19-5402

ORIGINAL

In The Supreme Court of the United States

Tatyana Mason- Petitioner *pro-se*
vs.
John Mason- Respondent

On Petition For A Writ of Certiorari
To The Court of Appeals of Washington State Division II.

PETITION FOR A WRIT OF CERTIORARI

FACTS OF THE CASE:

This is a serious domestic violence 11 years old case where RCW 26.50.060 Domestic Violence Protection Order was issued against the father –Respondent in this case, by Judge Schaller in 2007. The father was found as "controlling, coaching the children and provides false information in the court with help of his attorney. He and his attorney had been sanctioned under CR11 (a) for promoting untrue information in the court in violation of RPC 3.3 by Judge Wickham in 2016. Judge Leighton found him breached his contract in Form I-864 affidavit of support and promoted false information in the court in 2018.

Multiple judges found the mother –Petitioner in this case, as the aggrieved survivor of Domestic Abuse from John, whose lack of resources and limited English proficiency had been prejudiced in the legal system.

HELD

"Because the issue will have important precedential value, we now set forth the reasons for our holding that the lack of adequate translation in trial which were conducted in English rendered the trial constitutionally infirm".. *United States ex rel. Negron v. State of N.Y.*, 434 F.2d 386, 389 (2nd Cir.1970) and of obvious relevance here is this Court's logic in *Pate v. Robinson*, 383 U.S. 375, 384, 86 S. Ct. 836, 841, 15 L.Ed.2d 815 (1966)." "When the State moves to destroy familial bonds, it must provide a parent with fundamentally fair procedures." *Santosky v Kramer* 455 U.S. 745, 768 (1982).

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QUESTIONS PRESENTED

1. Whether the State violated the due process clause of the Fourteenth Amendment in the previous trial court proceedings, by ignoring the 2016 findings including that the State *withhold* an access to a free translator or interpreter at the previous trial for the indigent mother *pro-se* who has limited English proficiency - when terminated her parental-rights under RCW, 26.09.191 and re-punished her though financial harassment by improperly damaging her immigration status and imputed income based on her debt (school loan). The lack of a free trial language interpreter for the indigent parents —elevates the risk of erroneous deprivation too high for the Due Process Clause to bear. This raises the subsidiary issue of what role preservation-of-error rules may play—consistent with the Due Process Clause—in denying Petitioner *pro-se* review of the sufficiency of the evidence underlying the constitutionality of procedures leading up to it. In the end, the result in this case cannot be squared with the due process analysis underlying the Court's decisions in *United States ex rel. Negron*, and this Court's logic in *Pate* "holding that the lack of adequate translation in trial which were conducted in English rendered the trial constitutionally infirm".

2. Whether the Washington State statute extending a substantial procedural safeguard (the right to a free language interpreter in the trial court actions) but then arbitrarily withholding it from some indigent parents violates the Equal Protection Clause. The Washington State's decisions upholding this scheme conflict with decisions of many other state supreme courts holding that this type of statutory distinction violates the constitutional principle of equal protection.

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PARTIES TO THE PROCEEDING

In order to avoid confusion:

Petitioner pro-se Ms. Mason therefore refers to the children (G.M.) & (D.M.).

Respondent in this Court's action is Mr. John Mason-(hereinafter "John") is a U.S. citizen, English is his native language; he is a state employee, always represented by attorney. Found by the courts that: John refused to removed conditions from his beneficiary's green card due to his abuse toward her; As a sponsor he failed to pay spouse maintenances and breached the From I-864 affidavit of support (contract) which he promised to the U.S. Government to support (his beneficiary) with the basic financial level of substantial support to overcome public charge of inadmissibility.
John is (G.M.) & (G.M.)'s natural father.

In 2007 a Domestic Violence Protection Order RCW 26.50.060 was issued against John by Judge Schaller. John was found "controlling, coaching the children and promoted false information in the court". In 2016 John and his family law counsel Ms. Roberson had been sanctioned under CR 11(a) for aggressively promoting false information in the court in violation of RPC 3.3 by Judge Wickham. In 2019 John was found breached the From I-864 affidavit by Judge Leighton.

Petitioner *pro-se* in this Court's action is Ms. Tatyana Mason–(hereinafter "Tatyana") is a citizen of Ukraine and Moldova had limited English proficiency; legally entered the US after her K-1 Fiancée Visa was approved. John and Tatyana married. Her marriage to John was blessed by two children G.M and D.M. but punctuated by his abuse of her. She is unemployed and indigent because John damaged her immigration status, prevented her from obtain employment and her failed his I-864 financial obligations to her; Now she is a cancer patient going through serious daily cancer treatments and the court litigations. Tatyana is (G.M.) & (D.M.)'s natural mother.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner *pro-se* Tatyana Mason respectfully submits this petition for a writ of certiorari to review the decision of the Court of Appeals Division II of the Washington State.

OPINIONS AND ORDERS BELOW

The Washington State Supreme Court's order refusing discretionary review dated March 6, 2019 (case No. 96438-6) - unreported. The opinion of the Court of Appeals Division II of Washington State dated July 31, 2018 and September 24, 2018 (case No.49839-1) - unpublished. *See* in the Appendix.

The sanctions for consistently presenting untrue information in the 2016 three day trial court issued by Judge against John Mason and his counsel Ms. Roberson dated December 9, 2016 and December 13, 2016. *See* in the Appendix.

The judgment and decision vacating the 2013 trial court's orders under extraordinary circumstances and found that in the 2013 trial court's proceedings were "fundamentally wrong and unjust"; that Tatyana Mason was lacked the basic and fundamental fairness required by the due process clause of the Fourteenth Amendment, dated November 2, 2016 and November 23, 2016 entered by the Thurston County Family Court (case 07-3-00848-0). *See* in the Appendix.

JURISDICTION

The Court of Appeals Division II of Washington State filed its unpublished opinion on July 31, 2018 by granting appeal to John who was represented by attorney; reversed the 2016 trial court orders and denied indigent *pro-se* Tatyana's motion for

reconsideration on September 24, 2018. The Washington State Supreme Court denied a timely petition for discretionary review on March 6, 2019, Mandate of the State Court of Appeals Division II issued on March 21, 2019.

