



Nebraska (“DHHS”), and oversees, among other departments, the Newborn Screening Program and Child Protective Services.

3. Defendant Julie Miller is a Nebraska resident and the Coordinator of the DHHS “Newborn Screening Program.”
4. Defendant Krystal Baumert is a Nebraska resident and the “Follow-Up Coordinator” of the DHHS Newborn Screening Program.
5. This action is brought pursuant to 42 U.S.C. § 1983 due to deprivations of the constitutional rights of the Plaintiffs when their not-yet 6 week old son Joel Ezekiel was seized from the family home in order to subject him to the requirements of the Newborn Screening Program.
6. Because this action is brought pursuant to 42 U.S.C. § 1983, this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331.
7. The Newborn Screening Program is authorized by Neb. Rev. Stat. §§ 71-519 et. seq. (Reissue 2003) and provides that newborns are to undergo a procedure wherein their blood is drawn in order to test for eight (8) extremely rare metabolic disorders.
8. The Plaintiffs have a conscientious objection to the program and a sincerely held religious belief that blood should not be drawn from the human body because the Scriptures state that, “Life is in the blood.” The Plaintiffs’ religious objection is well-known to the Defendants since the Anayas resisted newborn screening for children born prior to Baby

Joel, and had protracted litigation with Douglas County and DHHS regarding their daughter Rosa Anaya, born in 2003. *See Douglas County v. Anaya*, 269 Neb. 552 (2005).

9. In that case, the Douglas County Attorney brought an action, pursuant to Neb. Rev. Stat. §§ 71-519 *et seq*, in the District Court of Douglas County. Notice was provided to the Anayas and a hearing was conducted in which the Plaintiffs were allowed to present their objections to the screening program. Despite the Anayas' objections, the District Court ruled that Rosa should be tested. As was their right, the Anayas appealed to the Nebraska Supreme Court. After briefing and argument, the Court eventually upheld the District Court's decision in 2005. The Anayas then filed a writ of certiorari to the U.S. Supreme Court. The writ was denied.
10. The Plaintiffs' nine (9) children born prior to Baby Joel are all healthy and have none of the metabolic disorders screened for in the newborn screening program.
11. On September 2, 2007, Baby Joel was born in the Anaya home. The Plaintiffs filled out the requisite paperwork and registered the birth with DHHS.
12. Baby Joel is healthy and has exhibited none of the signs or symptoms associated with the screened for metabolic disorders.

13. On September 18, 2007, Defendant Baumert, Follow-up Coordinator of the Newborn Screening Program, sent the Anayas a letter advising them of the newborn screening program's testing requirement. Ms. Baumert stated in the letter that if DHHS did not hear from the Anayas by September 21, 2007, that DHHS would presume that the screening had not been done and would notify the County Attorney to initiate action pursuant to Neb. Rev. Stat. § 71-524.
14. At no time did Defendant Baumert, nor anyone on behalf of DHHS, advise, warn, or even discuss with the Anayas that if the screening was not performed, DHHS would, through the juvenile courts, seek to remove Baby Joel from the Anaya home without notice for testing.
15. After receiving the September 18<sup>th</sup> letter, and the follow-up call from Defendant Baumert, the Anayas expected to be summoned to District Court and allowed to present their objections to the newborn screening program as they did when Rosa was born in 2003. The objections the Anayas intended to raise included objections which had not been raised in the previous litigation involving Rosa.
16. Neb. Rev. Stat. § 71-524, the section cited by Baumert in the letter, specifically enumerates Nebraska state District Court as the court in which an action is to be filed to enforce the screening program.

17. The Defendants, in concert with other members of the DHHS and the Douglas County Attorney's office, conspired to deny the Anayas their rights of due process, and to seize and test Baby Joel without notice or a hearing in District Court.
18. The Douglas County Attorney, at the behest of and with the cooperation of Defendants, filed a petition in the Separate Juvenile Court of Douglas County on October 10, 2007. An *ex parte* motion for immediate removal of Baby Joel was also filed. The plan was to grab Baby Joel and immediately take him to a local hospital for testing, without giving the Anayas notice and an opportunity for a hearing.
19. The motion for removal was filed *ex parte* (without prior notice to the Anayas) and alleged that it was of "immediate and urgent" necessity to remove Baby Joel from the Anaya home for his "protection." These allegations were not true: Baby Joel was safe and healthy at the Anaya home. Furthermore, he was exhibiting none of the signs or symptoms of the disorders tested for in the newborn screening program.
20. The motion for temporary custody alleged that "the current situation precludes reasonable efforts being made to prevent or eliminate the need for removal." This was also false: no efforts had been made by the Defendants or DHHS to keep Baby Joel in the home while the testing issue was resolved through the courts.

