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IN THE

SUPREME COURT OF THE UNITED STATES

Hailey Kyle Vallier — PETITIONER
(Your Name)

vs.
Florida Department of
Children and Families, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Second District Court of Appeal of Florida
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Hailey Kyle Vallier
(Your Name)

6901 State Road 62
(Address)

Bowling Green, FL 33834
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

QUESTION ONE

Is a case involving a state habeas proceeding by a parent, on behalf of their child, who attacks the validity of the custody of his or her child as a result of an adoption that occurred after termination of parental rights were imposed upon him or her by a state court pursuant to an adjudicatory hearing that took place wherein the trial court unlawfully terminated his or her parental rights based on insufficient evidence and the improper judicial administration of the law, with which expressly violated Federal and State Constitutions, and who seeks to specifically gain custody of his or her child and relinquish temporary custody of said child to the paternal grandparents until his or her release from incarceration, moot despite the fact that the child was adopted contrary to legislative intent?

QUESTION TWO

If so, why is it then that an adoption of a child moots state habeas corpus review, especially when the child's parent had his or her rights unlawfully terminated and the predicate of the child's adoption is against legislative intent, constitutional provisions, and the child was never lawfully released for adoption to begin with and creates a right-without-a-remedy dilemma when the parent never received relief, when legally entitled to redress, on direct review, and there is a lack of post-trial motions that could other-

wise be authorized by the court rules after a family court relinquishes its exclusive original jurisdiction over the child?

QUESTION THREE

Is it fundamentally unfair for a parent, who represents themselves and their child as a pro se litigant after their parental rights have been unlawfully and involuntarily terminated, and in the course of judicial proceedings, be kept from knowledge regarding the custody status of his or her child especially when such information is paramount for the parent to effectively and timely represent themselves and their child in the procedural course of post-termination judicial proceedings demanded by due process such as habeas corpus?

QUESTION FOUR

If the parent whom had their parental rights unlawfully terminated and their child was unlawfully adopted as a result, and explicitly proved reversible error in the judgment that terminated his or her parental rights on direct review, and also proved that the State presented insufficient evidence at trial in order to support termination, yet, no relief was ever administered by the court, and whom, in addition, collaterally attacked that judgment, and adoption, via state habeas corpus, again, to no avail, what is then the proper mechanism in order to institute certain litigation to a court wherein the parent could be heard and relief properly administered thus resolving the right-without-a-remedy dilemma?

QUESTION FIVE

IS it appropriate for a parent to, on behalf of their child, seek state habeas relief since federal habeas proceedings are not allocated for termination proceedings in accordance with this Court's precedent in *Lehman v. Lycoming*, 458 U.S. 502 (1982) or is a 42 USC 1983 suit the proper course to obtain relief from the judiciary?

QUESTION SIX

Are the provisions under 28 USC 2241(d)(1)(A) applicable to state habeas proceedings since termination cases are not applicable under federal habeas corpus review under 28 USC 2254 in accordance with this Court's decision in *Lehman v. Lycoming*, 458 U.S. 502 (1982)?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- The Florida Department of Children and Families
 - The Florida Statewide Guardian ad Litem Program
 - The Adoptive Parents to O.R.T. with regards to the alleged adoption that took place on October 12, 2018. Chris and Cecilia DiJunno who previously resided at 21059 Lawson Avenue, Port Charlotte, FL 33952.
- * Current residential address is unknown at this time.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C-2-3 to the petition and is (See also A-1-3)

- ☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished. *Petitioner has limited access to immediate publication.

The opinion of the Florida Court of Appeal, 2nd District court appears at Appendix A1-4 to the petition and is

- ☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished. *Petitioner has limited access to immediate publication.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was August 1, 2019.
A copy of that decision appears at Appendix C-1-3.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- The Constitution of the United States

Amendment XIV [1868]

Section 1. 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.

Article I

Section 9. The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

- The Constitution of the State of Florida

Article 1

Section 2. Basic rights. - All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

Section 9. Due Process. - No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.

Section 13. Habeas Corpus. - The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety.

