

No. 18-1068

IN THE
SUPREME COURT OF THE UNITED STATES

Raja Mittal,

Petitioner,

v

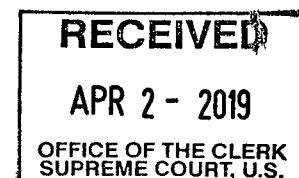
County Of Clark, et al.,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

**REPLY TO OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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**Reply To Opposition To Petition
For Writ of Certiorari**

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I. Misstatements Of The Record In Respondent's Opposition To Petition

The Respondents have tendered to this court a response brief that is replete with misstatements as well as mischaracterization of facts as they relate to Petitioner's first amended complaint and misquote the law. The Petitioner cannot argue every misstatement and misrepresentation of fact due to the word limit but has attempted to argue what was possible within the word limit. The statements offered by Respondents are compiled from bits and pieces of the facts from Petitioner 's first amended complaint, sometimes single words selected from it and inserted into their own distorted version of the facts, even when using verbatim, in an attempt to mislead this court and conceal the facts.

On June 7, 2013, CPS/Clark County Child protective services removed Petitioner's child from his custody and control without a judicial order, in the absence of exigent circumstances. Petitioner has a Fourth Amendment right to be free from unreasonable seizure and this Fourth Amendment claim is cognizable through 42 U.S.C. § 1983 ("Section 1983"). Subsequently, Respondents continued to lie, suppressed exculpatory evidences and made misrepresentations to the dependency court to destroy Petitioner's relationship with his child. Petitioner has a Due Process right protecting him against deliberate government use of perjured testimony and fabricated evidence in the dependency/Juvenile court proceeding designed to rupture his familial relationship with his son. This right is beyond debate.

When the Petitioner got divorced, the custody arrangement was by mutual consent and the family

court case was not a custody battle as the Respondents are attempting to portray. It was about a parent trying to protect his child from sexual abuse by maternal grandfather and ended up losing his parental rights because of misconduct of the defendants. The family court never ordered sole custody of the child to the mother. It was CPS that took this decision to remove the child from Petitioner's care and put in the sole custody of the mother in whose home the child was allegedly being sexually and physically abused. The misconduct of Respondents affected the substantial rights of the Petitioner and the Petitioner lost the right to the care, custody and control of his child and all he was left with was a one hour a week, supervised visitation with his child.

Pg-4-5 of Opposition, Respondent stated "Contrary to Petitioner's assertions in his brief his first amended complaint makes no direct claim that the Clark County respondents violated his Fourth Amendment rights by making a warrantless entry onto his property to seize his minor child from his custody without exigent circumstances. In fact, and as concluded by the district court the first amended complaint stated that the mother had custody of the minor at all relevant times and he had only visitation rights. Petitioner does not ever allege that minor was in his direct custody at his home at the time he was placed in protective custody on June 7,2013. Petitioner specifically alleges that he was informed about the minor being placed in protected custody on June 7,2013 and that he was to appear in court on June 12th, 2013 through a phone call".

The Respondents argue that "the Petitioner did not have custody of the child but only visitation". In

the family law parlance, if a parent has physical custody of the child less than 50%, it is called visitation. For example: if the child stays with one parent for 4 days a week and with the other parent for 3 days a week, the parent that has the child 4 days a week has the primary custody and the one that has the child 3 days a week has visitation. The Petitioner shared the custody of his child with the other parent. The Petitioner had visitation with his child Saturday to Monday, additional holidays and 50/50 legal custody which means the right to make decision regarding his child's education, medical and other important decisions regarding the care of his child, before CPS removed his child from Petitioner's custody.

Child custody decisions lie with family court judge and not with CPS social workers. Only a judicial officer is authorized by law to make custody decisions and then also strict scrutiny applies to parental rights. Even if the other parent denies handing over a child to the parent on his visitation days/custody days, it's punishable as contempt of court in family court with imprisonment and fine. When a child's own parent cannot lawfully withhold a child from the other parent, how a CPS social worker is justified in this unlawful conduct. Petitioner has a Fourth and Fourteenth Amendment right against unreasonable seizures and deprivation of life liberty or property without due process of law. A social worker cannot remove a child from parent's custody without a court order. A few hours before the Petitioner was to pick up his child from mother's home to exercise his visitation with his child, the CPS social worker called the Petitioner and told him that he "no longer has custody of his child", is violation of his fourth and fourteenth amendment rights. The Respondents trying to justify,

saying that they did not remove the child entering into the Petitioner's home or from his direct custody is analogous to removing a child from school absent exigency and informing his parents that they no longer have custody of their child is lawful because they did not remove the child entering a parent's home and from parent's direct custody and that they met their legal obligation by informing the parents that they do not need to pick up their child from school as CPS has taken protective custody. It simply doesn't make sense.