On April 2, 2019 This Court granted extension of time from June 2 to August 2, 2019 to file the Petition of Writ of Certiorari.

This Court has jurisdiction under 28 U.S.C. § 1257(a). Because this petition challenges the constitutionality of a Washington State's statute affecting the public interest, the terms of 28 U.S.C. § 2403(b) may apply and this petition therefore is being served on the Attorney General of Washington State as required by Rule 29.4(c) of this Court.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The Sixth Amendment's guarantee of a right to be confronted with adverse witnesses, now also applicable to the states through the Fourteenth Amendment **Pointer vs. Texas**, 380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed 2d 923 (1965), includes the right to cross-examine those witnesses as an "an essential and fundamental requirement for the kind of fair trial which is country's constitutional goal". *Id.* at 405, 85 S.Ct. at 1068. *See* also, **Bruton v. United States**, 391 U.S. 123, 128, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968); **Barber v. Page**, 390 U.S. 719, 725, 88 S.Ct. 1318, 20 L.Ed.2d 255 (1968); **Douglas v. Alabama**, 380 U.S. 415, 418, 85 S.Ct. 1074, 13 L.Ed.2d 934 (1965); **Mattox v. United States**, 156 U.S. 237 242-243, 15 S. Ct. 337, 39 L. Ed. 409 (1895). "When the State moves to destroy familial bonds, due process requires provide a parent with fundamentally fair procedures"

Sanosky v. Kramer 455, U.S. at 745, 768 (1982). The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

Under Washington State law (RCW 2.42 and 2.43), Title VI of the Civil Rights Act of 1964 (Title VI), the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act):

> "It is the policy of Thurston County District Court to provide foreign language interpreter services at no cost to LEP parties, witnesses, victims, and others with an interest (e.g., parents, legal guardians, custodians) in all civil and criminal court proceedings and operations, other than when it is the responsibility of other government bodies pursuant to state law".

STATEMENT OF THE CASE:

This case presents issues that the 2013 trial proceedings and court of appeals lacked the basic and fundamental fairness required by the due process clause of the Fourteenth Amendment for bedeviling, indigent *pro-se* parents, victims of domestic abuse from their spouses in Washington state and other states facing limited English proficiencies,

termination of their parental rights under RCW 26.09.191 especially based on the fabricated, unsupported allegations, re-punishment through a financial barrier without assisting them with language interpreting serves in the trial court proceedings in the violation of the U.S. constitution in the wake of the Court's decision in **United States ex rel. Negron v. State of N.Y.**, 434 F.2d 386, 389 (2nd Cir.1970) "Because the issue will have important precedential value, we now set forth the reasons for our **holding that the lack of adequate translation in trial which were conducted in English rendered the trial constitutionally infirm"**. Respondent deserved more than to sit in total incomprehension as the trial proceeded. Particularly inappropriate in this nation where many languages are spoken is a callousness to the crippling language handicap of a newcomer to its shores, whose life and freedom the state by its processes chooses to put in jeopardy". And of obvious relevance here is this Supreme Court's logic in **Pate v. Robinson**, 383 U.S. 375, 384, 86 S. Ct. 836, 841, 15 L.Ed.2d 815 (1966)."

*1. **Factual Background:*** John Mason is a citizen of the United State of America, English is his native language. Tatyana Mason is a citizen of Ukraine and Moldova. English is not her primary language. Tatyana legally entered the U.S. after her K-1 Fiancée Visa was approved. (Ex. 7)[1] Tatyana and John married on August 19, 1999. John prepared, signed before a notary and executed his Form I-864 Affidavit of Support

[1] The Exhibits (Ex) -accepted by the 2016 three day trial court RP case No. 07-3-00848-0 in front of Judge Wickham; Clerk Papers (CP) - designated and transferred to the Washington state's court of appeals division II case No. 49839-1-II

(hereinafter referred to as the "I-864 Contract") on September 29, 1999 to sponsor Tatyana. (Ex. 9; Ex. 33). John promised to the US Government that Tatyana would not be on public charge to overcome inadmissibility. Act of 1996 (IIRAIRA), Pub, L. No. 104-208, 110 Stat. 3009 IIRAIRA included 8 U.S.C. 1182(a)(4)(B) Tatyana Upon the I-864 contract signed by John, she received her conditional permanent resident green card on January 1, 2000 for 2 years. (Ex. 8) (RP 11/02/16 at 3). Tatyana did not speak English and John controlled all of Tatyana's Immigration documents and the USCIS interviews. (Ex.33; 36).

> **Tatyana's marriage to John was blessed by two children (G.M. & D.M.), but punctuated by his abuse of her. John abused Tatyana by threatening her immigration status, strictly controlling her access to money, restricted her ability to go to school or obtain a job, and abusing her emotionally, verbally, and physically which resulted in RCW 26.50.060 a Domestic Violence Protection Order against John issued by Judge Schaller where John was found as "controlling, coaching children and provide false information in court".**

In the beginning, Tatyana was never comfortable telling anyone about John's abuse, because of her limited English and feared that John would retaliate, take her children away, and have her removed from the United States to never see her children again. When things got bad enough, she would go to **Safe-Place**-(a domestic violence organization) for refuge from John's abuse. She started going to Safe-Place in July 2001. At Safe-Place, one of the many people who helped her was Trisha Smith. (Ex 14); (RP 11/02/16 at 470 rules) One of the few people that she ever felt comfortable enough to tell about John's abuse

was Soon Lee who witnessed that John was abusing Tatyana on many occasions. During the divorce from John, Soon Lee wrote a declaration to the court about John's abuse. Soon Lee was a close friend of Tatyana who she met shortly after coming to the U.S. Declaration of Soon Lee accepted by court. (CP 235-8)

John always restricted Tatyana's access to money. John would not help Tatyana pay for school, which forced Tatyana to take out student loans which angered him. Also due to his restrictions, Tatyana did not have enough money to buy food to feed herself and her children. Tatyana had to get basic food assistance and cash assistance to support herself and their children. At her request, the Washington DSHS office provided Tatyana with a copy of her *aces.online* assistance records. Washington DSHS, *aces.online*, Assistance records from September 5, 2001 to March 2, 2011; Washington DSHS, Cash Assistance; Food Assistance; and Medical Assistance benefits approval. "John did not support Tatyana and she lived on her school loan in order to survive". (RP 11/02/16 at 9).