Section 23. Right of Privacy. - Every natural person has the right to be let alone and free from government intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Florida Chapter 39 - Proceedings Relating to Children

39.001 Purposes and Intent; personnel standards and screening.

- (1) PURPOSES OF CHAPTER. - The purposes of this Chapter are: (b) To recognize that most families desire to be competent caregivers and providers for their children and that all children achieve their greatest potential when families are able to support and nurture the growth and development of their children. Therefore, the Legislature finds that policies and procedures that provide for prevention and intervention through the department's child protection system should be based on the following principles:

3. The prevention and intervention should intrude as little as possible into the life of the family, be focused on clearly defined objectives, and keep the safety of the child or children as the

paramount concern.

4. The prevention and intervention should be based upon outcome evaluation results that demonstrate success in protecting and supporting families.

(f) To preserve and strengthen the child's family, ties whenever possible, removing the child from parental custody only when his or her welfare cannot be adequately safeguarded without such removal.

(1) To provide judicial and other procedures to assure due process through which children, parents, and guardians and other interested are assured fair hearings by a respectful and respected court or other tribunal and the recognition, protection, and enforcement of their constitutional and other legal rights, while ensuring that public safety, interests and the authority and dignity of the courts are adequately protected.

39.802 Petition for Termination of Parental Rights; filing; elements — (1). A petition for termination of parental rights filed under this chapter must contain facts supporting the following allegations: (a) That at least one of the grounds listed in s. 39.806 has been met. (c) That the manifest best interests of the child, in accordance with s. 39.810, would be served by the granting of the petition.

39.8055 Requirement to file a petition to terminate parental rights; exceptions. — (2) Notwithstanding subsection (1), the department may choose not to file or join in a petition to terminate the parental rights of a parent if: (b) The department has documented in the report to the court a compelling reason for determining that

filing such a petition is not in the best interests of the child. Compelling reasons for not filing or joining a petition to terminate parental rights may include, but are not limited to: (1) Adoption is not the appropriate permanency goal for the child. (2) No grounds to file a petition to terminate parental rights exist. (3) The department has not provided to the family, consistent with the time period in the care plan, services that the department deems necessary for the safe return of the child to the home.

39.809 Adjudicatory hearing. — (1) In a hearing on a petition for termination of parental rights, the court shall consider the elements required for termination. Each of these elements must be established by clear and convincing evidence before the petition is granted. (5) The judge shall enter a written order with the findings of fact and conclusions of law.

Chapter 63. (Florida) - Adoption

63.022 Legislative intent. — (1) The Legislature finds that:

(d) Adoptive parents have a constitutional privacy interest in retaining custody of a legally adopted child (emphasis supplied). (2) It is the intent of the Legislature that in every adoption, the best interest of the child should govern and be of foremost concern in the court's determination. The court shall make a specific finding as to the best interests of the child in accordance with the provisions of this chapter. (4) The basic safeguards intended to be provided by this chapter are that: (a) the minor is legally free for adoption and that all adoptions are handled in accordance with the requirements of law. (emphasis supplied). (k)

In all matters coming before the court under this chapter, the court shall enter such orders as it deems necessary and suitable to promote and protect the best interests of the person to be adopted.

63.219 Sanctions. — Upon a finding by the court that an adoption entity has willfully violated any substantive provision of this chapter relative to the rights of the parties to the adoption and legality of the adoption process, the court is authorized to prohibit the adoption entity from placing a minor for adoption in the future in this state.

• Chapter 79 (Florida) - Habeas Corpus

79.01 Application and writ. — When any person detained in custody, whether charged with a criminal offense or not, applies to the Supreme Court or any justice thereof, or to any district court of appeal or any judge thereof or to any circuit judge for a writ of habeas corpus and shows by affidavit or evidence probable cause to believe that he or she is detained without lawful authority, the court, justice, or judge to whom such application is made shall grant the writ forthwith, against the person in whose custody the applicant is detained and returnable immediately before any of the courts, justices, or judges as the writ directs.

• Florida Rules of Civil Procedure

Rule 1.630 Extraordinary Remedies — (a) Applicability. This rule applies to actions for the issuance of writs of mandamus, prohibition, quo warranto, certiorari, and habeas corpus. (c) Time. A complaint shall be filed within the time provided by law, except that a complaint for common law certiorari shall be filed within 30 days of rendition of the matter sought to be reviewed. (d) Process. If the complaint shows a prima facie case for relief, the court shall issue: (5) a writ of habeas corpus. The writ shall be served in the manner prescribed by law, except the summons in certiorari shall be served as provided in rule 1.680(b).

