

25-FM-0607



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IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

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FONDA ALLEN,

*Appellant,*

v.

TAMIEKA WHITEHEAD,

*Appellee.*

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On Appeal from the Superior Court of the District of Columbia

Case No. 2024-CPO-003496

The Honorable Sean C. Staples

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BRIEF OF DC KINCARE ALLIANCE AS *AMICUS CURIAE* IN SUPPORT OF  
APPELLANT AND REVERSAL

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rules 29(a)(4)(A) and 26.1(a) of the D.C. Court of Appeals

Rules, amicus states as follows:

DC Kincare Alliance states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. DC Kincare Alliance has no parent corporation, and no publicly held company has 10% or greater ownership in the organization.

Dated: September 22, 2025

/s/ Theodore A. Howard

Theodore A. Howard

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**STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE**

DC Kincare Alliance is a nonprofit organization that supports the legal, financial and related needs of caregivers (usually grandmothers) who raise D.C.'s most vulnerable and at-risk children when their parents are not able to care for them.<sup>1</sup> The organization respects and empowers relatives to care for at-risk D.C. children by providing (a) legal representation; (b) information and education; and (c) advocacy.<sup>2</sup>

DC Kincare Alliance has an interest in this appeal because the determination of the issue before this court will directly impact individuals the organization serves - specifically grandparents and other non-parental caregivers with legal custody of children - and their access to legal protections crucial to their safety. Because the organization seeks to achieve a future in which all D.C. children live in safe and stable homes, the organization has a direct interest in advocating for interpretations of the law that promote safety and stability for all District families facing domestic violence.

DC Kincare Alliance files this brief with a corresponding Motion for Leave to File Amicus Brief, pursuant to Rule 29(a) of the D.C. Court of Appeals Rules.

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<sup>1</sup> DC Kincare Alliance, <https://www.dckincare.org/> (last visited Sept. 21, 2025).

<sup>2</sup> *Id.*

## INTRODUCTION

Like Ms. Allen, thousands of individuals in the District of Columbia have legal custody of their grandchildren, children who are relatives, or children with whom they share a relative-like relationship. This intersection of a legal and familial relationship often creates complex and difficult dynamics between kinship caregivers and the biological parents of the children, many of whom may have lost custody because they are unable to care for their children for a variety of reasons. In navigating these relationships, kinship caregivers may have their safety – and the safety of the children they care for – threatened through acts of domestic violence. The D.C. Intrafamily Offenses Act (IFOA) provides the only adequate civil remedy for protecting these individuals and the members of their households through the use of civil protection orders (CPO).

In the case before this court, Ms. Allen was denied access to CPO protection from her abuser, her grandchildren's mother, on jurisdictional grounds, leaving her and her grandchildren exposed to continued danger. The trial court's ruling is not only inconsistent with the letter of the law and legislative history of the IFOA, but it also violates sound public policy in failing to provide for safety of grandparents and other kinship caregivers who are integral to the well-being of D.C. children and the sustaining of strong family units.

## SUMMARY OF ARGUMENT

This court should reverse the lower court's dismissal of Ms. Allen's petition for a CPO. The lower court's determination that it lacked jurisdiction over Ms. Allen because she does not have the requisite intrafamily relationship with her grandchildren's mother (the respondent) under the IFOA is contrary to the statute's plain language and clear intent, and contravenes public policy interests in protecting the safety of kinship caregivers and children and preserving the stability of families in the District. Unique and variable circumstances cause people to come together and create a wide array of familial relationships, and children are routinely involved in this process, with many such families being held together by grandparents and other kinship caregivers. Regardless of the composition of their families, similarly situated kinship caregivers and children are entitled to the same legal protections against domestic violence as the members of a conventional nuclear family unit. Any contrary reading of the IFOA leaves thousands of kinship caregivers without the necessary legal remedies that CPOs should and must provide for them and the children in their care.