While living with John, in addition to DSHS assistance, Tatyana had to use her student loans to pay for the basic needs of her children and herself. For example, John would refuse to take care of the children and wouldn't give Tatyana enough money for childcare, which would force her to skip class where she learns English. Declaration of Alejandra Walker was accepted by court. (CP 741-3)

Tatyana started to visit Diane K. Borden, a mental health counselor, in order to understand how to deal with John's abuse. Diane helped her realize that things were not getting better

with John and the only way Tatyana could get her freedom was through divorce. (CP 239-40) After the divorce was finalized, Tatyana has struggled to provide for herself and was even required to declare bankruptcy. Tatyana had substantial student loans, which John had forced her to take out to take care of herself and the kids and to pay for her school. The debts Tatyana had incurred during the marriage forced her into bankruptcy. *See* in Appendix (Order of Judge Leighton).

2. Trial Court Proceedings: [2]

The 2007 Trial Court Proceedings: Tatyana's claims of John's acts of control over her during marriage were found credible by the Thurston County Superior Court during the divorce proceedings and resulted in an Order for **RCW 26.50.060** a Domestic Violence Protection against John issued by Judge Schaller in 2007 (CP 232-34). Tatyana was granted to be a custodian parent.

> "The Court finds that Domestic Violence has been committed. The Court finds that there have been acts of control by John Mason. Tatyana Mason is a disadvantaged spouse. John Mason's testimony was not credible. The Court stated concern about coaching the children. The Court finds that John Mason should be restrained from contacting Tatyana and her children. The Court restrained John Mason from going within a mile of the Tatyana and her children" *See* in Appendix.

On July 24, 2008 parties divorced, **but final divorce did not stop John's abuse toward Tatyana.**

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[2] See Verbatim Report of the 2016 Trial Court Proceedings rules in front of Judge Wickham's in the attachment to this petition.

In January, 2009, one of the many ways John controlled Tatyana financially was that he claimed that the KIA van was his and that he made payments on it. Temporary Order issued during the divorce, showed that the court ordered possession of the van to Tatyana along with responsibility for all debt due on it. Tatyana had substantial student loans, which John had forced her to take out to take care of her and the kids and to pay for her school. Tatyana could not transfer the van loan to her name because of her student loans, being a full-time student, and being unemployed. The result was that she had to give the van back to John because she could not transfer the title or loan to her name. **Tatyana had to return the van to John because the debts she had incurred during the marriage forced her into bankruptcy** and her bankruptcy made it impossible for her to get a separate loan to replace the loan with his name on it. CP 1815-6. Were it not for John's financial abuse, Tatyana would not be in this situation. *See* in Appendix. Order of Judge Leighton

In February, 2010 John showed his control when he asked the court to change a child therapist Dr. Wilson who worked with the children since 2007 on daily basis to his attorney Ms. Roberson's friend Ms. Hurt, **because Dr. Wilson found John as "controlling who is coaching the children"**. (CP 760-1) Tatyana found Ms. Hurt very unprofessional working with the children.

In October 2010, Tatyana severed Ms. Hurt with a letter which angered Ms. Hurt and she refused to change her improper behavior. Tatyana stopped all appointments with Ms. Hurt. (RP 10/27/12 at 8-9)

In January, 2011, John organized a campaign with Ms Hurt against Tatyana to retaliate, fabricated evidence and terminated Tatyana's parenting rights in bad faith by improperly using CPS (child protection services) - this action went to the 2013 trial court.

The 2013 Trial Court's Proceedings: Tatyana has limited English proficiency, but during the five day trial, Tatyana was lack of adequate translation in trial, which was conducted in English. In result of this, she was unable intelligently participate in her defense.

> Judge Hirsch later said in the 2013 trial court proceeding: "Ms. Hurt has not seen Tatyana since December of 2010. It is clear that Ms. Hurt completely aligned herself with John (father of the children). Ms. Hurt was very clear that she does not like Tatyana. This court found that Ms. Hurt improperly teaches small children to disrespect their mother. Ms. Hurt does not have licenses to work with children; Ms. Hurt used completely improper vulgar terms and false facts in the court, which is why I removed her from the case". (RP10/27/12 at 8-9)

> Based on the CPS report, which Tatyana was not aware of at that time, Tatyana was found abusive and her parenting rights were terminated under RCW 26.09.191. Income was imputed based on her debt school loan and DSHS food stamps; Court ordered her to pay child support; $300 per hour for re-unification service with her children, medial bills and other expensive court fees by finding her as "voluntarily unemployed". (CP 1625-33 – 2013 order).

But Tatyana and her children were always been abused by John. She lived on her school loan and DSHS food stamps to support herself and their children in order to survive. She is

financially straggled because her immigration status had been damaged by John and he also failed to support Tatyana with the basic needs promised in a contract Form I-864 affidavit of support.

> Judge Hirsch of the 2013 trial court said: "frankly, I was very bothered during trial by John's testimony including by the Ms. Hurt therapist and GAL at that time, who provide untrue information and misbehaved in court and which is why I removed Ms. Hurt and GAL from the case in 2013" (RP 01/25/17 at 34) "What struck me about Guardian ad Litem Mr. Smith-he failed to do his investigation, but repeated word to word of Ms. Hurt when described Tatyana which I removed him from Tatyana the case" (RP 10/27/12 at 10)

The only reason of the 2013 decision was the CPS report. But the CPS report was solely based on John and Ms. Hurt's false allegations. But Ms. Hurt and GAL were removed from the case in 2013 for misbehavior and false allegations; and the children clearly said "Our Mom never hits us; our dad and Ms. Hurt forced us to say this to CPS". CP 1852-1919. Dr. Rybicki **specifically** wrote in his forensic report "Coaching and external influence which seem to have been neglected by the court in 2013 and in the court of appeals". CP 1852-1919. This lost in the court process.

