

In The
Supreme Court of the United States

TAMRA L. LAMPRELL,

Petitioner,

v.

REX E. STUCKEY,

Respondent.

**On Petition For A Writ Of Certiorari
To The New Mexico Court Of Appeals**

**MOTION OF CHILD USA FOR LEAVE TO FILE
A BRIEF *AMICUS CURIAE* IN SUPPORT OF
PETITIONER AND BRIEF OF CHILD USA AS
AMICUS CURIAE IN SUPPORT OF PETITIONER**

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**MOTION OF CHILD USA FOR LEAVE TO
FILE A BRIEF *AMICUS CURIAE* IN
SUPPORT OF PETITIONER**

Pursuant to Rule 37.2(b), CHILD USA respectfully moves for permission to file the attached brief *amicus curiae*. Petitioner has consented to CHILD USA's filing of a brief. In accordance with Rule 37.2(a), CHILD USA has provided notice to Counsel for Respondent of CHILD USA's intent to file a brief.

CHILD USA, the Think Tank for Child Protection, is a 501(c)(3) nonprofit that conducts evidence-based legal, medical, and social science research to identify, impact, and inform the laws and policies affecting child protection in the United States. With these facts, CHILD USA promotes ideas, and proposes effective policy solutions that work to protect kids from abuse and neglect. CHILD USA draws on the combined expertise of the nation's leading medical, social science, and legal academics to reach evidence-based solutions to the persistent and widespread epidemic of child maltreatment.

CHILD USA, therefore, asks this Court for leave to file this *amicus* brief encouraging this Court to grant certiorari in this case to clarify a constitutional standard for ex parte removal proceedings to help families and prevent child abuse.

Respectfully submitted,

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BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITIONER

With the written consent of the Petitioner filed with the Clerk of the Court, CHILD USA, respectfully submits this brief as *amicus curiae*.¹ *Amicus* has moved to have this Court accept this brief without the consent of the Respondent.

STATEMENT OF INTEREST OF *AMICUS CURIAE* CHILD USA

Amicus curiae, CHILD USA, is the leading non-profit think tank working to end child abuse and neglect in the United States. CHILD USA engages in high-level legal, social science, and medical research and analysis to derive the best public policies to end child abuse and neglect. Distinct from an organization engaged in the direct delivery of services, CHILD USA produces evidence-based solutions and information needed by policymakers, organizations, media, and the public to increase child protection and the common good.

CHILD USA works to protect children from abuse in various contexts including its family court reform initiative. The physical and sexual abuse of children

¹ Counsel for *amicus curiae* authored this brief in whole. No other person or entity other than *amicus* or their counsel has made a monetary contribution to the preparation or submission of this brief. Counsel for both parties were given proper notice. Petitioner granted consent. We move to have this Brief admitted by this Court without Respondent's consent.

perpetrated within families is one of the most under-recognized and under-prosecuted crimes. Shortcomings in both the criminal and civil justice systems often fail to protect children from abuse in the family context. Family court judges and custody evaluators are not trained on the facts of child sex abuse or the effects of trauma. This problem is magnified when the courts deprive a parent of due process in the course of custody determinations.

CHILD USA's interest in this case is the protection of children who are routinely given to abusive parents as a direct result of courts across the nation disregarding the due process rights of a child's other protective parent.

SUMMARY OF ARGUMENT

Pervasive violations of parental due process rights are routinely occurring in family courts throughout the country. Children are frequently removed from a parent's protective care on an *ex parte* basis, without giving the parent a hearing or opportunity to object prior to deprivation and based on little to no evidence of the imminent danger to the child. Parents are also denied hearings for extended periods of time post-deprivation, while their children remain in the care of an abusive parent. A direct result of the courts' repeated failures to adhere to federal constitutional protections is that children are being wrongfully placed and then remain in the care of parents who physically, sexually, and

psychologically abuse them. Petitioner's claims are not unique. This *amicus* brief documents the routine stripping of federally-guaranteed constitutional due process rights from parents nationwide to aid this Court in understanding the widespread nature of this problem and its harmful effects on families. State courts are not being held accountable for these due process violations and children are in urgent need of this Court's intervention to protect the rights of parents to keep vulnerable children safe.