STATEMENT OF THE CASE

The Father to O.R.T. submitted a petition for writ of habeas corpus, on February 1, 2019, to the Circuit Court of the Twentieth Judicial Circuit in and for Charlotte County, Florida. The clerk was in receipt of the petition on February 4, 2019. See Appendix "B-5". In short, the voluminous habeas petition aimed to collaterally attack the legality of the custody of his daughter, O.R.T., due to the fact that the trial court unlawfully terminated his parental rights at an adjudication hearing held on September 27, 2016, as the State presented insufficient evidence to support termination on that date. The Father assailed that record on direct review (14-780; 2016-5167; SC17-1354; SC17-1275; and Certiorari to this court 17-6547), however, even though the Father's argument was legally correct, the State still denied him relief.

The paternal grandparents to O.R.T. also assailed the record on direct review from an order denying their motion to intervene. (14-780; 2017-4216; SC18-1571). The Florida Supreme Court denied them discretionary review on September 20, 2018, and the mandate to their direct appeal issued October 5, 2018. See Question Six.

The Father included specific instructions on how the habeas petition was to be filed, either as a Florida Juvenile Rule 8.270(b)(4) motion or to remain as a habeas proceeding as the Father was not legally entitled to know the current custody status of his child in a post-termina-

tion proceeding. The Father waited to file until the child's paternal grandparents decided not to pursue Certiorari review to this Court. The period for the paternal grandparents to seek such review from this Court would have ended on December 19, 2018. By the time the habeas petition at issue was filed, the paternal grandparents' direct appeal was still within the 120-day mandate recall period with the mandate having issued October 5, 2018. (2017-4216).

The trial court transferred the habeas proceedings, initially invoked under Florida Civil Rule 1.630, to the juvenile court that terminated the father's parental rights previously. See Appendix "B-1-2". The juvenile court then denied the Father's habeas petition as an unauthorized successive attempt to relitigate the termination judgment. See Question Four, See Appendix "B-3-4". The Father was still unaware of any adoption proceedings. See Question Three. It was not until the appeal that the Father learned of an adoption hearing that allegedly took place on October 12, 2018 in the trial court, and from thereon, the appeal turned into another spin of arguments on the issues relating to mootness. See Questions One, Two, and Five.

As the appellate process continues, the Father has timely submitted another habeas petition to the 2nd DCA directly (2019-2927), as an original proceeding authorized under Florida Appellate Rule 9.141(d) alleging the ineffective assistance of appellate counsel in the appeal stemming directly from the termination judgment (2016-5167). The habeas petition was timely, in conformance with Florida Appellate Rule 9.141(d)(5), however, the appell-

ate court still denied it as unauthorized due to untimeliness, even though the Father proved timeliness of the habeas petition. The Father assailed that record to the Florida Supreme Court where discretionary review was also denied October 22, 2019. (SC19-1805).

The Father now brings this certiorari petition before this Court out of the string of cases 19-127CA, 19-780, 2019-1058, SC19-1306. The reasons for granting this petition now ensues.

REASONS FOR GRANTING THE PETITION

I. The case before this court is not moot on the alleged ground that the child was adopted. The State of Florida, acting on the child's behalf, argues that habeas corpus proceedings should be denied as unauthorized without the trial court ruling on the merits on the ground that this case is moot. Whether or not this case is moot is a federal question presented before this court, and at its discretion, can resolve this constitutional issue. The State argues habeas proceedings instituted against the State and/or adoptive parents becomes moot, because State custody of the child has ended as a result of the adoption. Due process of law was denied to the parent under the standards laid down in Florida Law during the termination and subsequent adoption proceedings. No remedy against this invasion of the parents and child's constitutional rights are available to them except by habeas corpus.

Here, we have before us today a somewhat complex constitutional dilemma regarding termination proceedings involving parental rights, subsequent adoptions, habeas corpus, and issues relating to mootness. A child, O.R.T., Y.O.B. 2014, is currently in wrongful custody which is not in conformance with our Federal Constitution (Amend. 14; Sec. 1 - Art. 1; Sec. 9), our Florida Constitution (Art. 1; Sec. 2, 9, 13, and 23), Florida Chapter 39 (Proceedings Relating to children), Florida Chapter 63 (Adoption - Legislative intent), and Florida Chapter 79 (Habeas Corpus). O.R.T. has been wr-

ongfully released for adoption after the child's father's parental rights were unlawfully and involuntarily terminated under F.S. 39-806(1)(iii) due to the State's insufficient evidence presented at trial (14-780) and on appeal (2016-5167) in order to support such termination by clear and convincing evidence held required by this Court. See Santosky v. Kramer, 455 U.S. 745 (1982). And here, the parent cannot obtain relief via federal habeas corpus proceedings collaterally attacking the unlawful termination and adoption judgment waged against him and his child. See Lehman v. Locoming, 458 U.S. 502 (1982).

