would have left “before DCF took physical custody of the children.” *See* Pls.’ Facts ¶ 274; *cf.* DCF Resp. ¶ 274; WPD Resp. ¶ 274; O’Connell Resp. ¶ 274.

- Moraski accurately communicated these threats to the Sabeys. He told the Sabeys that police would “forcibly come into their house and breach the door.” *See* Pls.’ Facts ¶¶ 295–96; *cf.* DCF Resp. ¶¶ 295–96; WPD Resp. ¶¶ 295–96; O’Connell Resp. ¶¶ 295–96; *see also* Pls.’ Reply Facts ¶¶ 295–96.

- Chief O’Connell wanted the Sabeys to know that the police would “stay here until we make sure those kids are safe and taken.” *See* Pls.’ Facts ¶ 276; *cf.* WPD Resp. ¶ 276; O’Connell Resp. ¶ 276; *see also* Pls.’ Reply Facts ¶ 276. Lieutenant Couture added that the standoff was “not a situation that we can walk away from liability-wise.” *See* Pls.’ Facts ¶ 271; *cf.* WPD Resp. ¶ 271; O’Connell Resp. ¶ 271. And Couture testified that the only “peaceful resolution” was immediate removal of the kids—by breaching the door if necessary. *See* Pls.’ Facts ¶ 273; *cf.* DCF Resp. ¶ 273; WPD Resp. ¶ 273; O’Connell Resp. ¶ 273; *see also* Pls.’ Reply Facts ¶ 273.

- The social workers and police officers on the scene gave no indication that the Sabeys had the right to refuse to turn over the kids. *See* Pls.’ Facts ¶¶ 216, 276, 305; *cf.* DCF Resp. ¶¶ 216,

276, 305; WPD Resp. ¶¶ 216, 276, 305; O’Connell Resp. ¶¶ 216, 276, 305; *see also* Pls.’ Reply Facts ¶¶ 276, 305.

- Chief O’Connell gave permission to call in NEMLEC, including its SWAT Team. *See* Pls.’ Facts ¶¶ 265, 272; *cf.* DCF Resp. ¶¶ 265, 272; WPD Resp. ¶¶ 265, 272; O’Connell Resp. ¶¶ 265, 272; *see also* Pls.’ Reply Facts ¶ 265. He wanted the Sabeys to know there were no circumstances under which police would leave until DCF took custody of the kids. *See* Pls.’ Facts ¶ 274, *cf.* O’Connell Resp. ¶ 274.

- The Sabeys were in a vulnerable state throughout the midnight encounter, having been awoken with sleeping children inside. Yet, they did not immediately comply after speaking with Moraski. They continued talking to officers about what would happen next. *See* Pls.’ Facts ¶¶ 303–12; *cf.* DCF Resp. ¶¶ 303–12; WPD Resp. ¶¶ 303–12; O’Connell Resp. ¶¶ 303–12; *see also* Pls.’ Reply Facts ¶¶ 303, 305–07, 310–12. They only surrendered their children after confirming that the police would not leave without them. *See* Pls.’ Facts ¶ 307; *cf.* DCF Resp. ¶ 307; WPD Resp. ¶ 307; O’Connell Resp. ¶ 307; *see also* Pls.’ Reply Facts ¶ 307.

- Over more than 48 hours, no one made any attempt to get a warrant. *See* Pls.’ Facts ¶¶ 150, 153, 210–11, 241; *cf.* DCF Resp. ¶¶ 150, 153, 210–11, 241; WPD Resp. ¶¶ 150, 153, 210–11, 241; O’Connell Resp. ¶¶ 150, 153, 210–11, 241.

- Defendants had ample time to get a warrant and they had the means to do so. *See* Pl.’s Facts. ¶¶ 210, 241, 277; *cf.* DCF Resp. ¶¶ 210, 241, 277; WPD Resp. ¶¶ 210, 241, 277, 241; O’Connell Resp. ¶¶ 210, 241, 277.

II. The Breezeway Was Curtilage

The curtilage analysis in this case is straightforward. In their opening brief, the Sabeys explain why there is no question of fact about their breezeway’s status as an area “immediately

surrounding and associated with the home.” See Pls.’ Memo. in Supp. of MSJ (Doc. No. 208) at 4–7 (quoting *Florida v. Jardines*, 569 U.S. 1, 6 (2013)). Since *Jardines*, the Supreme Court has recognized a limited common-law license to approach a person’s front door: A visitor can, “knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave.” 569 U.S. at 8. In this case, law enforcement violated that license by refusing to leave the breezeway.

Attempting to avoid this straightforward analysis, the police Defendants invoke the terms of the Sabeys’ lease, see WPD Opp. to MSJ (Doc. No. 235) at 2–3, and argue that apartment dwellers never have curtilage protection in the common areas of their buildings—that constitutional protection, they claim, is somehow reserved for single-family homes, see *id.* at 11–13. But landlord-tenant relationships do not determine Fourth Amendment protections. The Constitution protects against government intrusion, not against private landlords. And under *Jardines*, curtilage analysis focuses on common-law expectations, not the terms of private leases or the fact that your neighbors also have access to a non-public area. See 569 U.S. at 6. Far from limiting the curtilage to single-family homes, *Jardines* recognizes everyone’s right to tell someone who is knocking on their front door to go away.

That is why, since *Jardines*, the First Circuit has found a curtilage violation in multi-family-housing settings akin to the Sabeys’ apartment. In *French v. Merrill*, 15 F.4th 116, 122 (1st Cir. 2021), it was a home where three people lived together and everyone used a small front porch with a single door. Despite the common status of the entryway, the Court in *French* found a curtilage violation and denied qualified immunity to officers who merely approached the front door and knocked. *Id.* In this case, of course, officers did more—they remained after being repeatedly told to leave. The porch in *French* was just like the breezeway here: A private entryway generally off-limits to the public. Both entryways are therefore within the curtilage.

The police and DCF Defendants mischaracterize the Sabeys' home as an "apartment building" and cite pre-*Jardines* cases, *United States v. Hawkins*, 139 F.3d 29 (1st Cir. 1998), and *United States v. Werra*, 638 F.3d 326, 331 (1st Cir. 2011), for the idea that common areas of apartment buildings never enjoy Fourth Amendment protection. See WPD Opp. to MSJ (Doc. No. 235) at 12–13; DCF Opp. to MSJ (Doc. 236) at 21–24. Their argument is beside the point. The Sabeys lived in a two-unit duplex. The breezeway in this case bears far more resemblance to the private entryways in *Jardines* and *French* than to the apartment basement in *Hawkins* or foyer in *Werra*. And, still, the First Circuit in *Werra* ruled that a tenant in a multifamily home *had* a reasonable expectation of privacy in the foyer and therefore could sue officers who entered the foyer without a warrant. 638 F.3d at 335–36. This precedent shows the curtilage is breached whenever law enforcement stands at someone's front door without a warrant and without permission to remain there after being asked to leave. That is what happened here.

CONCLUSION

The Court should grant Plaintiffs' motion for summary judgment (Doc. 205) and deny Defendants' cross-motions for summary judgment.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2025, I served this document via the Court's electronic filing system to Defendants.

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