ent who, based solely upon their own personal views of the impact of their emotional, medical, or even professional situation on their children, intentionally removes themselves from their children's lives. As this Court recently opined, "[p]arental rights are not preserved by waiting for a more suitable or convenient time to perform one's parental responsibilities while others provide the child with his or her physical and emotional needs." *In re Adoption of C.M.*, 255 A.3d at 364 (citation omitted). Instead, a parent must take overt steps to establish or maintain the parent-child relationship.

While I have long-championed appellate court deference to trial court discretion in termination cases based upon the trial courts' first-hand observation of the parties, *see, e.g.*, *In re T.S.M.*, 71 A.3d at 267, I nevertheless recognize that this Court should not countenance a trial court's determination that is manifestly unreasonable. While our standard of review requires appellate courts "to accept the findings of fact and credibility determinations of the trial court if they are supported by the record," a trial court's decision nonetheless may be reversed "upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will." *Id.* at 267, 270 (holding that "we must reverse the trial court's determination in this case because we find the court's conclusion to be manifestly unreasonable, and thus an abuse of discretion").

For the reasons set forth above, I conclude that the denial of termination of parental rights in this case was manifestly unreasonable based upon Father's absolute and deliberate decision to withhold all contact with Children for nearly four years, well in excess of the six-month period for demonstrating parental abandonment under Section 2511(a)(1) of the Adoption Act. In my view, it is beyond cavil that a parent who intentionally removes himself from his children for years at a time fails to meet the minimum standards for reasonable firmness necessary to maintain a parent-child relationship.

Justice Mundy joins this dissenting opinion.

In the INTEREST OF: Y.W.-B., a Minor

Appeal of: J.B., Mother

In the Interest of: N.W.-B., a Minor

Appeal of: J.B., Mother

No. 1 EAP 2021
No. 2 EAP 2021

Supreme Court of Pennsylvania.

Argued: May 19, 2021

Decided: December 23, 2021

Background: City Department of Human Services (DHS) filed petitions to compel mother's cooperation with home visit, after she refused consent for home inspection in response to general protective services (GPS) report of suspected child neglect. The Court of Common Pleas, Philadelphia County, Family Division, Nos. CP-51-DP-0002108-2013 and CP-51-DP-0002387-2016, granted petitions, and mother appealed. The Superior Court, Nos. 1642 EDA 2019, 1643 EDA 2019, Nichols, J., affirmed, 241 A.3d 375. Mother's petition for allowance to appeal was granted.

Holdings: The Supreme Court, Nos. 1 EAP 2021 and 2 EAP 2021, Donohue, J., held that:

(1) DHS's entry into mother's home without her consent based on GPS report was not minimally intrusive spot check, for purposes of determining orders were supported by probable cause to believe that children were being neglected, in accordance with Fourth Amendment and Pennsylvania Constitution;

(2) as matter of first impression, probable cause to believe that child was victim of neglect was governed by traditional principles of federal and state constitutional limitations against unreasonable search and seizure;

(3) finding of probable cause based on testimony of DHS caseworker on issues not alleged in petitions violated due process;

(4) DHS did not demonstrate probable cause based on allegation that reporter had not observed mother feed one of children on single day for period of approximately eight hours while mother was engaged in protest;

(5) finding of probable cause based on part on evidence of mother's prior history with DHS was fundamental error;

(6) DHS did not show nexus between allegations in petitions and mother's home, as would support finding of probable cause;

(7) DHS's failure to present evidence to establish credibility and reliability of unidentified source who filed GPS report, or any evidence to corroborate information provided by unidentified source, precluded finding of probable cause;

(8) provision of Pennsylvania Child Protective Services Law (CPSL) requiring DHS to keep confidential name of anonymous reporter of report alleging child abuse did not apply to anonymous GPS report of alleged neglect; and

(9) Superior court acted dehors record by considering alleged fire damage to mother's home, in reviewing trial court's determination of probable cause.

Reversed.

Dougherty, J., filed opinion concurring in part and dissenting in part in which Todd, J., joined.

Mundy, J., filed dissenting opinion.

1. Infants ⚿1460

An order compelling cooperation with the scheduling and completion of an in-home inspection by a government agency in response to a report of child abuse or neglect is a final order, for purposes of appeal.

2. Appeal and Error ⚿19

In general, the mootness doctrine requires that an actual case or controversy must be extant at all stages of review.

3. Appeal and Error ⚿3172

Constitutional challenges present questions of law over which appellate review is plenary.

4. Infants ⚿2406, 2415(1)

With respect to findings of fact and credibility determinations of the trial court, the standard of review in dependency cases requires an appellate court to accept them if they are supported by the record, but does not require the appellate court to accept the lower court's inferences or conclusions of law.

5. Infants ⚿1438

An order permitting a home visit without parental consent upon an agency's receipt of a general protective services (GPS) report from someone alleging that a child is in need of general protective services must comport with federal and state constitutional limitations on unreasonable

searches. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8; 23 Pa. Cons. Stat. Ann. § 6375(g), (j); 55 Pa. Code § 3490.232(f), (j).

6. Searches and Seizures ⇐25.1

Physical entry of the home is the chief evil against which the Fourth Amendment is directed. U.S. Const. Amend. 4.

7. Searches and Seizures ⇐25.1

At very core of Fourth Amendment stands right of man to retreat into his own home and there be free from unreasonable governmental intrusion. U.S. Const. Amend. 4.

8. Searches and Seizures ⇐25.1

Freedom in one's own dwelling is the archetype of the privacy protection secured by the Fourth Amendment, and physical entry of the home is the chief evil against which it is directed; thus, the Fourth Amendment draws a firm line at the entrance to the house. U.S. Const. Amend. 4.

9. Searches and Seizures ⇐124

The Pennsylvania Constitution protects all citizens in the Commonwealth against unreasonable searches by requiring a high level of particularity, i.e., that warrants describe "as nearly as may be" the place to be searched and the items to be seized with specificity. Pa. Const. art. 1, § 8.

10. Searches and Seizures ⇐113.1

The Pennsylvania Constitution's prohibition against unreasonable search and seizure requires that a warrant be supported by probable cause to believe that the items sought will provide evidence of a crime. Pa. Const. art. 1, § 8.

11. Searches and Seizures ⇐113.1

Probable cause exists to support the issuance of a search warrant where the facts and circumstances within the affiant's knowledge and of which he or she has reasonably trustworthy information are sufficient in and of themselves to warrant a person of reasonable caution in the belief that a search should be conducted. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8.

12. Searches and Seizures ⇐113.1

To assess whether probable cause to search has been established, the issuing authority makes a practical, common-sense decision based on the totality of the circumstances and the information in the affidavit in support of an application for a warrant, whether, given the relative veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that relevant evidence will be found in a particular place. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8.

13. Courts ⇐97(1)

Pennsylvania Supreme Court is not bound by the decisions of federal circuit courts on constitutional questions.

14. Searches and Seizures ⇐40.1

The constitutional requirement of probable cause to permit entry into a private home is not excused based upon any relative perceived societal importance. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8.

15. Infants ⇐1438

In a dependency case, the government cannot condition a parent's right to raise her children on periodic home inspection without parental consent on a general protective services (GPS) report of suspected child abuse or neglect unsupported by probable cause to believe that abuse or neglect is occurring within the home. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8; 23 Pa. Cons. Stat. Ann. § 6375(j); 55 Pa. Code § 3490.232(j).

16. Infants ⚿1438

In the dependency context, probable cause to conduct a home visit without parental consent upon a general protective services (GPS) report of suspected child abuse or neglect depends upon whether probable cause exists to justify the entry into a particular home based upon credible evidence that child neglect or abuse may be occurring in that particular home. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8; 23 Pa. Cons. Stat. Ann. § 6375(j); 55 Pa. Code § 3490.232(j).

17. Searches and Seizures ⚿40.1

"Dragnet searches" in which the government searches every person, place, or thing in a specific location or involved in a specific activity are not predicated on individualized showings of probable cause, nor indeed on any kind of individualized suspicion of wrongdoing; on the contrary, the hallmark of a dragnet search is its generality, as it reaches everyone in a category rather than only a chosen few. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8.

See publication Words and Phrases for other judicial constructions and definitions.

18. Searches and Seizures ⚿36.1

Dragnet searches are justified if they satisfy balance of interests and are necessary because regime of individualized suspicion could not effectively serve government's interest; based on this rationale, there could not reasonably be an individual suspicion of wrongdoing because the inspections are routine and periodic. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8.

19. Infants ⚿1438

While home visits without parental consent in response to a general protective services (GPS) report of suspected child abuse or neglect are conducted by civil government officials rather than members of law enforcement, they do not fit within the two categories of administrative searches, i.e., dragnet searches or individualized searches involving a person with a reduced expectation of privacy, entitled to reduced protections under the Fourth Amendment and the Pennsylvania Constitution. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8; 23 Pa. Cons. Stat. Ann. § 6375(j); 55 Pa. Code § 3490.232(j).

20. Infants ⚿1438

Entry by city Department of Human Services (DHS) into mother's home without her consent based on general protective services (GPS) report alleging possible neglect could not be characterized as "minimally intrusive spot check," for purposes of determining whether DHS had probable cause to believe that children were being neglected, as basis for order compelling mother's cooperation with home inspection, in accordance with mother's rights protected by Fourth Amendment and Pennsylvania Constitution, despite DHS's assertion that inspection was to merely check for working utilities, windows, stove, food, and beds; order imposed no limitation on scope of search, and thus granted DHS unfettered discretion as to thoroughness of search, including, if it so chose, to engage in general rummaging of all rooms inside home and belongings. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8; 23 Pa. Cons. Stat. Ann. § 6375(j); 55 Pa. Code § 3490.232(j).

21. Infants ⚿1438

While state agencies have an interest in investigating credible allegations of child neglect, nothing short of probable cause to believe that a child is the victim of neglect or abuse, guided by the traditional principles that govern its federal and state constitutional limitations against unreasonable search and seizure, will suffice when a trial court makes a determination as to whether or not to authorize a home visit

without parental consent. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8.

22. Searches and Seizures ⚿40.1

The evidence necessary to establish probable cause in both criminal and child dependency case must be evaluated pursuant to certain basic principles developed primarily in search and seizure jurisprudence – including the existence of a nexus between the areas to be searched and the suspected wrongdoing at issue, an assessment of the veracity and reliability of anonymous sources of evidence, and consideration of the age of the facts in relation to the facts presented to establish probable cause; these fundamental principles are critical to ensure that a court's finding of probable cause is firmly rooted in facts that support a constitutional intrusion into a private home without consent or exigency. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8.

23. Searches and Seizures ⚿31.1

There is no "social worker exception" to compliance with constitutional limitations on an entry into a home without consent or exigent circumstances; as a result, the Fourth Amendment applies equally whether the government official is a police officer conducting a criminal investigation or a caseworker conducting a civil child welfare investigation. U.S. Const. Amend. 4.

24. Infants ⚿1437, 1438

The Fourth Amendment's and Pennsylvania Constitution's protections against unreasonable searches and seizures applies to searches conducted in civil child neglect proceedings, which have the same potential for unreasonable government intrusion into the sanctity of the home. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8.

25. Infants ⚿1458

Pennsylvania's Child Protective Services Law (CPSL) does not require a trial court to conduct an evidentiary hearing in connection with the filing of a petition to compel cooperation with a home visit without parental consent in a proceeding initiated by the filing of a general protective services (GPS) report of child abuse or neglect; at its discretion, the trial court may either hold an evidentiary hearing or issue a ruling on the averments of fact set forth in the petition to compel, and in either case, a finding of probable cause to believe that a child is being abused or neglected must be supported by the allegations in the petition and supporting testimony, if any. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8; 23 Pa. Cons. Stat. Ann. § 6375(j); 55 Pa. Code § 3490.232(j).

26. Constitutional Law ⚿4401
Infants ⚿1455

Finding of probable cause to believe that mother's children were being neglected, as support for order granting petitions by city Department of Human Services (DHS) to compel mother's cooperation with home visit upon general protective services (GPS) report of suspected child neglect, based on testimony of DHS caseworker regarding concerns of family's homelessness and inadequate care provided to children while mother was protesting outside city housing authority, violated due process, where neither petition alleged family's homelessness nor "inadequate basic care," and therefore, petitions failed to provide mother with notice of important issues, misled her with regard to evidence that DHS intended to introduce at evidentiary hearing on petitions, and deprived her of opportunity to present evidence to dispute DHS caseworker's testimony. U.S. Const. Amend. 14; Pa. Const. art. 1, § 8; 23 Pa. Cons. Stat. Ann. § 6375(j); 55 Pa. Code § 3490.232(j).

27. Constitutional Law ⚿4401

On a petition for home inspection without parental consent based on a report of suspected child abuse or neglect, parents, in order to protect the sanctity of their homes in accordance with federal and state constitutional protections against unreasonable search and seizure, are entitled, at a minimum, to the basic tenets of due process, which include, fundamentally, the key principles underpinning due process: notice and an opportunity to be heard. U.S. Const. Amends. 4, 14; Pa. Const. art. 1, § 8.

28. Constitutional Law ⚿4401

On a petition to compel a parent's cooperation with a home visit in response to a general protective services (GPS) report of suspected child abuse or neglect, the State may not, consistent with the fundamental principles of due process, set forth its allegations of alleged wrongdoing in a verified petition to compel a home visit, but then at the evidentiary hearing on the petition present entirely contrary evidence. U.S. Const. Amend. 14; Pa. Const. art. 1, § 8; 23 Pa. Cons. Stat. Ann. § 6375(j); 55 Pa. Code § 3490.232(j).

29. Constitutional Law ⚿3881, 3882

Adequate notice, for due process purposes, includes the right to notice of the issues and an opportunity to offer evidence in furtherance of such issues. U.S. Const. Amend. 14; Pa. Const. art. 1, § 8.

30. Infants ⚿1457

City Department of Human Services (DHS) did not demonstrate probable cause to believe that children were being neglected, as required to support petition to compel mother's cooperation with home visit without her consent, in response to general protective services (GPS) report of suspected child neglect, based on allegation that reporter had not observed mother feed one of children on single day for period of approximately eight hours while mother was engaged in protest; DHS presented no evidence indicating that children were malnourished or were not being fed. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8; 23 Pa. Cons. Stat. Ann. § 6375(j); 55 Pa. Code § 3490.232(j).

31. Infants ⚿1457

Trial court's finding of probable cause to believe that children were being neglected, based on part on evidence of mother's prior history with Department of Human Services (DHS), specifically that several years prior, children had been removed from home due to deplorable conditions within home, was fundamental error, on petitions by DHS to compel mother's cooperation with home visit in response to general protective services (GPS) report of suspected neglect; mother had resolved conditions that had led to children's removal years before petitions were filed, which resulted in reunification of family and DHS dismissing case, and DHS presented no evidence at hearing on petitions of any recurrence of concerns regarding condition of home. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8; 23 Pa. Cons. Stat. Ann. § 6375(j); 55 Pa. Code § 3490.232(j).

32. Infants ⚿1455

City Department of Human Services (DHS) did not show nexus between allegations in petitions to compel mother's cooperation with home visit and mother's home, as would support finding of probable cause to believe that children were being neglected, as required to issue orders granting petitions, in response to general protective services (GPS) report of suspected neglect; petitions alleged that it was "unknown" whether mother had fed child during eight-hour period that mother was engaged in protest, and such allegation bore no connection to mother's home, much less that inspection of home would reveal lack

of food or that children were malnourished. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8; 23 Pa. Cons. Stat. Ann. § 6375(j); 55 Pa. Code § 3490.232(j).

33. Searches and Seizures ⚿121.1

Stale evidence may not be used to establish the probable cause necessary to issue a search warrant; instead, the conclusion that probable cause exists must be based on facts which are closely related in time to the date the warrant is issued; if too old, the information is stale, and probable cause may no longer exist. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8.

34. Infants ⚿1457

City Department of Human Services' (DHS) failure to present any evidence to establish credibility and reliability of unidentified source who filed general protective services (GPS) report alleging possible neglect of mother's children, or any evidence to corroborate information provided by unidentified source, precluded finding of probable cause to believe that children were being neglected, as required to support DHS's petitions to compel mother's cooperation with home visit without her consent. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8; 23 Pa. Cons. Stat. Ann. § 6375(j); 55 Pa. Code § 3490.232(j).

35. Infants ⚿1439

Provision of Pennsylvania Child Protective Services Law (CPSL) requiring Department of Human Services (DHS) to keep confidential name of anonymous reporter of a report alleging child abuse did not apply to anonymous general protective services (GPS) report of alleged neglect. 23 Pa. Cons. Stat. Ann. § 6340(c).

36. Infants ⚿1457

The demeanor of a witness, without more, does not constitute a basis for a finding of probable cause to believe that a child is being neglected, as required to permit entry into the parent's home without his or her consent. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8; 23 Pa. Cons. Stat. Ann. § 6375(j); 55 Pa. Code § 3490.232(j).

37. Infants ⚿1459

Superior court acted dehors record when it considered alleged fire damage to mother's home in determining whether orders granting petitions by city Department of Human Services' (DHS) to compel mother's cooperation with home visit, in response to general protective services (GPS) report of suspected child neglect, were supported by finding of probable cause that children were being neglected; while petitions indicated that mother had advised agency outreach worker that fire had destroyed prior residence, trial court did not, based upon boarded window or otherwise, conclude that mother's current home had suffered fire damage, and fire damage to current home was not mentioned at evidentiary hearing on petitions or in trial court's written opinion on mother's statement of matters complained of on appeal. U.S. Const. Amend. 4; Pa. Const. art. 1, § 8; Pa. R. App. P. 1925(a).

Appeal from the Order of Superior Court entered on October 8, 2020 at No. 1642 EDA 2019 affirming and reversing the Order entered on June 11, 2019 in the Court of Common Pleas, Philadelphia County, Family Division at No. CP-51-DP-0002108-2013

Appeal from the Order of Superior Court entered on October 8, 2020 at No. 1643 EDA 2019 affirming and reversing the Order entered on June 11, 2019 in the Court of Common Pleas, Philadelphia County, Family Division at No. CP-51-DP-0002387-2016

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Michael Eugene Angelotti, Esq., for Appellant J.B., Mother, for Appellee, G.W.-B., Father.

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Sharon K. Wallis, Esq., for Appellee Y.W.-B., a Minor.

Frank P. Cervone, Esq., Matthew Hare Duncan, Esq., Marguerite C. Gualtieri, Esq., Barry M. Kassel, Esq., for Appellee Amicus Curiae Support Center for Child Advocates.

BAER, C.J., SAYLOR, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

OPINION

JUSTICE DONOHUE

A report from an unidentified source provided the sole basis for an allegation that Mother (J.B.) was homeless and had failed to feed one of her children during a single eight-hour period and led to the issuance of an order compelling her to allow the Philadelphia Department of Human Services ("DHS") to enter and inspect the family residence. Before the Court is the question of whether DHS established sufficient probable cause for the trial court to issue the order permitting entry into the home without consent. We conclude that DHS did not establish probable cause and thus reverse the order of the Superior Court.

I. Factual and Procedural History

Mother, who is politically active, lives with her two young children ("Y.W.-B" and "N.W.-B") and the children's father ("Father") in Philadelphia. On May 22, 2019, DHS allegedly received a general protective services report ("GPS report") from an unidentified source alleging possible neglect by Mother. Although DHS referenced this GPS report several times at the evidentiary hearing and used it to refresh its sole witness's recollection, it inexplicably never introduced it into evidence. The only information of record regarding the contents of the GPS report are set forth in the "Petitions to Compel Cooperation" (the "Petitions to Compel") subsequently filed by DHS. In paragraph "J" of the Petitions to Compel, DHS summarized the relevant allegations in the GPS report against Mother as follows:

> J. On May 22, 2019, DHS received a GPS report alleging that three weeks earlier, the family had been observed sleeping outside of a Philadelphia Housing Authority (PHA) office located at 2103 Ridge Avenue; that on May 21, 2019, [Mother] had been observed outside of the PHA office from 12:00 P.M. until 8:00 P.M. with one of the children in her care; that Project Home dispatched an outreach worker to assess the family; that [Mother] stated that she was not homeless and that her previous residence had burned down; and that it

> was unknown if [Mother] was feeding the children [sic] she stood outside of the PHA office for extended periods of time.[1] This report is pending determination.

Petitions to Compel, 5/31/2019, ¶ J.

In summary, and as set forth in paragraph "J," two allegations were made in the report: first, around three weeks prior to May 21, 2019 (or on approximately May 1, 2019), the unidentified reporter claimed to have observed Mother's family sleeping outside of the Philadelphia Housing Authority. Project Home pursued this allegation with Mother, who denied the family was homeless. Second, on May 21, 2019, the unidentified source apparently indicated that he or she had also observed Mother, with one of her children, protesting outside of the office of the Philadelphia Housing Authority from noon until eight in the evening, and that it was "unknown" if Mother had fed the child during that eight-hour time period. Mother does not challenge that these were the claims of possible neglect in the GPS report, and we thus rely on the allegations in paragraph J in our analysis and disposition.

The same source provided DHS with the address of the family home. Project Home, a Philadelphia organization that attempts to alleviate homelessness, dispatched a worker on May 22, 2019 to approach Mother.[2] In response to the Project Home worker's questions, Mother stated that she was at the Philadelphia Housing Authority to protest and that she was not homeless, although she indicated that a previous home had been involved in a fire.

Later that same day, Tamisha Richardson, a DHS caseworker, verified the address of the family's home via a search of the Department of Welfare's records. When she arrived at this address later in the day after the Project Home worker's visit, she encountered Father, who denied Richardson entry into the residence and called Mother, who then spoke with her over the phone. Trial Court Opinion, 9/9/2019, at 6-7. Mother reiterated that she was protesting at the Philadelphia Housing Authority on May 21st and denied that she had either of the children with her on that date. Shortly thereafter, Mother arrived at the family home with the children and ushered them into the house. Mother informed Richardson that she would not allow her into the home absent a court order. *Id.* Richardson left but returned later the same day accompanied by police officers, again seeking entry into the home. Mother and Father continued to refuse entry. *Id.*

On May 31, 2019, without conducting any additional investigation or making any effort to corroborate the allegations of the unidentified author of the GPS report, DHS filed two Petitions to Compel the parents' cooperation with an in-home visit, one for each of the children. In the Peti-

1. It is not entirely clear whether this allegation relates to the family sleeping outside of the Philadelphia Housing Authority three weeks earlier or on May 21st while Mother was protesting for eight hours. Because this allegation regarding a failure to feed the children as she "**stood** outside of the PHA office" (rather than sleeping outside of the PHA office), herein we will assume that this allegation refers to Mother's protesting activities on May 21st. The trial court made no finding of fact on the issue and the Superior Court did not reference it in its opinion. In any event, this assumption has no effect on our disposition of the appeal before us.