This Court should grant certiorari to remind the nation's courts that parents' fundamental due process rights are non-negotiable, especially when children are put at risk of ongoing child abuse. For these reasons, certiorari should be GRANTED in *Stuckey v. Lamprell* (19-577).

ARGUMENT

Every day children are being removed from protective parents without due process and placed in the hands of abusive parents. The result is that children suffer. This happens regularly in *ex parte* fashion without the protective parent receiving notice, or opportunity to be heard pre-deprivation. Parents are also denied required subsequent hearings within a reasonable period, and sometimes, receive none. The most devastating consequence of disregarding constitutionally required procedural safeguards is the death of children at the hands of abusive parents improperly

given custody. The last decade alone has seen *at least* 718 documented child homicides committed by a divorcing or separating parent.² “[T]rAGICALLY, many of these cases involve a family court *knowingly* placing kids in harm’s way.”³

While due process violations can sometimes be remedied, often these violations are not addressed on appeal, and case precedent to properly guide the courts’ conduct relating to ex parte removal of children is severely lacking. With little accountability for disregarding parents’ federal due process rights, state courts continue to strip parents of custody of their children without adequate notice or an opportunity to be heard, both before and after ex parte removal of their children.

For example, in a 2008 New York case, a mother appealed after a judicial hearing officer (JHO) awarded temporary custody to the father without conducting a hearing.⁴ The appellate judges agreed the JHO had erred, but found reversal was not required because a hearing happened prior to the appellate court hearing the case.⁵ Yet again in 2017, a father appealed the issuance of a temporary custody order curtailing his visitation without a hearing, while the order

² *US Divorce Child Murder Data*, Center for Judicial Excellence, <https://centerforjudicialexcellence.org/> (last visited November 19, 2019).

³ *Id.* Emphasis added.

⁴ *In the Matter of Daryl B.W. v. Sharon M.W.*, 49 A.D.3d 1246 (2008).

⁵ *Id.*

was based only on unsubstantiated allegations by mother.⁶ And again, the due process failure was ignored, as moot, simply because a permanent order was entered during the time between due process violations and appellate court review.⁷ One Pennsylvania mother was provided a hearing after appellate court reversal, but the judge denied her due process during that hearing by refusing permission to speak, present evidence, or call witnesses, instead relying solely on an abusive father's evidence to keep the child with their abuser.⁸

Another case saw a mother experience an 18-month delay between a petition to terminate a temporary custody order and the issuance of a final custody order.⁹ In rejecting the assertion of a due process violation, the appellate court found no prejudice after this lengthy time period in the life of a child. A 14-day delay between an ex parte motion and a hearing on the removal was held “on the brink of unreasonableness,” saying while no due process violation happened, the procedures “marginally [met] the requirements of due process, [but] were shoddy.”¹⁰ That is not a standard capable of protecting children from abuse.

⁶ *Kleinbach v. Cullerton*, 151 A.D.3d 1686 (2017).

⁷ *Id.*

⁸ Contributed Pennsylvania story, Joann Sieckmann.

⁹ *Spencer v. Spencer*, 684 N.E.2d 500 (Ind. Ct. App. 1997).

¹⁰ *In re Interest of R.G.*, 470 N.W.2d 780 (1991).

The interest in the care and custody of children is the oldest recognized fundamental liberty interest in the United States, and the federal Constitution guarantees this fundamental right will not be violated in family court proceedings.¹¹ States have and continue to trample on the due process rights of parents in ex parte removal determinations, disregarding their own statutes and the due process that the Constitution requires. *Amicus* respectfully requests that this Court grant certiorari in this case to clarify the minimum due process protections required in ex parte removal proceedings. The country is in desperate need of guidance as the rights of parents and the safety of their children are imminently at risk.

This *amicus* brief documents due process violations and further abuse through the family court system. *Amicus* CHILD USA respectfully urges this Court to grant certiorari in this case to establish due process criteria that will prevent courts from inflicting further harm on children already at risk. Family courts are in a special position to protect children from harm, but have failed to do so, resulting in parents being stripped of their fundamental rights and children being subjected to preventable harm.