State Court of Appeals of 2015 Proceedings: In 2014, Tatyana *pro-se* filed an appeal under ***the Masons*** case 45835-7-II. On July, 2015 State's court of appeals dismissed her review by not even reading her brief, because of her limited English proficiency and because indigent *pro-se* parent did not know

how to preserve the issue on appeal because she had no attorney.

The 2016 Trial Court Proceedings: Judge Wickham redressed Tatyana's limited English proficiency:

> "I should say I've had a chance to observe Tatyana in court for three separate days with two interpreters. Her English is limited, and her statements were clearer through the interpreters" (RP 11/02/16 at 11)
>
> "I am aware of no proceedings prior to the last three days in which interpretive services were provided for her. I know that in the motion hearings I had leading up to this, she did not have interpreter services, and so I believe that Tatyana's 2013 trial lacked the basic and fundamental fairness required by the due process clause of the Fourteenth Amendment". (RP 11/02/16 at 11); (CP 123 finding (G) 11/23/16 order vacated the 2013 orders).
>
> "it's not hard for me to understand why Tatyana might not have done well with an English-speaking court prior to this 2016 proceeding" so I believe she's been operating at disadvantage. (RP 11/02/16 at 11).

Judge Wickham also redressed Tatyana's immigration status which was damaged by John due to his domestic abuse toward her and next by the 2013 trial court orders, which Judge Wickham found "fundamentally wrong and unjust"

> "it's also apparent from what I've heard and seen that John had no real incentive to continue to work with Tatyana to maintain her permanent status in the United States early on in the marriage". RP11/02/16 at 4).

> "Tatyana was not supported by John. Granted, she lived in the house with him that he was paying the mortgage on in order for her to survive. She was taking out loans and DSHS.(RP 11/02/16 at 9)

> "Now, I indicated that the conditions on the conditional permanent residence were not removed within the two years by John as required under the law. Ms. Mason, through her own testimony and through the testimony of her expert, however, has presented compelling evidence that she is now in a disfavored status as someone who has significant unpaid child support and that the immigration authorities have the discretion to deny her permanent residency at this point, so she is in the awkward position of being in this country but having no ability to obtain permanent status.
> And with the focus on legal status that currently exists in this country, it's not hard to believe that most employers will not hire her, because she is not able to show proof of legal status. And were she to go back to immigration, she would most likely be denied because of the child support order".(RP 11/02/16 at 5).

One of the factual issues reviewed in this trial court was whether John Mason had signed an Affidavit of Support (From I-864) on behalf of Tatyana and whether the Affidavit of support was still enforceable.

> "So the various provisions that allow for the termination of the I-864 support obligation, none of those have come to pass, so the obligation is still alive and John failed to pay his obligations to Tatyana. Certainly, if a court was entering a child support order, it would take into account whether or not the person receiving child support was also

> paying spousal maintenance to the person paying it." (RP 11/02/16 at 9-11).

On December 9, 2016 Judge Wickham granted immigration expert witness fees and **imposed Washington Civil Rule 11 sanction against John and his attorney Ms. Roberson for promoting untrue information in the court in violation of RPC 3.3.** (RP 12/09/16); (CP 1367-8); (12/13/16 order re: CR 11 (A) sanction) *See* Appendix.

> On July 7, 2016, Mrs. Robertson filed Ms. Seifert's declaration, who failed to acknowledge the existence of Department of Justice before Department of Homeland Security. Ex 49
>
> Ms. Seifert, who claimed herself as an immigration expert for 27 years does not know what the year the I-864 was enforced. Ex 49.
>
> During the trial court, she testified: a single trip for two weeks to Tatyana's mother's funeral in 2004, she said it terminated obligation under the I-864. But, Ms. Seifert refused to mention in court, if a person departed *permanently*. Later Ms. Seifert stated in court that Ms. Robertson instructed her to manipulate in every aspect of law in this case and confuse the court. RP 11/02/16 at 7-8.
>
> Next on July 6th, 2016. Ms. Robertson filed John Mason's declaration where he openly lied in his multiple statements that "he never signed the I-864 affidavit of support" that "he has no obligation to support Tatyana" that "law are not required him to do so"Ex 80. RP 12/09/16 at 17-20. John even denied his own signature, which was notarized and the USCIS officer had special interview with John regarding the I-864 in 1999 and when 8.U.S.C §1182(a)(4)(b) imposed requirement for foreign nationals in family

> immigration cases to overcome public charge in mandating the I-864. John still denied it. RP 12/09/16 at 17-20.

NOTE: Judge Wickham did not consider or enter a judgment on the enforcement of I-864 affidavit of support. Instead Judge Wickham suggested that Tatyana should bring a separate action in Federal court to enforce the I-864 affidavit of support.

State Court of Appeals 'of 2018 Proceedings: John Mason has brought an appeal challenging Tatyana's successful motion to vacate the 2013 orders, a grant of expert witness fees, and the imposition of Washington Civil Rule 11 sanctions. Because Tatyana is indigent and cannot retain attorney she was *pro-se* in her Response. Her friend who is not an attorney helped her with the English grammar.

In the 2018 opening brief, John ignored all findings of Judge Wickham made in 2016; John applied de-novo; **the Masons** custody case **45835-7-II** dated July 2015 and his false statements which were *specifically* rejected by Judge Wickham under sanction CR11 (a). John argued that "Judge Wickham enforced the I-864 affidavit of contract during the 2016 trial court proceedings as extraordinary circumstances to vacate the 2013 orders" which is not true. *See* (RP11/02/16); (CP 123-5; 11/23/16 order); (RP 12/09/16); (CP-1367-8; 12/13/16 order).