The State argued, on appeal (2019-1058), that the adoption of O.R.T. rendered habeas relief moot, even though the petition was directed at the adoptive parents, along with the State, due to the parents' lack of knowledge as to the custody status of his child. F.S. 39.812(2). The parent had requested in his habeas petition that if the child had not been adopted, for the case to be transferred to the juvenile division and treated as a Florida Juvenile Rule 8.270(b)(3) motion as there is no time limitation under that rule, and on the condition that if the adoption did occur, for the habeas petition to remain as it is, with the habeas judge, and for the adoptive parents to be listed as the respondents to said petition. The trial court habeas judge (19-127CA) stated the habeas proceedings were unauthorized and made citation to Florida Case DCF v. J.J.E., 901 So. 2d 215 (Fla. 3rd DCA 2005). See DCF v. J.J.E., 953 So. 2d 659 (Fla. 20th 07), wherein a father, by utilizing Florida Juvenile Rule 8.270(b)(3), obtained relief approximately 5 years after from the date his parental rights to his son, J.E., were involuntarily and unlawfully terminated. This occurred after a pet-

tion for writ of prohibition, filed by the State, was granted enforcing the prohibition of using habeas corpus when the juvenile court still retains competent jurisdiction over the child, and was further ruled that Rule 8.270 was the proper mechanism in obtaining relief when habeas corpus was not authorized, primarily because the trial court that terminated the father's parental rights had not relinquished its jurisdiction over the said child as the child had not been adopted. In those cases, the court inferred that Rule 8.270(b)(2) was not moot. IF J.J.E.'s child was adopted before or during the course of his father's judicial proceedings, J.J.E. and his son would be facing the same constitutional issue before this court today, and it could not be in the slightest doubt that his child would remain in wrongful custody after an adoption thus creating a right-without-a-remedy dilemma.

Even though the parent, in this instance, moved for the trial court to either treat the petition as a Florida Juvenile Rule 8.270(b)(2) motion or a habeas corpus proceeding, because the parent was at a complete procedural disadvantage without knowledge of the custody status of his child, due to prior unlawful termination, and representing himself and his child as a pro se litigant, in the best interests of his child; He assailed the record to this court under certiorari (17-6549), and the parent submitted the habeas petition at issue on February 1, 2019, which was presumably filed by the clerk on that date even though the Clerk was in receipt of it by February 4, 2019 pursuant to Florida Appellate Rule 9.420(2)(A) and (B), (See Appendix "B-5"), within one year after the termination judgment became final on the date rehearing on certiorari was denied by this court (17-6549). The parent contemplated on filing a 28 USC 2254 habeas petition, but after discoveri-

ing this Court's precedent in *Lehrman v. L. Looming*, 458 U.S. 502 (1982), he decided to pursue state habeas relief. The parent felt that 28 USC 2241(d)(1)(A) could be, in a sense, applicable to the filing of his state habeas petition (See Question Six), and the judgment of the paternal grandparents' motion to intervene (14-780) was not final on appeal (2017-4216), and still alive at the time the child was allegedly adopted on October 12, 2018, because the paternal grandparents to O.R.T. were still within the timeframe to petition this court for certiorari as the highest state court denied discretionary review on September 20, 2018 (SC18-1571). See U.S. Supreme Court Rule 13.1. Additionally, the parent's habeas petition was filed within the 120-day mandate recall period to the paternal grandparents' direct appeal where the mandate issued October 5, 2018 (2017-4216). See Florida Appellate Rule 9.340(a).