2. The Project Home representative did not testify at the evidentiary hearing and offered no evidence regarding whether or not the family was homeless. The record merely indicates that the representative asked Mother if her family was homeless and Mother responded that they were not. Petitions to Compel, 5/31/2019, ¶ J.

tions to Compel, DHS set forth the events of May 22, 2019 and detailed the family's prior involvement with DHS, which consisted of a dependency matter that began in 2013 when DHS received a GPS report indicating that the family home "was in deplorable condition; that there were holes in the walls; that the home was infested with fleas; that the home lacked numerous interior walls; that the interior structure of the home was exposed; that the home lacked hot water service and heat; and that the home appeared to be structurally unsound." Petitions to Compel, 5/31/2019, ¶ C. On October 29, 2013, Y.W.-B was adjudicated dependent and committed to DHS [3] until July 20, 2015, at which time DHS transferred legal and physical custody back to Mother and Father. *Id.* ¶¶ E-F. The family received in-home services through local community agencies and treatment centers through November 10, 2015, at which time DHS ceased its protective supervision of Y.W.-B and discharged the dependency matter.[4] *Id.* ¶¶ H-I.

On June 11, 2019, the trial court held a hearing on the Petitions to Compel, at which Mother and Father appeared with counsel. DHS called Richardson as its single witness. Richardson testified to the events of May 22nd and explained that because of the allegations in the GPS report, she was required to assess the inside of the home to complete her investigation. N.T., 6/11/2019, at 11. She did not state or offer any evidence to support any belief that the conditions inside the home were deficient in any respect (as had been the case in 2013). The trial court then questioned Mother from the bench as to the status of her housing, the operability of her utilities, her employment status and whether the children were up-to-date with their medical and dental exams. Mother responded by verifying her address and affirming that the utilities were functioning in her home, that she was employed, and that the children were current with their medical and dental exams. *Id.* at 12-14. During this inquiry, Mother asked the presiding judge why he was asking these questions of her and voiced her opinion that his inquiries did not relate to the allegations in the GPS report. *See id.* at 13, 19.

Mother also stated her view that the GPS report was made in retaliation for her protests of the Philadelphia Housing Authority. *Id.* at 15. She insisted that this was the third time [5] that DHS had "com[e] after me. Every time the reports were proven to be false. This is retaliation. I'm in the news. I'm engaging in an ongoing protest at the [Philadelphia Housing Au-

3. N.W.-B was born in January 2015. Petitions to Compel, 5/31/19, ¶ G.

4. The Petitions to Compel also noted Father's two criminal convictions in 1993 and 1994, the first for drug offenses and the second for rape. Petitions to Compel, 5/31/2019, ¶ O. The Petitions to Compel indicated that Mother's criminal history included convictions for theft and trespassing, but provided no timeframes. *Id.* ¶ N.

5. A review of the lower court record reveals one such encounter. While not referenced in the trial court's opinion or in the briefs of Mother or DHS, the record reflects that in 2016, the trial court granted a DHS petition to compel Mother and Father to cooperate with a home visit based on numerous allegations of neglect, including that the family home did not have water service, that Mother and Father had a history of domestic violence and drug use, and that the neighbors were providing food and clothing to the children. Motion to Compel Cooperation, 10/27/2016, ¶ B. The trial court's order stated: ''View to Discharge at the next listing if parents are compliant.'' Cooperation Order, 11/23/2016. After DHS conducted its home visit on November 30, 2016, the trial court dismissed DHS's motion to compel the next day (December 1, 2016). We were unable to locate any further records involving this encounter.

thority] headquarters and I'm being retaliated against." *Id.*

After the close of testimony, the trial court stated that the probable cause requirement had been met and that it was going to grant the Petitions to Compel. *Id.* at 18. In this regard, the trial court stated that "[i]f there's a report, that's their duty to investigate. You don't cooperate then I have to force you to cooperate." *Id.* at 16. The order stated in full:

> AND NOW, this 11th day of June 2019, after conducting a Motion to Compel Cooperation Hearing the court enters the following order: Motion to Compel is Granted.
>
> Further Findings: Child resides with mother and father.
>
> Further Order: Mother is to allow two DHS social workers in the home to assess the home to verify if mother's home is safe and appropriate on Friday, June 14, 2019 at 5:00pm. Ms. Allison McDowell is to be present in mother's home as a witness to the home assessment. Mother is NOT to record or video, nor post on social media. Mother is to remove current videos regarding DHS works from social media. Parents or third parties are NOT to intimidate, harass or threaten any social workers.

Petitions to Compel Cooperation Order, 6/11/2019.[6] In its order, the trial court continued the evidentiary hearing until June 18, 2019.

Mother immediately filed a motion to stay the home inspection pending the resolution of her appeal. The trial court denied Mother's motion for a stay and the inspection occurred on June 14, 2019. When the hearing reconvened on June 18, 2019, one of the DHS caseworkers who performed the inspection testified that although Mother and Father did not permit the caseworkers to have access to the basement or the living room (which was under renovation), the rest of the home, which they did inspect, was safe and suitable for the children. N.T., 6/18/2019, at 12-13, 18. The trial court then dismissed the motion to compel. *Id.* at 20.

[1, 2] Mother filed a timely notice of appeal of the trial court's June 11th order.[7] [8] In her statement of matters complained

6. Before the Superior Court, Mother challenged the trial court's prohibition of filming the DHS social workers during the home visit on the ground that it violated her First Amendment right to freedom of speech, which necessarily incorporates the act of recording. The Superior Court agreed and reversed this portion of the trial court's order, indicating that "under the specific circumstances of this case, and in light of Mother's and DHS's arguments, we conclude that DHS failed to establish that its request for a no-recording provision was reasonable." *In Interest of Y.W.-B*, 241 A.3d 375, 395 (Pa. Super. 2020), *appeal granted*, 243 A.3d 969 (Pa. 2021).

7. An order compelling cooperation with the scheduling and completion of an in-home inspection by a government agency is a final order for purposes of appeal. *In re Petition to Compel Cooperation with Child Abuse Investigation*, 875 A.2d 365, 369 (Pa. Super. 2005).

8. We agree with the Superior Court's determination that Mother's constitutional claims are not moot. *In Interest of Y.W.-B*, 241 A.3d at 381. In general, the mootness doctrine requires that an actual case or controversy must be extant at all stages of review. *See, e.g., Slice of Life, LLC v. Hamilton Twp. Zoning Hearing Bd.*, 652 Pa. 224, 207 A.3d 886, 897 (2019). This Court has recognized that issues "capable of repetition yet evading review" fall within a limited exception to the mootness doctrine. *Reuther v. Delaware Cty. Bureau of Elections*, 651 Pa. 406, 205 A.3d 302, 306 n.6 (2019) (citing *Nutter v. Dougherty*, 595 Pa. 340, 938 A.2d 401, 405 n.8 (2007)). We have likewise recognized an exception for issues that are of great and immediate public importance. *Chester Water Auth. v. Pa. Dep't of Cmty. & Econ. Dev.*, 249 A.3d 1106, 1115 (2021) (citing *Com., Dep't of Envtl. Prot. v. Cromwell Twp., Huntingdon Cty.*, 613 Pa. 1, 32 A.3d 639, 652 (2011)). In our view, both exceptions apply here.

of on appeal pursuant to Rule 1925(b) of the Pennsylvania Rules of Appellate Procedure, Mother argued, inter alia, that the trial court's determination that DHS had established probable cause to allow the home inspection violated her rights under the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution. In its written opinion pursuant to Rule 1925(a), the trial court recognized that a home inspection is subject to "the limitations of state and federal search and seizure jurisprudence[,]" Trial Court Opinion, 9/9/2019, at 6, and that to compel cooperation with a home inspection, DHS must establish probable cause that an act of child abuse or neglect has occurred and that evidence relating to the abuse or neglect will be found in the home. *Id.* at 5-8. The trial court relied on the concurrence in *In re Petition to Compel Cooperation with Child Abuse Investigation*, 875 A.2d 365 (Pa. Super. 2005)[9] (Beck, J., concurring) (hereinafter the "Beck Concurrence"), for the proposition that "the standard notion of probable cause in criminal cases" does not apply to matters involving child protective services agencies and that "[w]hat an agency knows and how it acquired that information should not be subject to the same restrictions facing police seeking to secure a search warrant in a criminal matter." Trial Court Opinion, 9/9/2019, at 6 (quoting *Petition to Compel Cooperation*, 875 A.2d at 380) (Beck, J., concurring).

Operating under this principle, the trial court explained that it considered not only the allegations contained in the Petitions to Compel,[10] but also the testimony presented by DHS at the hearing and the consternation Mother expressed when questioned by the trial court regarding her ability to care for the children, her source of income, and her employment status. *Id.* at 7. The trial court explained that "one of the main factors of the DHS investigation [was] the matter of homelessness and if the alleged address of the family was suitable" for the children, and that the home inspection would determine if the claims of homelessness and inadequate care had merit. *Id.* Because of DHS's allegations of homelessness and inadequate care, the trial court found that "it was reasonable to ascertain whether the parents had stable housing; therefore, parents needed to allow a home assessment." *Id.*

The Superior Court affirmed. *In Interest of Y.W.-B*, 241 A.3d 375 (Pa. Super. 2020), *appeal granted*, 243 A.3d 969 (Pa. 2021). Relying on its prior decision in *Petition to Compel Cooperation*, it first found that both the Fourth Amendment and Article I, Section 8[11] apply to regulations

9. Given the prominence of this opinion and, in particular, the concurring opinion, the opinions are later addressed in detail at pages 30-34.

10. As discussed, this included averments regarding Mother's previous involvement with DHS in 2013, which involved allegations of physical abuse against the older child, Mother's employment status, whether the child's basic needs were being met, and inadequate housing. Trial Court Opinion, 9/9/2019, at 1-2. In connection with those allegations, the child was adjudicated dependent for a period of time. In November 2015, the trial court discharged the dependency. *Id.* at 2.

11. In the "Counter-Statement of the Issues Involved'' ' in its brief filed with this Court, DHS contends that Mother failed to preserve a claim under Article I, Section 8 of the Pennsylvania Constitution in either the trial court or the Superior Court. Because Mother asserted violations of Article I, Section 8 before the trial court, the Superior Court and now in this Court, we conclude that Mother has preserved this constitutional claim. For present purposes, we take no position, one way or the other, with respect to Mother's contention that Article I, Section 8 provides greater constitutional protections than does the Fourth Amendment. Appellant's Brief at 42.

promulgated pursuant to Pennsylvania's Child Protective Services Law ("CPSL"), 23 Pa.C.S. §§ 6301-6386, that govern an agency's duty to investigate allegations of abuse or neglect within a home. As such, to compel cooperation with a home inspection, an agency must establish probable cause before it will be permitted to enter a private residence to conduct an investigation. *In Interest of Y.W.-B*, 241 A.3d at 384 (citing *Petition to Compel Cooperation*, 875 A.2d at 377-78). Drawing on the Beck Concurrence, the Superior Court considered the different purposes of child protective laws and criminal laws as reflected in the procedural differences for obtaining a warrant in a criminal case and a motion to compel in a child welfare case. For instance, in criminal law, the procedure to obtain a search warrant is entirely ex parte such that the target of the search has no opportunity to challenge the allegations contained in the warrant application or affidavit before the warrant issues. *Id.* at 385 (citing *Commonwealth v. Milliken*, 450 Pa. 310, 300 A.2d 78, 80 (1973); Pa. R.Crim.P. 203(B)). In contrast, under the CPSL, trial courts may conduct an evidentiary hearing before the issuance of an order granting a search of the home, at which time the parents may cross-examine witnesses, testify on their own behalf, and otherwise challenge the evidence put forth in support of the motion to compel. *Id.* Moreover, the Superior Court noted, there are no statutory provisions or procedural rules that cabin a trial court's consideration of a motion to compel to the contents within the four corners of that motion, and so trial courts are free to consider additional evidence relevant to its inquiry, including any prior experiences they have had with the parents that would be relevant to a probable cause determination. *Id.* at 385-86. The court ultimately held that

> an agency may obtain a court order compelling a parent's cooperation with a home visit upon a showing of a fair probability that a child is in need of services, and that evidence relating to that need will be found inside the home. In making a probable cause determination, however, the trial court may consider evidence presented at a hearing on the petition, as well as the court's and the agency's prior history to the extent it is relevant.

Id. at 386 (internal citations omitted).

Applying this standard, the Superior Court pointed to the testimony of the DHS caseworker, who corroborated that DHS received a GPS report on May 22, 2019 alleging "homelessness and inadequate basic care," and that the home visit was intended to make sure the home was appropriate, the utilities were working, and that there was food in the house. Thus, the Superior Court found no error in the trial court's probable cause determination, as the averments in DHS's petition, supported by evidence at the hearing, corroborated the initial report and established a "link" between the initial allegations of homelessness and inadequate care and DHS's motion seeking to enter the home. *Id.* at 390.

[3, 4] This Court granted Mother's petition seeking allowance of appeal to consider the following issues:

(1) Did the Superior Court err in creating a rule of law that violates Article 1, Section 8 of the Pennsylvania Constitution, when it ruled that where a Pennsylvania Child Protective Services agency receives a report that alleges that a child is in need of services, and that there is a fair probability that there is evidence that would substantiate that allegation in a private home, where the record does not display a link between the allegations in the report

and anything in that private home, then that government agency shall have sweeping authority to enter and search a private home?

(2) Did the Superior Court err in creating a rule of law that violates the Fourth Amendment of the United States Constitution, when it ruled that where a Pennsylvania Child Protective Services agency receives a report that alleges that a child is in need of services, and that there is a fair probability that there is evidence that would substantiate that allegation in a private home, where the record does not display a link between the allegations in the report and anything in that private home, and there was no showing of particularity, then that government agency shall have sweeping authority to enter and search a private home?

In Interest of Y.W.-B, 243 A.3d 969 (Pa. 2021) (per curiam). The constitutional challenges before us present questions of law over which our review is plenary. *See, e.g., Washington v. Dep't of Pub. Welfare*, 647 Pa. 220, 188 A.3d 1135, 1149 (2018). With respect to findings of fact and credibility determinations of the trial court, the standard of review in dependency cases requires an appellate court to accept them "if they are supported by the record, but does not require the appellate court to accept the lower court's inferences or conclusions of law." *In re L.Z.*, 631 Pa. 343, 111 A.3d 1164, 1174 (2015) (quoting *In re R.J.T.*, 608 Pa. 9, 9 A.3d 1179, 1190 (2010)).

II. The Parties' Arguments

Mother argues that the Superior Court's decision created an unconstitutionally diluted version of the probable cause standard to be applied when a government agency is seeking to compel cooperation with a home inspection based on allegations of child neglect. In her view, the Superior Court's adoption of the sentiment, derived from the Beck Concurrence, that child welfare agencies should not be held to the same restrictions as police in criminal investigations in the acquisition of information to develop probable cause vitiates the protections against unreasonable searches guaranteed by the Fourth Amendment and Article 1, Section 8.

Mother believes that the Superior Court eliminated three aspects of constitutional protection. The first is the requirement that the order indicate with particularity the area and items targeted by the search. Mother claims that the trial court's order granting entry into her home completely failed to set forth the parameters of the search to be conducted. Mother's Brief at 26-27.[12] Second, she maintains that the Superior Court's ruling eliminates the need for an assessment of the reliability of the source of the information upon which probable cause is based. Noting that this Court has upheld this "reliability factor" as a critical part of a probable cause determination, she argues that the standard established by the Superior Court fails to incorporate an assessment of the reliability of the reporting source. *Id.* at 28-30 (citing *Commonwealth v. Clark*, 611 Pa. 601, 28 A.3d 1284 (2011)). Third, probable cause requires a nexus between the allegations of neglect and the individual's home. Mother argues that the Superior Court eliminated this requirement by permitting a home assessment upon no more than the vague allegation that a child is in need of

12. Given our conclusion that DHS failed to offer sufficient evidence to establish probable cause to enter and search Mother's home, we do not reach Mother's contention that the trial court's order lacked sufficient particularity.

services. *Id.* at 32-33.[13] This case, Mother asserts, exhibits a complete lack of nexus between the allegations in the GPS report and anything that could be found within the home, and this lack of nexus by itself renders the search unconstitutional. *Id.* at 32-34.

Mother argues that before cooperation with a home inspection may be compelled, the trial court's probable cause determination should require consideration of not only the particularity, reliability and nexus requirements, but also the government's interest or justification for the search; the extent of the government intrusion being requested; and whether there are acceptable alternatives to a government intrusion that would address the government's interests. *Id.* at 55.

DHS agrees that probable cause must be established before a family may be compelled to cooperate with a home inspection, but it rejects the notion that the considerations identified by Mother must be strictly enforced. DHS's Brief at 16-17. DHS echoes the sentiment expressed in the Beck Concurrence that probable cause "in the child protective arena is far different from what constitutes probable cause in the criminal law." *Id.* at 19 (quoting *Petition to Compel Cooperation*, 875 A.2d at 380 (Beck, J., concurring)).

With these considerations in mind, DHS argues that there is no need for a particularity requirement in the context of probable cause for a home inspection for neglect because there is no particular "thing" that is the subject of such a search, suggesting that neglect is a permeating condition found throughout the home. *Id.* at 24 ("[W]here the allegation in a GPS report is a lack of care in the home, an order to inspect the general conditions of the home **is** sufficiently particular.") (emphasis in original). In a similar manner, DHS contends that "there is almost **always** a nexus between the home and potential allegations of neglect" and that "[w]ithout searching the home, DHS has no way to ensure" that adequate care is being provided. *Id.* (emphasis in original). In this instance, in DHS's view, when assessing probable cause, it would have been more salient for the trial court to focus on the need for the search, the minimal intrusiveness of the requested search, Mother's prior involvement with DHS, and her evasive demeanor at the hearing. *Id.* at 20.[14] DHS also rejects Mother's contention that the Superior Court's standard is too vague, arguing that "two layers of protection"

13. Highlighting the impact of the greatly relaxed probable cause standard, Mother argues that DHS's regulations require child protective agencies to make a home visit in the case of every GPS report. Mother's Brief at 32 (citing 55 Pa. Code § 3490.232(f)). In her brief filed with this Court, Mother cites to the Pennsylvania Department of Human Services 2019 annual report, which reflects that in that year it received 178,124 GPS reports statewide. Of those, 95,671 were screened out, leaving county agencies to investigate 82,427 GPS reports – with 41,937 deemed valid and 40,490 unsubstantiated. Thus, according to Mother, this reflects that there are "nearly 100,000 potential searches into Pennsylvania homes each year." *Id.* at 17.

14. DHS characterizes the assessment here as minimally intrusive and not designed to uncover criminal activity. DHS's Brief at 25-31. Because the search here was not for evidence of a crime and did not involve the police, DHS contends that "Mother had less privacy interests at stake." *Id.* at 29-30. Also weighing in favor of allowing the search, according to DHS, is the fact that the trial court found Mother evasive when it questioned her and that Mother had a history of involvement with DHS related to the conditions of her home. *Id.* at 32-35. Regarding the role of anonymous reports, DHS emphasizes that anonymous reports are crucial for child protective investigations, as anonymity often provides cover that allows reporters to feel comfortable making a report. *Id.* at 35-36.

prevent this standard from being applied improperly – specifically, the counties' screening processes to weed out unfounded reports and the due process protections provided by the hearing on a motion to compel. *Id.* at 43-44. DHS argues that United States Supreme Court precedent supports less stringent probable cause requirements for the home inspections it performs, a contention we address in our analysis.

III. Analysis

A. Constitutional Limitations on Home Entry

Pennsylvania's CPSL defines two types of reports received by county agencies. A general protective service report (a GPS report) is "[a] verbal or written statement to the county agency from someone alleging that a child is in need of general protective services[,]" which are in turn defined as, inter alia, services to prevent the potential for harm to a child who "[i]s without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals." 55 Pa. Code § 3490.223(i). In contrast, a child protective report ("CPS") is made by someone who has "reasonable cause to suspect that a child has been abused." 55 Pa. Code § 3490.11(a).

[5] When a county agency receives a GPS report indicating that a child is not receiving proper care, the agency must within sixty days conduct an "assessment," which is defined as "[a]n evaluation ... to determine whether or not a child is in need of general protective services." 23 Pa.C.S. § 6375(c)(1); 55 Pa. Code § 3490.232(e). As part of its assessment, the CPSL and its regulations provide that the county agency must perform "at least one home visit[.]" 55 Pa. Code § 3490.232(f); 23 Pa.C.S. § 6375(g) ("The county agency shall ... conduct in-home visits."). The CPSL and its regulations further state that the county agency may initiate court proceedings if "a home visit ... is refused by the parent." 55 Pa. Code § 3490.232(j); *see also* 23 Pa.C.S. § 6375(j). On the two prior occasions in which the Superior Court has addressed the issue, it has held that trial courts may grant an order requiring parents to cooperate with a home visit **only** when it is entered in accordance with the requirement of probable cause pursuant to the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution. *In Interest of D.R.*, 216 A.3d 286, 294 (Pa. Super. 2019) ("[A] CYS inspection of a home is subject to the limitations of state and federal search and seizure jurisprudence."); *Petition to Compel Cooperation*, 875 A.2d at 374. The parties to the present appeal both agree that an order permitting a home visit must comport with federal and state constitutional limitations. Mother's Brief at 13; DHS's Brief at 14.

[6–8] The Fourth Amendment establishes the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," and that "no [w]arrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV. "[P]hysical entry of the home is the chief evil against which the ... Fourth Amendment is directed[.]" *United States v. United States Dist. Court*, 407 U.S. 297, 313, 92 S.Ct. 2125, 32 L.Ed.2d 752 (1972). "At the very core [of the Fourth Amendment] 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, 81 S.Ct. 679, 5 L.Ed.2d 734 (1961); *see also Payton v.*

New York, 445 U.S. 573, 586, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980) ("It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable."). As the Supreme Court recently reiterated:

> When it comes to the Fourth Amendment, the home is first among equals. At the Amendment's very core, we have said, stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion. Or again: [f]reedom in one's own dwelling is the archetype of the privacy protection secured by the Fourth Amendment; conversely, physical entry of the home is the chief evil against which it is directed. The Amendment thus draws a firm line at the entrance to the house.

