



FOR IMMEDIATE RELEASE

Media Inquiries: Judy Pino, 202-869-5218

NCLA Asks AZ Court of Appeals to Require Due Process Before DCS Adds Names to Central Registry

Phillip B. v. Mike Faust and Arizona Department of Child Safety

Washington, DC (April 19, 2021) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a [reply brief](#) today in the Arizona Court of Appeals. The suit challenges the Maricopa County Superior Court’s decision to allow the Arizona Department of Child Safety (DCS) to overrule factual findings and credibility determinations made by an independent administrative law judge (ALJ). DCS’s unjust decision placed NCLA client Phillip B. (whose name has been redacted to preserve his anonymity under court rules) on the DCS Central Registry of child abusers for 25 years, destroying his reputation and career.

After taking live testimony, the ALJ did not find probable cause to support the accusations of alleged child abuse against Mr. B. But state law allowed DCS to appeal the ALJ’s decision to its own Director, who in July 2019, disregarded due process and rejected the findings of the ALJ, adopting his own agency’s unsupported and unproven version of events. Acting as prosecutor, judge, and jury, then-director of DCS, Greg McKay, decided unilaterally that the charges against Mr. B. were ‘substantiated.’

For 27 years, Phillip B. has been a coach, school teacher, and group-home caregiver for troubled teens. In 2018, Mr. B. was falsely accused of child abuse by one of the teens in a group home. After a two-day trial, the ALJ found that Mr. B. committed no abuse when he placed his hand on the upset teenager’s shoulder to calm him down.

Director McKay rewrote the ALJ’s facts and applied an unconstitutional standard of proof that deviated from DCS’s own regulations. Additionally, Director McKay carried out his own decision without waiting for the court process to commence, much less conclude. DCS thus placed Mr. B.’s name on the Central Registry while he was still pursuing his state court appeals. NCLA argues that DCS’s review process violates the statute, federal due process, and the Arizona Constitution’s due-process and separation-of-powers clauses. The Court should reverse and vacate the DCS Director’s and the Superior Court’s decisions, and follow the initial conclusion of the neutral ALJ, who deemed the allegations against Mr. B. baseless. In addition, the Court of Appeals should require DCS to accord due process before placing anyone’s name in the Central Registry in the future.

NCLA released the following statement:

“DCS made the unbelievable statement that it can achieve its mission of protecting children only if no state court interferes with DCS’s antics. But when an agency is bent on disregarding due process, meaningful judicial oversight is sorely needed.”

— **Adi Dynar, Litigation Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

###