## ARGUMENT

### I. A BROAD READING OF THE IFOA PROTECTS THE SAFETY OF D.C. CHILDREN CARED FOR BY KINSHIP CAREGIVERS, PROMOTING PUBLIC POLICY.

#### A. Kinship Care Remains a Safe Haven for Millions of Children Nationwide, and in Particular in the District of Columbia.

Nearly 2.5 million children across the country live in kinship care relationships and are being raised by a family member in a home with no biological parent present.<sup>3</sup> This means that approximately 3% of children living in the United States depend on kinship caregivers as a safe haven when their parents cannot care for them.<sup>4</sup> Nearly equal numbers of grandparents – more than 2.4 million – are responsible for their grandchildren in kinship care living situations.<sup>5</sup>

This national snapshot significantly corresponds with family relationships in the District of Columbia (D.C.). As of 2024, over 14,000 children in D.C. lived in kinship care.<sup>6</sup> Of this number, over 10,000 children were reported to live with

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<sup>3</sup> *Children in Kinship Care in the United States*, The Annie E. Casey Found. (last updated Sept. 2025), <https://tinyurl.com/5f4c3jde>.

<sup>4</sup> *Id.*

<sup>5</sup> *Fact Sheet: Grandfamilies and Kinship Families: Strengths and Challenges*, Generations United (May 2022), <https://tinyurl.com/bddybzwn> (citing U.S. Census Bureau data accessed in Mar. 2022).

<sup>6</sup> U.S. Census Bureau, *Table B09018: Relationship to Householder for Children Under 18 Years in Households, 2024 American Community Survey 1-Year Estimates Detailed Tables*, <https://data.census.gov/table/ACSDT1Y2024.B09018?q=B09018> (last visited Sept. 16, 2025).

their grandparents and an additional 4,400 were reported to live with other relatives or non-relative caregivers.<sup>7</sup> These numbers are striking. Over 11% of all children in D.C. depend on some form of kinship care for their well-being and safety.<sup>8</sup> According to a policy report issued by The Annie E. Casey Foundation, “one in 11 of all children, and one in five Black children, will live within a kinship family sometime during their childhood.”<sup>9</sup>

D.C. Kincare Alliance has first-hand experience supporting these families in the Nation’s Capital, as 100% of its clients are kinship caregivers, and approximately 30% of its clients are paternal relatives, family friends, or godparents.

Recognizing the critical importance of kinship families in the District, the D.C. Council named September 2025 as “Kinship Care Month.”<sup>10</sup> This designation exists “to recognize children in kinship families, and the grandparents, other relatives, and family friends who raise them, ensuring their safety, promoting their well-being, and establishing a safe and stable home for these young people.”<sup>11</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *See id.*

<sup>9</sup> 72 D.C. Reg. 008465 (2025), Kinship Care Month Recognition Resolution of 2025 (citing *Stepping Up for Kids: Kids Count Policy Report*, The Annie E. Casey Found. (2012), at 2, <https://www.aecf.org/resources/stepping-up-for-kids>).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

In proclaiming its “Kinship Care Month” Resolution, the D.C. Council highlighted that “it is vitally important for the public to grow in awareness of the challenges faced by children, grandparents, and other relatives in kinship families; so as to ensure there are services and supports available and accessible to enable kinship youth to grow and thrive.”<sup>12</sup> Through “Kinship Care Month,” the District affirms its commitment to the “refuge” that kinship families provide children and “honors the priceless role these grandparents and other kinship caregivers play in the lives of the children they love.”<sup>13</sup>

**B. The IFOA is Intended to Promote the Safety of Family Members Regardless of Family Composition.**

The statistics cited above underscore the extent to which the District of Columbia is comprised of unique families that reflect the diversity of our communities and relationships. This includes, without limitation, blended families with stepparents, stepsiblings, and half-siblings as a result of parents divorcing or separating; single-parent households; multigenerational households; adoptive and foster families; and families consisting of grandparents and other third-party caregivers raising children. Likewise, fictive kin – individuals who are unrelated by blood or marriage but considered relatives – have played central roles in the

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

lives of families (particularly Black and Brown families) for generations, providing the same love, support, and community that are characteristic of many biological relationships.<sup>14</sup> Non-traditional familial relationships are commonplace in our society, and the children within them are often the thread that ties family members together.