Lange v. California, —— U.S.——, 141 S. Ct. 2011, 2018, 210 L.Ed.2d 486 (2021) (internal citations and quotations omitted).

[9, 10] Article I, Section 8 of the Pennsylvania Constitution provides:

> **§ 8. Security from searches and seizures**
>
> The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

PA. CONST. art. I, § 8. Article I, Section 8 of the Pennsylvania Constitution protects all citizens in this Commonwealth against unreasonable searches by requiring a high level of particularity, i.e., that warrants (or here, an order to compel) describe "as nearly as may be" the place to be searched and the items to be seized with specificity. Article I, Section 8 also requires that a warrant be supported by probable cause to believe that the items sought will provide evidence of a crime. *Commonwealth v. Waltson*, 555 Pa. 223, 724 A.2d 289, 292 (1998).

[11, 12] It is well established that "[p]robable cause exists where the facts and circumstances within the affiant's knowledge and of which he [or she] has reasonably trustworthy information are sufficient in and of themselves to warrant a person of reasonable caution in the belief that a search should be conducted." *Commonwealth v. Jacoby*, 642 Pa. 623, 170 A.3d 1065, 1081-82 (2017). To assess whether probable cause has been established, the issuing authority makes a "practical, common-sense decision" based on the totality of the circumstances and the information in the affidavit (or here, the Petitions to Compel), whether, given the relative veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that relevant evidence will be found in a particular place. *Id.* at 1082.

B. Standards for Assessing the Existence of Probable Cause with Respect to a Petition to Compel Entry into a Home in a Case Initiated by the Filing of a GPS Report

While the parties to the present appeal agree that an order permitting a home visit must be supported by probable cause, they do not agree on what constitutes probable cause in a civil proceeding initiated by the filing of a GPS report. DHS disagrees that probable cause with respect to home visits by social workers should be assessed based upon the fundamental principles developed primarily in the criminal law context, including that there be a nexus between the areas to be searched and the suspected crime committed, an assess-

ment of the veracity and reliability of anonymous sources of evidence, and facts that are closely related in time to the date of issuance of the warrant. DHS's Brief at 19. DHS contends that social service agencies "should not be hampered from performing their duties because they have not satisfied search and seizure jurisprudence developed in the context of purely criminal law." *Id.* Relying upon *Wyman v. James*, 400 U.S. 309, 91 S.Ct. 381, 27 L.Ed.2d 408 (1971) and *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967), DHS contends that the protection of children is an essential societal value and thus the interests it serves through home visits are more worthy of the public's concern than are Mother's interests in the protection of the sanctity of her home. DHS's Brief at 21. Finally, DHS further insists that unlike an entry into a home to search for evidence of a crime, a child protective home assessment is nothing more than a "minimally invasive spot-check" for evidence of neglect (e.g., like confirmation that the home had basic utilities, food and beds). *Id.* at 25-26.

[13] We disagree with DHS's position. The evidentiary principles used to guide an analysis of whether sufficient evidence exists to establish probable cause has developed over many years in a wide variety of contexts. In this regard, while we are not bound by the decisions of federal circuit courts, we find persuasive the opinion of the Third Circuit in *Good v. Dauphin County Social Services for Children and Youth*, 891 F.2d 1087 (3d Cir. 1989). In *Good*, members of the Harrisburg Police and two social workers entered and searched a home without a warrant or other legal justification (e.g., consent or exigency). The social workers argued that they were entitled to sovereign immunity because the law had not been developed to make clear that because this was a child abuse case, their actions would not be governed "by the well-established legal principles developed in the context of residential intrusions motivated by less pressing concerns." *Id.* at 1094. The Third Circuit disagreed, ruling that the controlling standards for determining whether probable cause exists in cases involving possible harm to children are the same as those developed in criminal cases and that no perceived increase in the societal interest involved alters these standards.

> It evidences no lack of concern for the victims of child abuse or lack of respect for the problems associated with its prevention to observe that child abuse is not sui generis in this context. The Fourth Amendment caselaw has been developed in a myriad of situations involving very serious threats to individuals and society, and we find no suggestion there that the governing principles should vary depending on the court's assessment of the gravity of the societal risk involved. We find no indication that the principles developed in the emergency situation cases we have heretofore discussed will be ill suited for addressing cases like the one before us.

Id. (footnotes omitted)

[14] This basic principle, namely that the requirement of probable cause to permit entry into a private home is not excused based upon any relative perceived societal importance, was further articulated by the United States Supreme Court in *Mincey v. Arizona*, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978). In *Mincey*, the police argued that the extreme importance of the immediate investigation of murders justified a warrantless search of a murder scene. The Supreme Court emphatically disagreed:

> [T]he State points to the vital public interest in the prompt investigation of

> the extremely serious crime of murder. No one can doubt the importance of this goal. But the public interest in the investigation of other serious crimes is comparable. If the warrantless search of a homicide scene is reasonable, why not the warrantless search of the scene of a rape, a robbery, or a burglary? 'No consideration relevant to the Fourth Amendment suggests any point of rational limitation' of such a doctrine.

Id. at 393, 98 S.Ct. 2408 (quoting *Chimel v. California*, 395 U.S. 752, 766, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969)).

The *Wyman* and *Camara* cases relied on by DHS do not support its position. At issue in *Wyman* was a New York regulation that was part of a program to provide aid to dependent children (i.e., children in families who qualified for welfare). The regulation required social workers to make an initial home visit and subsequent periodic visits for public financial aid to begin and thereafter to continue. The Supreme Court concluded that the home visits in this circumstance did not violate the Fourth Amendment. In so ruling, the Court focused on the public interest in insuring that state tax monies are spent on their proper objects and encouraging welfare recipients to return to self-sufficiency; the limited scope of the entry and its consensual nature; the fact that the recipients were entitled to advance notice; and the fact that all welfare recipients were subjected to the entries, which thus were not based on individualized suspicion of wrongdoing. *Wyman*, 400 U.S. at 318-23, 91 S.Ct. 381; *see also Walsh v. Erie Cty. Dep't of Job and Family Servs.*, 240 F. Supp. 2d 731, 745 (N.D. Ohio 2003).

[15] The circumstances of the recipients of financial aid in *Wyman* differ significantly and substantially from those of Mother in this case. In *Wyman*, the persons at issue affirmatively sought financial benefits to which they were not automatically entitled to receive. The Court ruled that a state can lawfully condition the receipt of benefits on various conditions, including comprehensive disclosure of the applicant's financial status. In addition, the state can lawfully take steps, such as periodic inspections of recipients' homes, to ensure that fraud is not occurring and that the recipients remain entitled to continued benefits. Under *Wyman*, the diminishment of privacy of the recipients of the benefits was a quid pro quo for receiving the welfare payments. The recipients consented to the inspections in exchange for the receipt of benefits. In the present case, by contrast, Mother sought nothing from DHS other than her basic right to be left alone. The government cannot condition a parent's right to raise her children on periodic home inspection unsupported by probable cause.

In *Camara*, the Supreme Court addressed a circumstance where a San Francisco tenant challenged a city code provision that allowed health and safety inspectors to conduct warrantless searches of apartments to check for possible code violations. The Court began by emphasizing that an administrative inspection for possible violations of a city's housing code was a "significant intrusion upon the interests protected by the Fourth Amendment[.]" *Camara*, 387 U.S. at 534, 87 S.Ct. 1727. The Court then rejected any contention that the Fourth Amendment only protects citizens from searches to obtain evidence of a crime, but does not apply to civil administrative searches.

> It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior. For instance, even the most law-abiding citizen has a very tangible interest in limiting

> the circumstances under which the sanctity of his home may be broken by official authority, for the possibility of criminal entry under the guise of official sanction is a serious threat to personal and family security.

Id. at 530-31, 87 S.Ct. 1727 (footnote omitted); *see also Michigan v. Tyler*, 436 U.S. 499, 506, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978) ("Searches for administrative purposes, like searches for evidence of crime, are encompassed by the Fourth Amendment.").[15]

The Court also recognized, however, that an administrative inspection for possible violations of a city's housing code posed a unique situation, since unlike searches of a specific residence for a particular purpose (i.e., to find evidence of a crime), the investigation programs at issue were "aimed at securing city-wide compliance with minimum physical standards for private property[,]" and that even a single unintentional violation could result in serious hazards to public health and safety, e.g., a fire or an epidemic that could rav-

15. The Concurring and Dissenting Opinion identifies several cases we cite which presumably "rely" upon *Camara*. While certain of these cases cite to *Camara*, that fact is coincidental to the reasons for which we cite them. Concurring and Dissenting Opinion (Dougherty, J.) at 649–50 n.16. In connection with *Tyler*, for instance, we note only that administrative searches are governed by the Fourth Amendment. *Tyler* has no specific connection to searches in the child protective context; as it instead deals with firefighters entering private property to fight a fire, *Tyler*, 436 U.S. at 511, 98 S.Ct. 1942, and it cites to *Camara* for the unremarkable proposition that once the firefighters leave, "additional entries to investigate the cause of the fire must be made pursuant to the warrant procedures governing administrative searches[,]" as set forth in *Camara*. *Id. New Jersey v. T.L.O*, 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985) reaffirms that the Fourth Amendment safeguards privacy against invasion by government officials generally (not just the police). It involved searches of school students by school officials." *Camara* was cited solely for the proposition that the Fourth Amendment applies outside the criminal context. *Id.* at 335, 105 S.Ct. 733 ("Because the individual's interest in privacy and personal security 'suffers whether the government's motivation is to investigate violations of criminal laws or breaches of other statutory or regulatory standards" it would be anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior.") (citations omitted). The Tenth Circuit in *Roska ex rel. Roska v. Peterson*, 328 F.3d 1230 (10th Cir. 2003) rejected the existence of a social worker exception to the Fourth Amendment. The court cited to *Camara* for the limited purpose of comparing *Camara*'s warrant requirement in the administrative context to a case in which the "special needs" doctrine permitted a warrantless search of someone's home. *Id.* at 1248 (citing *Griffin v. Wisconsin*, 483 U.S. 868, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987)). Finally, in *Walsh v. Erie County*, 240 F. Supp. 2d 731 (N.D. Ohio 2003), the federal district court declined to recognize a social worker exception to the Fourth Amendment and cited to *Camara* as an example of Fourth Amendment protections extending beyond the criminal context. *Id.* at 744-45.

DHS does not contend that "special needs, beyond the normal need for law enforcement," *Commonwealth v. Hicks*, [652 Pa. 353], 208 A.3d 916, 938 (2019), dispense with the requirement of probable cause in child neglect investigations. To the contrary, as indicated above, DHS agrees that probable cause must be established before a court may order a home visit. DHS's Brief at 14. *See, e.g., Gates v. Texas Dep't of Protective & Regulatory Servs.*, 537 F.3d 404, 424 (5th Cir. 2008) ("The purpose of TDPRS's entry into the Gateses' home – the investigation of possible child abuse – was closely tied with law enforcement ... [and because] the need to enter the Gateses' home was not divorced from the state's general interest in law enforcement, there was no special need that justified the entry.").

In sum, these cases do not contradict the conclusion that no social worker exception to the Fourth Amendment exists or that traditional probable cause requirements apply in the context of home visits in connection with child neglect circumstances.

age a large urban area. *Camara*, 387 U.S. at 535, 87 S.Ct. 1727. Accordingly, given this distinctive circumstance, the Court concluded that probable cause to issue a warrant to inspect exists "if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling." *Id.* at 538, 87 S.Ct. 1727

[16] *Camara* has no application with respect to home visits to investigate allegations of child neglect. Unlike in *Camara*, which involved an agency's decision to conduct an area inspection based upon its appraisal of the conditions in the **area as a whole** to protect the public, probable cause to conduct a home visit depends upon whether probable cause exists to justify the entry into a **particular** home based upon credible evidence that child neglect may be occurring in that particular home. Moreover, and importantly, the scope of the search in the present case was in no respect limited to ensuring compliance with certain identified housing code violations. The search here allowed DHS investigators to search the home, including every room, closet and drawer in the home, based entirely upon their own discretion. In short, while the search here was not conducted by law enforcement, its scope bore little or no relation to a traditional administrative search. As such, the contention that *Camara*'s holding that administrative searches on an area basis are permitted where "reasonable legislative and administrative standards are satisfied"[16] is insufficient to allow the exhaustive search of the entirety of family's home without a clear showing, based upon competent and, as necessary, corroborated, evidence establishing individualized suspicion exists allowing entry into a private home.

[17] The Concurring and Dissenting Opinion nevertheless urges application of *Camara* with respect to child protection home visits. We decline to do so. Decided in 1967, *Camara* was the Supreme Court's first blessing of what has come to be known as a "dragnet search," namely one in which the government searches every person, place, or thing in a specific location or involved in a specific activity. *See generally* Eve Brensike Primus, *Disentangling Administrative Searches*, 111 Colum. L. Rev. 254, 263 (2011). Dragnet searches are not predicated on individualized showings of probable cause, nor indeed on **any** kind of individualized suspicion. *See City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 161 (Minn. 2017) ("Administrative search warrants must be supported by probable cause; not individualized suspicion but 'reasonable legislative or administrative standards for conducting an area

16. In *Camara,* the Supreme Court held that given the unique and limited nature of the administrative searches at issue there, compliance with ''reasonable legislative and administrative standards,'' in and of itself, satisfied the probable cause requirement. *Camara,* 387 U.S. at 535, 87 S.Ct. 1727. No similar result may maintain for child protection home visits. The legislative and administrative standards in the CPSL and the regulations promulgated thereunder provide that at least one home visit must be conducted in every case in which a GPS report, 55 Pa. Code. § 3490.232(f), or a CPS report, 55 Pa. Code § 3490.55(i), is received, without a requirement that any constitutional requirements be satisfied. In *Petition to Compel,* the Superior Court held that despite the mandatory nature of the need for a home visit in every instance, home visits are permitted only where the agency files ''a verified petition alleging facts amounting to probable cause to believe that an act of child abuse or neglect has occurred and evidence relating to such abuse will be found in the home.'' *Petition to Compel,* 875 A.2d at 377. DHS in this case does not contest that Pennsylvania law requires that home visits, despite the mandatory nature of Sections 3490.232(f) or 3490.55(i), must be supported by a separate showing of the existence of probable cause. DHS's Brief at 8.

inspection.' ") (quoting *Camara*, 387 U.S. at 538, 87 S.Ct. 1727); Christopher Slobogin, *The Liberal Assault on the Fourth Amendment*, 4 Ohio St. J. Crim. L. 603, 611 (2007) (noting the individualized suspicion requirement cannot be honored when large groups of people are subjected to searches or seizures). On the contrary, the hallmark of a dragnet search is its generality, as it reaches everyone in a category rather than only a chosen few. In addition to the safety-related inspection of every home in a given area in *Camara*, other dragnets include checkpoints where government officials stop, for example, every car or every third car driving on a particular roadway, *see also United States v. Martinez-Fuerte*, 428 U.S. 543, 550, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976) (upholding checkpoint stops for illegal aliens near the border); and drug testing programs that require every person involved in a given activity to submit to urinalysis. *See, e.g., Bd. of Educ. v. Earls*, 536 U.S. 822, 837, 122 S.Ct. 2559, 153 L.Ed.2d 735 (2002) (permitting random drug testing of students involved in extracurricular activities).

[18] Dragnet searches are justified if they satisfy a balance of interests and are necessary because a regime of individualized suspicion could not effectively serve the government's interest. In *Camara*, the Court suggested that if the legislative standards were reasonable, probable cause existed because "the only effective way to seek universal compliance with the minimum standards required by municipal codes is through routine periodic inspections of all structures." *Camara*, 387 U.S. at 535-36, 538, 87 S.Ct. 1727. Based on this rationale, there could not reasonably be an individual suspicion because the inspections are **routine and periodic**. The Court has subsequently found that the traditional probable cause standard "may be unhelpful in analyzing the reasonableness of **routine administrative functions**." *Nat'l Treasury Emps. Union v. Von Raab*, 489 U.S. 656, 668, 109 S.Ct. 1384, 103 L.Ed.2d 685 (1989) (emphasis added) (constitutionality of drug-testing program analyzing urine specimens of employees who applied for promotion to positions involving interdiction of illegal drugs). In *Von Raab*, a case involving a routine search that set out to prevent hazardous conditions from developing, the Court found that such searches can be conducted "without any measure of individualized suspicion." *Id.*

In the 1980s, the Court recognized a separate category of administrative searches for groups of people shown to possess **reduced expectations of privacy**, including students, *New Jersey v. T.L.O.*, 469 U.S. 325, 340, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985), government employees, *O'Connor v. Ortega*, 480 U.S. 709, 725, 107 S.Ct. 1492, 94 L.Ed.2d 714 (1987), probationers, *Griffin v. Wisconsin*, 483 U.S. 868, 879, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987), and parolees, *Samson v. California*, 547 U.S. 843, 847, 126 S.Ct. 2193, 165 L.Ed.2d 250 (2006). These types of searches typically carry stigmatic burdens imposed by suggestions of wrongdoing, as they target those who are generally more likely to be likely to engage in wrongdoing, e.g., probationers and parolees, than other individuals. Eve Brensike Primus, *Disentangling Administrative Searches*, 111 Colum. L. Rev.at 272. While these cases did not require the same level of individualized suspicion typically required to authorize a Fourth Amendment search because of the person's reduced expectation of privacy, the requirement of individualized suspicion was not entirely eliminated. In *Griffin*, for instance, the probationer had a reduced expectation of privacy because a refusal to permit a home visit to search for weapons was a violation of the terms

of his or her probation, and because possession of a weapon without permission was a violation of law. *Griffin*, 483 U.S. at 871, 107 S.Ct. 3164. Even given the reduced expectation of privacy, however, a relatively high degree of individualized suspicion was required, as the probation officer, before entering the home, had to consider "the reliability and specificity of [the informant's] information, the reliability of the informant (including whether the informant has any incentive to supply inaccurate information), the officer's own experience with the probationer, and the need to verify compliance with rules of supervision and state and federal law." *Id.* (internal quotations omitted).

[19] A child protection home inspection order like the one at issue here is neither a dragnet search nor a search of an individual with a reduced expectation of privacy. It is not a dragnet-type search because it does not involve home visits of all homes in an area for a limited purpose as in *Camara* to inspect wiring. Home visits by DHS are in no sense "routine and periodic," but rather must be based upon credible allegations of evidence of neglect occurring in the specified home. Mother likewise has no reduced expectation of privacy in the sanctity of her home based upon any suspicion of potential wrongdoing (like with, e.g., probationers and paroles), and DHS does not rely on the *Griffin* or *Samson* line of cases. As a result, while home visits in the child neglect context are conducted by civil government officials rather than members of law enforcement, they do not fit within the two categories of "administrative searches" entitled to reduced Fourth Amendment and Article 1, Section 8 protections.

[20] Moreover, DHS's entry into Mother's home cannot remotely be characterized as a "minimally intrusive" spot check. DHS argued in its brief filed with this Court that the trial court informed Mother that DHS would only check for working utilities, windows, a stove, food and beds. DHS's Brief at 26. Although it is hard to fathom how the operability of windows could be determined without entering every room to determine the existence of a window, in its order granting DHS permission to enter Mother's home, the trial court imposed **no** limitations and provided only that the search would "assess the home to verify if mother's home is safe and appropriate." Petitions to Compel Cooperation Order, 6/11/2019. The order thus placed no limitations on the scope of the search, leaving it entirely in DHS's discretion as to the thoroughness of the search, including, if it so chose, a general rummaging of all of the home's rooms and the family's belongings.

[21] In *Wyman*, a refusal to allow a home inspection would have the limited consequence of termination of the conditional governmental financial assistance. In the case of any court ordered entry by a child protective service agent, depending upon the findings in the home, the inspection could result in criminal charges for child abuse [17] or for any criminal activity discovered during the search. More significantly, the home visit could result in the parents' loss of their children, either temporarily or permanently. The United States Supreme Court has held that natu-

17. Child neglect could in some cases result in criminal charges. The CPSL defines "child abuse" to include intentionally, knowingly or recklessly "[c]ausing serious physical neglect of a child." 23 Pa.C.S. § 6303. In turn, "serious physical neglect" can include the "failure to provide a child with adequate essentials of life, including food, shelter or medical care." *Id.* If CPS makes a finding of abuse, they can initiate the proceedings to take a child into protective custody. 23 Pa.C.S. § 6315(a)(4).

ral parents have a fundamental liberty interest in the "care, custody, and management" of their children and that a natural parent's "desire for and right to the companionship, care, custody, and management of his or her children is a [liberty] interest far more precious than any property right." *Santosky v. Kramer*, 455 U.S. 745, 753, 758-59, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (citations omitted). Likewise, this Court has affirmed that the right to make decisions concerning the care, custody, and control of one's children is one of the oldest fundamental liberty interests protected by due process. *Hiller v. Fausey*, 588 Pa. 342, 904 A.2d 875, 885 (2006) (citing *Troxel v. Granville*, 530 U.S. 57, 67, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000); *see also Lassiter v. Dep't of Soc. Servs. of Durham Cty, N.C.*, 452 U.S. 18, 27, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981) (observing that "a parent's desire for and right to the companionship, care, custody and management of his or her children is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection"). Accordingly, while state agencies have an interest in investigating credible allegations of child neglect, nothing short of probable cause, guided by the traditional principles that govern its federal and state constitutional limitations, will suffice when a trial court makes a determination as to whether or not to authorize a home visit.

The trial court and Superior Court here both cited the Beck Concurrence for the proposition that "[w]hat constitutes probable cause in the child protective arena is far different from what constitutes probable cause in the criminal law[,]" *Petition to Compel Cooperation*, 875 A.2d at 380 (Beck, J., concurring), and that as a result a distinct or lesser standard of probable cause is sufficient for a home inspection in a child neglect investigation. In *Petition to Compel*, the Susquehanna County Services for Children and Youth ("C & Y") filed a petition to compel cooperation to permit a caseworker to make a home visit of the family residence as part of a child abuse investigation. In its petition, C & Y averred that it had received a referral of possible child abuse at the residence and that the parents had refused to allow the visit. The trial court, without conducting a hearing, signed an order directing the parents to comply with a home visit, and subsequently denied their motion for a temporary stay – stating in his order that 55 Pa. Code § 3490.55(i) provides that a home visit is mandatory.