¹¹ *Santosky v. Kramer*, 455 U.S. 745, 753-59 (1982); *Troxel v. Grandville*, 530 U.S. 57, 65 (2000).

I. COURTS FREQUENTLY GRANT EX PARTE REMOVALS WITHOUT SUFFICIENT EVIDENCE, WHICH RESULTS IN ABUSIVE PARENTS RECEIVING CUSTODY THAT ENDANGERS CHILDREN

Children are regularly removed from protective parental care based on unfounded allegations in ex parte proceedings that run afoul of federal constitutional due process standards. Criteria justifying ex parte removal of children vary from state to state; some are highlighted here.

The following examples illustrate the ignored state standards for hearings post ex parte removal which lead to due process violations. Pennsylvania courts may exercise jurisdiction ex parte if a child is “subjected to or threatened with mistreatment or abuse.”¹² Connecticut allows ex parte custody orders when present immediate risk of physical or psychological harm exists.¹³ There the application for ex parte removal must include an affidavit stating the conditions requiring removal, that removal is in the child’s best interest, and any actions taken to inform the respondent of the request or reasons why the application should be considered on an ex parte basis; then, a hearing must occur within 14 days of an order requiring hearing.¹⁴ North Carolina’s form states simply: if “the child(ren) are exposed to a substantial risk of bodily

¹² 23 Pa.C.S.A. §5424.

¹³ Conn. Gen. Stat. §46b-56f.

¹⁴ *Id.*

injury or sexual abuse” and “there is a substantial risk . . . the child(ren) may be . . . removed from North Carolina.”¹⁵ Delaware indicates orders are permitted if “immediate and irreparable harm will result if the request is not granted”; if the order is granted, a full hearing must occur within 15 days of issuance.¹⁶ Idaho requires ex parte orders meet the best interests standard, and a hearing within 10 days.¹⁷ Finally, Oregon permits ex parte custody orders if the child is in immediate danger, and a hearing occurs not more than 21 days after respondent’s request.¹⁸ In this case, Petitioner did not receive a hearing for 493 days, experiencing delays significantly longer than the statutorily required period.

Amicus seeks to enlighten the Court to the frequency with which ex parte removal is granted based on insufficient evidence by providing a sampling of first-person accounts.

¹⁵ North Carolina Request for Ex Parte/Emergency Custody Consideration Form.

¹⁶ Delaware Courts, Family Court, Emergency or Expedited Relief Forms, <https://courts.delaware.gov/family/expeditedrelief/>.

¹⁷ I.C. §32-705; I.R.C.P. 65(g).

¹⁸ Or. Rev. Stat. §107.097(3)-(4).

II. COURTS ROUTINELY DELAY POST-REMOVAL HEARINGS LONG AFTER THE REQUIRED PERIOD OF TIME, RESULTING IN SIGNIFICANT HARM TO FAMILIES

Ex parte temporary custody changes can be permitted, and indeed are necessary in some circumstances, when children are in imminent danger or risk of harm. Should a parent be denied a pre-deprivation hearing as is the case with ex parte removals, a post-deprivation hearing is statutorily required to be held within a set period of time, which varies by state, to provide the parent who lost custody an opportunity to be heard. As Petitioner has indicated in her petition, courts disagree over how soon after deprivation a hearing is required. Regardless, statutory time limits are frequently disregarded, as hearings are significantly postponed or never held at all, and parents are constitutionally delayed access to post-removal hearings. The result is that children are endangered for extended periods of time.

Amicus seeks to inform the Court on the widespread nature of post-removal hearing delays with a sampling of first-person accounts provided to *amicus* from parents across the country. In Tennessee, a hearing on ex parte protection orders (which can include custody changes) must be held within 15 days of issuance.¹⁹ Yet, a Tennessee mother did not receive a hearing for 153 days.²⁰ In Connecticut, an ex parte

¹⁹ Tenn. Code Ann. §36-3-605(b).