In context of a seizure of a child by the State during an abuse investigation . . . a court order is the equivalent of a warrant.' *Tenenbaum v. Williams*, 193 F.3d 581, 602 (2nd Cir. 1999). F.K. v. Iowa district Court for Polk County, Id. The social worker undisputedly did not have a court order authorizing her to intrude on Petitioner's custody rights. Respondents are also not justified in saying that they did not violate the Fourth and Fourteenth Amendment because they placed the child in the sole custody of the mother. Each parent has individual constitutional rights.

Contrary to Respondent's assertions, the Petitioner had made claims in his First Amended complaint regarding the Fourth Amendment right to be free from unreasonable seizure. First Amended Complaint pg14-pt.60, pg15-pt.63, Pg42-pt.163,Pg43-pt.166, Pg50-pt.194. Pg51-Ln:18. In response to that claim only the respondents attached the order of the Juvenile Court App.19, defending themselves saying that the removal of the child without a judicial order was justified because Juvenile court decided on the continued detention.

The respondents conceded that "The minor was placed in protective custody from his contact on June 7, 2013, and when the Eighth Judicial District Court - Family Division Juvenile Court of Clark County, Nevada entered an order on June 15 2013 the court order held that the minor shall remain in protective custody with his natural mother pending the disposition of the court because there was reasonable cause to believe that Petitioner was subjecting him to mental and emotional abuse".

"Concerns" of mental and emotional abuse based on a parent taking a child to a doctor for rectal bleeding, rectal injuries, rectal tearing and multiple infections of the anus from alleged sexual abuse in the other parent's home, is never an exigency. Just two days before the removal, CPS manager Troy Armstrong testified in front of Judge Pollock in family court on June 4,2013, that the reasons he took his son to the doctor were appropriate for a parent to seek medical help and that if it was Troy's son, he too would have sought medical help for the same. In addition, a government official's prior willingness to leave a child in their parent's custody militates against a finding of exigency. Rogers, *supra*, 487 F.3d at 19 1295.

The decision of the Juvenile Court of Clark County, Nevada entered an order on June 15,2013, regarding the continued detention of the child was based on the detention report full of lies, inaccuracies, half-truths, perjured reports, perjured testimony and suppressed exculpatory evidences. See App.19: the court order says: "Based on the statements made and the report submitted: the court finds that....." Detention Report is the primary evidentiary document the juvenile court relies on in making its *prima facie* findings regarding the propriety of the

detention of a child from its parents and/or family. The matter set out in the Detention Report is required to be honest, accurate, and complete in all material respects.

Long ago, the United States Supreme Court held that the knowing use of false or perjured testimony and/or the deliberate suppression of exculpatory evidence violates due process. *Napue v. Illinois*, 360 U.S. 264, 269 (1959); *Pyle v. Kansas*, 317 U.S. 213, 216 (1942); *Mooney v. Holohan*, 294 U.S. 103, 112 (1935). An oath-beholden servant of the government is never justified in depriving an individual of liberty by defrauding the courts. See e.g., *N. Mariana Islands v. Bowie*, 243 F.3d 1109, 1124-1125 (9th Cir. 2001).

Respondents stated in their Opposition (pg.5) Petitioner alleges that his due process rights were violated in every hearing before the Juvenile court because it was done by ambush and that he was given important information only as he was stepping into the courtroom for hearings. That is not the only due process violation committed by the Respondents in the Juvenile court proceedings. It was a part of it - the protective custody report/detention report, Petition, disposition report and all other reports required by procedures set in Juvenile court, that would have given a fair notice of what the Petitioner was to defend at that particular hearing were not provided in advance but was handed over to him at the time they were stepping into the courtroom for that particular hearing. *In Re The Welfare of Raino v. State*, 255 N.W.2d 398,299 (Minn. 1977 (due process in general in juvenile court proceedings requires notice and a fair opportunity to be heard). Notice, to comply with due process requirements, must be given sufficiently in

advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must 'set forth the alleged misconduct with particularity.' Petitioner and his attorney did not even know the allegations when they arrived at the dependency court on June 12, 2013 for the detention hearing nor did they have copy of detention report they submitted to the Juvenile court. Due process demands that as a matter of law and as a matter of justice, defendant in any case is entitled to know what he/she must defend.