Parents filed a notice of appeal, arguing that, inter alia, the order was unsupported by probable cause and therefore violated their state and federal constitutional rights against unreasonable searches and seizures. The majority opinion, authored by then-Judge Kate Ford Elliott, unanimously held first that 55 Pa. Code § 3490.55(i), despite its mandatory requirement of a home visit, was subject to the limits of Fourth Amendment and Article I, Section 8 jurisprudence. In so holding, the majority decision rejected C & Y's contention that Section 3490.55(i) may be enforced without regard to constitutional limitations on entry into a private residence. *Petition to Compel Cooperation*, 875 A.2d at 374. To the contrary, the court, relying in substantial part on the Third Circuit's decision in *Good* discussed earlier, held that a request for a home visit could be enforced only upon a showing of probable cause or an exception thereto (e.g., exigency). The court likewise rejected C & Y's contention, based upon the Supreme Court's decision in *Wyman*, that because social workers played an important role in protecting children, constitutional protections did not apply to them.

> To accept the defendants' claims about the reach of *Wyman* would give the

> state unfettered and absolute authority to enter private homes and disrupt the tranquility of family life on nothing more than an anonymous rumor that something might be amiss.
>
> Despite the defendants' exaggerated view of their powers, the Fourth Amendment applies to them, as it does to all other officers and agents of the state whose requests to enter, however benign or well-intentioned, are met by a closed door. There is, the defendants' understanding and assertions to the contrary notwithstanding, no social worker exception to the strictures of the Fourth Amendment.

Id. at 376 (quoting *Walsh*, 240 F. Supp. 2d 731, 746-47 (citations omitted)).

Having rejected C & Y's contention that no showing of probable cause was required before the trial court could order a home visit, the panel in *Petition to Compel Cooperation* easily concluded that in its petition C & Y had not presented sufficient facts to establish probable cause in its petition. The petition was based solely on C & Y's belief that a home inspection was statutorily mandated. The petition cited only to a Childline referral for possible "medical neglect," with no explanation or description of the alleged neglect. It did not contend that an emergency situation existed or that the child's life was in imminent danger. *Id.* at 378. There were no allegations supporting a nexus between the family home and the factual allegations of child abuse (i.e., "medical neglect"). *Id.* In the absence of probable cause, the court reversed the trial court's order permitting entry into the family home.

The Beck Concurrence was joined by the two other members of the panel. Despite unanimous acceptance, the Beck Concurrence was dicta, as its discussion of the probable cause standard was entirely irrelevant to the disposition of the case where there were no allegations to support probable cause because the agency did not believe that any were necessary given the statutory mandate. Moreover, aside from saying the standard is different when a child protective services home inspection is at issue rather than a criminal investigation, it does not explain how that is so. The Beck Concurrence instead more generally provides that "[s]ocial services agencies should be held accountable for presenting sufficient reasons to warrant a home visit." *Petition to Compel Cooperation*, 875 A.2d at 380 (Beck, J., concurring).

Contrary to DHS and the lower courts here, we do not read the Beck Concurrence to advocate for a lesser standard of proof, or a lesser quantum of evidence, to establish probable cause in the child neglect context. After all, the court in *Petition to Compel Cooperation* (including Judge Beck) reversed the trial court's grant of authority to enter the family home based upon a lack of evidence to demonstrate probable cause and criticized C & Y for its "exaggerated view" of its powers to do so without first satisfying constitutional requirements. In context, the Beck Concurrence merely recognizes that because the context of a child service home inspection is different from a criminal investigation, the facts supporting probable cause to enter the home will likewise be different.

[22] We agree that the evidence necessary to establish probable cause in the child neglect context will sometimes be "different" than is typically presented in a criminal case. For example, a disinterested magistrate in an application for a criminal search warrant cannot consider prior knowledge of the subject of the search. In contrast, as discussed later at page 45 note 21, in a child protective service petition to compel a home visit, the judge presented with the petition oftentimes, by design,

may have been assigned continuing oversight over matters involving the family whose home is the subject of the inspection. The judge's prior knowledge of the family circumstances will be part of the probable cause analysis. But what is not "different" is that the evidence necessary to establish probable cause in both settings must be evaluated pursuant to certain basic principles developed primarily in search and seizure jurisprudence (given the abundance of caselaw in this area) – including the existence of a nexus between the areas to be searched and the suspected wrongdoing at issue, an assessment of the veracity and reliability of anonymous sources of evidence, and consideration of the age of the facts in relation to the facts presented to establish probable cause. These fundamental principles are critical to ensure that a court's finding of probable cause is firmly rooted in facts that that support a constitutional intrusion into a private home.

[23] We expressly hold that there is no "social worker exception" to compliance with constitutional limitations on an entry into a home without consent or exigent circumstances.[18] While most often applied with respect to the police, the United States Supreme Court has ruled that "[t]he basic purpose of [the Fourth] Amendment . . . is to safeguard the privacy and security of individuals against arbitrary invasions **by governmental officials**." *New Jersey v. T.L.O.*, 469 U.S. 325, 335, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985) (emphasis added). As a result, the Fourth Amendment applies equally whether the government official is a police officer conducting a criminal investigation or a caseworker conducting a civil child welfare investigation. *Dubbs v. Head Start, Inc.*, 336 F.3d 1194, 1205 (10th Cir. 2003) ("[T]he defendants' contention that the Fourth Amendment does not apply in the 'noncriminal' and 'noninvestigatory' context is without foundation.").

18. Our holding is in agreement with the binding panel decision in *Petition to Compel Cooperation*, 875 A.2d at 375-76. The Concurring and Dissenting Opinion insists that it does not favor implementation of a ''social workers exception'' to permit DHS caseworkers to obtain home visit orders without a showing of probable cause. Concurring and Dissenting Op. (Dougherty, J.) at 638–39. Other than to describe the type of evidence that is **not** required to establish probable cause in the child welfare context (i.e., the type or quantum of evidence necessary in the criminal context), the Concurring and Dissenting Opinion does not identify what type or quantum of evidence is required to establish probable case in the child welfare milieu. The Concurring and Dissenting Opinion references the ''individualized and fact-sensitive civil administration'' of the CPSL, *id.* at 639. but offers no indication of any evidence of individualized suspicion or fact-sensitive information'' actually discovered or developed by DHS in this case. Likewise, the Concurring and Dissenting Opinion indicates that in accordance with its ''risk assessment model,'' DHS must have ''some discretion in translating the information supplied by a reporter, along with any other information revealed through its own screening and assessment processes, into risk assessment categories such as 'homelessness' and 'inadequate basic care.' '' *Id.* at 642–43. As presented in this case, such ''discretion,'' however, is not really discretion at all, but rather a license to translate simple allegations of an unidentified reporter (without any corroboration whatsoever) into serious contentions that might threaten the removal of the children from the home. At the evidentiary hearing, caseworker Richardson translated a contention that the family slept outside of the Philadelphia Housing Authority as part of Mother's protesting activities into a claim that the family was homeless. Likewise, an apparent observation by the unidentified reporter that he or she had not seen Mother feed one of the children during an eight-hour period mushroomed into a serious contention of neglect, not just on the night in question (again, during Mother's protesting activities) but also in the family home necessitating a DHS home visit. This bald translation of the information provided by the reporter in the guise of evidence presented at the hearing cannot, under any type or quantum of evidence, establish probable cause.

[24] We thus join the vast majority of other federal and state courts in explicitly recognizing that the Fourth Amendment (and our own Article I, Section 8) applies to searches conducted in civil child neglect proceedings, which have the same potential for unreasonable government intrusion into the sanctity of the home. *See, e.g.*, *Andrews v. Hickman Cty., Tenn.*, 700 F.3d 845, 863-64 (6th Cir. 2012) ("Fourth Amendment standards are the same, whether the state actor is a law enforcement officer or a social worker."); *Roska ex rel. Roska v. Peterson*, 328 F.3d 1230, 1250 n. 23 (10th Cir. 2003) ("[A]bsent probable cause and a warrant or exigent circumstances, social workers may not enter an individual's home for the purpose of taking a child into protective custody."); *Walsh*, 240 F. Supp. 2d at 746-47 ("[A]ssertions to the contrary notwithstanding, [there is] no social worker exception to the strictures of the Fourth Amendment."); *People v. Dyer*, 457 P.3d 783, 789 (Colo. App. 2019); *State in Interests of A.R.*, 937 P.2d 1037, 1040 (Utah Ct. App. 1997), *aff'd sub nom., State ex rel. A.R. v. C.R.*, 982 P.2d 73 (Utah 1999); *In re Diane P.*, 110 A.D.2d 354, 494 N.Y.S.2d 881, 883-85 (1985); *In re Robert P.*, 61 Cal.App.3d 310, 132 Cal. Rptr. 5, 11-12 (1 Dist. 1976) (stating that the Fourth Amendment applies in civil child protective proceeding).

C. The Absence of Probable Cause in the Present Case

[25] In criminal matters, when presented with an application for a search warrant, the issuing authority considers only the information contained in the "four corners" of the application and the supporting affidavit. *Commonwealth v. Housman*, 604 Pa. 596, 986 A.2d 822, 843 (2009); Pa.R.Crim.P. 203(B). In contrast, here both the trial court and the Superior Court also took into consideration the testimony presented at the evidentiary hearing on the Petitions to Compel. We take no issue with this approach in connection with efforts to establish probable cause to compel a home visit as long as the testimony is cabined by the allegations in the petition. We note that the CPSL contains no provision requiring the trial court to conduct an evidentiary hearing in connection with the filing of a petition to compel cooperation with a home visit in a proceeding initiated by the filing of a GPS report. At its discretion, the trial court may either hold an evidentiary hearing or issue a ruling on the averments of fact set forth in the petition to compel. In either case, a probable cause finding must be supported by the allegations in the petition and supporting testimony, if any.

[26–29] In this regard, we note that the two dissenting opinions both disagree that the evidence at the hearing must be limited to the averments set forth in the Petitions to Compel, and even take no issue with DHS's decision to amend the content of the Petitions to Compel by presenting testimony in direct contradiction to the allegations that it had set forth in those Petitions to Compel. Concurring and Dissenting Opinion (Dougherty, J.) at 641–43; Dissenting Opinion (Mundy, J.) at 657–58. We disagree, as parents, in order to protect the sanctity of their homes, are entitled, at a minimum, to the basic tenets of due process, which include, fundamentally, the key principles underpinning due process – notice and an opportunity to be heard. *Pa. Bankers Ass'n v. Pa. Dep't of Banking*, 598 Pa. 313, 956 A.2d 956, 965 (2008). DHS may not, consistent with the fundamental principles of due process, set forth its allegations of alleged wrongdoing in a verified petition to compel a home visit, but then at the evidentiary hearing on the petition present entirely contrary evidence. The Petitions to Compel in this case were verified by a representative of

DHS, but as both of the dissenting opinions acknowledge, DHS's sole witness (caseworker Richardson) took the stand and disavowed key evidence in the Petitions to Compel regarding the family's alleged homelessness (namely that she saw Mother and her children enter the home). Concurring and Dissenting Opinion (Dougherty, J.) at 641–43; Dissenting Opinion (Mundy, J.) at 657–58. What had not been an issue even mentioned in the Petitions to Compel (homelessness) suddenly became a significant issue, at least in the eyes of the trial court. The Petitions to Compel thus not only failed to provide Mother with notice of an important issue, but also misled her with regard to the evidence that DHS intended to introduce at the evidentiary hearing. If Mother had been on notice of a need to prove that her family lived in the home, she could have introduced any of numerous forms of proof (e.g., recent bills, rental or mortgage documents, etc.) The trial court ordered the home visit, at least in part, to determine whether DHS's allegation of homelessness "had merit." Trial Court Opinion, 9/9/2019, at 7 Adequate notice for due process purposes includes the "right to notice of the issues and an opportunity to offer evidence in furtherance of such issues." *Id.* at 965. When the allegations of wrongdoing and the evidence to support them may be changed during the course of the hearing itself, parents have little or no opportunity either to prepare or respond to any contentions of alleged neglect directed against them.

As recounted above, DHS's involvement in this case began with an anonymous GPS report. At the hearing, caseworker Richardson testified that the GPS report contained allegations of "homelessness and inadequate basic care" of Mother's children. N.T., 6/11/2019, at 5. The Petitions to Compel do not state that Mother was homeless, but rather only that on one occasion three weeks prior to the filing of the GPS report Mother and her family had been seen sleeping outside of the Philadelphia Housing Authority and on a more recent occasion Mother had been observed protesting outside of the Philadelphia Housing Authority from noon until eight in the evening. *See* Petitions to Compel, 5/31/2019, ¶ J. The Petitions to Compel likewise do not describe any generalized "inadequate basic care," but rather allege only that during the eight hours she was protesting at the Philadelphia Housing Authority on May 21, 2019, it was "unknown" whether she had fed her children. *Id.*

To the extent that the contention that the family slept outside of the Philadelphia Housing Authority on one occasion could be construed as evidence of homelessness (rather than just part of her protesting activities), DHS disproved this contention during its limited investigation. First, the anonymous source of the GPS report provided DHS with the family's address, and DHS then promptly sent a representative of Project Home to approach Mother. Mother informed the representative of her protesting activities at the Philadelphia Housing Authority but denied that she or her family was homeless. Caseworker Richardson then verified Mother's address in DHS's files and proceeded to the residence, where she confronted Father and later observed the arrival of Mother and the children. *Id.* ¶ L. Caseworker Richardson left but returned later in the day, when she again found Mother and Father at the home. Having located the family's home and repeatedly finding Mother and Father there, any allegation of homelessness was rendered moot. If all of this was not sufficient evidence of a lack of homelessness, by the end of the evidentiary hearing DHS unmistakably confirmed that it no longer considered the family to be homeless, as it requested an order to con-

duct a home visit at the very house where caseworker Richardson had visited twice on the day in question.

[30] At that juncture, the only remaining allegation in the Petitions to Compel was that the anonymous reporter had not observed Mother feed one of the children on a single day for approximately eight hours. The DHS caseworker's characterization of this allegation as "inadequate basic care" was hyperbole. At the hearing, DHS did not offer any evidence to corroborate this specific allegation or of any other instance of current neglect of the children of any kind that it discovered in its investigation prior to filing the Petitions to Compel.

Without reference to the claims in the Petitions to Compel, or recognition of the lack of evidence to support them, the trial court questioned Mother regarding the status of the utility service to the home, the presence of food in the home, whether there was adequate bedding and clothing, whether the children had treating physicians and dentist, and whether Mother was employed. *See* N.T., 6/11/2019, at 12-14. Although Mother answered these questions appropriately by denying any general neglect of her children (and without any allegation or evidence to the contrary), the trial court nevertheless concluded that the evidence presented formed the basis for a finding of probable cause to grant DHS a home visit:

> The Motion to Compel and the hearing confirmed that one of the main factors of the DHS investigation is the matter of homelessness and if the alleged address of the family was suitable for Children. The home assessment by DHS would be able to determine the claims for both homelessness and inadequate care of Children have merit. The trial court determined that the Motion to Compel provided probable cause to complete the assessment of the family home.

Trial Court Opinion 9/9/2019, at 7-8.

This analysis reveals a decision and fact-finding untethered to the allegations or evidence before the trial court. Richardson's testimony confirmed that the family was not homeless,[19] and there were no allegations in the Petitions to Compel, and no evidence presented at the hearing, to substantiate any issues with the children's health or that the home was lacking in any respect. We reiterate: the only potentially viable allegation of any current or ongoing neglect before the trial court at the hearing on the Petitions to Compel was an anonymous report of a possible failure to feed one of the children for a portion of one day. DHS offered no evidence to corroborate this allegation or to support the more general contention that the children were malnourished or otherwise not regularly being fed. Without any evidence to substantiate the allegations of neglect of the children, no probable cause existed to order DHS to conduct a home visit.

[31] To the extent that the trial court was suspicious that the home conditions of prior years could possibly have returned despite the lack of evidence to even support a suspicion, this was a fundamental error. Respectfully, reasoning of this sort appears to rest on an unsupportable presumption that once neglectful parents will always be deficient in the care of their children. Mother and Father had resolved the home-related issues in prior years, re-

19. The Dissenting Opinion contends that as "the allegations of homelessness remained an issue, along with the allegations of inadequate basic care, there was a clear connection between the allegations in the petition and the requested investigative home visit." Dissenting Opinion (Mundy, J.) at 659. For all of the reasons set forth here, we respectfully disagree that the record supports such a contention.

sulting in DHS lifting Y.W.-B.'s protective supervision in 2015. At the time of the events at issue here, there was no evidence of any reoccurrence of those prior shortfalls. While it was not inappropriate for the trial judge to view any current allegations through the prism of prior experiences with the family, it was entirely inappropriate to order a home visit based solely on prior events without any evidence of a reoccurrence.

As a reviewing court, the Superior Court's inquiry was limited to determining whether there was a substantial basis in the record for the trial court to find probable cause. *Jacoby*, 170 A.3d at 1082. As we outlined in connection with the trial court's ruling, the paucity of evidence offered in this proceeding does not provide a substantial basis for a finding of probable cause. The Superior Court erred in reaching a contrary conclusion.

> The averments in DHS's petition, supported by evidence at the hearing, corroborated the initial report that Mother was outside the [Philadelphia Housing Authority] office and the allegation that there was a fire at Mother's current residence. Although Mother asserted her previous residence was damaged by fire, the trial court was under no obligation to credit Mother's alleged explanation, particularly since DHS workers ultimately observed at least some damage to Mother's current residence, namely the boarded-up window, which was consistent with damage from a fire. *Cf. Commonwealth v. Torres*, [564 Pa. 86], 764 A.2d 532, 538 n.5, 539 & 540 n.8 (2001) (corroboration of information freely available to the public does not constitute sufficient indicia of reliability, but indications that a sources had some "special familiarity" with a defendant's personal affairs may support a finding of reliability).
>
> The trial court was also entitled to consider its prior experiences with the family, as well as Mother's demeanor at the hearing. *See Pet. to Compel*, 875 A.2d at 380 (Beck, J., concurring). Moreover, it was within the province of the trial court to resolve conflicts between the petition to compel and the testimony at the hearing when evaluating whether there was probable cause to compel Mother's cooperation with the home visit. *Cf. [Commonwealth v.] Marshall*, [523 Pa. 556], 568 A.2d [590], 595.
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> * * *
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> Moreover, there was a "link" between the allegations and DHS's petition to enter the home. *See D.R.*, 216 A.3d at 295. Accordingly, we affirm the trial court's conclusion that that there was a fair probability that Children could have been in need of services, and that evidence relating to the need for services could have been found inside the home.

In Interest of Y.W.-B, 241 A.3d at 390.

The Superior Court's probable cause analysis fails in several respects. First, while the court indicated that there was a "link" between the allegations and DHS's petition to enter the home, it did not explain what that link was between the home inspection and the allegation that Mother may have failed to feed one of the children for eight hours. To establish probable cause, there must be a specific "nexus between the items to be [searched] and the suspected crime committed[.]" *Commonwealth v. Johnson*, —— Pa. ——, 240 A.3d 575, 587 (2020) (plurality) (quoting *Commonwealth v. Butler*, 448 Pa. 128, 291 A.2d 89, 90 (1972)); *see also Commonwealth. v. Kline*, 335 A.2d 361, 364 (Pa. Super. 1975) ("Probable cause to believe that a man has committed a crime on the street does not necessarily give rise to probable cause to search his home."). In the case that the Superior Court cited to support the neces-

sity of a nexus, *In Interest of D.R.*, 216 A.3d 286 (Pa. Super 2019), *affirmed*, —— Pa. ——, 232 A.3d 547 (2020),[20] the Fayette County child protective services agency filed a motion seeking to compel cooperation with a home inspection, alleging that it had received three reports of incidents in which a father was observed to be under the influence of an unspecified substance, and that during one of those instances, he was in the company of one of his five children. The Superior Court reversed the trial court's grant of the motion, concluding, inter alia, that the agency had wholly failed to allege a connection between the alleged misconduct and the family's home. *Id.* at 294-95 ("[C]ritically, Fayette CYS did not allege a link between the alleged abuse/neglect and the parents' home.").

[32] Based upon our review of the record, no nexus existed between the allegations in the Petitions to Compel and Mother's home. The Petitions to Compel state that during an eight-hour period, while protesting before the Philadelphia Housing Authority, it was "unknown" whether Mother fed her child who was with her. This allegation has no connection whatsoever to the family's home. Even assuming a lack of food in the home on the day of the inspection, that would not be evidence to support the contention that Mother failed to feed one of her children during her eight-hour protest on May 21, 2019 in front of the Philadelphia Housing Authority. We reiterate that there was no evidence, or even an allegation, that the children exhibited signs of malnourishment or even that DHS uncovered other days in which the children appeared to go without food.

Second, the Superior Court also erred in considering Mother's prior experiences with DHS in its probable cause analysis because the trial court placed no express reliance on it. Y.W.-B's dependency ended in 2015 when DHS ceased its protective supervision and discharged the dependency matter. The GPS report contained no allegations that any of the prior deficiencies in the home (e.g., flea infestation, lack of interior walls) had reoccurred or was currently occurring. The current child protective services investigation is not a continuation of the prior proceeding, but rather is wholly unrelated to the prior proceeding that DHS itself terminated in 2015 after concluding that the then-existing issues with the family home had been satisfactorily rectified. The fact that Mother earned the discharge of the dependency petition four years prior to this proceeding, with no proof of any intervening episodes, made the prior experience totally irrelevant.[21]

20. This Court's review was limited to addressing the agency's authority to compel a parent to submit to an observed urine sample for analysis as part of its investigation. *In Interest of D.R.*, 232 A.3d at 558. We affirmed the Superior Court's ruling that under the unambiguous provisions of the CPSL, the agency lacked any such authority. *Id.* at 559. We did not grant allocatur to consider the issues raised in the current appeal.