On July 31, 2018, State court of appeals issued unpublished opinion where neglected Judge Wickham's findings of the 2016 three day trial court proceedings. Appellate court improperly reversed the 2016 trial court decisions by applying

de-novo, all findings from the 2013 trial court and the case 45835-7-II which were specifically rejected by Judge Wickham as **"fundamentally wrong and unjust"**; Appellate court adopted John's false statements which were specifically rejected under CR 11 sanctions by Judge Wickham for providing false information with help of his attorney in the court in violation of RPC 3.3; Appellate court supplemented credibility findings of the 2016 trial court decision with their own judgment and by misstating the facts of the case-- are stating:

> "We hold that: the trial court erred in vacating the 2013 order because the failure of the parties to inform the court of the I-864 affidavit was not an extraordinary circumstance extraneous to the prior proceedings" Opinion at 1.

Court of appeals approved John's domestic abuse toward Tatyana and her children because John was represented by attorney and Tatyana is indigent pro-se with limited English proficiency.

> When even Judge Hirsch of the 2013 court said: "I want to say, that when I read the Court of Appeals decision, it didn't really speak of the credibility findings that the court made in 2013. Frankly, I was very bothered by John and therapist' Ms. Hurt's false testimonies". (RP 01/25/17 at 34)

Washington state Supreme Court Proceedings. Tatyana filed a pro se petition for discretionary review in the Washington Supreme Court. In response, John again applied de-novo; **the Masons** case 45835-7-II dated July 2015; His and Ms. Hurt's 2013 fabricated allegations of child abuse which were rejected even by Judge Hirsch in 2013. The State Supreme Court denied discretionary review without explanation.

United States Supreme Court in 2019 granted Tatyana's application for extension of time on April 2, 2019 to file her petition for writ of certiorari from June 2 to August 2, 2019.

REASONS FOR GRANTING THE WRIT

This case presents two important questions of Federal constitutional law concerning the State's improperly handling parental-rights termination under RCW 26.09.191; re-punishment through financial harassment of victims of domestic abuse indigent parents with limited English proficiency by withholding a free trial interpreter and a counsel, which elevates the risk of erroneous deprivation too high for the Due Process Clause to bear. This raises the subsidiary issue of what role preservation-of-error rules may play—consistent with the Due Process Clause··· does the State court of appeals violated the due process clause of the Fourteenth Amendment without engaging in the due process analysis mandated by the Court in **United States ex rel. Negron v. State of N.Y.**, 434 F.2d 386, 389 (2nd Cir.1970) "holding that the lack of adequate translation in trial which were conducted in English rendered the trial constitutionally infirm". And of obvious relevance here is this Court's logic in **Pate v. Robinson**, 383 U.S. 375, 384, 86 S. Ct. 836, 841, 15 L.Ed.2d 815 (1966).

"The government does not dispute the nearly self-evident proposition that an indigent Defendant who could speak and understand no English would have a right to have [her] trial proceedings translated so as to permit Defendant to participate effectively in his own defense". **United States v. Desist**, 384 F.2d 889, 901 (2d Cir. 1967), aff'd 394 U.S. 244, 89 S.Ct. 1030, 22

L.Ed.2d 248 (1968). *See* **Terry v. State**, 21 Ala. App. 100, 105 So. 386 (1925) (defendant was a deafmute); **Garcia v. State**, 151 **Tex.Crim**. R., 210 S.W.2d 574 (1948); **State v. Vasquez**, 101 Utah 444, 121 P.2d 903 (1942) (defendant spoke "broken English").

> ***The first question this case presents is:*** Whether the State violated the due process clause of the Fourteenth Amendment in the previous trial court proceedings, by ignoring the findings that the State *withhold* an access to a free translator or interpreter at the previous trial for the indigent mother pro-se who has limited English proficiency - when terminated her parental-rights under RCW, 26.09.191 and re-punished her though financial harassment by improperly damaging her immigration status. The lack of a free trial language interpreter for the indigent parents — elevates the risk of erroneous deprivation too high for the Due Process Clause to bear. This raises the subsidiary issue of what role preservation-of-error rules may play—consistent with the Due Process Clause—in denying Petitioner *pro-se* review of the sufficiency of the evidence underlying the constitutionality of procedures leading up to it. In the end, the result in this case cannot be squared with the due process analysis underlying the Court's decisions in **United States ex rel. Negron** and this Court's logic in **Pate.**
>
> ***The second question is*** : Whether the Washington State statute extending a substantial procedural safeguard (the right to a free language interpreter in the trial court actions) but then arbitrarily withholding it from some indigent parents violates the Equal Protection Clause. The Washington State's decisions upholding this scheme conflict with decisions of many other state supreme courts holding that this type of statutory distinction violates the constitutional principle of equal protection.

This case also provides an opportunity for this Court to address what is apparently the continuing refusal by State to follow the clear statute and the Court's directive in concerning evaluation of the need for a free appointed language translator under Washington State law (RCW 2.42 and 2.43), Title VI of the Civil Rights Act of 1964 (Title VI), the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act). Multiple Judges found that Tatyana is the aggrieved survivor of Domestic Abuse from John, whose lack of resources and limited English proficiency had been prejudiced in the legal system and her parental rights were *improperly* terminated for several years through RCW 26.09.191 and financial barrier without the benefit of the Equal Protection Clause analysis.

THIS CASE RAISES AN IMPORTANT ISSUE OF FEDERAL CONSTITUTIONAL LAW, AND THE WASHINGTON STATE'S DECISIONS CONFLICT WITH THE REASONING UNDERLYING THE COURT'S DECISIONS IN United States ex rel. Negron v. State of N.Y. AND OF OBVIOUS RELEVANCE IN THIS COURT'S LOGIC IN Pate vs. Robinson

Analysis of the right to a free language translator for parents with limited English proficiency facing improper termination parenting rights and re-punishment through financial harassment actions based on fabricated, unsupported evidence begins with the Court's decision in **United States ex rel. Negron,** 434 F.2d 386, 389 (2nd Cir.1970) and of this Court's logic in **Pate v. Robinson**, 383 U.S. 375, 384, 86 S. Ct. 836, 841, 15 L.Ed.2d 815 (1966) that "it is contradictory to argue that a

Defendant may be incompetent, and yet knowingly or intelligently waive [her] right to have the court determine [her] capacity to stand trial." The Due Process Clause does require appointment of a free language translator and a counsel for indigent parents facing limited English proficiency in every trial court proceedings. After **United States ex rel. Negron.** and the Court's decision in **Pate** "trial courts must conduct a case-by-case analysis—subject to appellate review—of whether Federal Due Process requires appointment of a free language translator and a counsel to indigent *pro-se* who has limited English proficiency to participate intelligently in [her] own defense".