²⁰ Anonymously contributed Tennessee story.

emergency custody order hearing must be held within 14 days, unless a gun permit is involved, in which case a hearing must occur within 7 days;²¹ one mother did not receive her hearing for 112 days.²² Another Connecticut parent lost custody *ex parte* while hospitalized, with the subsequent hearing scheduled for over a month later, long past the 14-day requirement; the father who received custody murdered three people, including two children, almost six weeks later.²³ In California, a hearing must occur within 20 days;²⁴ one mother did not receive an *initial* hearing for 42 days.²⁵ In Pennsylvania, temporary custody hearings should occur within 10 days;²⁶ one mother *never* received a hearing, despite the uncommon occurrence of Superior Court reversal stating she must be heard.²⁷

These unconstitutional delays in the due process right to be heard are detrimental to parents and put children at risk. Family courts nationwide should not be permitted to continually run afoul of the procedural safeguards the Constitution requires.

²¹ Conn. Gen. Stat. §46b-15(b).

²² Anonymously contributed Connecticut story.

²³ Anne Stevenson, *Connecticut Court failure: The deadly rebranding of Joshua Komisarjevsky*, Communities Digital News (February 25, 2014), http://www.comfortncolor.com/CT%20Book/C82_Connecticut%20Court%20Failure_%20The%20Deadly%20Rebranding%20of%20Joshua%20Komisarjevsky.pdf.

²⁴ CA Fam. Code §3062 (2018).

²⁵ Anonymously contributed California story.

²⁶ 23 Pa.C.S.A. §6107; 23 Pa.C.S.A. §6108.

²⁷ Anonymously contributed Pennsylvania story.

III. FIRST-HAND PARENT ACCOUNTS OF THE EX PARTE REMOVAL OF CHILDREN WITHOUT DUE PROCESS

The following contains first-hand accounts of due process violations involving ex parte removal that have been provided by parents to *amicus*. In an effort to illustrate the pervasive nature of this particular type of family court due process violations nationwide, *amicus* shares these stories with the Court. Most contributors requested anonymity, with a few consenting to their names being included. Parents allowing *amicus* to use their stories provided interviews regarding their situations, as well as court documentation and otherwise verifying information.

a. California²⁸

This California story involves a mother whose custody rights to her toddlers were stripped away for six weeks as a result of an ex parte hearing based on unfounded claims by her abusive husband. The mother endured abuse by her husband, the father of her children. She worked up the courage to tell the father she wanted out of the marriage and was then blindsided by child abduction. One Saturday the mother awoke to find the father and her children gone. The father's mother, the mother's mother-in-law, gave her a stack of papers, indicating a court date the day prior, and a restraining order against her. The day prior, the father had said he was working late, which was not unusual

²⁸ Anonymously contributed California story.

so the mother thought nothing of it. In actuality, the father was filing ex parte motions against the mother, based on lies, alleging she had threatened child homicide.

The mother was able to hire an attorney who initially acquired supervised visits for two hours, three days a week. During supervised visits, the mother noticed the son's face was severely scratched and needed care. The mother-in-law continued the father's abuse of the mother during visits by verbally attacking her. At the end of visits, the daughter cried and clung to the mother, before being physically pulled from the mother. After 42 days, the trial started but it was continued after the father alleged more evidence needed to be presented. Ultimately, the now-presiding judge dismissed the restraining order against the mother, and heavily sanctioned the father for filing an unmeritorious restraining order, requiring him to pay the mother's \$40,000 in attorney's fees. The mother and children were finally allowed to reunite after six weeks.

b. Connecticut²⁹

In this Connecticut story, a mother abused by her husband was stripped of her custody rights after an ex parte order was issued, despite her presence outside the courtroom. The mother was denied access to her son years after custody was supposedly settled. When she lost custody to the abusive father when the son was three-years-old, the mother retained visitation.

²⁹ Anonymously contributed Connecticut story.