21. Although not discussed in the proceedings in this case, we recognize that the trial judge who issued the order in question presided over the 2013 dependency matter for one year prior to its termination. As such, he was aware of the discharge of that petition and the fact that the conditions giving rise to those proceedings has been ameliorated well in advance of the current matter. In addition, the same trial judge granted a petition to compel an inspection of Mother's home in 2016 and the petition was discharged the day after the inspection. *See* supra note 5. This interaction between Mother and the agency was not contained in the current petitions to compel or referenced in the proceedings in this case. In many counties, repeat incidents involving child welfare are assigned to the same judge for purposes of continuity with the family. When a petition to compel compliance with a home inspection is presented to a judge with

[33] Moreover, according to the Petitions to Compel, the current allegations against Mother were related solely to her presence near the Philadelphia Housing Authority and not to any conditions existing inside her current residence. Again, Mother's prior experiences with DHS that ended in 2015 were four years old and there was no evidence of any reoccurrence of prior problems. They were therefore **stale** and provided no evidentiary basis to establish probable cause to enter the home. Stale evidence may not be used to establish the probable cause to issue a search warrant; instead, the conclusion that probable cause exists must be "based on facts which are closely related in time to the date the warrant is issued." *Commonwealth v. Jones*, 506 Pa. 262, 484 A.2d 1383, 1389 (1984) (Zappala, J., dissenting). "If too old, the information is stale, and probable cause may no longer exist." *Commonwealth v. Leed*, 646 Pa. 602, 186 A.3d 405, 413 (2018); *In re Smith Children*, 26 Misc.3d 826, 891 N.Y.S.2d 628, 635 (N.Y. Fam. Ct. 2009) ("[W]hile the statute requires the court to consider the child protective or criminal history of a family, such history cannot be proffered as the sole basis for seeking a pre-petition order to gain entry into their home in connection with a new investigation commenced by an anonymous report . . . three years later."); *see also Commonwealth v. Tolbert*, 492 Pa. 576, 424 A.2d 1342, 1344 (1981) ("If the issuing officer is presented with evidence of criminal activity at some prior time, this will not support a finding of probable cause as of the date the warrant issues, unless it is also shown that the criminal activity continued up to or about that time".).

[34] Next, the Superior Court failed to address the reliability of the information contained in the Petitions to Compel, which was provided exclusively by the unidentified source that filed the GPS report. DHS offered no evidence at the evidentiary hearing to establish the credibility and reliability of the source or to corroborate any of the information provided by the source. This Court has ruled that where probable cause is "almost entirely based on information gleaned from anonymous sources . . . [and] there is no attempt made to establish either the basis of knowledge of the anonymous sources or their general veracity, a strong showing of the reliability of the information that they have relayed" is required to support a finding of probable cause. *Commonwealth v. Torres*, 564 Pa. 86, 764 A.2d 532, 540 (2001); *see also Florida v. J.L.*, 529 U.S. 266, 270, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000) (holding that anonymous tip that juvenile was carrying a weapon did not justify a stop and frisk because "[i]n the instant case, the officers' suspicion that J.L. was carrying a weapon arose not from any observations of their own but solely from a call made from an unknown location by an unknown caller."); *Commonwealth v. Cramutola*, 450 Pa.Super. 345, 676 A.2d 1214, 1216 (1996) ("[I]nformation provided to the police by an anonymous source can establish probable cause **if it is corroborated**.") (emphasis added); *Croft v. Westmoreland Cty. Children and Youth Servs.*, 103 F.3d 1123, 1127 (3d Cir. 1997) (holding that in connection with searches in the child protective services context, "[the investigator] was not . . . entitled to rely on the unknown credibility of an anonymous informant unless she could corroborate the information through other sources which

prior case involvement with the parents, the judge will be making a probable cause determination with knowledge of the previous proceedings and dispositions. To the extent relevant, the judge may take into account these prior encounters. Here, in issuing the order, the trial judge did not invoke reliance of Mother's history in his courtroom.

would have reduced the chance that the informant was recklessly relating incorrect information or had purposely distorted information."); *In re Smith Children*, 891 N.Y.S.2d. at 634 ("In the absence of other reliable information, this Court finds that an anonymous SCR report alone is insufficient to establish 'probable cause' for the issuance of an order of entry in a child protective investigation[.]").

In the present case, the identity of the individual who provided the allegations of neglect summarized in the Petitions to Compel was never identified and did not testify at the evidentiary hearing. The failure to testify was significant in at least four respects. First, there was no evidence to corroborate the anonymous report. In fact, the conjecture as to homelessness was specifically rebutted by Mother to the Project Home representative and by DHS's own investigation and its request for an order to enter the same home that Caseworker Richardson twice visited. Second, the trial court lacked any opportunity to observe the individual's testimony to assess his or her credibility. Third, Mother had no opportunity to provide support for her contention that the GPS report had been filed in retaliation for her protests of the policies of the Philadelphia Housing Authority, which she could have done if, for example, the source of the GPS report had any affiliation with that governmental body. Fourth, the lack of testimony left unclear the foundation for the statement in the Petitions to Compel that it was "unknown" whether Mother fed her children during the time she was protesting. Did the source observe Mother continually throughout the eight hours of protest on May 21st without seeing Mother provide food to the child?[22] Or, conversely, did the source of this allegation observe Mother with child only sporadically during the eight hour period, such that Mother could have fed the child on many (unobserved) occasions throughout that time period?

[35] Finally, and significantly, DHS had no obligation to keep the identity of the source of the GPS report confidential or to shield him or her from testifying at the evidentiary hearing. The trial court mistakenly believed that DHS was legally required to keep the name of the anonymous source confidential and, accordingly, citing 23 Pa.C.S. § 6340(c), sustained DHS's objections when Mother's counsel asked Richardson to identify the anonymous source of the GPS report. Trial Court Opinion, 9/9/2019, at 8. Section 6340(c) of the CPSL, however, only requires DHS to keep confidential the name of an anonymous reporter of a **CPS** report, i.e., a report alleging child abuse. 23 Pa. C.S. § 6340(c). No similar provision in the CPSL protects the source of a **GPS** report, i.e., a report of, inter alia, child neglect.[23]

22. Mother has consistently denied that she had either of her children with her during her protests on May 21st, a contention contradicted only by the anonymous source of the GPS report.

23. The Concurring and Dissenting Opinion disagrees with this statutory analysis on the grounds that there is some overlap in the definitions of "child abuse" and "child neglect." Concurring and Dissenting Opinion (Dougherty, J.), at 640–41. While there is some overlap, it is minimal and clearly not implicated in this case. The definition of "child abuse" includes, inter alia, "[s]erious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning. " 55 Pa. Code § 3490.4. The alleged child neglect in this case, involving an uncorroborated allegation of a single instance of potentially failing to feed one of the children for one eight hour period is not the type of serious prolonged and repeated physical neglect necessary to

Our General Assembly has drawn a clear distinction between an individual who makes an anonymous report of child abuse as opposed to one of child neglect – DHS must guard the confidentiality of an individual making allegations of child abuse in a CPS report, but has no similar obligations in cases involving GPS reports alleging child neglect. While DHS could have called the source of the GPS report in this case to provide testimony to corroborate the claims against Mother, it chose not to do so and, accordingly, the allegations set forth in the Petitions to Compel, based solely on this single uncorroborated anonymous source, were insufficient to establish probable cause to justify entry into Mother's home. *See, e.g., Torres*, 764 A.2d at 540.

[36] In its probable cause analysis, the Superior Court placed heavy weight on Mother's perceived demeanor at the evidentiary hearing. While her demeanor may well have had some effect on the trial court's evaluation of her credibility, we are aware of no legal authority to support the proposition that the demeanor of a witness, without more, constitutes a basis for a finding of probable cause to permit entry into that individual's home. In this regard, and without condoning disrespect for the court or the proceeding, we note that Mother's demeanor may well have been, in whole or in part, a reflection of her frustration based on her view that the entire episode was in retaliation for her protesting activities.

[37] The Superior Court's reference to fire damage in Mother's current home in its probable cause analysis is dehors the record in this case. The trial court made no finding of fact that Mother's current home had suffered any fire damage. While the Petitions to Compel did indicate that Mother had advised the Project Home worker that a fire had destroyed a **prior** residence, the trial court did not, based upon a boarded window or otherwise, conclude that the present home had suffered fire damage.[24] Fire damage in the current home was not even mentioned at the evidentiary hearing or in the trial court's subsequent Rule 1925(a) written opinion. In short, the trial court did not, as did the Superior Court, take the leap from the existence of a boarded window to fire damage inside the home in the absence of any evidence in support.

For these reasons, Mother's constitutional rights were violated. The order compelling her cooperation with a governmental intrusion into her home was deficient for want of probable cause. Accordingly, we reverse the order of the Superior Court.

Order reversed.

Chief Justice Baer and Justices Saylor and Wecht join the opinion.

Justice Dougherty files a concurring and dissenting opinion in which Justice Todd joins.

Justice Mundy files a dissenting opinion.

constitute child abuse under the definition of that term in 55 Pa. Code § 3490.4. In the overlap case hypothesized by the Concurring and Dissenting Opinion, the trial court judge would make the call on the appropriate categorization and treat the identity of the reporter accordingly. Here however, we apply the CPSL to the case before us.

24. It is not clear how the trial court could have made such a finding of fact. The Superior Court rightly notes that the trial court had no obligation to find Mother's testimony regarding a fire at a previous home to be credible. *In Interest of Y.W.-B.*, 241 A.3d at 390. The result, however, would merely be to disbelieve that the previous home had been destroyed by fire. Absent any evidence that a fire had damaged Mother's current home, her testimony regarding her prior home could not be "transferred" to her current home.

JUSTICE DOUGHERTY, concurring and dissenting

I concur in the result. Specifically, I agree with the majority's conclusion the juvenile court's order directing appellant to comply with a child welfare home safety assessment lacked a sufficient basis, and the Superior Court therefore erred in concluding the record supports a finding of probable cause. I appreciate the majority's scrupulous attempt to pronounce clear parameters of probable cause around the domain of child protection, where bright-line standards are scarce, and I underscore my thorough agreement with the majority's conclusion the facts of this record do not establish probable cause under any type or quantum of evidence. However, I view substantial elements of the majority's reasoning as incongruous, and potentially deleterious to the development of more context-specific, and arguably more appropriate, jurisprudence. But, upon this record of insufficient facts, the majority makes significant pronouncements of child welfare law and practice regarding issues neither properly before this Court nor, in my view, necessary for resolution of this case; these statements may hamper county agencies' ability to effectively assess and serve vulnerable families. I therefore dissent from the majority's analysis.

There is no dispute here regarding whether the Child Protective Services Law (CPSL) and the related regulations governing the Department of Human Services and county children and youth agencies must be enforced within the constitutional limits imposed by the Fourth Amendment to the United States Constitution. The parties, the lower courts, over a decade of jurisprudence governed by the Superior Court's decision in *In re Petition to Compel Cooperation*, 875 A.2d 365 (Pa. Super. 2005), and each of the federal circuit courts confronting constitutional claims related to child protection investigations,[1] all agree the Fourth Amendment's protection against unreasonable searches requires a showing of reasonable government need to compel inspection of a home by an agency acting under a child protection statute. We ostensibly granted discretionary review to consider whether the Superior Court below granted the Philadelphia Department of Human Services (DHS) "sweeping authority to enter and search a private home" in violation of state and federal constitutional protections, allegedly without a link between the General Protective Services (GPS) report and anything particular inside the home. *Interest of Y.W.-B.*, 243 A.3d 969, 969-70 (Pa. 2021) (*per curiam*). But, the question of what measure of probable cause applies to an administrative search sought by an agency performing a child protection investigation is an issue of first impression for this Court, and the arguments advanced by the parties actually focus on whether the record before the trial court provided a basis to meet any standard of probable cause at all.[2]

1. *See, e.g., Wojcik v. Town of N. Smithfield*, 76 F.3d 1 (1st Cir. 1996); *Tenenbaum v. Williams*, 193 F.3d 581 (2d Cir. 1999); *Good v. Dauphin Cty. Soc. Servs. for Children & Youth*, 891 F.2d 1087, 1093 (3d Cir. 1989); *Wildauer v. Frederick Cty.*, 993 F.2d 369, 372 (4th Cir. 1993); *Roe v. Tex. Dep't of Protective & Regulatory Servs.*, 299 F.3d 395, 407-08 (5th Cir. 2002); *Doe v. Heck*, 327 F.3d 492 (7th Cir. 2003); *Calabretta v. Floyd*, 189 F.3d 808 (9th Cir. 1999); *Roska ex rel. Roska v. Peterson*, 328 F.3d 1230, 1240-42 (10th Cir. 2003).

2. Preliminarily, the question of whether appellant preserved her state law claim under Article I, Section 8 of the Pennsylvania Constitution circumscribes the scope of my analysis. Although, as the majority indicates, appellant claimed a violation of both federal and state provisions in the trial court and Superior Court, *see* Majority Opinion at 613 n.10,

I. The Superior Court's decision in *Petition to Compel*

The thorny issue we confront here was previously considered by the Superior Court in *Petition to Compel*. The question before that court was broad: whether constitutional protections against unreasonable searches applied at all to home inspections sought by a children and youth agency pursuant to the CPSL. *See Petition to Compel*, 875 A.2d at 374. Noting the absence of Pennsylvania law on the subject, the panel in *Petition to Compel*, like the majority in the present case, drew significant guidance from *Good v. Dauphin County Social Services for Children and Youth*, 891 F.2d 1087 (3rd Cir. 1989), and *Walsh v. Erie County Department of Job & Family Services*, 240 F. Supp. 2d 731 (N.D. Ohio 2003), both federal cases, respectively reversing and denying summary judgment on Section 1983 civil rights claims regarding child protection searches performed without a warrant.[3] *Id.* at 375-79. *Good* and *Walsh* each held the Fourth Amendment applied to the searches performed under child protection statutes, although neither addressed the merits of a claim probable cause was lacking, nor did they consider situations where a warrant had issued or a pre-deprivation hearing had been held. Observing, based upon *Good* and *Walsh*, that Fourth Amendment and Article I, Section 8 principles applied to child protection investigations, as well as the primacy of the privacy interest in one's home, and the agency had provided only a single allegation of medical neglect unconnected to the child's home environment, the *Petition to Compel* panel vacated the lower court's *ex parte* order granting the home inspection. The panel pronounced as the law of the Commonwealth that constitutional protections against unreasonable searches require a children and youth agency to "**file a verified petition alleging facts amounting to probable cause to believe that an act of child abuse or neglect has occurred and evidence relating to such abuse will**

appellant's contention in this Court is that the Pennsylvania Constitutional provision affords greater protection than the Fourth Amendment does, and consequently certain probable cause exceptions developed under the federal law do not apply. *See* Appellant's Brief at 42-54, *citing, inter alia*, *Commonwealth v. Edmunds*, 526 Pa. 374, 586 A.2d 887, 888, 897-98 (1991) (declining to adopt federal good-faith exception to the exclusionary rule). However, DHS argues appellant's expansion-of-protection argument is waived under *Commonwealth v. Bishop*, 655 Pa. 270, 217 A.3d 833, 840-42 (2019), in which we held preservation of a claim seeking departure from federal constitutional law requires an appellant to assert and develop — to the trial court and on intermediate appeal — why the state constitutional provision at issue should be interpreted more expansively than its federal counterpart. Here, appellant did not do so, and, consistent with *Bishop*, I therefore view her departure claim as waived, and regard her state law claim as coterminous with a claim under the Fourth Amendment. *Id.* at 838, 841. As a result, to the extent necessary for resolution of this case, I view federal Fourth Amendment jurisprudence, and our cases interpreting Article I, Section 8 as coterminous with its federal counterpart, as appropriate binding precedent.

3. *See* 42 U.S.C. § 1983. Though effective for answering the broad question then before the panel in *Petition to Compel*, the utility of these federal cases accedes to some important limits discussed *infra, i.e.*, they assume the truth of the plaintiffs' allegations of objectively egregious conduct (an assault by police to compel an investigation of poor housekeeping in *Walsh*, and a strip search based upon an anonymous report of bruises in *Good*), and determine the agents were not entitled to qualified immunity, because a factfinder could conclude the government actors performing the searches could not reasonably believe they had authority to search plaintiffs' homes without a warrant or on the basis of exigency. *See Good*, 891 F.2d at 1095-96; *Walsh*, 240 F. Supp. 2d at 744, 749-50, 758-60.

be found in the home." *Petition to Compel*, 875 A.2d at 377 (emphasis added). The panel's rationale and holding are endorsed by the majority and both parties in the present appeal. *See* Majority Opinion at 624–26, Appellant's Brief at 39-40, Appellee's Brief at 16, 22 n.3.

I make these observations regarding *Petition to Compel* in response to appellant's central claim the rule of law articulated by the Superior Court's decision below allows for a sweeping, unlimited search of a private home "not compatible with Fourth Amendment jurisprudence" because the court failed to confine its holding to the particular definition of "general protective services" provided in the CPSL regulations. Appellant's Brief at 15-16, 20-21, 32, 40-41, 53. The "rule of law" to which appellant refers is a nearly word-for-word reiteration of the accepted "rule of law" from *Petition to Compel*: "an agency may obtain a court order compelling a parent's cooperation with a home visit **upon a showing of a fair probability that a child is in need of services, and that evidence relating to that need will be found inside the home**." *Id.* at 16-17; *Interest of Y.W.-B.*, 241 A.3d 375, 386 (Pa. Super. 2020) (emphasis added), *citing Petition to Compel*, 875 A.2d at 377-78. In adapting this minimally-nuanced version of the holding from *Petition to Compel* regarding a child abuse investigation under the CPSL, to the type of "general protective services" assessment involved in this case, the panel below explicitly incorporated this Court's definition of "probable cause," as well as the CPSL's definition of "general protective services" and relevant regulations. *See id.* at 383-84, *quoting*, *inter alia*, *Commonwealth v. Jones*, 605 Pa. 188, 988 A.2d 649, 655 (2010) (defining "probable cause" as a common-sense determination of "fair probability" evidence would be found in a particular place); *id.* at 384, *quoting* 23 Pa. C.S. § 6303(a) (defining "general protective services" as " '[t]hose services and activities provided by each county agency for cases requiring protective services, as defined by the department in regulations' ") and 55 Pa. Code § 3490.223 (further defining "general protective services"); *id.* at 384 n.8, *quoting* 55 Pa. Code § 3490.4 (defining "protective services" to include child abuse and general protective services). It therefore appears appellant's entire argument takes the Superior Court's reference to a child "in need of services" fully out of context, and appellant would be satisfied if the panel instead had merely referred more explicitly to a child "in need of **protective** services." Consequently, I view appellant's challenge to the Superior Court's "rule of law", which comprises the issues upon which we granted allocatur, as without merit.

I further observe that neither DHS nor its *amicus* argues in favor of implementing the "social worker exception to the Fourth Amendment" the majority rejects. Relatedly, I cannot agree with the majority's casting of Judge Beck's famous concurring opinion in *Petition to Compel* — joined, notably and unusually, by both panel members in the majority — as generally irrelevant, aside from its recognition the facts supporting probable cause for a home inspection will likely be different from those in a criminal investigation. Majority Opinion at 625–26. In my view, the Beck Concurrence potently declared "simply requiring an agency to show 'probable cause' as it is defined in the criminal law **is not enough**[,]" and encouraged close consideration of the nature and context of each scenario, along with the fullest of all possible disclosures of relevant information by children and youth agencies requesting to compel a home inspection, in light of the significantly different purposes and goals of child protection versus those of law enforcement. *Petition to Compel*, 875 A.2d

at 380 (Beck, J., concurring) (emphasis added).

Thus, I would not minimize the significance of the Beck Concurrence. Judge Beck's astute warning to avoid applying "the standard notion of probable cause in criminal law" to child protection cases is not without authoritative support, and indeed, it reflects important, diverging federal court probable cause jurisprudence involving non-criminal investigations. *See, e.g.*, *Griffin v. Wisconsin*, 483 U.S. 868, 873, 875-76, 877-78 & nn.4 & 6, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987) (administrative search requires reasonableness only, rather than quantum of concrete evidence to support probable cause; warrantless search of probationer's home was reasonable where state's Department of Health and Social Services regulatory scheme provided "special needs" for the supervision of a special population "beyond the normal need for law enforcement[which] make the warrant and probable-cause requirement impracticable"), *quoting New Jersey v. T.L.O.*, 469 U.S. 325, 351, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985) (Blackmun, J., concurring); *Ferguson v. City of Charleston*, 532 U.S. 67, 68, 79-80, 121 S.Ct. 1281, 149 L.Ed.2d 205 (2001) (warrantless, suspicionless search fits "special needs" exception only when "divorced from the State's general interest in law enforcement"); *Darryl H. v. Coler*, 801 F.2d 893, 901 (7th Cir. 1986) (because discretion of caseworker was circumscribed by regulatory standards and child could refuse to cooperate, child abuse investigation including inspection of child's body could be conducted without meeting the strictures of probable cause or warrant requirement); *Tenenbaum v. Williams*, 193 F.3d 581, 604 (2d Cir. 1999) (noting possibility of "special needs" circumstances where warrant and probable cause would not effectively protect child); *Franz v. Lytle*, 997 F.2d 784, 791 (10th Cir. 1993) ("critical distinction[ ]" between social work and law enforcement "justifies a more liberal view of the amount of probable cause that would support an administrative search").

Similarly, I view the distinct features of the individualized and intimately fact-sensitive civil administration of the CPSL, as compared to the strictly-prescribed principles of criminal law and procedure utilized to enforce the Crimes Code, as important considerations — not for the purpose of excusing a proper showing of reasonable or probable cause — but to competently balance risks of harm to the vulnerable child and the sacrosanctity of the family home.[4] After all, despite well-established Fourth Amendment standards developed through criminal law, we nevertheless continue to pronounce often fine-grained distinctions between assessments of probable cause necessary to support an arrest (where the conclusion concerns the guilt of the arrestee), and probable cause to search (where the conclusions concern the present location of items sought and their connection with a crime), as well as the not-quite probable cause (*i.e.*, a reasonably articulable suspicion) required to perform an investigatory stop and subsequent search. *See Terry v. Ohio*, 392 U.S. 1, 20-27, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) (reasonable suspicion affords "due weight" to "specific reasonable inferences which [an officer] is entitled to draw from the facts in light of his experience"; however, "good faith" and "inarticulate hunches" are insuf-

4. The majority criticizes my analysis here as failing to indicate what evidence might be required to establish probable cause in the child welfare context. *See* Majority Op. at 627 n.18. I reiterate that I do not dispute there was insufficient evidence presented in this case, and also note that I describe several examples to this effect *infra,* in Section IV of this opinion.

ficient support); *see also*, *e.g.*, *Commonwealth v. Hicks*, 652 Pa. 353, 208 A.3d 916, 925, 940, 946 (2019) (applying *Terry*, investigative stop based on officer's "inchoate and unparticularized suspicion or hunch" did not satisfy reasonable suspicion standard) (internal quotations omitted).