The parent also timely petitioned the 2nd DCA under habeas corpus for a new direct appeal, stemming from the unlawful termination judgment, due to the ineffective assistance of appellate counsel, under Florida Appellate Rule 9.41(d), in which authorizes the court to, under that rule, have jurisdiction to hear habeas proceedings (2019-2927). The adoption of the child cannot moot that procedure or it would otherwise result in procedural deficiencies blocking due process. However, the appellate court denied it as unauthorized due to untimeliness, even though the parent proved the timeliness of the petition with clear-cut prima facie evidence on rehearing and clarification, thus proving that the appellate court is not complying with the proper judicial administration of the law; breaking its own court rules, and the parent will, in the near future,

assail that record to this Court via certiorari petition (819-18-05).

The issue on this case is primarily focused on the adoption of O.R.T., and resolving as to whether or not habeas proceedings are rendered moot once the child has been adopted. It is entirely worthy to note the predicate of the termination and adoption were unlawful, and this fact alone should warrant habeas relief regardless of any statute as habeas corpus is a powerful writ of right resolving issues in the interest of justice when there is no other remedy available and does not moot the petition, since a live controversy continues. (Habeas Corpus is a powerful remedy to be wielded promptly in cases where restrictions on individual liberty.) Strait v. Lead, 306 U.S. 341, 350. See also Henry v. Santana, 62 So. 3d 1122, 1125-26 (Fla. 3d D. 2011) ("

The writ is revered by all free and liberty loving people and recognized as a fundamental guaranty and protection of their liberty right. . . . If it appears to a court of competent jurisdiction that a man is being illegally restrained of his liberty, it is the responsibility of the court to brush aside formal technicalities and issue such appropriate orders as will do justice."). The trial court can exercise its equitable jurisdiction, and does not necessarily have to hear the habeas corpus in its juvenile division. The civil division can indeed hear the habeas proceedings in the best interests of the child, as an equitable cause of action, because the child's best interest were insufficiently obtained as a result of an illegal termination and adoption, clearly against legislative intent. The Florida Legislature never intended the illegal adoption of a child whose parent is legally fit to raise such child, and, here, the parent is legally fit. Habeas Corpus §1 - constitutional privilege (5. Habeas corpus is a great constitutional privilege; there is no higher

duty than to maintain it unimpaired and unsuspended, save only in the cases specified in the Federal Constitution). § 1 Function of the writ (6. the function of the writ of habeas corpus is to provide an efficacious remedy for whatever society deems to be intolerable restraints; vindication of due process is its historic office.) Schofield v. Judd, 2019 Fla. App. LEXIS 5032, n.4 ("In habeas corpus the niceties of the procedure are not anywhere near as important as the determination of the ultimate question as to the legality of the restraint.").

The habeas petition at issue was filed with the trial court in the civil division (19-127CA) and the habeas judge transferred the case to the juvenile division (judge 14-78D). This should not have occurred, especially because it was further ruled that the juvenile court relinquished its exclusive original jurisdiction over the child due to the alleged adoption. However, the State, on appeal, never provided legal documentation showing that O. RT. had been adopted. The State only provided a non-certified, non-court document showing that a log entry was made by DCF showing that an adoption hearing took place on October 12, 2018. The juvenile judge never made mention of an adoption, and simply stated that the habeas petition was unauthorized and an attempt to seek successive review of the trial court's order; the termination judgment stemming from the September 27, 2016 adjudication hearing (14-78D). It was not until the appeal, when the State argued that the habeas petition was nonetheless barred under Florida Juvenile Rule 8.270(c); not an unauthorized successive attempt to relitigate the termination judgment as stated by the circuit court judge (juvenile division). The habeas judge cited DCF v. J.J.E., 901 So. 2d 215 (Fla. 5th DCA 2005) and

Failed to also cite a later case DCF v. J.J.E., 953 So. 2d 659 (Fla. 2007), and used the earlier case as basis for transferring the civil case to the juvenile division/judge. These two case laws specifically show that Rule 8.270(b)(4) is the proper mechanism to obtain relief of a child wrongfully withheld when habeas corpus is unavailable for relief due to the State still retaining custody of the child; and the petition was exactly that: a petition for writ of habeas corpus initially invoked under Florida Civil Rule 1.630 by the parent. The habeas petition should have clearly remained with the habeas judge, as the child was allegedly already adopted by the time the petition was filed. The habeas judge was obviously not aware of the alleged adoption. Florida Courts have intentionally allowed the use of habeas corpus to obtain custody of a child wrongfully withheld regardless of any jurisdictional issues arising out of circumstances involving the adoption of a child, showing that the courts retain proper equitable jurisdiction allowing courts to hear the case as an equitable proceeding in the best interests of the child. Equity § 87; Habeas Corpus § 1 - equitable principles (35 Habeas Corpus has traditionally been regarded as governed by equitable principles).