The mother and father agreed to resolve parenting differences without court involvement, through a parenting coordinator. This worked well for years, until an instance during the mother's visitation. The mother and now-adolescent son had a typical disagreement. The father, who was texting with the son at the time, asked if police were necessary; the son said no. The father arrived at the mother's home, after calling the police who arrived shortly thereafter, and subjected the son to unnecessary police intervention. Testimony from responding officers revealed no injury that day. Two days later, the father filed an emergency *ex parte* order application, providing only his own affidavit as evidence, describing long-past events, without establishing any risk of immediate harm. Still, the mother was ordered, *ex parte*, to have no contact with her son, while in the courthouse, waiting to be heard. The final hearing on the matter occurred 112 days after the application was granted. By this point, the mother's counsel repeatedly objected, citing to Connecticut Rules of Court which made *ex parte* orders void after 30 days without a concluded hearing. The court upheld the no-contact order, citing present risk of psychological harm to the child relying entirely on the father's self-serving affidavit. Appeals were dismissed as moot, because by the time the appellate court weighed in, the hearings already occurred, even if significantly after the statutorily required period.

c. Delaware³⁰

This story involves a mother abused by her husband whose custody rights to her child were stripped away without notice in an ex parte hearing. To protect herself from further abuse, a mother did not provide a father with her post-separation address. The father was represented by legal counsel in the initial hearings while the mother was not, and he created an illusion of an uncooperative mother, who allegedly purposefully withheld information. Utility records from the mother's telephone service provider confirmed the father's then-girlfriend had telephone service terminated at the mother's home the day of a phone conference with the court. The father called the child welfare agency, alleging the mother's boyfriend was sexually assaulting the child. The child was forensically interviewed but made no such disclosures; the father had previously made nearly identical unfounded allegations against the mother's brother-in-law. A safety plan implemented by the child welfare agency, though revoked within 24 hours, served as the basis for an ex parte emergency motion filed by the father seeking custody of the child. The court had the mother's contact information but did not inform her of a hearing on the motion, instead proceeding ex parte. At the hearing, the court heard only from the father while the child welfare agency was not called to provide testimony. Their testimony would have shown they had no issue with the custody arrangement that included custody for the mother. The court gave the father

³⁰ Anonymously contributed Delaware story.

temporary sole legal custody and primary residential placement and provided the mother with only supervised visitation for three hours per week. When the mother learned of the ex parte emergency motion hearing after it had already occurred, she filed a motion to reopen; it was denied.

d. Georgia³¹

This Georgia story involves a mother whose visitation rights were suspended ex parte, while her children were left in the care of their abusive father. The mother invited a woman into their home after the woman had been raped. The father began an affair with the woman while she stayed as a guest. The father physically abused the mother, raped her, and threatened suicide, murder-suicide, and taking their children. The mother initiated divorce proceedings, while the father was investigated by the military, which resulted in sexual and physical assault charges to which he ultimately pled guilty. One convicted assault occurred while the mother held one son in her arms. Post-separation, while in the father's care, their oldest son disclosed paternal abuse.

Once family proceedings began, the guardian *ad litem* on the case quickly became Facebook friends with the father, his girlfriend, and his parents, engaging in improper ex parte communications. According to the

³¹ Contributed Georgia story, Anonymous.

report, the guardian contacted none of the mother's references, while contacting all of the fathers'.

Georgia guardian *ad litem*'s must file reports 10 days before a hearing, at minimum, to ensure proper notice and due process compliance. Here, the guardian filed her report 48-hours before the hearing and it was admitted. The report alleged "parental alienation" against the mother without using those words, describing behaviors consistent with the debunked theory.³² Junk science and supposedly "dirty car seats" were deemed enough for removal of the children from the mother's care, despite the father's violent behavior and military investigation.

Sometime thereafter, the mother received an *ex parte* order suspending her visitation, without motion or hearing, despite affidavits, written evidence of the father committing perjury, evidence showing his allegations of "alienation" were impossible, and more witnesses. The mother was not provided an opportunity to present this evidence, and filed a motion to modify custody, to no avail as of yet.