I further note the contours of an appropriate Fourth Amendment analysis are, to some extent, shaped by the General Assembly's intentional enactments of specialized laws, with their particularly-defined purposes and elements, which must be considered when determining whether an adequate quantum of evidence supports the requested invasion of privacy. *See Hicks*, 208 A.3d at 954 (Dougherty, J., concurring), *quoting Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000) (where legislature exercises its exclusive power to pronounce which acts are crimes and define them, "it is the elements of those crimes that officers must consider when determining whether there is 'reasonable, articulable suspicion that criminal activity is afoot' "). The Beck Concurrence did not further expound upon the parameters of probable cause in cases arising under the CPSL, perhaps due to the panel's unanimous agreement regarding the dispositively insufficient record before it. But, in my respectful view, Judge Beck foresaw the pernicious allure of applying our existing, well-developed criminal law rubric within the context of a child welfare investigation — exemplified by several problematic assumptions and conclusions relied upon throughout the majority's analysis in this case — which risks arriving at incorrect, plausibly dangerous results.

II. Criminal law and child protection distinctions

The criminal law standards relied upon by the majority, *see* Majority Opinion at 617–19, address the constitutional probable cause requirements for obtaining an ***ex parte*** **warrant** to search for **specific evidence** of **criminal activity** to be **seized for use in proving a crime**. Analogy to the customized procedural and substantive requirements developed in response to these particular features of criminal search warrants may be all that exists in the Commonwealth's jurisprudence to aid our analysis here, but, in my view, it is at best an approximate, awkward fit.

A.

First, and foremost, the CPSL is not a criminal statute. It is a civil law statute administered by the Pennsylvania Department of Human Services (the Department) to implement and regulate a program of child protection with the stated purpose of, *inter alia*, "providing rehabilitative services for children and parents involved so as to ensure the child's well-being and to preserve, stabilize and protect the integrity of family life wherever appropriate[.]" 23 Pa.C.S. § 6302(b). "It is the goal of children and youth social services to ensure for each child in this Commonwealth a permanent, legally assured family which protects the child from abuse and neglect." 55 Pa. Code § 3130.11. "The primary purpose of general protective services is to protect the rights and welfare of children so that they have an opportunity for healthy growth and development." 23 Pa. C.S. § 6374(a). "Implicit in the county agency's protection of children is assistance to parents in recognizing and remedying conditions harmful to their children and in fulfilling their parental duties more adequately." *Id.* § 6374(b). To that end, each county is responsible for administering a program of children and youth social services that provides, *inter alia*, "[s]ervices designed to keep children in their own homes; prevent abuse, neglect and exploitation; and help overcome problems

that result in dependency and delinquency[;]" and "[s]ervices designed to reunite children and their families" if circumstances require the child's removal. 55 Pa. Code §§ 3130.12(c), 3490.231; 23 Pa.C.S. § 6373. Of course, referrals to law enforcement may at times arise in such situations, but, fundamentally, an investigating caseworker is not law enforcement. As well, although there might naturally be some resistance to a protective services investigation, the caseworker's purpose and duty is to render the services necessary to keep children safe in their own homes. *See id.*

Unlike our expansive crimes code and detailed Rules of Criminal Procedure, which together define every possible offense requiring law enforcement with strictly-construed precision and delineate their consequences and warrant procedures, the CPSL defines only two circumstances authorizing an agency's unwanted involvement in family privacy: when the child is in need of either "child protective services" as a result of child abuse, or "general protective services" to address additional needs related to potential for harm, such as neglect. Each of these is broadly defined, and their concepts and protocols overlap. For example, beyond solely intentional injuries, child abuse calling for "child protective services" may include omissions in care which create a likelihood of injury, cause physical neglect (including failure to provide age-appropriate supervision), or contribute to a child's mental illness. *See* 23 Pa.C.S. § 6303. "General protective services" are those provided by each county agency "**for cases requiring protective services**, as defined by the [D]epartment in regulations[,]" *id.* (emphasis added); the corresponding regulations' definition of "protective services" encompasses services **both** to "children who are abused" **and** those "in need of general protective services[,]" 55 Pa. Code § 3490.4.[5]

The term "general protective services" includes, most broadly, "[s]ervices to prevent the potential for harm to a child who [*inter alia*] [i]s without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals[,]" *id.* § 3490.223. Consequently, a child may be **both** the subject of a child protective services report, **and also** in need of general protective services. A report of suspected child abuse received by Childline may, after its initial screening, be assigned to the county agency for assessment as a GPS report, and a family may also be accepted for general protective services following an unfounded "CPS" (*i.e.*, child protective services) investigation; conversely, a report screened-in as meeting GPS criteria may, after assessment, be transitioned to a CPS case for a child abuse investigation. *See* 23 Pa.C.S. § 6334(f); 55 Pa. Code §§ 3490.32(g), 3490.59(a), 3490.235(a) ("The county agency shall provide, arrange or otherwise make available the same services for children in need of general protective services as for abused children[.]"); PA. DEP'T OF HUM. SERVS., OCYF BULL. NO. 3490-20-08, STATEWIDE GEN. PROTECTIVE SERVS. (GPS) REFERRALS, at 2 (Sept. 11, 2020) (referencing guidelines for transitioning reports originally assigned as GPS reports to CPS reports). Furthermore, a report of possible neglect based on, for example, a reporter's observation a child is unbathed, hungry, and unsupervised, may fit either category or none at all, depending not only upon the veracity of the par-

5. *See also* 23 Pa.C.S. § 6303 (defining "protective services" as [t]hose services and activities provided by the department and each county agency for children who are abused **or** are alleged to be in need of protection under [the CPSL]") (emphasis added).

ticular details provided by the reporter (or lack thereof), but also the agency's ability to understand the circumstances — *e.g.*, the child's age and ability, whether the incident is isolated, or if there is evidence of further or different maltreatment [6] — and assess for safety threats and level of risk. *See* 23 Pa.C.S. §§ 6362(e), 6375(c)(2) (requiring use of Department-approved risk assessment process to evaluate both CPS and GPS cases); 55 Pa. Code § 3490.321 (providing standards for Department-approved risk assessment processes).[7]

Recognizing the Court must render its decision in this case without the contextual aid of any record development regarding the foundations of the agency's administrative or investigatory protocols and risk assessment calculus, I note responsibility for the particulars of how these screening and assessment practices are employed has been delegated to the Department by the General Assembly. *See id*; 23 Pa.C.S. § 6303 (defining "[r]isk assessment" as "[a] Commonwealth-approved systematic process that assesses a child's need for protection or services based on the risk of harm to the child"); 55 Pa. Code § 3490.321(b) ("The Department and counties will review the implementation of the risk assessment process on an ongoing basis to ensure that the standards established are consistent with good practice and the results of research."); *id.* § 3490.321(c) ("The county agency shall implement the State-approved risk assessment model developed by the Department in consultation with the Risk Assessment Task Force."). In this vein, the agency

6. Research compiled by the United States Department of Health and Human Services indicates children experiencing one form of maltreatment may experience others simultaneously and are likely to experience recurring neglect. CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., CHILD MALTREATMENT 2019 20-22 (2019), https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf.

7. The majority dilutes my disagreement with its statutory analysis by imprecisely characterizing it as merely based upon ''overlap in the definitions of 'child abuse' and 'child neglect.' '' Majority Op. at 634 n.23. But my dissent in this regard stems not only from the particular definitions of these (unquestionably important) terms, but from the malleable, transferable, **context-specific** concepts relating to the **type of protective services** (*i.e.*, CPS or GPS) employed at a given time in a given case as a result of an agency's screening, assessment, or investigatory process — which, by statute and by regulation, is neither static nor dependent upon the information supplied by the reporter.

Of course, this statutory and regulatory scheme is significantly more complex than the summary review I provide herein. Its adaptability to an agency's improved understanding of the child's and family's needs is a critical feature which, in my respectful view, is dangerously oversimplified by the majority's use of regulatory provisions divorced from context to define the services an agency must provide based on how the report is made. *See id.*; *see also id.* at 617. Even a report as seemingly anodyne as potentially failing to feed a child for eight hours while outside could prove dire in the case of a very young infant or other especially vulnerable child; such a report is just as readily an allegation the child is without care necessary for his physical health — *i.e.*, GPS report criteria, *see id.* at 617, *quoting* 55 Pa. Code § 3490.223 — as it is reasonable cause to suspect the child's development is endangered by his caregiver's failure to provide the essentials of life — *i.e.*, CPS report criteria, *see id.*, *quoting* 55 Pa. Code § 3490.11(a); *id.* at 634 n.23, *citing* 55 Pa. Code § 3490.4 (defining child abuse as including ''serious physical neglect''). Additionally, I note the statutory definition of ''serious physical neglect,'' differs from the regulatory definition described by the majority, and includes, as forms of child abuse, the failure to supervise a child in a manner appropriate for the child's development and abilities, as well as failure to provide a child with adequate essentials of life — ''including food, shelter or medical care,'' without regard for whether such deprivation is ''prolonged or

must have some discretion in translating the information supplied by a reporter, along with any other information revealed through its own screening and assessment processes, into risk assessment categories such as "homelessness" and "inadequate basic care."[8]

Here, I am troubled by the majority's parsing of the information supplied by the reporter and the categories of risk identified by DHS without regard for the Department's evidence-based process. *See id.* § 3490.321(b), *supra*. Specifically, I disagree with the majority's conclusion the DHS caseworker's testimony — that she located the family's address and observed the arrival of appellant and the children — "confirmed" the family was not homeless, and thus any risk of homelessness was "rendered moot." Majority Opinion at 629–30. First, I note that, while the Petition to Compel Cooperation (Petition) indicates appellant ushered the children into the home while DHS was there, the caseworker herself specifically refuted making that observation, as follows:

> [Appellant's counsel] Q. You testified that the allegations were homelessness and inadequate care. You said you went out to the home; is that correct?
>
> [DHS] A. I went out to the home; yes, I did.
>
> Q. You saw the family go into a home?
>
> A. No, I did not. We were standing outside the entire time.
>
> * * *
>
> Q. The facts alleged in the petition are that the father was at the home, and that the mother arrived at the home shortly after that and ushered the children into the home; is that correct?
>
> A. I do not recall that, no.
>
> Q. All right. I think your counsel can show you a copy of the petition? Were you there?
>
> A. That's fine, but I -- I filed the petition, and I recall being with the family, and that's not what occurred. So, something could be in the petition, but that's not what I stated.
>
> Q. The petition might be false?
>
> A. That could be. It could be a mistake, but that's not what occurred.
>
> Q. All right. You have an address that you went out to; is that correct?
>
> A. Yes, I did.
>
> Q. Was the family living at that address?
>
> A. I have no idea if they were living at the address because I was not allowed access into the home.

N.T. 6/11/2019 at 8-10; *see also* Petition to Compel Cooperation, 5/31/2019, at ¶ 3(*l*). Second, other nonconflicting evidence indicates the address was the same residence known to DHS and the trial court from appellant's prior dependency matter, which was confirmed by the caseworker through a public welfare records search. *See* N.T. 6/11/2019 at 9-12; Petition at ¶ 3(k). But there is nothing in the record to confirm that any person did or could occupy or enter the address prior to DHS's completion of its court-ordered home assessment. In my view, just as the Court cannot affirm a finding of probable cause on these scant facts, the Court

repeated'' as the majority insists. 23 Pa.C.S. § 6303(b.1).

8. Guidance from the Pennsylvania Department of Human Services' Office of Children, Youth and Families provides subcategories of need to be used for the dual purposes of identifying the primary concerns to address and allowing for consistent tracking of data. *See* Pa. Dep't of Hum. Servs., OCYF Bull. No. 3490-20-08, Statewide Gen. Protective Servs. (GPS) Referrals, at 8 (Sept. 11, 2020). The subcategories, which include ''homelessness'' and ''inadequate basic needs'' related to clothing/food/hygiene, education, health care, nurturing/affection, and shelter/housing, are not exhaustive or rigidly applied, but ''nuanced'' examples are ''provided solely to give direction to staff[.]'' *Id.* at 8, 10-11.

should not conclusively terminate, as a matter of law, a fact-intensive DHS investigation where more information may be available, but the evidence presented in the midst of an investigation is insufficient to warrant home entry. An individual's presence at the address on file for public welfare purposes, without more, is not proof the address is habitable or that she lives there. Likewise, I disagree with the majority's dismissal of DHS's identified concern for "inadequate basic care" as "hyperbole," and its determination that the "only potentially viable allegation" remaining (after ruling out homelessness) was an anonymous report one child may not have been fed over a period of several hours during a protest event which had no connection to conditions of the home. Majority Opinion at 629–31. Regardless of whether appellant did or did not feed the child that day, safe and habitable shelter remains an essential aspect of providing "basic care" to a child. *See supra* n.7.

B.

Although reports provided by mandated reporters must include the reporter's identity and a presumption of good faith, *see* 23 Pa.C.S. §§ 6313(b)(8), 6318(c), the CPSL also encourages "[a]ny person" to make a report "if that person has reasonable cause to suspect that a child is a victim of child abuse[,]" *id.* § 6312; *see also id.* § 6302 (one purpose of CPSL is "to encourage more complete reporting of suspected child abuse"). The agency must accept and screen all reports "regardless of whether the person identifies himself." 55 Pa. Code § 3490.11; *see also id.* at § 3490.54 (agency "shall investigate and make independent determinations on reports of **suspected** child abuse" "regardless of whether or not the person making the report identified himself") (emphasis added). As a result, even anonymous or nonspecific reports are where an agency's investigation must begin. Unlike law enforcement, caseworkers do not police and patrol; their investigations do not typically start with knowledge of any objective facts, as law enforcement does when a crime occurs. *See*, *e.g.*, *E.Z. v. Coler*, 603 F. Supp. 1546, 1559-60 (N.D. Ill.1985) ("When police are investigating a crime, investigation is generally after the fact and no immediate threat to the life of a dependent child is present. . . . [R]equiring child abuse investigators to meet a probable cause standard or obtain a warrant ignores the difficulty of collecting any evidence other than anonymous tips and unverified reports in child abuse investigations."), *aff'd sub nom.*, *Darryl H. v. Coler*, 801 F.2d 893 (7th Cir. 1986). Similarly, the respective roles of confidential informants in police investigations and anonymous reporters of child maltreatment are not equivalent. A confidential informant receives some benefit based on the level of detail and reliability of information provided in cooperation with the police. A reporter's reliability does not stem from his relationship with the investigator, however, but from his relationship to the child and family — requiring careful balancing to preserve that relationship, for the sake of the child and family as well as the investigation — and, as a result, may trigger greater reluctance to provide details, including his identity.

For these reasons and others, I disagree with the majority's determination DHS has no basis to maintain the confidentiality of a reporter whose unsolicited information at the starting point of an investigation is categorized by the agency as fitting GPS criteria as opposed to CPS criteria, a distinction with plausibly no difference in some cases. *See* 23 Pa.C.S. § 6332 ("The department shall establish a single Statewide toll-free telephone number that all persons, whether mandated by law or not, may use to report cases of suspected child

abuse or children allegedly in need of general protective services."); *but see* Majority Opinion at 633–34. Nor do I agree the General Assembly "has drawn a clear distinction between an individual who makes an anonymous report of child abuse as opposed to one of child neglect." *Id.* at 633–34. As explained *supra*, the CPSL's definition of child abuse **includes** types of neglect, and the decision to assign a report as GPS or CPS belongs to the Department or agency staff performing the intake screening, not the lay reporter. *See supra* n.7; *see also* 23 Pa.C.S. §§ 6334, 6362; 55 Pa. Code § 3130.31. It thus seems quite plausible that the CPS and GPS distinctions are not clear enough to require the confidentiality of one reporter but not the other, and the contrary conclusion appears antithetical to the CPSL's express purpose of encouraging more complete reporting of any and all child abuse. *See* 23 Pa.C.S. § 6302. More importantly, however, the majority's sweeping judgment in this regard is a departure from the Department's stated practice,[9] and will have consequences for incident reporting across the Commonwealth. And, even more problematic, the issue is not one squarely before us for review. To the extent the parties do argue the issue, the majority accepts appellant's position, but does not address the reasonable counter-argument of DHS. DHS observes CPSL subsection 6375(*o*) mandates "[i]nformation related to reports of a child in need of general protective services shall be available to individuals and entities to the extent they are authorized to receive information under [S]ection 6340[,]" and Section 6340(c) protects the identity of the person making a report "of **suspected** child abuse." Appellee's Brief at 38-39, *citing* 23 Pa.C.S. §§ 6340, 6375(*o*) (emphasis added). Although the reporter's testimony may well have shed some light, it may simply be that the reporter was anonymous, in which case DHS would not have known the reporter's identity, let alone called upon him or her to testify. In any event, the majority's rule eradicating a reporter's confidentiality appears neither appropriate nor necessary in the context of this case. [10]

C.

One of the few objective tools available to agencies performing an initial assessment or investigation is to obtain the family's prior history of agency involvement, which the regulations require. *See* 55 Pa. Code § 3490.321(e)(1) ("[F]actors which shall be assessed by the county agency include . . . the history of prior abuse and neglect."). "Simply put, as the frequency of known prior abuse/neglect increases, so does the risk of harm to the child." PA. CHILD WELFARE RES. CTR., UNIV. OF PITTS-

9. *See* PA. DEP'T OF HUM. SERVS., PERMISSIVE REPORTERS: FREQUENTLY ASKED QUESTIONS, https://www.dhs.pa.gov/KeepKidsSafe/Clearances/Documents/FAQ_Permissive Reporter.pdf (last visited December 17, 2021).

10. The majority misconstrues my disagreement with its analysis of a reporter's confidentiality as a disagreement with its statutory analysis of CPSL Subsection 6340(c). *See* Majority Op. at 634 n.23. Though I have highlighted here several textual and practical reasons one might disagree with the substance of the majority's review of this point, *see also supra* n.7, I underscore my view that the majority's decision to declare GPS reporters' identities subject to disclosure conclusively addresses a discrete issue not encompassed in our allocatur grant, despite the likelihood of significant negative impacts as well as the majority's recognition that potentially dispositive factors are "clearly not implicated in this case." *Id.* As described *supra*, the agency, not the trial court judge, categorizes a report, and whether the trial court judge can or should override this agency function is not before us; further, conditioning a reporter's confidentiality on this after-the-fact determination ap-

BURGH, A REFERENCE MANUAL FOR THE PENNSYLVANIA MODEL OF RISK ASSESSMENT 22 (2015).[11] However, the mere existence of a previous report is not dispositive of a high degree of risk; other important factors include, *inter alia*, the quantity and quality of the previous incidents, the abilities of the child and parent, and whether the severity of risk has increased over time. *Id.* at 22-23. In its updated guidance to county agencies regarding the initial assessment of GPS reports, the Office of Children, Youth and Families instructs "[i]t is critical that county agencies seek information regarding the child and family's prior history of child welfare involvement .... Prior referral history, previous indicated reports of abuse or neglect, and prior services provided to the family offer important context to inform decision making. ... It often entails going beyond the [reported] maltreatment and the underlying motivations of an individual making a report." OCYF Bull. No. 3490-20-08 at 4.

For these reasons, I cannot agree with the majority's determination appellant's prior experience with the agency from 2013 to 2015 — which includes the removal of one child for over a year due to the structurally unsound and deplorable conditions in the home, including lack of heat and hot water — is "totally irrelevant." Majority Opinion at 631–32. The agency's requirement to assess it makes it relevant; the particular circumstances, including the passage of time and any subsequent history, afford it due weight. I note the majority's conclusion appellant's DHS history was "stale" relies, in part, on the assertion there was no recurrence of the prior problems, despite its recognition a subsequent petition to compel cooperation was granted in 2016, and the trial judge, who had presided over both the prior dependency petition and the 2016 petition to compel, "may take into account these prior encounters." *Id.* at 611 n.5, 632–33 n.21. In the 2016 petition, DHS averred the family's home lacked water service, which was confirmed by the utility company. Motion to Compel Cooperation, 10/27/2016, ¶ 3(d). The majority further rests its legal conclusion of staleness on indefinite or nonbinding jurisprudential statements which, as a result of today's decision, are now the law of the Commonwealth despite the fact the issue was not squarely before the Court — and not preserved or developed through the litigation in the lower tribunals.[12]

D.

Lastly, as the Superior Court aptly explained in its analysis below, the standards applicable to *ex parte* criminal warrants are ill-suited in cases such as this one where an evidentiary hearing is held and the parties may present and cross-examine witnesses. *See Interest of Y.W.-B.*, 241 A.3d at 385-86. Where an *ex parte* warrant issues without notice to the target of the search, the four corners of the affidavits supporting the warrant must speak for

pears to me an absurd, if not harmful, conclusion.

11. http://www.pacwrc.pitt.edu/Curriculum/1300_PA Rsk Assssmnt_BsterSht/Handouts/HO 3 ARfrncMnlFrThPAMdlOfRskAssssmnt_CPSLRevision2015 (2).pdf

12. Moreover, the majority's conclusion in this regard is in tension with other aspects of dependency law, involving a significantly stricter clear-and-convincing burden of proof, in which prognostic evidence is routinely admitted to support an adjudication. *See In re R.W.J.*, 826 A.2d 10, 14 (Pa. Super. 2003); *see also, e.g., N.J. Div. of Youth & Family Servs. v. Wunnenburg*, 167 N.J.Super. 578, 408 A.2d 1345, 1348-49 (App. Div. 1979) (holding an adjudication of "unfitness" in relation to three older siblings twenty-two months prior to the requested investigation regarding parents' newborn child was a sufficient basis to authorize home entry, "[p]arental unfitness is a personal characteristic which, ordinarily, does not vanish overnight, or even within weeks or months.").

themselves with sufficient particularity, reliability, and connection between the search and the need, such that a surprise invasion would be justified. For law enforcement seeking evidence to prove a suspect committed a crime, such a showing is a fair requirement; criminal activity will usually leave a "trail of discernible facts" available whereby probable cause may be established. LaFave, 5 *Search & Seizure* § 10.3(a) (6th ed.). This is not the case where a safety threat exists behind closed doors, especially if the victim is not old enough to attend school, cannot communicate clearly, or is harmed in a way that does not leave clearly visible injuries. *See id.* In such circumstances, the "four-corners" requirements of personal knowledge or reasonably trustworthy information from others to show a specific link to the home would require an agency to make a probable cause showing of a thing they do not know exists in a place accessible only to those who would hide its existence.[13] In this sense, even the term "allegations" is something of a misnomer, having different meanings whether in connection with the original reporter, the GPS assessment report, or the petition to compel; further, the petition is not "affied to" by an individual with personal knowledge, but verified by a legal representative on behalf of the agency. Moreover, the agency cannot truthfully allege in a verified petition that a home contains safety hazards when seeking an order to investigate whether the home contains safety hazards.[14] And, as a result, we are left with the quagmire we must now resolve.