21. In support of the motion for temporary custody, Defendant Julie Miller swore out an "Affidavit in Support of Temporary Custody." The affidavit contained misleading information, casting a false light on whether Baby Joel was in danger, and whether the Anayas had notice of the looming proceedings against them.
22. Defendant Miller stated in the sworn affidavit that, "The diseases included in the newborn screening panel cause a variety of problems from profound mental retardation to physical disability, seizures, blindness, deafness and/or death in infancy or childhood. The diseases individually are rare; however, Nebraska's detection rate found in 2006 approximately 1:624 newborns had one of the screened for diseases." The actual number of confirmed metabolic disorders that cause the "profound" injuries listed by Miller were much lower than the number suggested by Defendant Miller.
23. Further, since Baby Joel was now almost 6 weeks old, healthy, and eating normally, he was clearly not at risk for a number of the screened for disorders such as Congenital Adrenal Hyperplasia and Galactosemia, which manifest themselves in the first days or weeks of life.
24. Defendant Miller also indicated in the affidavit that Mrs. Anaya was asked by Defendant Baumert whether she understood the cryptic statement "What would happen next relative to notifying the County

Attorney?” The affidavit stated that Mrs. Anaya said, “Yes.” At no time did Defendant Baumert tell Mrs. Anaya that the State planned to seek the temporary removal of Baby Joel from the Anaya home without prior warning or notice to the Anayas.

25. Based upon the affidavit of Defendant Miller, a judge of the Separate Juvenile Court of Douglas County signed an order on October 10, 2007, authorizing the immediate removal of Baby Joel from the Anaya home.

26. On October 11, 2007, at approximately 11:00 a.m., representatives of the Nebraska Department of Health and Human Services, aided by three armed deputies, went to the Anaya home, forcibly removed Baby Joel, and placed him in the custody of the DHHS.

27. At the time Baby Joel was seized, he was just 5 weeks, 4 days old, and his only form of nutrition and hydration was breastfeeding from his mother. Mary Anaya nursed Baby Joel 9 to 10 times per day or as often as he needed in order to satisfy his needs. Before being taken by the State, Baby Joel had never been bottled or formula-fed. The removal of Baby Joel from the home led to the interruption of his normal feeding patterns and restrictions on his ability to nurse, and jeopardized his welfare.

28. Due to the actions of the Defendants, Baby Joel was removed from the Anaya home from October 11 to 16, 2007—nearly 1/6 of his young lifetime.
29. While in the custody of DHHS, Baby Joel was subjected to the newborn screening test. The results of the test showed that Baby Joel had none of the screened for metabolic disorders.
30. Children are not mere creatures of the State. The Defendants' pre-hearing removal of Baby Joel from the Anaya home was in violation of the Plaintiffs' Constitutional rights, including those found in the Fourth, Fifth and Fourteenth Amendments.
31. The actions of the Defendants violated the Plaintiffs' rights of procedural and substantive due process, their liberty interest in family integrity, and their right to be free of unreasonable searches and seizures. No emergency existed justifying the Defendants' actions in seeking and supporting the plan to remove Baby Joel from the Anaya home. Baby Joel was never in immediate danger. Rather, he was safe and secure in his environs, and his removal from the home placed him at severe risk of injury due to the disruption in his ability to nurse, as well as his ability to bond and attach to his parents and siblings.
32. The Anayas are still of child-bearing years and have already-born children who have not been subjected to the newborn screening

program. Thus, there is a risk that the Defendants might, again, seek to violate the Plaintiffs' constitutional rights.

WHEREFORE, Mary and Josue Anaya request that this Court enter an order declaring that the actions of the Defendants in seizing Baby Joel in non-emergent circumstances were unconstitutional, and enjoining the Defendants from enforcing, seeking, and/or supporting pre-notice and pre-hearing removal proceedings without first making reasonable efforts to keep the family together, and only if there is evidence that said child is in imminent risk of serious harm. The Plaintiffs also request their attorneys' fees and the costs of this action.

JOSUE and MARY ANAYA,  
Parents of Joel Ezekiel Anaya,  
Plaintiffs

By:           /s/ Jefferson Downing            
Jefferson Downing, #19280  
Joel Bacon, #22388  
KEATING, O'GARA, NEDVED &  
PETER, P.C., L.L.O.  
530 South 13th Street, Suite 100  
Lincoln, NE 68508  
402-475-8230