"It is axiomatic that the Sixth Amendment's guarantee of a right to be confronted with adverse witnesses, now also applicable to the states through the Fourteenth Amendment" **Pointer v. Texas**, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed. 2d 923 (1965), includes the right to cross-examine those witnesses as an "an essential and fundamental requirement for the kind of fair trial **which is this country's constitutional goal**." Id. at 405, 85 S.Ct. at 1068. See also, **Bruton v. United States**, 391 U.S. 123, 128, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968); **Barber v. Page**, 390 U.S. 719, 725, 88 S.Ct. 1318, 20 L.Ed.2d 255 (1968); **Douglas v. Alabama**, 380 U.S. 415, 418, 85 S.Ct. 1074, 13 L.Ed.2d 934 (1965); **Mattox v. United States**, 156 U.S. 237 242-243, 15 S.Ct. 337, 39 L.Ed. 409 (1895).

A. TATYANA'S PARENTAL RIGHTS ARE FUNDAMENTAL:

The Due Process Clause includes a substantive component that "provides heightened protection against government

interference with certain fundamental rights and liberty interests." **Washington v. Glucksberg**, 521 U.S. 702, 720 (1997); *see* also **Reno v. Flores**, 507 U.S. 292, 301-302 (1993). The liberty interest at issue—the interest of parents in the care, custody, and control of their children— "is perhaps the oldest of the fundamental liberty interests recognized by this Court." **Troxel**, 530 U.S. at 65. But the right that was denied Tatyana who is indigent *pro-se* facing limited English proficiency seems even more consequential than the right of confrontation.

> Because of State court's violations due process clause of the Fourteenth Amendment in 2013 the mother was erroneously deprived of her parental rights and her children erroneously deprived of their mother's support and companionship by been placed in custody of the abusive father.
>
> Income was imputed to the mother who is cancer patient based on her **debt** (school loan) and DSHS food stamps; She was ordered to pay $300 per hour for re-unification; cover medical bills and child support, by ignoring that her immigration status had been damaged by her spouse (father of her children) due to his domestic abuse of her and the 2013 orders prevented her from fixing her status and obtain employment and seeing her children.

Considerations of fairness, the integrity of the fact-finding process, and the potency of our adversary system of justice forbid that the state should prosecute a Defendant who is not present at his own trial, *see*, e.g., **Lewis v. United States**, 146 U.S. 370, 372, 13 S.Ct. 136, 36 L.Ed. 1011 (1892), unless by her conduct she waives that right. *See*, e.g., **Illinois v. Allen**, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed. 353 (1968). and it is equally

imperative that every defendant — if the right to be present is to have meaning — possess "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" **Dusky v. United States**, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1962) (per curiam). Otherwise, "[t]he adjudication loses its character as a reasoned interaction * * * and becomes an invective against an insensible object." Note, Incompetency to Stand Trial, **Harv.L.Rev**. 454, 458 (1969). *See* also **Wilson v. United States**, 129 U.S. App. D.C. 107, 391 F.2d 460, 462 (1968), quoting with approval, **United States v. Wilson**, 263 F. Supp. 528, 533 (D.C. 1966) (due process requires that defendant have a "present ability to follow the * * * proceedings * * * and discuss them rationally with his attorney").

B. BY REMOVING TOO MANY SAFEGUARDS AGAINST ERRONEOUS DEPRIVATION, WASHINGTON STATE COURT OF APPEALS DENIED TATYANA'S DUE PROCESS:

Due process ensures the "essential fairness of state-ordered proceedings anterior to adverse state action *See* **Pete**. *See* also **United States ex rel. Negron** examination of due process as [in this case is improper termination of parenting rights and financial re-punishment] arena turns principally on analysis of the risk that the utilized procedures will result in erroneous decisions. Tatyana was adjudged indigent pro-se with limited English proficiency but did not receive:

(1) A language interpretation service at the 2013 trial court;

(2) An appellate lawyer in the 2015 case 45535-7-II to properly redress the issues on her appeal and in the 2018 case 49839-1-II to properly respond on John's frivolous appeal when John retained two attorneys and Tatyana indigent with limited English and was *pro-se.*

(3) The benefit of analysis of the **United States ex rel. Negron** ; **Pate** and **Santosky** factors;

(4) Appellate review of the sufficiency of the evidence supporting improper termination of her parental rights under RCW 26.09.191 which obviously were based on fabricated unsupported evidence and re-punishment indigent pro-se through financial harassment.

Perhaps none of these deficiencies taken alone—other than denial of the language interpretation service, which denied Tatyana's due process under **Pate** and **United States ex rel. Negron**., had she known how to preserve that violation—meant Tatyana did not receive due process and deprivation beyond the constitutional breaking point. The decisions by the Washington State Court of Appeals reversing the 2016 trial court decisions and the Washington state Supreme Court upholding the termination decree and financial re-punishment conflict with the rationales of **Pate** , **United States ex rel. Negron** and **Sanosky**. Washington State denied Tatyana's appellate review in 2015 without reading it because she was pro-se with limited English proficiency and ignored her Responsive brief in 2018 by relying on John's false facts which were specifically rejected under sanction CR11(a) by Judge in 2016. English is not Tatyana's primary language and she did not know how to assert denial at the legal system as a due process violation. This cannot

be acceptable where State action may "deprive Tatyana of her freedom to associate with her child . . . ., especially when forensic investigator clearly stated in his report: **"Father's coaching and external influence which seem to have been neglected by the 2013 trial court"** especially when the children said: **"My mom never hits us; my dad and Ms. Hurt told us to say this to SPC"** CP 1852-1919 (Rybecki) *See* **Lassiter**, 452 U.S. at 59 (Stevens, J., dissenting).