Nevertheless, where the target of the search in such cases has an opportunity to challenge the search — before it occurs, through the adversarial process, in a court of law subject to appellate review, where a judge assesses credibility and has the authority to direct the bounds and circumstances of the search — I see little reason for typical warrant constraints to apply. I am therefore unpersuaded by the majority's pronouncement the evidence at a hearing on a petition to compel cooperation must be cabined by the allegations in the petition. *See* Majority Opinion at 631–32. Unrelated risk factors may be identified in the course of an investigation; preventing the consideration of additional, relevant evidence beyond the allegations in the petition would appear only to further delay resolution of the matter to the detriment of all involved. Our Rules of Juvenile Court Procedure allow for the liberal amendment of pleadings, oral motions, the forgiveness of certain defects in the interest of expeditiously stabilizing the child's circumstances, the possibility of continuances in the interests of fairness, and assurance of due process safeguards, such as adequate notice. *See* Pa.R.J.C.P. 1122, 1126, 1334, 1344. We need not depart from these principles where an evidentiary proceeding commences from a petition to compel cooperation.

13. I note, as described *supra,* the reporter in such a case will likely be someone close to the child whose confidentiality should be maintained for the child's safety, whether the report is coded as a CPS or GPS.

14. The majority observes, though DHS testified the GPS report contained allegations of homelessness and inadequate basic care, "the Petitions to Compel d[id] not state that [appellant] was homeless" or "describe any generalized [allegations of] 'inadequate basic care[.]' " Majority Opinion at 628–29. I counter that DHS could not aver appellant was homeless or provided inadequate basic care because it was unable to obtain appellant's cooperation to rule in or out whether these concerns were true; if such facts were available, an order to compel cooperation would be unnecessary. However, as discussed further *infra,* I see no reason why DHS could not aver in its petition what categories of concern it sought to assess.

Thus, in my view, several of the judgments foundational to the majority's analysis, made here within the specific confines of establishing probable cause as opposed to definitive proof, unduly restrict as a matter of law the discretion and scope of an agency's child protection investigation. These judgments also hamper rather than encourage the more complete assessment of fact-bound risk factors better suited to the discretionary functions of the agency, and the factfinding function of the trial court, than to the review function of an appellate court. Nonetheless, I still agree with the majority's result, for reasons that follow.

III. Probable cause and administrative searches

As we have explained many times in our criminal law jurisprudence, the United States Supreme Court dictates the requisite probable cause to warrant a search by law enforcement in terms of reasonableness and fair probabilities based upon a totality of the circumstances; that is: based upon a "balanced assessment of the relative weights of all the various indicia of reliability (and unreliability)" of all the circumstances in a warrant affidavit, the magistrate should make a commonsense, non-technical decision of whether there is a fair probability of discovering evidence of criminal activity. *Illinois v. Gates*, 462 U.S. 213, 232, 234-38, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983) ("[P]robable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts — not readily, or even usefully, reduced to a neat set of legal rules."); *see also*, *e.g.*, *Commonwealth v. Clark*, 611 Pa. 601, 28 A.3d 1284, 1287-88 (2011) (applying *Gates*, the reliability of hearsay information in an anonymous tip need not depend on the veracity and basis of knowledge of the informant if corroborated by other information).

However, the High Court has also explained this **traditional "probable-cause standard is peculiarly related to criminal investigations**" and is "unhelpful in analyzing the reasonableness of routine administrative functions, especially where the [g]overnment seeks to prevent the development of hazardous conditions[.]" *National Treasury Employees v. Von Raab*, 489 U.S. 656, 667–68, 109 S.Ct. 1384, 103 L.Ed.2d 685 (1989) (internal quotation marks and citations omitted; emphasis added), *citing*, *inter alia*, *Camara v. Municipal Court of San Francisco*, 387 U.S. 523, 535, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967). Though searches for administrative purposes, like searches for evidence of crime, are encompassed by the Fourth Amendment, "[p]robable cause in the criminal law sense is not required[,]" *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 320, 98 S.Ct. 1816, 56 L.Ed.2d 305 (1978), and "**may vary with the object and intrusiveness of the search**," *Michigan v. Tyler*, 436 U.S. 499, 506, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978) (emphasis added), *citing Camara*, 387 U.S. at 538, 87 S.Ct. 1727. *See also O'Connor v. Ortega*, 480 U.S. 709, 723, 107 S.Ct. 1492, 94 L.Ed.2d 714 (1987) ("[T]he appropriate standard for administrative searches is not probable cause in its traditional meaning."); *New Jersey v. T.L.O.*, 469 U.S. 325, 341, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985) ("Where a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause, we have not hesitated to adopt such a standard."),[15]

15. The majority cites *T.L.O.* to support its pronouncement the Fourth Amendment "applies equally" to criminal and noncriminal investigations. Majority Opinion at 626–27,

citing, inter alia, *Terry*, 392 U.S. at 1, 88 S.Ct. 1868, *and Camara*, 387 U.S. at 534–539, 87 S.Ct. 1727; *Griffin*, 483 U.S. at 873, 107 S.Ct. 3164 ("[I]n certain circumstances government investigators conducting searches pursuant to a regulatory scheme need not adhere to the usual warrant or probable-cause requirements[.]").

Under the principles developed through the High Court's jurisprudence, the requisite demonstration of cause to justify an administrative search turns on a more generalized notion of reasonableness than traditional probable cause, ranging from a reasonable suspicion of some existing code violation, *see Marshall*, 436 U.S. at 320, 98 S.Ct. 1816, to a showing that reasonable legislative or administrative standards for conducting an inspection would be satisfied, *see Camara*, 387 U.S. at 536-38, 87 S.Ct. 1727, or where "special needs, beyond the normal need for law enforcement" would make the traditional probable-cause requirement impracticable, *Griffin*, 483 U.S. at 873, 107 S.Ct. 3164. *See also O'Connor*, 480 U.S. at 723, 107 S.Ct. 1492.

I would not, as the majority does, reject the relevance of *Camara* with respect to child protection home inspections. *See* Majority Opinion at 621–22. Nor do I urge the wholesale application of *Camara* in these types of cases. However, principles from *Camara* remain foundational to administrative search jurisprudence among the federal courts, and are omnipresent throughout the cases and scholarship regarding the constitutionality of child protection investigations — including most of the cases cited by the majority, underscoring its importance to the matter at hand.[16]

quoting T.L.O., *469 U.S. at 335, 105 S.Ct. 733. I do not disagree that the Fourth Amendment applies to both. However, in my observation,* T.L.O. *does not support the proposition the provision applies in equal measure in both situations; rather, it dispensed with traditional probable cause requirements and held searches of school students required neither a warrant nor "strict adherence to the requirement that searches be based on probable cause" in favor of a justification based "simply on the reasonableness" of a search which best serves the public interest.* T.L.O., *469 U.S. at 340-41, 105 S.Ct. 733;* but see *Majority Opinion at 621 n.15.*

16. *See, e.g., Tyler,* 436 U.S. at 509, 98 S.Ct. 1942; *T.L.O.,* 469 U.S. at 337, 340, 105 S.Ct. 733; *Roska,* 328 F.3d at 1248; *Walsh, supra* n.3. The majority indicates these cases do not particularly rely on *Camara* nor contradict its conclusions that no social worker exception to the Fourth Amendment exists and that "traditional probable cause requirements" apply in the context of a child protection home assessment, *see* Majority Opinion at 621 n.15; but I respectfully disagree.

Addressing the government's entry and inspection of a private property for the purpose of determining the cause of a fire, *Tyler* explicitly relied upon the *Camara* principle that the probable cause showing required to authorize an administrative search warrant is distinct from the "traditional showing of probable cause applicable to searches for evidence of crime," which would apply if arson was suspected, but otherwise "may vary with object and intrusiveness of search" and satisfied by compliance with relevant regulatory standards for conducting the search. *See Tyler,* 436 U.S. at 506 & n.5., 511-12, [98 S.Ct. 1942].

Contrary to the majority's review of *T.L.O.,* respectfully, that decision **did** rely on *Camara*'s balancing principle, significantly weighing the prohibitive burden of obtaining a warrant in favor of maintaining safety and order on school grounds, to curtail the privacy rights of students. *T.L.O.,* 469 U.S. at 337 [105 S.Ct. 733] ("[T]he standard of reasonableness governing any specific class of searches requires 'balancing the need to search against the invasion which the search entails.' "), *quoting Camara,* 387 U.S. at 536–537 [87 S.Ct. 1727]; *id.* at 340-41 [105 S.Ct. 733]; *see also supra* n.15.

Though declining to excuse child protection social workers from warrant protocols for the home entry and removal of a child not believed to be in imminent danger, the Tenth Circuit in *Roska* recognized "the Fourth Amendment's strictures might apply differently to social workers" whose principal focus is

In addition to confirming the Fourth Amendment applies even to routine home inspections by non-law enforcement government officials, *Camara* articulated a basis to "vary the probable cause test from the standard applied in criminal cases" in administrative searches, by degree of reasonableness in light of the government's particular need to search balanced against the invasion the search entails. *Camara*, 387 U.S. at 537-39, 87 S.Ct. 1727. For example, where a criminal investigation requires a level of specificity that certain contraband will be found in a particular location to justify the search of a dwelling, the health and safety inspection program in *Camara*, the goal of which was to prevent the development of hazardous conditions in private homes, required universal compliance with periodic inspections to achieve acceptable results, as "[m]any such conditions—faulty wiring is an obvious example—are not observable from outside the building and indeed may not be apparent to the inexpert occupant himself." *Id.* at 535-37, 87 S.Ct. 1727.

On the "government need" side of the reasonableness equation, *Camara* determined the need is met "if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling"; however, the Court also considered whether any less invasive method would achieve acceptable results. *Id.* at 537-40, 87 S.Ct. 1727. *Camara* identified factors including the routineness of the search, its lack of personal nature or law enforcement aim, and the notice and time of day it would be conducted (*i.e.*, during normal business hours) to conclude the intrusion was limited, and enforced the requirement of a warrant procedure as a necessary protection of the occupant from unlimited arbitrary discretion, *i.e.*, "rummaging," by the official in the field. *Id.* at 532, 537, 539, 87 S.Ct. 1727; *but see* Majority Opinion at 624 (trial court's order granting appellant's home inspection left search "entirely in DHS's discretion" including, "if it so chose, a general rummaging of all of the home's rooms and the family's belongings").

Now echoed in harmony with the eminent criminal-law probable cause standard pronounced in *Gates*, 462 U.S. at 232, 234-38, 103 S.Ct. 2317, the importance of *Camara*'s proportional balancing test is not overstated:

> [In *Camara*] the Court has taken the view that the evidentiary requirement of

the welfare of the child, ''justif[ying] a more liberal view of the amount of probable cause that would support an administrative search'' and assenting to ''something approaching probable cause.'' *See Roska*, 328 F.3d at 1249-50.

Additionally, I note other cases cited by the majority do not lend support for the proposition that the same notion of criminal-law probable cause applies in an administrative child protection proceeding. *See* Majority Opinion at 626–27, *citing, e.g., In re Robert P.*, [61 Cal.App.3d 310], 132 Cal. Rptr. 5, 11-12 (Dist. 1976) (indicating the **Fourteenth Amendment** is implicated in such proceedings, but explicitly declining to extend the Fourth Amendment's exclusionary principles). *See also id.* at 622–23, *citing Von Raab*, 489 U.S. at 668 [109 S.Ct. 1384]. Upholding the routine warrantless drug testing of customs agents who sought promotions to positions involving access to firearms and illicit substances, the *Von Raab* Court relied not only upon the routineness of administrative employment decision-making, but upon ''the longstanding principle that neither a warrant nor probable cause, nor, indeed, any measure of individualized suspicion, is an indispensable component of reasonableness in every circumstance. ... [O]ur cases establish that where a Fourth Amendment intrusion serves special governmental needs, beyond the normal need for law enforcement, it is necessary to balance the individual's privacy expectations against the Government's interests'' to determine the level of individualized suspicion in the particular context. *Von Raab*, 489 U.S. at 665-66 [109 S.Ct. 1384].

> the Fourth Amendment is not a rigid standard, requiring precisely the same quantum of evidence in all cases, but instead is a flexible standard, permitting consideration of the public and individual interests as they are reflected in the facts of a particular case. This is an extremely important and meaningful concept, which has proved useful in defining the Fourth Amendment limits upon certain other special enforcement procedures unlike the usual arrest and search.

LaFave, 5 *Search & Seizure* § 10.1(b) (quotations omitted). The majority's view of the limited types of administrative searches enabled by *Camara* — dragnet searches, and searches involving special subpopulations with reduced expectations of privacy — is certainly useful (to a degree) in identifying the relevant factors underpinning each line of cases. Justification for dragnet searches intended to achieve universal compliance without the need for individualized suspicion is predicated not only on the seriousness of the government's interest at stake, but also on the limitation of discretion by officials, either through a warrant-type procedure or a statutory or regulatory regime setting the terms of the search; for subpopulations whose expectation of privacy is already diminished, a showing of at least some individualized suspicion of wrongdoing is required in the absence of a warrant. *See* Majority Opinion at 622–23; Eve Brensike Primus, Disentangling Administrative Searches, 111 Colum. L. Rev. 254, 263 (2011). But, as the majority aptly observes, a child protection home inspection fits neither of these two categories. *Id.* at 623–24. And as the foregoing explication describes, the principles of criminal law are not wholly suitable either.

The High Court has articulated other factors to consider in assessing the invasiveness of — and requirements for allowing — an administrative search. Where the purpose of the search is law enforcement, the invasion is greater, and traditional warrant and probable cause requirements apply. *See Ferguson*, 532 U.S. at 79-80, 121 S.Ct. 1281; *Tyler*, 436 U.S. at 508, 98 S.Ct. 1942. However, "[t]he discovery of evidence of crimes in the course of an otherwise proper administrative inspection does not render that search illegal or the administrative scheme suspect." *New York v. Burger*, 482 U.S. 691, 716, 107 S.Ct. 2636, 96 L.Ed.2d 601 (1987). A supervisory relationship "that is not, or at least not entirely, adversarial" between the government-searcher and the object of the search, *e.g.*, school and student, employer and employee, probation officer and probationer, may demonstrate a special need of the agency "to act based upon a lesser degree of certainty than the Fourth Amendment would otherwise require in order to intervene[.]" *Griffin*, at 879, 107 S.Ct. 3164; *see also O'Connor*, 480 U.S. 709, 725-26, 107 S.Ct. 1492; *T.L.O.*, 469 U.S. at 339-40, 105 S.Ct. 733. In all cases, determining the reasonableness of any search involves a determination of whether the search was justified at its inception and reasonably related in scope to the circumstances that warranted the interference in the first place. *T.L.O.* 469 U.S. at 341, 105 S.Ct. 733, *citing Terry*, 392 U.S. at 20, 88 S.Ct. 1868.

Though the United States Supreme Court has not directly addressed the constitutionality of administrative searches and seizures performed under state child protection statutes, federal district and circuit courts reaching the issue provide consistent guidance to the extent they uniformly, although generally, establish the Fourth Amendment's protections do unequivocally apply to child protection investigations and child removals; the cases are significantly less consistent, however, with

regard to the degree of protection to apply. *See supra* at 636 n.1. Given the gravity of interests at stake, the bounds of these cases are important to consider: they arise in the posture of summary judgment in Section 1983 civil rights actions and on the distinctive fact of a **warrantless** search by an agency, which is presumptively unreasonable. *See*, *e.g.*, *Darryl H.*, 801 F.2d 893 at 901; *Tenenbaum*, 193 F.3d 581 at 605; *Franz*, 997 F.2d 784 at 791; *Good*, 891 F.2d 1087 at 1095-96; *Roska*, 328 F.3d 1230 at 1240-42; *Walsh*, 240 F.Supp.2d 731 at 758-60. In this limited context, the courts' resolution turns on whether a basis exists to reasonably support an exigency or other exception to the warrant requirement, or otherwise afford the investigator with a qualified immunity defense, *see*, *e.g.*, *Tenenbaum*, 193 F.3d at 605, but does not reach the merits of whether a warrant should issue on any set of facts. As a result, such cases define characteristics of objectively unreasonable searches only, and provide little guidance for the magistrate or investigating caseworker to assess what quality and quantity of information available to describe potentially harmful circumstances will establish sufficient cause to justify an invasion of privacy when evidence of danger is suspected to exist, but has not been clearly established.

For these reasons, I view the majority's reliance on *Good* and *Walsh*, which considered only whether exigent circumstances excused a warrantless search, to support its conclusion principles of probable cause in child protection investigations must always adhere to those in criminal investigations, to be somewhat misplaced. The majority quotes *Good* as follows: " 'Fourth Amendment caselaw has been developed in a myriad of situations involving very serious threats to individuals and society, and we find no suggestion there that the governing principles should vary **depending on the court's assessment** of the gravity of the societal risk involved.' " Majority Opinion at 619, *quoting Good*, 891 F.2d at 1094 (emphasis added). However, this portion of the opinion refers not to any judicial approval of a warrant or similar request to compel an inspection, but to the district court's erroneous assessment that certain immunity provisions of the CPSL absolved the investigating social workers who performed a strip search of a child, without a warrant or court order, and in the absence of any evidence of imminent danger of serious bodily injury that might excuse their lack of process.[17] *See Good*, 891 F.2d at 1093-96.

In contrast, the present case involves no such lack of process. Beyond the protection afforded by any warrant issued and exercised without advance notice to the object of the search, DHS filed a petition to compel appellant's cooperation with its investigation, and appellant received an evidentiary, adversarial hearing to contest

17. Similarly, I view the majority's use of *Mincey v. Arizona*, 437 U.S. 385, 393, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978), *see* Majority Opinion at 619–20, as even farther afield, as the case dealt with a warrantless multi-day search by law enforcement of a murder suspect's home, during which time the suspect was incapacitated and all of the other household members were safely relocated. 437 U.S. at 389, 393, 98 S.Ct. 2408. The High Court determined the state court's decision deeming the murder crime scene *per se* exigent was unconstitutional because it excused the police from obtaining a warrant where there was no imminent danger to "life or limb." *Id.* at 393-95, 98 S.Ct. 2408. Furthermore, while I do not endorse a view that a child protection investigation or assessment should be *per se* exigent, I do view the government's interest in halting and preventing harm to children, who are in no position themselves to escape harm inflicted by those intended to protect them, as significantly different, and in certain situations possibly more urgent, than solving a completed crime that can no longer be prevented.

the petition before a court of common pleas where the judge found probable cause existed to order a compelled home safety assessment. On the merits, then, we are left with the question of whether the Fourth Amendment requires compelled child protection investigations be supported by the traditional standard of probable cause applicable to criminal investigations as the majority advances. Majority Opinion at 619–20, 621 n.15, 626–27. For the foregoing reasons, I suggest it does not, and I would not foreclose the possibility of future development of more clearly-tailored tenets. Presently, however, as described *supra*, there appears to be no real dispute over the Superior Court's expression of probable cause in terms of "fair probabilities" so long as the "fair probability" measured relates to a need for protective services as they are defined by the CPSL.

Accordingly, I now review whether, in light of the totality of the circumstances of DHS's need to search and the concomitant invasion of appellant's privacy, the record contains a substantial basis of fair probability that the home assessment ordered by the trial court would uncover evidence showing one or both of appellant's children were in need of protective services under the CPSL.

IV. Application

Applying the principles we articulated in *Clark*, *supra*, to this context, proper dispatch of the totality of the circumstances approach should not " 'judg[e] bits and pieces of information in isolation against [ ] artificial standards[,]' " but rather should consider the information appropriately available to the trial court " 'in its entirety, giving significance to each relevant piece of information and balancing the relative weights of all the various indicia of reliability (and unreliability)[.]' " 28 A.3d at 1289, *quoting Massachusetts v. Upton*, 466 U.S. 727, 732, 104 S.Ct. 2085, 80 L.Ed.2d 721 (1984) (applying *Gates*, 462 U.S. at 234, 103 S.Ct. 2317).

In its opinion, the trial court described the two substantiated GPS reports underlying DHS's initial involvement in September 2013, and Y.W.-B.'s removal from appellant's care and placement in foster care later in October of 2013, as set forth by DHS in the Petition: the first report stated Y.W.-B., then aged fifteen months, was often heard yelling and screaming, appellant hit him on the arm, and although his basic needs were met, the home was dirty and disordered; the second report stated the family's home was structurally unsound, flea-infested, lacked internal walls and heat and hot water, and was in deplorable condition. Trial Court Opinion, 9/9/2019, at 1-2. Y.W.-B. remained in foster care until July of 2015, and under protective supervision until the trial court discharged DHS's supervision and dependency petition in November 2015. *Id.* The court also set forth the additional allegations in the current Petition, *i.e.*: the family had been sleeping outside the Philadelphia Housing Authority; appellant was outside the Authority from noon until 8 P.M. three weeks later and possibly did not feed the child who was with her during that time; appellant was there to protest, and stated she was not homeless and that her previous residence had burned down; DHS confirmed appellant's address through a public welfare records search; DHS located the home and the children's father was present but would not allow the caseworker inside the residence; DHS observed appellant arrive with the children and usher them into the home; appellant refused to allow DHS to assess the home or children; DHS did not enter the home but observed from outside "that one of the home's windows was boarded up"; and, DHS returned accompanied by po-

lice, but appellant still refused entry. *Id.* at 6-7, *quoting* Petition at ¶¶ 3(j)-(m).

Regarding the hearing on the Petition, the court described appellant's testimony, in which she attempted to refuse to answer his questions about her income and ability to feed the children and obtain their medical care, and the court stated its finding the DHS caseworker's testimony was credible. *Id.* at 7-8. The court noted, because the Petition included an allegation the family slept outside the Housing Authority, it was reasonable to ascertain if their housing was stable, and the Petition thereby established probable cause. *Id.* at 8. The court entered an order directing appellant to allow DHS into the home to assess and "verify if [appellant's] home is safe and appropriate," and further set a date and time for the assessment, and provisions for appellant to have a witness present. Trial Court Order, 6/18/2019.