Reports submitted by court-appointed guardians and custody evaluators, which carry great weight in custody decision-making, are often rife with personal biases accepted as fact. Here, the guardian stated: "The odd coincidence is *the girlfriend* was raped by her husband, *the mother* and *father* helped her through it and

³² Dallum, *supra* note 4; this theory has been widely discredited due to its invalid and unscientific development, entirely biased basis, and lack of scientific data supporting it.

allowed her to live with them. After *the mother* decided to leave the marriage, she then made an allegation of rape. [This g]uardian is not stating it did or didn't happen just simply that it does place a huge seed of doubt." This supposition was admitted as evidence. The guardian described the situation with the mother as feeling "very dishonest," and stated "if anyone is concerned for the welfare of their children in the care of the[ir] father, that person would have a cell phone to be contacted immediately in the case of an emergency," ignoring economic difficulties the mother faced because of their lengthy legal battle. The guardian acknowledged the military charges, stating: "If for some reason *the father* does get some short amount of jail time, the guardian feels *the father* should have the ability to appoint his parents to temporarily take care of the children." The father was convicted of three counts of assault, disobeying an officer, and adultery, resulting in a dishonorable discharge. The U.S. Army Court of Criminal Appeals upheld his conviction.

At the final hearing, the court ordered the children into the father's full-time care, providing him with full physical custody; the mother's visitation was restricted, with the judge calling the mother an "opportunist using the legal system." The judge stated they did not believe the mother's abuse allegations despite the military charges against the father. While a verifiably abusive father received custody, a mother with "dirty car seats" and no violent or criminal history lost custody and had her visitation severely constrained in a process rife with due process violations.

d. Oregon³³

This Oregon story involves a disabled mother whose custody rights were stripped from her after her abusive ex-husband dragged her to court for over ten years. The mother's disability and Post-Traumatic Stress Disorder have been caused in part by domestic violence she suffered at the hands of the father of her daughter and his ongoing litigation abuse. Recently, the court took from the mother all contact with her daughter and gave sole custody to the father. The daughter, 12-years-old, has not been allowed to see or speak to her mother in three months. The daughter has been suicidal and engages in self-harm while in her father's care.

The mother lost custody after being labeled responsible for "parental alienation." When the mother attempted to receive help from the single free legal resource to fight this in her jurisdiction, she discovered the father had approached them first, creating a barrier to the mother finding counsel. The father's attorneys pressured the DHS caseworker into making their reports, which were meant to investigate the father, instead be focused on the mother. The judge stated on the record that he relied entirely on the father's attorneys to "educate him on the case history," instead of previously documented case history and court findings. The judge refused to transfer the case to a proper forum, because he felt it would be "too much" to re-educate another judge, thereby retaining the case in an improper

³³ Contributed Oregon story, Collene Kuznicki.

venue. This judge agreed in writing and on the record to allow the mother to appear by phone due to her disability, if she provided a supporting letter from a physician, but then denied the accommodation despite the mother providing *three* letters from healthcare providers. The judge then sent the HIPAA-protected letters directly to the father's attorneys in an ex parte fashion without the mother's permission, continuing to conduct ex parte communications and informal hearings without the mother. This disabled mother continues to fight through the legal system in Oregon to obtain visitation rights.

f. Oregon³⁴

This Oregon story involves a mother whose custody rights of her daughter were stripped from her after an evaluator engaged in ex parte communications between an abusive father and the presiding judge. The mother, a victim of domestic violence evidenced by police reports, initially had full custody of a daughter, and was her primary caregiver since birth. Two years after divorcing, the father made allegations of medical neglect against the mother. The daughter's optometrist stated surgery may be needed later, but vision therapy was suitable at that time; the father demanded surgery. When the father would not agree otherwise, the mother arranged surgery by a leading pediatric ophthalmologist in the area. The father initiated a custody battle for the daughter, using an

³⁴ Anonymously contributed Oregon story.

unqualified custody evaluator who displayed obvious biases against the mother. Initially at a phone conference, the evaluator suggested custody be given to the father, because the mother allegedly had difficulty making decisions. Then, after the father communicated with the evaluator *ex parte*, the evaluator decided without testing that the mother had an Anxious Attachment Style, and relayed this “determination” to the judge, also *ex parte*. They continued to allege medical neglect against the mother, claiming she refused vaccination and pediatric dental care, when medical records indicated these were blatant lies. The judge relied on the evaluator’s report, saying the medical records were a “red herring” to divert attention from the “real” issue. The mother went through several additional mental health evaluations, all showing normal and healthy results. There have been multiple reports against this evaluator for violations, including tampering with medical records. The mother, still without her daughter, is working through the legal system, fighting due process violations the entire way.