This is not a situation where the state appellate court had to rely on a litigant to alert it to a constitutional issue. The court of appeals judges knew that Tatyana has limited English proficiency and she is not an attorney. They knew that in 2007 RCW 26.50.060 a DV protection order was issued against John; and in 2016, trial court sanctioned John and his attorneys Ms. Roberson for aggressively provided false information in court in violation of RPC 3.3", They knew that John breached his I-864 contract and failed to pay his obligation to Tatyana; that Tatyana is a disadvantage spouse and the aggrieved survivor of Domestic Abuse whose lack of resources and limited English proficiency had been prejudiced in the legal system. Yet, State court of appeals approved John's abuse toward Tatyana and dogmatically relied on his false statements which were specifically rejected by Judge in 2016.

Reversing the 2016 trial court and ignoring Judge Wickham's findings violated the Due Process of the Fourteenth Amendment. They knew about this Court's decisions in **Pate** and **United States ex rel. Negron**, and knew from the 2016 trial court's transcript filed in their court that the 2013 trial court

failed to apply the **Pate** and **United States ex rel. Negron** factors. They are trained in the law and rose in their professions to become appellate court judges. They did not need an indigent parent *pro-se* with limited English to tell them the 2013 trial court and State's court of appeals had (twice) violated the Constitution.

In the dissenting opinion in **M.L.B.**, Justice Thomas (joined by Chief Justice Rehnquist and Justice Scalia) examined the safeguards usually present in a termination action: an impartial tribunal applying procedural and evidentiary rules, the right to confront opposing evidence and witnesses, application of the clear-and-convincing evidence standard" In **Pate** and **United States ex rel. Negron** examined "however astute the summaries may have been, they could not do service as a means by which Defendant could understand the precise nature of the testimony against [her] during that period of the trial's progress when the State chose to bring it forth. The indigent parents' incapacity to respond to specific testimony would inevitably hamper the capacity of their counsel to conduct effective cross-examination.

Not only for the sake of effective cross-examination, however, but as a matter of simple humaneness, so Defendant was deserved more than to sit in total incomprehension as the 2013 trial proceeded "Particularly inappropriate in this nation where many languages are spoken is a callousness to the crippling language handicap of a newcomer to its shores, whose life and freedom the state by its criminal processes chooses to put in jeopardy".

Tatyana lacked too many of these safeguards. She lacked language interpretation service, a counsel, and was not familiar with the US legal system- essentially rendering the procedural and evidentiary protections useless. Even a cursory review of Tatyana's brief in the 2015 case **No. 45835-7-II** reveals that she was not able presented her case effectively or made coherent evidentiary arguments. Moreover, Judge Wickham during the 2016 three day trial proceedings found that "Tatyana's English is limited" obvious that the 2013 court and court of appeals were fully aware of her language disabilities."

This Supreme Court held in **Pate** that when it appears that a defendant may not be competent to participate intelligently in his own defense because of a possible mental disability, the trial court must conduct a hearing on the defendant's mental capacity. Judge Wickham said in his rulings that he observed Tatyana *pro-se* during the 2016 three day trial court's proceedings and found that she was benefited with the appointed free language interpretation service in 2016. There is no indication that Tatyana's failure to ask for an interpreter during the 2013 trial court's proceedings when her parenting rights were improperly terminated based on fabricated unsupported evidence was any part of her trial strategy. **Cf. Wilson v. Bailey**, 375 F.2d 663 (4th Cir. 1967). Nor could the motive for such an otherwise self-defeating strategy have been to deviously set up the case for reversal on appeal. As the history of Tatyana's own case attests, the Federal right to a State provided translator is far from settled. "We would, in any event, be reluctant to find a knowing, intelligent waiver of so ill-defined a right". *See* **United States v.**

Liguori, 430 F.2d 842 (2d Cir., filed July 17, 1970) (defendant "cannot be faulted for failing to anticipate the action of the Supreme Court" subsequently taken in **Leary v. United States**, 395 U.S. 6, 89 S. Ct. 1532, 23 L.Ed.2d 57 (1969)).

All this, of course, normally would be subject to appellate review. But the Washington State Supreme Courts denied indigent pro-se review of her due process and equal protection claims on March 6, 2019 because she did not know how present the issue. Court of appeals improperly reversed the 2016 orders are an essential component of Due Process, because State Appellate Courts sometimes misapply the clear-and convincing evidence standard, by leaving appeal in the US Supreme Court as the sole remedy for these erroneous deprivations. *See*, e.g., In re **C.M.C.**, 273 S.W.3d 862 (Tex. App. – Houston, no pet.).

Here even Judge Hirsch of the 2013 trial court said:

> "I want to say, that when I read the Court of Appeals decision *the Masons* case 45835-7-II dated (July 2015), it didn't really speak of the credibility findings that the court made in 2013. Frankly, I was very bothered by John, therapist' Ms. Hurt and GAL's unprofessional, false testimonies which is why I removed them from the case". (RP 01/25/17 at 34).

Yet, State court of appeals in 2015 case 45835-7-II and 2018 case 49839-1-II heavily relied on John, Ms. Hurt and GALs false testimonies and fabricated unsupported allegations by ignoring forensic investigator's analysis of "the father's coaching and external influence were neglected by the court, especially when the children said: 'My Mom never hits us; my dad and Ms. Hurt forced us to say this to CPS". Also, state court of appeals ignored

Judge Wickham's findings: that "the 2013 trial court decision was fundamentally wrong and unjust".

Finally, the issue of error preservation—the thresholds to appellate review—also are reviewed under the **Pate** and **United States ex rel. Negron** factors. Weighing these factors, Tatyana's fundamental liberty interest in maintaining custody and control of (G.M.) and (D.M.) the risk of permanent loss of their parent-child relationship, and everyone's interest in a just and accurate decision weigh heavily in favor of permitting appellate review of the sufficiency of the evidence despite Tatyana's failure to preserve error. And the State's fundamental interest in protecting (G.M.) and (D.M.)'s best interests is not antagonistic to those concerns. The State's corollary interest in efficient and speedy resolution pales in comparison to the private interests at stake.