I agree with the majority that the trial court's analysis raises more questions than provides answers about the basis of the court's concern. We can guess about the significance of the prior dependency matter, but without definitive resolution; sleeping outside might mean hovering under a tree at night or napping on a bench in broad daylight — or a myriad of other circumstances not necessarily indicative of safety level; and a single boarded up window might be cause for concern depending on the location and size of the space covered by the board, and what lies behind it. The Petition itself is not much more illuminating,[18] though it provides the additional detail that N.W.-B. was born in January of 2015 while Y.W.-B was still in foster care, and she remained in appellant's care during that time. Petition at ¶3(g). The hearing transcript demonstrates the trial judge remembered the family from prior proceedings, and that the family's home address was the same. N.T. 6/11/2016 at 12. However, as explained previously, the DHS caseworker's testimony, deemed credible by the judge, indicated the Petition may have contained mistakes. Indeed, the caseworker directly refuted the Petition allegation she saw the children enter the home — an allegation the trial court nevertheless relied on in its opinion. And while DHS urges us to consider the trial court's determination appellant was "evasive," the court made no such finding — the court observed appellant attempted to refuse to answer its questions, but in the end, she did answer them. *See id.* at 12-14.

Turning to appellant's prior dependency matters, I note the trial court record for the underlying Petition includes the entire dependency court record, presided over since its midpoint by the same trial judge as this Petition. The twenty-five-month-long matter, including Y.W.-B.'s placement in foster care for twenty months due to hazardous housing conditions, is relevant; but all other circumstances incident to the case are relevant, too. Here, the court's record reveals: each case plan and permanency review order noted the parents' full cooperation with the agency and court's orders; the condition of the house, which parents own, was the only problem; par-

18. The second-to-last page of the Petition contains two paragraphs which provide the movant with the option of checking a box to include them as statements in the verified petition. The box relating to the first paragraph, which requests the court to order appellant to ''cooperate with the investigation,'' is checked. Notably, the box relating to the second paragraph, which states, ''the allegations set forth above constitute probable cause to believe [the children are] the victim(s) of child abuse and/or neglect, and probable cause to believe that evidence relating to such abuse will be found in the home[,]'' is **not** checked. Petition at 5 (unnumbered). In other words, DHS did not aver in its petition a belief or allegation that probable cause existed.

ents consistently worked on repairs, they took classes in home repair, and both enrolled in college; and, except for a brief period before the first permanency review, parents were awarded liberal, day-long visits with Y.W.-B. so long as they didn't go to the house. *See* Juvenile Court Docket, entries dated 10/21/2013 – 11/24/2015; DHS Family Service Plan Review, 9/18/2014. Finally, although a subsequent Motion to Compel Cooperation was filed in 2016 averring the water department confirmed the home's service had been shut off, service had been restored and parents applied for payment assistance prior to the hearing. *See* Motion to Compel Cooperation, 10/27/2016, at ¶3(d); Trial Court Order, 11/23/2016. Thus, the prior dependency court record demonstrates **at least** as much capacity to care for and protect the children as it does concern for risk of harm relating to the conditions existing inside the home at the onset of DHS's involvement in 2013.

Given the aforementioned missing details and other inconsistencies in the record, I cannot conclude it established a fair probability that appellant's children need protective services sufficient to warrant the government's intrusion into appellant's home. Though the trial court, in good practice, included protective parameters in its order to reduce the intrusion of the home assessment, the search nevertheless remains an invasion upon appellant's greatest expectation of privacy, and this record does not demonstrate a substantial basis for DHS's need to invade.

If this result begs the question what would have sufficed, I suggest that, in this case, it would have required only a modicum more, particularly in light of the fact appellant admitted after the home assessment that the home's front room had been damaged by a fire. N.T. 6/18/2019 at 18-19. A photo of the home's exterior, a sworn statement of observed or believed fire damage, certainly, more detail from the anonymous reports would have been useful, as well as the GPS report document if possible. Given the Petition's evidentiary import, accuracy in the pleading is a must; but even an oral motion to amend errors may have rehabilitated its weakened reliability. In addition, reference to agency regulations or policies addressing the scope of the search and its confidentiality would be demonstrative of necessary limitations on the discretion of the caseworker in the field.[19] But more importantly, some expla-

19. The majority declines to address the particularity of the search order directly, but, as I noted above, it does criticize the order's lack of limitation as authorizing "general rummaging of all of the home's rooms and the family's belongings." Majority Opinion at 624; *see also id.* at 615 n.12; *supra* at 622–23. This concern may be somewhat overstated in this case: appellant did not complain of any rummaging from her prior experiences with DHS, and acknowledged the caseworker performing the assessment in this instance "had a good attitude," N.T. 6/18/2019 at 15; the trial court generally described the walk-through safety inspection several times, *see* N.T. 6/11/2019 at 17-18, 24-25, 32; and the caseworker testified DHS has a standard walk-through procedure for assessments, *see* N.T. 6/18/2019, at 10-12, that would clearly be violated by "general rummaging." Nevertheless, the prevention of such unreasonably intrusive searches is a valid constitutional concern, and a petition to compel a home assessment may be an individual's first contact with the child protection and dependent court systems. All practical efforts should be made to assure parties of the expectations and limitations of the search, such as providing reasonably detailed orders, or directing access to relevant agency policies and procedural safeguards. *See* 55 Pa. Code § 3130.23 ("County agency rules and policies describing the services offered by the county agency, service policies and procedures, eligibility for services, financial liability of clients and the rights of clients to receive or refuse services shall be available to the public for review or study in every county agency office on regular workdays during regular office hours.").

nation of the agency's risk assessment was crucial, notwithstanding the trial judge's past experience with these individuals, in order to establish in the record some basis for why these pieces of information raised the agency's concern and how the search satisfied administrative standards. And, while a home assessment may be the most powerful tool for obtaining reliable information, there are other tools available to further an investigation, for example: school visits for children who are old enough, discreet questions to neighbors when appropriate, or as DHS did in 2016, a confirmation of utility services (or lack thereof) to the home. Where other efforts are unavailable, or attempted and thwarted, an explanation of those efforts is a considerable factor. Although, as Judge Beck observed, "the frustration agency officials experience in carrying out their tasks must be immense," it is nonetheless "critically important that we [e]nsure agencies act within the bounds of the Constitution." *Petition to Compel*, 875 A.2d at 380 (Beck, J., concurring). It is, after all, a government investigation.

The trial court's function is to resolve conflicts in evidence, and appellate courts generally should afford great deference in dependency matters to the judge who has observed the parties over multiple hearings. *See Interest of S.K.L.R.*, —— Pa. ——, 256 A.3d 1108, 1127 (2021). As the majority relates, these observations are certainly relevant; however, to obtain the benefit of them upon a challenge, they must be invoked in some manner. *See* Majority Opinion at 632–33 n.21. In this instance, in my view, the trial court's resolution only further obfuscated any indicia of reliability attending the information provided by DHS. To justify a deprivation of constitutional magnitude where the court does not otherwise have dependency jurisdiction over the child, the court relying on its prior experience, like the agency, must articulate in the record the basis for its belief; "it cannot simply assert the belief without explanation." *Petition to Compel*, 875 A.2d at 380.

Justice Todd joins this concurring and dissenting opinion.

JUSTICE MUNDY, dissenting

The issue in this case is whether the trial court's decision to grant the Philadelphia Department of Human Services' (DHS) Petitions to Compel Cooperation (Petitions to Compel) was supported by probable cause. As I conclude DHS established sufficient probable cause to support the trial court's grant of the Petitions to Compel, I respectfully dissent.

An order directing cooperation with an investigative home visit in the child protective arena must satisfy the strictures of the Fourth Amendment, including the requirement that the order must be supported by probable cause. However, as Judge Beck observed in her concurrence in *In re Petition to Compel Cooperation with Child Abuse Investigation*, 875 A.2d 365 (Pa. Super. 2005), "it would be unwise to apply the standard notion of probable cause in criminal law to cases such as these." *In re Petition to Compel*, 875 A.2d at 380 (Beck, J. concurring). This is because "the purposes and goals underlying the activities of child protective agencies differ significantly from those of law enforcement generally." *Id.* For example, in the criminal arena, probable cause to search means "a fair probability that contraband or evidence of a crime will be found in a particular place." *Commonwealth v. Jones*, 605 Pa. 188, 988 A.2d 649, 655 (2010) (citation omitted). The purpose of an investigative home visit in the child protective arena, however, is not to discover contraband or evidence of a crime, but, rather, to investigate reports of incidents

or circumstances of potential danger to children. The ultimate goal of child protection agencies is the protection of children and not the prosecution of criminal activity. Therefore, the probable cause needed to grant a request to order cooperation with an investigative home visit should be that there is a fair probability that a child has suffered from abuse or neglect and that evidence relating to those allegations may be found in the residence. This standard protects a parent's Fourth Amendment rights while also permitting a child protective agency to protect the health and safety of the children involved.

Further, a probable cause determination is based on the totality of the circumstances and the issuing authority should make a practical, common-sense decision whether probable cause exists, given all the circumstances. *Commonwealth v. Torres*, 564 Pa. 86, 764 A.2d 532, 537 (2001) (citation omitted). In addition, while there is a rule-based requirement in the criminal arena that an issuing authority may only consider the contents of the sworn written affidavits presented by the affiant in making his or her probable cause determination, that requirement is not constitutionally mandated. Pa.R.Crim.P. 203(B); *Commonwealth v. Connor*, 452 Pa. 333, 305 A.2d 341, 342 (1973). There is no corresponding rule-based requirement in the child protective services arena. Therefore, there is neither a constitutional requirement nor a rule-based requirement that a trial court considering a child protective agency's petition to compel an investigative home visit rely solely on the contents of the petition. As such and given the differences between the child protective and criminal contexts, I disagree with the Majority's holding that the trial court can only consider testimony at an evidentiary hearing on such a petition to establish probable cause "as long as the testimony is cabined by the allegations in the petition." Majority Opinion at 628. The trial court should be permitted to consider all the information before it in coming to its probable cause determination, including the contents of the petition, the evidence produced at any hearing on the petition, and the trial court's knowledge of the family's prior involvement with child protective services.

In this case, DHS filed the two Petitions to Compel (one for each child) at issue on May 31, 2019. In its petitions, DHS asserted, *inter alia*, that on May 22, 2019 it received a General Protective Services (GPS) report regarding the family. It summarized the contents of that report as follows:

> j. On May 22, 2019 DHS received a GPS report alleging that three weeks earlier, the family had been observed sleeping outside of a Philadelphia Housing Authority (PHA) office located at 2103 Ridge Avenue, that on May 21, 2019 [Mother] had been observed outside of the PHA office from 12:00 P.M. until 8:00 P.M. with one of the children in her care, that Project Home dispatched an outreach worker to assess the family, that [Mother] stated that she was not homeless and that her previous residence had burned down; and that it was unknown if [Mother] was feeding the children [sic] she stood outside of the PHA office for extended periods of time. The report is pending determination.

Petitions to Compel, 5/31/2019 ¶ j. According to the petitions, that same day DHS located the family's home address through a Department of Public Welfare search and went to the residence:

> l. On May 22, 2019, DHS visited the family's home. When DHS arrived at the home, only [Father] was present, and he refused to allow DHS to enter the home. [Father] contacted [Mother] via tele-

phone and allowed DHS to speak with her. [Mother] stated that she was engaging in a protest outside of the PHA office; that she did not have the children with her while she was protesting; and that she would not permit DHS to enter the home. [Mother] subsequently returned to the home with [Y.W.-D.] and [N.W.-B.] in her care; DHS observed [Y.W.-B.] and [N.W.-B] appeared to be upset before [Mother] ushered them into the home. [Mother] refused to allow DHS to enter the home or to assess [Y.W.-B.] and [N.W.-B.]. and that [sic] stated that she would not comply with DHS absent a court order. [Mother] further stated that the children had not been with her when she protested outside of the PHA offices; and that the children were fine and were not in need of assessments or services. [Mother] exhibited verbally aggressive behavior toward DHS and filmed the interaction outside of the home with her telephone. DHS did not enter the home, but observed from the outside of the home that one of the home's windows was boarded up.

m. On May 22, 2019, DHS returned to family's home with officers from the Philadelphia Police Department (PPD). [Mother] and [Father] continued to exhibit aggressive behavior and refused to allow DHS to enter the home. The PPD officers suggested that DHS obtain a court order to access the home.

Id. at ¶¶ l-m. At the hearing on the petitions, DHS investigator Tamisha Richardson testified that she was the DHS worker that went out to the family's home that day and contradicted the assertion in the petition that she observed Mother usher the children into the home, testifying that she did **not** observe Mother and the children enter the home. N.T., 6/11/19 at 8-9 (emphasis added).

The petitions also set out the family's past involvement with DHS, which included GPS reports from September and October 2013 alleging, *inter alia*, deplorable home conditions, including holes in the walls, a flea infestation, lack of interior walls, internal structure of the home being exposed, a lack of water and heat service, and that the home appeared to be structurally unsound. Petitions to Compel at ¶ c. These reports were determined to be valid and led to the older child, Y.W.-B., being adjudicated dependent and placed in DHS custody. *Id.* at ¶¶ c, e. Y.W.-B. remained in foster care until July 20, 2015 when custody was returned to Mother and Father. *Id.* at ¶ f. The family continued to receive services through DHS until November 10, 2015 when DHS's supervision ended and Y.W.-B.'s dependency case was discharged. *Id.* at ¶ h-i. N.W.-B. was not born until January 23, 2015. *Id.* at ¶ g. In addition to the family's prior involvement with DHS referenced in the Petitions to Compel, at the hearing on the petitions the trial court noted it had prior involvement with the family.

At the hearing on DHS's petitions on June 11, 2019, Richardson was the sole witness. She testified that DHS received a GPS report on May 22, 2019 alleging homelessness and inadequate basic care, naming the children as the victims and the parents as the alleged perpetrators. N.T. 6/11/19, 5. She further testified that she went to parents' house and the parents made it clear to her that she would not be permitted inside the home. *Id.* In response to questioning from the court, Richardson testified that she needed to view the inside of the home to make sure the home was appropriate, the utilities were working, there was food in the home, beds for the children, and so forth. *Id.* at 6.

Based on the information before it, the trial court determined that probable cause

existed to order parents to cooperate with an assessment of the home. In support of its determination, the trial court stated:

> The Motion to Compel and the hearing confirmed that one of the main factors of the DHS investigation is the matter of homelessness and if the alleged address of the family was suitable for Children. The home assessment by DHS would be able to determine if the claims for both homelessness and inadequate care of Children have merit.

Trial Court Opinion, 9/9/19 at 7. In determining that probable cause existed the trial court also found Richardson's testimony credible. *Id.* at 8.

I disagree with the Majority's contention that since DHS located the family's home the allegations of homelessness were moot and needed no further investigation. Majority Opinion at 628–29. Even though Richardson received an address where the family purportedly resided and talked to the family outside that residence, that does not mean the family resided there or that the residence was suitable for children. As Richardson testified, she needed to observe the inside of the house to determine if the home was appropriate for the children. N.T. at 6. The allegations of homelessness were also not moot by the unsupported assertion in the petitions that DHS observed Mother usher the children into the home. First, Richardson testified that she was the DHS worker who went to the residence and she did not observe Mother and the children enter the residence. N.T. at 8-9. The conflict between the petitions and Richardson's testimony was a factual question for the trial court to answer. Further, even if Richardson did observe Mother usher the children into the residence, merely entering a home is not proof that one resides there. I also disagree with the Majority's assertion that Richardson's testimony confirmed that the family was not homeless. Majority Opinion at 629. This assertion is directly contradicted by Richardson's own testimony that she had "no idea" if the family was living at the address because she was not permitted access into the home. N.T. at 10.

As the allegations of homelessness remained an issue, along with the allegations of inadequate basic care, there was a clear connection between the allegations in the petition and the requested investigative home visit. Only by observing the inside of the residence could DHS determine if the family resided there and if it was an appropriate place for the children to live.

In addition, I also disagree with the Majority's determination that the information regarding the family's prior involvement with DHS was stale because the family's prior experiences with DHS ended in 2015, four years prior to the Petitions to Compel, and there was no evidence of any reoccurrence of the prior issues. Majority Opinion at 631–32. The age of information is a factor in determining probable cause. *Commonwealth v. Leed*, 646 Pa. 602, 186 A.3d 405, 413 (2018). "However, staleness is not determined by age alone, as this would be inconsistent with a totality of the circumstances analysis." *Id.* (citing *Commonwealth v. Hoppert*, 39 A.3d 358, 363 (Pa. Super. 2012)). The remoteness of information can affect the weight a court chooses it give the information. Courts must also consider the nature of the allegations and the type of evidence. *Hoppert*, 39 A.3d at 363. The Petitions to Compel indicated that in 2013 DHS received GPS reports regarding the family, asserting, *inter alia*, deplorable home conditions, including holes in the walls, flea infestation, lack of interior walls, internal structure of the home being exposed, a lack of water and heat services, and that the home appeared structurally unsound. Petitions to Compel at ¶ c. Those reports were deter-

mined to be valid. *Id.* In addition, at the hearing on the current Petitions to Compel the trial judge referenced his prior involvement with the family. N.T. at 12, 18. Richardson testified that DHS received a GPS report alleging homelessness and inadequate basic care on May 22, 2019. *Id.* at 5. The family's prior involvement with DHS involved issues regarding the adequacy of the family's housing. The housing related allegations at issue in the Petitions to Compel were similar to the housing related problems at issue in the family's prior involvement with DHS. Those previous reports were determined to be valid and led to a dependency case. Therefore, the family's prior involvement with DHS was relevant to the allegations in the Petitions to Compel and not stale, as the allegations were of a similar nature. The fact that DHS received the previous GPS reports over five years prior to receiving the current one, and Y.W.-B.'s dependency case was closed approximately four years prior, goes to the weight the trial court should give the information. The trial court, however, should not have been required to ignore the family's prior involvement in considering the totality of the circumstances of the case. Rather, the trial court should have been permitted to consider the family's prior history as part of the totality of the circumstances in coming to its probable cause determination.

Further, due to the nature and purpose of child protective investigations, as discussed *supra*, "[w]hat an agency knows and how it acquired its knowledge should not be subject to the same restrictions facing police seeking to secure a search warrant." *In re Petition to Compel*, 875 A.2d at 380 (Beck, J. concurring). This is especially true in regards to anonymous sources. Anonymous sources in the child protective arena differ significantly from confidential informants in the criminal arena. Anonymous sources in child protective investigations are often family members or those close to the family who are in the best position to observe a child's circumstances and whether the child is in need of services. Due to the relationship with the care giver, these sources would be less likely to report abuse or neglect if they were not given anonymity. Confidential informants in criminal cases, on the other hand, are often involved in criminal activity themselves and provide information to law enforcement authorities in an attempt to extricate themselves from legal trouble. Information given in self-interest should be looked upon more cautiously than information given by an individual concerned about the health and safety of a child. Therefore, in the child protective arena courts should be able to consider anonymous reports as part of the totality of circumstances analysis in coming to a probable cause determination without the same corroboration requirements that are applicable to criminal informants.

The Majority also criticizes DHS's failure to call the anonymous source to testify at the hearing on the Petitions to Compel based, at least in part, on its incorrect determination that

> DHS had no obligation to keep the identity of the source of the GPS report confidential or to shield him or her from testifying at the evidentiary hearing. The trial court mistakenly believed that DHS was legally required to keep the name of the anonymous source confidential and, accordingly, citing 23 Pa.C.S. § 6340(c), sustained DHS's objection when Mother's counsel asked Richardson to identify the anonymous source of the GPS report. Section 6340(c) of the CPSL, however, only requires DHS to keep confidential the name of an anonymous reporter of a **CPS** report, I.e., a report alleging child abuse. No similar provision in the CPSL protects the

source of a **GPS** report, i.e., a report of, *inter alia*, child neglect,

Majority Opinion at 633–34 (emphasis in original) (internal citations omitted). Section 6340(c), entitled "Protecting identity," provides that, except under specific limited circumstances not at issue here, the release of information by a child protective services agency "that would identify the person who made a report of suspected child abuse or who cooperated in a subsequent investigation is prohibited." 23 Pa. C.S. § 6340(c). The CPSL also prohibits the release of the same information as to an individual who makes a GPS report. Section 6375(*o*) of the CPSL, entitled "Availability of information," states "[i]nformation related to reports of a child in need of general protective services shall be available to individuals and entities **to the extent they are authorized to receive information under section 6340 (relating to release of information in confidential reports)**." 23 Pa.C.S. § 6375(*o*) (emphasis added). Since Section 6340(c) prohibits the disclosure of information that would identify a person who made a report of child abuse, Section 6375(*o*) likewise prohibits the disclosure of information that would identify an individual who made a GPS report, like the anonymous source at issue here. The trial court, therefore, correctly sustained DHS's objection to Mother's counsel's question asking Richardson to identify the anonymous source.

Even if DHS was not statutorily required to keep the anonymous source's identity confidential, which it was, it was under no obligation to call the source to testify at the hearing on the petitions and provide Mother an opportunity to cross-examine him or her, as the Majority implies. Majority Opinion at 633–34. There is no legal requirement, constitutional, statutory, or rule-based, that the subject of a request for an order to compel cooperation with an investigative home visit must be permitted to cross examine a source prior to a trial court making a probable cause determination. There is no requirement that the court hold a hearing on the petition at all.

When reviewing a trial court's probable cause finding, it is a reviewing court's duty to ensure there was "a substantial basis for concluding probable cause existed. In so doing, the reviewing court must accord deference to the issuing authority's probable cause determination, and must view the information offered to establish probable cause in a common-sense, non-technical manner." *Jones*, 988 A.2d at 655 (quoting *Commonwealth v. Torres*, 564 Pa. 86, 764 A.2d 532, 537-38, 540 (2001)). In so doing, "a reviewing court [is] not to conduct a *de novo* review of the issuing authority's probable cause determination, but [is] simply to determine whether or not there is substantial evidence in the record supporting" the finding of probable cause. *Id.* (quoting *Torres*, 764 A.2d at 537-38, 540). In order to have met the probable cause standard in this case, there had to be a fair probability that the children had suffered from abuse or neglect and that evidence relating to those allegations may be found in the residence. The allegations set forth in the Petitions to Compel combined with Richardson's testimony and the trial court's knowledge of the family's prior involvement with DHS support the trial court's determination that DHS satisfied that standard here. Therefore, I respectfully dissent as I would affirm the Superior Court's holding.