To obtain custody of a child wrongfully withheld when the child is within the territorial jurisdiction of the court (Crane v. Hayes, 253 So. 2d 435 (Fla. 1971); Pereira v. Shanti, 751 So. 2d 1291 (Fla. 3d DCA 2000); Stack v. Stack, 697 So. 2d 1331 (Fla. 4th DCA 1996)). When the child custody is at issue, the proceeding becomes equitable, and the court must act in the best interests of the child. Lee v. Meeks, 592 So. 2d 282 (Fla. 1st DCA 1992).

Here, the cases above demonstrate cognizable claims wherein relief could be administered by the court due to a child in wrongful custody. The primary concern is not how the child became in wrongful custody, but, moreover, how relief can properly and legally be administered to correct the custody status of the child. Here, the manifest best interests of the child was never legally nor properly ascertained as a result of the termination and adoption. See Petitioner's Reply Brief P. 5-7 (2019-1058). This is the crux: The court may proceed with termination and adoption proceedings only if it is in the best interest of the child, and, in this instance, the current and wrongful custody of O.R.T. is not in her best interests. Constitutional Law S. 831, 831.5 - due process - right to be heard - procedural guarantees. (21. The scope of due process of law comprehends not only an accused right to be heard but also a number of explicit procedural rights drawn from the Bill of Rights). Habeas Corpus § 41 - prerequisites (24. Custody in the sense of restraint of liberty is a prerequisite to habeas corpus; the only remedy that can be granted on the writ is some form of discharge from custody).

What the trial and appellate court are doing is barring the parent's right to exercise his constitutional rights to be heard on a habeas corpus proceeding, on behalf of his child, and they are boxing in and limiting the scope of a constitutional right that should not have any jurisdictional boundaries within the State under its equitable jurisdiction, because the law has still been broken and not remedied. This is in violation of the Constitution. The State has even admitted: "[e]ven if the Father were able to secure reversal of the order terminating his parental rights, the order of adoption would remain valid and untouched. . . . And even if some error

occurred in the termination proceeding, O.T. has resided in her stable, adoptive home since shelter, more than four years ago, and she should not have to be made to pay the price for any error now." Respondents (GAL) Answer Brief P. 6-7 (2019-1058). However, that 4 year term wherein the child had resided in wrongful custody is irrelevant, and as previously mentioned, in the case of DCF v. J.J.E., 953 So. 2d 659 (Fla. 2007), the father was granted relief in more than that amount of time in a post-termination proceeding on behalf of his child. Similarly, O.R.T.'s custody is clearly erroneous and she is, without a doubt, in wrongful custody in violation of the Constitution or laws or treaties of the United States.

The habeas petition at issue specifically attacks the legality of the current custody status of the child as a result of both the unlawful termination and subsequent adoption. The child's release for adoption, via unlawful termination, and the actual alleged adoption had been obtained through the assertion of judicial power guided by the improper judicial administration of the law and does not serve in the interests of justice, and as a result of her parents' unlawful termination, O.R.T. is suffering, and will continue to suffer, serious disabilities contrary to the State's defense and is in violation of Constitutional principles which lay the foundation of justice. It is the welfare and the best interests of the child that must prevail as it serves as an overriding principle, and, here, her current custody status is not in her best interests. See Petitioner's Reply Brief P. 7-8 (2019-1058). The adoptive parents are also not immune to termination proceedings or other adverse legal actions that would otherwise cause them to lose custody

of the child, and it is technically correct to state that the State could possibly, once again, obtain custody of the child; pointing out that the parent would be completely unaware of the custody status of his child in order to reinstitute habeas proceedings directed at the State on behalf of his child in the future. This causes an entirely new conflict.

Florida courts have also ruled that habeas corpus is the proper mechanism to obtain relief when claims do not present a cognizable basis for relief under Florida Juvenile Rule 8.270, and further ruled that habeas proceedings are the appropriate procedural mechanism when the primary problem is the lack of due process wherein parents could otherwise enforce their rights.