g. Pennsylvania³⁵

This Pennsylvania story involves a mother whose custody rights were stripped from her *ex parte* without any evidence in support of the abusive father’s claims. The mother lost her children after an *ex parte* hearing based on unsupported claims of parental alienation and flight risk. The mother was ordered to send her

³⁵ Contributed Pennsylvania story, Joann Sieckmann.

children to a Texas “reunification camp” with their abusive father. The children were removed, without notice to the mother, in the middle of their school day and threatened to be shackled and handcuffed if they refused, a scenario described as “horrific” by the school counselor. Evaluations of parents and children were conducted by a psychologist who has had frequent sanctions levied against him by his licensing board. In testimony, he admitted parental alienation syndrome is invalid, and still relied on it when making recommendations. As well, he indicated on the record that placing the children with the father would be unsafe. Despite this, the court still forced the children into a reunification program that would place them in the care of the abusive father after a theoretically therapeutic intervention. The mother refused to send the children to Texas and was arrested and jailed for contempt. The Superior Court reversed and ordered a hearing. The children returned to her and a day-long hearing was scheduled. While the appellate court attempted to remedy the due process violation with the required hearing, at said hearing, the mother was not permitted to speak, nor present any witnesses or evidence. The mother has still *never* been heard. The court gave the father’s brother custody instead of the mother, with whom the children wanted to remain. She has been threatened with incarceration if she makes any response whatsoever to the children’s attempts to contact her. The mother has not seen nor spoken to her children in over a year, based solely on unsupported emergency ex parte petitions.

h. Tennessee³⁶

This Tennessee story involves a mother whose custody rights were stripped away in an ex parte hearing despite no claim of imminent harm, resulting in significant harm to her children. Her children were ordered by the court into the care of their abusive father who continued to physically and sexually abuse them. The mother has been separated from her children for nineteen months after ex parte removal. Before attempts to modify custody to protect the children, the father prevented them from receiving medically necessary care, denied the children access to technology to do their homework, and refused them participation in extracurricular activities, because they were inconvenient to him. The mother called the police on the father multiple times, after physical and sexual assaults on her and the children. The daughter was returned to the mother with an untreated broken wrist, and the son, with a severe allergy, reported allergen exposure in the father's home. The mother requested the court change 50/50 custody, to an arrangement where she would receive one extra day and have medical, educational, and extracurricular decision-making authority. The father then forbade the children from speaking to their mother during his custody time. When the children requested to speak to the mother, they were punished. The daughter, severely depressed, started self-harming and threatened suicide while in the father's care. She was hospitalized for 13 days, refusing to return to the father. The father blocked access to mental health

³⁶ Anonymously contributed Tennessee story.

care, despite recommendation from both counselor and pediatrician that she needed psychiatric care due to suicidal ideation. For seven months afterward, the daughter lived with her mother exclusively. Therapists indicated reunification with the father would be seriously dangerous to the daughter's health. Around the time of hospitalization, the father suggested a custody evaluation, conducted by a doctor with a pro-alienation reputation, despite widespread discreditation. The mother and her attorney were unaware of this reputation and agreed to the evaluation, hoping it could prove beneficial for the daughter. Prior to releasing the custody report, the daughter was diagnosed with PTSD and disclosed paternal abuse to another psychologist. The custody evaluation doctor cited this psychologist; nonetheless, he accused the mother of the unscientific "parental alienation," determining the poor relationship between the daughter and her father was due to the mother, and recommending the mother and children's relationships be severed.

The day after receiving the report, the father filed an ex parte motion seeking a restraining order against the mother and removal of the children from her care. *This motion was granted*, despite no risk of immediate irreparable harm. The next day the mother went to court expecting trial to resume, only to learn she would not be allowed any contact with her children. The daughter was told at school she would be removed from her mother and placed with her father. She became so distressed she was immediately hospitalized. The mother received no notice of removal and report

submission, thereby depriving her of opportunity to rebut the findings of the report. Without a subsequent hearing, the mother's due process rights were violated.

CONCLUSION

The systemic violation of parental due process rights in *ex parte* removal proceedings harms children across the country.

For these reasons, the Petition for Certiorari should be GRANTED.

Respectfully submitted,
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