It is this recognition of the diverse and unique composition of families that has led the D.C. Council to amend the IFOA multiple times to further expand the definition of “family member” beyond just spouses, children, parents, and roommates to include persons “[t]o whom the offender is related by blood, adoption, *legal custody*, marriage, or domestic partnership.”<sup>15</sup> (*Emphasis added.*) The IFOA amendments were made to ensure that the law reflects the ever-evolving nature of modern family relationships, which often include informal arrangements such as cohabitating partners, extended family members, and fictive-kin.<sup>16</sup> The

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<sup>14</sup> Robert Joseph Taylor et al., *Fictive Kin Networks among African Americans, Black Caribbeans, and Non-Latino Whites*, NIH Nat’l Libr. of Med. (Feb. 19, 2021), <https://tinyurl.com/mujr22ce>; Julia J. Eger, *Legally Recognizing Fictive Kin Relationships: A Call for Action*, ABA Ctr. on Child. & L. (Mar. 1, 2022), <https://tinyurl.com/58nduc4x>.

<sup>15</sup> Proceedings Regarding Intrafamily Offenses Amendment Act of 1982, D.C. Law 4-144, § 5(A), 29 D.C. Reg. 3131 (1982); D.C. Code § 16-1001(5A).

<sup>16</sup> The IFOA was expanded to include relationships based on “bonds of a genuinely familial, devoted, or homemaking nature; the substance of the relationship, not its form, being the key.” *McKnight v. Scott*, 665 A.2d 973, 975 (D.C. 1995) (quoting *Report of the Committee on the Judiciary of the Counsel of*

expanded definition of “family member” improved access to legal protections by ensuring that a broader range of possible victims of domestic violence were eligible for civil protection orders. It also mitigated the legal loophole that allowed many abusers to escape accountability for their intrafamily offenses because the petitioner did not fit into a narrow definition of family that was inconsistent with the practical realities of how many people live with and relate to one another.

If the expanded definition of “family member” is broad enough to encompass non-traditional, modern relationships, it is undoubtedly broad enough to encompass the relationship between Ms. Allen (a paternal grandmother) and Ms. Whitehead (the mother of Ms. Allen’s grandchildren). Not only are these individuals related by legal custody pursuant to a D.C. Superior Court custody order concerning the minor children, but they are also related by blood through their biological relationship with the minor children – Ms. Allen as the mother of the children’s father and Ms. Whitehead as the children’s mother.<sup>17</sup> And indeed, it is this familial relationship that gave rise to the incidents alleged in Ms. Allen’s CPO petition – including Ms. Whitehead coming to Ms. Allen’s home, threatening to kill Ms. Allen, and claiming Ms. Allen took her children – as well as Ms.

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*the District of Columbia, Bill 4-195, Proceedings Regarding Intrafamily Offenses Amendment Act of 1982* (May 12, 1982), at 9).

<sup>17</sup> See Brief of Appellant, *Allen v. Whitehead*, No. 25-FM-0607 (D.C. Sept. 15, 2025), at 10-14.

Whitehead continuing to harass and threaten Ms. Allen and express anger over the court-ordered visitation schedule.<sup>18</sup> Clearly, the relationship between the parties is precisely the kind of familial relationship for which the IFOA intends to provide a remedy for intrafamily acts or credible threats of violence.