See *S. v. DCF*, 33 So. 3d 125, 126-128 (Fla. 2nd DCA 2010) describing in pertinent parts:

"[a]rguing that the effect of this ruling is to leave him with a right to effective counsel but no mechanism through which to enforce that right, i.e., the proverbial right-without-a-remedy dilemma. . . . Because these claims do not present a cognizable basis for relief under rule 8.270, the trial court properly denied the father's motion. . . . The primary problem is the lack of an appropriate procedural mechanism through which parents can enforce this right when counsel is ineffective.

Faced with this problem, the courts have considered three means by which such a claim could be raised: direct appeal, a post trial motion authorized by the rules, or a petition for writ of habeas corpus.

Absent some wholly new approach to this issue, this leaves only the possibility of using a petition for writ of habeas corpus as the means to enforce the right to effective assistance of counsel in termination cases. The supreme court has permitted a parent to use a habeas petition to obtain belated appeal in a termination of parental rights proceeding based on counsel's ineffectiveness for failing to file a timely notice of appeal.

See E.H., 609 So. 2d at 1291. In doing so, the court explained:

"The writ of habeas corpus was designed as a speedy method of affording a judicial inquiry into the cause of the alleged unlawful custody of an individual. *State ex rel. Paine v. Paine*, 166 So. 2d 708 (Fla. 3d DCA 1964). For that reason, habeas corpus has been authorized as a remedy for ascertaining a parent's right to custody of his or her children. *Id.* We hold that the parent's petition for writ of habeas corpus should be filed with the trial court. This will permit a resolution of any factual issues as well as any defenses including those predicated on laches. *Id.* at 1290-91." (emphasis supplied)

Even though this case does not challenge the ineffectiveness of trial counsel, as trial counsel blatantly proved unlawful termination at the September 27, 2016 adjudicatory hearing (14-780) without objection from either of the opposing parties to the ground that no clear and convincing evidence was presented to the trial court in order to support termination, this case is not moot, nor barred by laches, on the principle that habeas corpus is readily

available for the administration of justice where Constitutional Law has been fundamentally violated. If this court issues a reversal, the State would be free to hear the case properly under its civil and equitable jurisdiction, and portions of this case could be validated under the Due Process Clause. The lower courts have not even considered the merits of the habeas petition at issue. It is necessary to reach the legislative issue on adoption rendering habeas corpus moot, and this Court should reverse the judgment on that basis. There are no procedural safeguards on the parent and child's behalf that the lower Florida State courts are willing to entertain, and here fundamental fairness is lacking in this case which is demanded under due process. *Parker v. Ellis*, 362 US 574, 597-98 (The loss of these civil rights prevents a case from becoming moot even though the sentence has been satisfied.).

Custody defined as:

As applied to a person, "custody" means physical control of the person, sometimes by his imprisonment. For the purpose of habeas corpus: — such restraint by another that the latter can produce the body of the former at a hearing as directed by writ or order.

Custody of child

The control, care, and maintenance of a child, whether at one's own expense or under an award, providing compensation to be paid by another.

The term "custody" is within the legal definition

to allow a procedural scope of inquiry into the custody status of the child, and here, the child does not necessarily need to be in the custody of the State in order for the remedy of state habeas corpus to be available. This is why the parent also directed the habeas petition to the adoptive parents, and invoked such petition as a civil proceeding and not within the context of a juvenile proceeding. The adoptive parents have a day-to-day control over the child and can directly produce the body of the child before the circuit court, and can release the child from their unlawful custody if ordered to do so by the court; personal and subject-matter jurisdiction exists. At the end of the day, I pray that this Court notices that Constitutional law has clearly been broken when the unlawful termination and subsequent adoption took effect. The fundamental liberty interest in parenting is specifically protected in the privacy provision in the Florida Constitution (Art. I, Sec 23), and based on the privacy provision in the Florida Constitution, the State of Florida may not intrude upon parents' fundamental right to raise their children except in cases when a child is threatened with harm. The parent was also never afforded case plan tasks regarding his child. The parent has represented his child's best interests diligently and wholeheartedly, on a timely basis, and the court records blatantly outline that the lower courts have consistently stonewalled him from obtaining justice with regards to his child whom he cherishes. The lower courts should, at least, give the parent a chance to be heard on the merits of his habeas petition, as it is paramount to the child's best interests and to the protection of our Constitution.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Hailey K. Vallin

Date: October 30, 2019.