The conspiratorial objective as alleged in his 'First Amended Complaint' and 'The petition for Writ of Certiorari' was that- in retaliation to the family court judge sending Marshalls to CPS office and questioning their investigation at the trial as to why they did not follow up on certain things when they should have and part of it was their anger towards the Petitioner because he requested for that trial. Petitioner prevailed at the trial and was able to prove that his child was being sexually abused by the maternal grandfather and physically abused by the mother. CPS/ retaliated against the Judge but at the expense of Petitioner and his child. Just two days after that trial CPS removed the child from his custody and care and proceeded to file petition full of lies and inaccuracies in the Juvenile Court. Respondents falsely allege(pg11) that 'his principal grievance was being on the losing side in the Clark County Family court'. Petitioner rather prevailed at the trial in family court. It was the Respondents that retaliated and engaged in the misconduct to violate Petitioner's constitutional rights, filing a malicious petition in Juvenile court.

Contrary to the Defendants misrepresentations, Petitioner's First Amended Complaint did not challenge the validity or constitutionality of the state court orders. There are no allegations contained in Petitioner's First Amended Complaint to suggest that the state court judgment should be reviewed by the district Court/Federal Court, or that the judgment came about as a result of "legal error by the state court." Rather, the allegations of the First Amended Complaint focus squarely on the Defendant's acts of deception in relation to court proceedings, and the removal of Petitioner's child from his custody without a judicial order.

The Respondents misleading this court portraying that in the family court, the case was about the custody of the child. Petitioner asserts that in the family court, this case was about the protection of the child from sex abuse and physical abuse in mother's home. There are several reports from professionals like child sex abuse expert, Pediatrician, child behavioral & developmental expert and child's teacher with the same concerns as the Petitioner but CPS suppressed all evidences and misrepresented to the Juvenile court that the concerns of the father for the safety of his child were baseless and him taking to the doctor for injuries from sex abuse or physical abuse were causing mental and emotional abuse to his child.

The family court or the Juvenile court did not grant sole custody of the child to the mother. It was CPS that removed the child and placed him in the exclusive custody of the mother and the maternal grandfather and then continued to mislead the Juvenile court with lies, perjured testimony, falsified reports and withholding exculpatory evidences and

eventually the final decision in the Juvenile Court was on the recommendations of CPS, advising the court that the sole physical and legal custody should be granted to the mother as she has no allegations against her. Petitioner lost his parental rights because of CPS fraud on the Juvenile Court. The court does not commit an error when it reaches a decision without the knowledge of underlying fraud by the adverse party.

When Respondents state (Pg-13) Petitioner sought a declaratory judgement from federal court that the family court's custody order placing his son in his mother's custody be declared void", they omit the rest of the statement from Petitioner's complaint – "which the juvenile court issued as a result of the fraud and suppression of evidence of the defendants".

Other Ninth Circuit and district court cases examining challenges to complaints alleging unconstitutional conduct of social workers have found such cases not subject to dismissal because of the Rooker-Feldman doctrine. In Kougasian v. Kougasian, 359 F.3d 1136, 1140 (9th Cir.2004), though the Petitioner requested that the court set aside a judgment, this request was based on the defendant's commission of extrinsic fraud, not because of legal error on the part of the state court. Id. at 1143.

The Rooker-Feldman doctrine does not bar a federal suit that seeks damages for a fraud that resulted in a judgment adverse to the Petitioner. Such a suit does not seek to disturb the judgment of the state court, but to obtain damages for the unlawful conduct that misled the court into issuing the judgment. In his motion for leave to amend, Petitioner

stated “If the court doesn’t want to take the fraud exception for declaratory relief, the claim for declaratory relief can be rejected without affecting the damages claim. Petitioner’s second amended complaint will reflect the changes”. Petitioner’s proposed second amended complaint did reflect the changes removing declaratory relief request. The claims for damages stand independent of the declaratory judgement.

II. Petitioner’s Compliant did state plausible claims for relief.

“To sustain an action under [42 U.S.C. §] 1983, a Petitioner must show ‘(1) that the conduct complained of was committed by a person acting under color of state law; and (2) that the conduct deprived the Petitioner of a federal constitutional or statutory right.’” *Hydrick v. Hunter*, 500 F.3d 978, 987 (9th Cir. 2007) (citation omitted), vacated and remanded on other grounds, 129 S. Ct. 2431 (2009); accord *West v. Atkins*, 487 U.S. 42, 48 (1988). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). A claim has “facial plausibility when the Petitioner pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (citing *Twombly*, 550 U.S. at 556). It simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of the alleged misconduct. The Supreme Court reiterated that a motion to dismiss for failure to state a claim cannot be

granted merely because the factual allegations are not believed. Instead, the factual allegations must be taken as true when evaluating a motion to dismiss. (“Rule 12(b)(6) does not countenance . . . dismissals based on a judge’s disbelief of a complaint’s factual allegations”); Moreover, where amendment would likely cure a pleading defect, “the standard for granting leave to amend is generous.” United States ex rel. Lee v. Corinthian Colleges, 655 F.3d 984, 995 (9th Cir. Cal. 2011). Petitioner’s complaint complies with the requirements of Rule 8(a) because it gives respondent fair notice of the basis for Petitioner’s claims.