Furthermore, a broad reading of the IFOA to encompass relationships like that between Ms. Allen and Ms. Whitehead ensures that the Act does not arbitrarily treat similarly situated caregivers differently. For example, it defies logic that the IFOA would promote the safety of a maternal grandmother who is a legal caregiver of her grandchildren seeking a CPO against the children's mother, but not a paternal grandmother if she is the legal caregiver of those same children. Both grandparents need and should be entitled to the same protection if the children's parent has threatened harm against them, and public policy demands that they have access to the same forms of protective relief under functionally indistinguishable circumstances. The only reasonable interpretation of the IFOA is one that provides legal protection and justice for all family members who are victims of domestic violence, regardless of how their familial bonds were formed.

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<sup>18</sup> See Appellate Appendix, *Allen v. Whitehead*, No. 25-FM-0607 (D.C. Sept. 15, 2025), at 018 (citing Findings of Fact and Conclusions of Law and Order Entering Permanent Custody, 2021 DRB 1353 (D.C. Super. Ct.), at 18).

**C. District Children are Not Safe if Grandparents and Fictive Kin Cannot Obtain CPO Relief.**

Given the large numbers of children in the District being raised in kinship care relationships, there is also a public policy interest in providing as many caregivers as possible with safety from abuse, harassment, and other intrafamily offenses that may occur within the context of those relationships. Ms. Allen is one of thousands of grandparent caregivers who are providing love, support, shelter, and financial security to District children, many of whom would otherwise be placed with strangers in the foster care system. Such caregivers, in particular, need adequate protection from any family member who threatens their safety and the stability of their homes. They are central to the stability of the District as a cohesive community in which children can grow and thrive.<sup>19</sup>

Indeed, kinship care remains vital for children’s safety, facilitating “sibling and community ties,” “[effective] behavioral and mental health outcomes,” and “permanency for children who cannot live with their parents.”<sup>20</sup> Safety remains

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<sup>19</sup> A broad reading of the term “family member” is also: (a) consistent with the legislative history of the IFOA, which confirms its broad remedial purpose of protecting victims of family abuse, and (b) consistent with the legal requirement of interpreting terms within a statute in a manner that gives each word effect. *See* Brief of Appellant, *supra* note 17, at 16-22.

<sup>20</sup> 72 D.C. Reg. 008465 (2025); Heidi R. Epstein, *Kinship Care is Better for Children and Families*, ABA Ctr. on Child. & L. (July 1, 2017), <https://tinyurl.com/3v638b6b>.

the cornerstone of kinship care families and cannot be preserved without protecting caregivers' safety. The narrow construction of the IFOA reflected in the ruling rendered by the trial court would limit the legal protections available for thousands of kinship caregivers facing domestic violence. This would decrease public safety, undermine strong families, and negatively impact the well-being of the children in their care.

Crimes or the threat of crimes committed against a kinship caregiver will inevitably affect the safety and welfare of the children living in his/her/their home, even if the harmful acts are not directed against the children themselves. For example, if caregivers are unable to obtain CPO protection, their abusers are likely to continue committing intrafamily offenses against them, which could significantly affect the mental health and wellbeing of the children who may observe and therefore vicariously experience this violence. Because Ms. Allen was awarded sole legal and physical custody of her grandchildren, the children would presumptively be exposed to any violence directed at Ms. Allen or her home.

Grandparents with legal custody of their grandchildren may face special challenges in navigating the care of their grandchildren that impact the children's safety and security. Children raised by grandparents "exhibit a variety of physical, behavioral, and emotional problems to a greater degree than the general population of children, often due to the difficult situations that caused them to be placed in



their grandparent's care.”<sup>21</sup> Often, grandparents are caring for their grandchildren because the children's biological parents are dealing with substance abuse, in addition to other challenges including “military deployment, incarceration, mental or physical illness, and death.”<sup>22</sup> For example, Ms. Whitehead's mental health challenges were a significant factor in the court awarding sole legal and physical custody of Ms. Whitehead's children to Ms. Allen.<sup>23</sup> Such fraught situations may trigger conflict between parents and custodial grandparents, which may rise to the level of intrafamily offenses against the grandparents – as was the case for the parties in this proceeding.