The State's interest in protecting child welfare must begin by working toward preserving the familial bond, rather than severing it. *See* **Santosky**, 455 U.S. at 766-67. The fundamental liberty interests at issue are too dear, and the risk of erroneous deprivation too substantial, for this Court to countenance waiver of Tatyana's appellate rights through error-preservation requirements in light of her lack of counsel in the appeals and lack of language interpretation service at the 2013 trial court.

At a minimum, **United States ex rel. Negron** and **Pete** required the appellate court to analyze whether application of preservation-of-error rules violated due process. In **Pate v. Robinson**, this Court held that "it is contradictory to argue that a defendant may be incompetent, and yet knowingly or

intelligently waive his right to have the court determine his capacity to stand trial." is sufficiently important that state courts must, under the Due Process Clause, either provide an adequate language interpretation service. It follows, then, that due process would require a state court to make a similar case-by-case determination of whether error preservation rules must be relaxed to comport with due process in a particular case, rather than applied rigidly in lock-step with other civil cases.

Of course, the lack of **Pate v. Robinson** and **United States ex rel. Negron** analysis has the potential to affect (and probably is affecting) indigent parents with limited English proficiencies in many other states.

C. THE WASHIGTON STATE COURTS' DECISION TO LET STAND A STAUTORY SCHEME GRANTING COURT-APPOINTED FREE LANGUAGE INTERPRETER TO INDIGENT PARENTS WITH LIMITED ENGLISH PROFICIENCY DEFENDING STATE INITIATED —BUT NOT PRIVATELY INITIATED — TERMINATION ACTIONS VIOLATES THE EQUAL PROTECTION CLAUSE AND CONFLICTS WITH THE HOLDINGS OF MANY OTHER STATE SUPREME COURTS.

The Equal Protection Clause forbids Washington state courts from making a substantial procedural safeguard generally available but arbitrarily withholding it from some litigants. In **Baxstrom v. Herold**, 383 U.S. 107 (1966), this Court found that a legislative scheme guaranteeing a jury trial to mental patients facing commitment proceedings under one statute but not another violated the Equal Protection Clause.

Ibid at 110. A state, having made a substantial procedural safeguard "generally available on this issue, may not, consistent with the Equal Protection Clause of the Fourteenth Amendment, arbitrarily withhold it from some." Ibid at 111. Washington State extends a substantial procedural safeguard—the right to language interpretation service in trial court actions—but arbitrarily withholds it from indigent parents like Tatyana. While the Washington State courts permitted this scheme to stand, other state supreme courts have concluded that it violates their respective state equal protection guarantees. *See* **Pointer v. Texas**, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed. 2d 923 (1965), includes the right to cross-examine those witnesses as an "an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal." Id. at 405, 85 S.Ct. at 1068. See also, **Bruton v. United States**, 391 U.S. 123, 128, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968); **Barber v. Page**, 390 U.S. 719, 725, 88 S.Ct. 1318, 20 L.Ed.2d 255 (1968); **Douglas v. Alabama**, 380 U.S. 415, 418, 85 S.Ct. 1074, 13 L.Ed.2d 934 (1965); **Mattox v. United States,** 156 U.S. 237 242-243, 15 S.Ct. 337, 39 L.Ed. 409 (1895).

Because the Washington State statute burdens Tatyana's attempt to exercise a fundamental right, as Judge Wickham already mentioned at the 2016 trial court, this Court reviews the statute with heightened scrutiny. Traditionally, this analysis was referred to as "strict scrutiny" necessitating a "compelling state interest." *See*, e.g., **Loving v. Virginia**, 388 U.S. 1, 11 (1967); **Kramer v. Union School Dist.**, 395 U.S. 621, 626-29 21 (1969); **Dunn v. Blumstein**, 405 U.S. 330, 336 (1972). Recently,

however, this Court has applied a more fluid standard of review, inspecting "the character and intensity of the individual interest at stake, on the one hand, and the State's justification for its exaction, on the other." M.L.B., 519 U.S. at 120-21 (citing **Bearden v. Georgia**, 461 U.S. 660, 666-667 (1983)).

Of course, the government always has a compelling interest in resolving child custody matters economically and efficiently, and obtaining a permanent home for a child as quickly as possible. But these efficiency interests pale in comparison to the risk that a parent may erroneously be deprived of parental rights and a child may erroneously be deprived of a parent's support and companionship. And efficiency concerns are only marginally implicated—if they are implicated at all.

Where a statute is defective because of underinclusion, there are two remedial alternatives: a court may (1) declare the statute a nullity and order that its benefits not extend to the class the legislature intended to benefit, or (2) extend the statute's coverage to those aggrieved by exclusion. **Welsh v. United States**, 398 U.S. 333, 361 (1970) (Harlan, J., concurring). The latter approach is warranted in this case by withholding a free language interpretation service from indigent parents with limited English proficiency in the trial court, she was not intelligently participate at her defense in 2013 and State denied a counsel on the appeal when other party was represented by two attorneys-- violate this Court's directive in **Pate** and **Negron.**

Tatyana was entitled to court-appointed a free language interpretation service at her 2013 trial court. Tatyana deserved

more than to sit in total incomprehension as the trial proceeded. Especially when the proceedings were based on fabricated, unsupported allegations and when the 2016 trial court specifically found that the 2013 trial proceedings were fundamentally wrong and unjust"

> "Particularly inappropriate in this nation where many languages are spoken is a callousness to the crippling language handicap of a newcomer to its shores, whose life and freedom the state by its civil and criminal processes chooses to put in jeopardy". **Nergon**

Multiple judges found that Tatyana was lacked the basic and fundamental fairness required by the due process clause of the Fourteenth Amendment and as the aggrieved survivor of Domestic Abuse whose lack of resources and limited English proficiency had been prejudiced in the legal system. The Washington state court of appeals --- violates the Equal Protection Clause.

CONCLUSION

Based on the Due Process Clause and the Equal Protection Clause, and this Court's decisions in **Pate** and **Negron**., the Petition for a writ of certiorari should be granted.

Dated August 2, 2019

Respectfully Submitted By: _____

Tatyana Mason
Petitioner *Pro-se*