III. Respondent’s reliance on Cooper v. Ramos is misplaced

Cooper’s claims were “inextricably intertwined” with state court decision because Cooper’s claims were a de facto appeal. Cooper complained of a legal wrong allegedly committed by the state court. Petitioner is not alleging legal wrong by the state court. Cooper’s challenge of a state court’s denial of his request to obtain additional DNA testing was a de facto appeal. The issues were already litigated and decided in the state court. Petitioner’s claims of warrantless removal of his child and Respondent’s deception of Juvenile court to destroy Petitioner’s familial relationship with his child are not a de facto appeal. These issues were neither presented nor decided by state court.

IV. Heck Does Not Apply To Petitioner’s Section 1983 Action

The Ninth Circuit provides a useful case study regarding the application of Heck to § 1983 Petitioners who have no access to relief via habeas. It holds that in circumstances where a habeas remedy is

unavailable, "a § 1983 claim may be maintained." *Nonnette v. Small*, 316 F.3d 872, 876 (9th Cir. 2002).

In *Deanna Fogarty Hardwick v. County of Orange, et al.* (June 14, 2010, G039045) review den. (Sept. 29, 2010, S184795) (2010 WL 2354383); CT 59,81, 116, 119), in which the Court of Appeal held that Heck did not bar a mother's section 1983 action arising from juvenile dependency proceedings "for the simple reason that juvenile dependency proceedings are not criminal convictions' and that it did not bar the claims for the same reason. Individuals not "in custody" cannot invoke federal habeas jurisdiction, the only statutory mechanism besides 1983 by which individuals may sue state officials in federal court for violating federal rights. That would be an untoward result. Other Circuit courts- the Second, Fourth, Seventh, Ninth, Tenth, and Eleventh Circuits have all held that when a Petitioner is not incarcerated, Heck does not bar a § 1983 claim because the intersection of habeas relief and § 1983 is not present. Heck is irrelevant in dependency cases.

In *Steffel v. Thompson*, 415 U.S. 452 (1974), the Court stated: "When federal claims are premised on 42 U.S.C. section 1983 and 28 U.S.C. section 1343a(3) we have not required exhaustion of state judicial or administrative remedies, recognizing the paramount role Congress has assigned to the federal courts to protect constitutional rights." Id at 472-73. See also in *Ellis v. Dyson*, 421 U.S. 426 (1975),

Respondents argue in part that to be allowed to proceed with his section 1983 claim Petitioner had to prevail in his child dependency proceedings. Petitioner asserts that it's not a prerequisite for section 1983 claim that Petitioner prevailed in his

child dependency proceedings. In Mabe and Anderson-Francois the Petitioners were both allowed to proceed with their claims despite adverse juvenile dependency court decisions that terminated parental/custodial rights. Mabe, *supra*, 237 F.3d at 1105; Anderson-Francois, *supra*, 2009 U.S. Dist. Lexis 44176, 10-11 (N.D. Cal. 2009).

V. Rooker Feldman Does Not Bar Petitioner's § 1983 Claim

The crux of Petitioner's argument is:

- 1) Removal of Petitioner's child – as evidenced in Court order (app-19) and as conceded by the Respondents in their opposition that the child was in fact removed from the Petitioner's custody without a judicial order. Petitioner's claim is not barred by Rooker Feldman or any other doctrine.
- 2) Petitioner's claims are not a *de facto* Appeal. Juvenile court made no findings of propriety of the removal of child without a judicial order. The statutes do not require the judge to make an exigency determination at the juvenile dependency detention hearing. Nor did the judge make any findings of CPS deception of the Juvenile court. The issue of removal of Petitioner's child from his custody without a Judicial order and deception of the Juvenile court was neither presented to nor decided by the Juvenile court so Petitioner's claims are not a *de facto* appeal. Because Petitioner's claims are not a *de facto* appeal second and distinct step of inextricably intertwined does not apply. Petitioner's claims are not barred by Rooker-Feldman.

3) Contrary to Respondent's claim, the errors asserted do not consist of erroneous factual findings or the misapplication of a properly stated rule of law but rather meet the reasons for consideration for granting writ of Certiorari as per Supreme Court Rule 10 (See Petition for Certiorari (pg11-13).

VI. CONCLUSION

Therefore, the Petitioner respectfully requests the United States Supreme Court to grant the petition for Writ of Certiorari,

Respectfully submitted,
this 28th Day of March, 2019,

Raja Mittal