Without access to CPOs, kinship caregivers will have inadequate legal recourse<sup>24</sup> to protect themselves and the children in their care in a time of crisis. In addition to providing stay-away orders, no contact orders, and options for

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<sup>21</sup> *Fact Sheet: Grandfamilies and Kinship Families: Strengths and Challenges*, supra note 3, at 5.

<sup>22</sup> *Id.* at 1.

<sup>23</sup> See Appellate Appendix, supra note 18, at 019; 023-024 (citing Findings of Fact and Conclusions of Law and Order Entering Permanent Custody, at 19; 23-24).

<sup>24</sup> The other legal remedies available to an individual who does not qualify for a CPO, including Anti-Stalking Orders (ASO) (D.C. Code § 16-1061 *et seq.*) and Temporary Restraining Orders (Super. Ct. Civ. R. 65), were not intended and are not equipped for domestic violence incidents involving petitioners with familial relationships with the respondent. Further, they do not provide adequate remedies for petitioners with custody of children (*e.g.*, ASOs are limited to stalking incidents occurring within 90 days of filing, do not offer custody relief, and were intended for parties with non-familial relationships).

restorative relief through family violence and related counseling programs,<sup>25</sup> CPO proceedings can uniquely provide petitioners with the ability to obtain immediate custody relief. In the District, same-day ex-parte emergency custody orders are only available in very limited circumstances where a child is in imminent danger, has been kidnapped, there has been complete denial of access to the child, or other extraordinary circumstances.<sup>26</sup> Where a party is unable to meet this high standard, they will likely have to wait weeks or even months before they can obtain custody relief pursuant to a D.C. Family Court order. In contrast, under the IFOA, a party can obtain same-day, ex-parte temporary custody relief pursuant to a Temporary Protective Order (TPO) upon a showing of “good cause.”<sup>27</sup>

The relatively lower legal threshold for a TPO allows petitioners to gain the immediate protection that they need for themselves and their children (including children for whom they have legal custody) when navigating domestic violence. For Ms. Allen, a TPO (and CPO) could have temporarily modified the terms of her existing permanent custody order to halt, limit, or otherwise adjust Ms. Whitehead’s visitation with her children if it would be detrimental to the children’s health and wellbeing. Indeed, in a family crisis, relief from abuse and custody

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<sup>25</sup> See Brief of Appellant, *supra* note 17, at 24-25.

<sup>26</sup> D.C. Super. Ct. Admin Order No. 14-23, Revised Case Management Plan for the Domestic Relations Branch (Dec. 31, 2014).

<sup>27</sup> D.C. Code § 16-1004(e)(2)(B).

relief go hand-in-hand in preventing the escalation of violence and ensuring the safety of the children, as the most vulnerable members of our society.

Certainly, the D.C. Council did not intend for the IFOA to protect some children more than others, simply due to the happenstance that they reside with different categories of relatives or kinship caregivers. Accordingly, an order dismissing the CPO petition of a paternal grandmother with legal custody of her grandchildren on jurisdictional grounds is inconsistent with both the legislative purpose of the IFOA and its underlying public policy interest in protecting District children and families.

### **CONCLUSION**

For all of the foregoing reasons, this court should reverse the lower court's dismissal of Ms. Allen's petition for a CPO and remand for further proceedings.

Respectfully submitted,

Dated: September 22, 2025

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of September 2025, I electronically filed the foregoing brief and this Certificate of Service with the court's electronic filing system. I further certify that a copy of the foregoing brief and this Certificate of Service was also served, through the court's electronic filing system, upon Laura A. Foggan, Jennifer C. Mika, and Kelsey Clinton, counsel for Ms. Fonda Allen, and Ms. Tamioka Whitehead, this day of September 22, 2025. Additionally, a copy of this Brief and Certificate of Service was also mailed via first class mail to appellee Tamioka Whitehead at her home address:

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on September 22, 2025. A courtesy copy was also emailed to Ms. Whitehead on the same day.

Dated: September 22, 2025

/s/ Theodore A. Howard

Theodore A. Howard