

No. 20-1473

In the Supreme Court of the United States

ALAN CRITTENDEN,

Petitioner,

v.

MARIKO CRITTENDEN,

Respondent.

**PETITION FOR REHEARING OF
PETITION FOR A WRIT OF CERTIORARI**

CARSON J. TUCKER, JD, MSEL
Counsel of Record
LEX FORI, PLLC
DPT #3020
1250 W. 14 Mile Rd.
Troy, MI 48083-1030
(734) 887-9261
cjtucker@lexfori.org

PETITION FOR REHEARING

In his Petition for a Writ of Certiorari to the Supreme Court of the State of Georgia, Petitioner explained that Georgia refused to exercise subject matter jurisdiction over his petition for divorce and the necessarily attendant issues concerning the custody and welfare of his minor children, both of whom are American citizens and both of whom remain in Japan with Respondent without any legal justification for her to have absconded with them into that nation. This is the current situation even though Petitioner established, without opposition, that he had never established any other home of record (HOR) or domicile in the United States, having left the State of Georgia to join the Marines at the age of 18 and having been forward deployed to various military installations during his active-duty career.

Petitioner's spouse, also an American citizen, has a Japanese mother and an American father (also a serviceman). While the parties were in Japan, they lived on the American base and were subject to the Status of Forces Agreement (SOFA) and the terms of its authorizing treaty between the United States and Japan. See U.S. SOFA (Japan), United States Treaties, 11 U.S.T. 1652, T.I.A.S. 4510, Art. IX, cl. 2.¹

¹ "Members of the United States armed forces, the civilian component, and their dependents shall be exempt from Japanese laws and regulations on the registration and control of aliens, *but shall not be considered as acquiring any right to permanent residence or domicile in the territories of Japan.*" (emphasis added).

As a result of their status under the SOFA, neither Petitioner nor Respondent have any rights to the jurisdiction of Japan or Japanese courts.²

When Petitioner sought a divorce in the state of Georgia, the only state in which he had ever been domiciled or resided before his entry into active duty military service, Respondent refused to appear and the state of Georgia refused to recognize subject matter jurisdiction over his petition for divorce *and* over the attendant matters concerning the custody and welfare of the parties' minor children.

In the interim, Petitioner moved to Maryland for purposes of taking a post-service job. Petitioner still cannot get a divorce. Maryland has yet to adjudicate Petitioner's constitutional rights to custody or visitation with his minor children. Yet, that state has imposed temporary support obligations on Petitioner upon the request of Respondent. Anne Arundel County Circuit Court, Maryland, Case No. C-02-FM-20-001938.

In effect, the state courts have failed to provide Petitioner and the minor children a forum in which to adjudicate their *prima facie* constitutional rights, and yet, the state of Maryland has imposed temporary support obligations on Petitioner, despite their being no custody determination, no litigation to determine support requirements, and, most importantly, no

² As pointed out in the Petition, Respondent subsequently took steps to acquire her Japanese citizenship, but this did not occur until after the divorce proceedings.

justification supporting Georgia's and now Maryland's failure to provide fundamental due process rights to Petitioner and his minor children.

In a very literal sense, from the time of the filing of his claim for divorce in 2018 in the state of Georgia (his only HOR and domicile (which according to this Court's long-standing jurisprudence, is also Respondent's domicile)), and today, Petitioner has been deprived of a forum in which to litigate these *prima facie* constitutional issues. Georgia never recognized Petitioner's rights, even though Petitioner demonstrated that it was the only state in which he could have possibly sought a forum in which to adjudicate them. Because the state of Maryland has imposed temporary support obligations on Petitioner without having adjudicated his or his minor children's constitutional rights, Petitioner still has no forum to adjudicate his rights to custody, nor any question concerning the safety and welfare of the minor children. It is difficult to imagine how the state of Maryland could impose support obligations on Petitioner and yet no state court has made any determination as to his rights to custody, the economic standing of the parties, and, more importantly, the safety and welfare of the minor children, who retain independent constitutional rights which have not been recognized. Both Petitioner and the minor children have a protected constitutional interest that this Court has stated must be protected by state process. See, e.g., *Troxel v. Granville*, 530 U.S. 57, 72; 120 S. Ct. 2054; 147 L. Ed. 2d 49 (2000) (freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment). See also

Quilloin v. Walcott, 434 U.S. 246, 255; 98 S. Ct. 549; 54 L. Ed. 2d 511 (1978); *Smith v. Org. of Foster Families for Equality & Reform*, 431 U.S. 816, 845; 97 S. Ct. 2094; 53 L. Ed. 2d 14, 35 (1977); *Moore v. East Cleveland*, 431 U.S. 494, 500; 97 S. Ct. 1932; 52 L. Ed. 2d 531, 538 (1977); *Cleveland Bd. of Ed. v. LaFleur*, 414 U.S. 632, 639-40; 94 S. Ct. 791; 39 L. Ed. 2d 52, 60 (1974); *Stanley v. Illinois*, 405 U.S. 645, 651-52; 92 S. Ct. 1208; 31 L. Ed. 2d 551, 559 (1972); *Prince v. Massachusetts*, 321 U.S. 158, 166; 64 S. Ct. 438; 88 L. Ed. 645, 652 (1944); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35; 45 S. Ct. 571; 69 L. Ed. 1070, 1078 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399-400; 43 S. Ct. 625; 67 L. Ed. 1042, 1045 (1923). A natural parent is entitled to a hearing regarding his or her rights to custody. *Stanley v. Illinois*, 405 U.S. 645, 649; 92 S. Ct. 1208, 1211 (1972). A denial of this right is a violation of the equal protection clause of the Fourteenth Amendment. *Id.* No state has yet to recognized Petitioner's or the minor children's constitutional rights!

There is no good reason for this. Petitioner demonstrated that this Court and the majority of state courts recognize that a member of the military retains the domicile and residence of his origin home of record (HOR), unless and until he establishes residence as a citizen of another state. Petitioner demonstrated that he was domiciled in the state of Georgia when he joined the Marines at the age of 18. Petitioner also demonstrated that throughout the entire time he was an active-duty member of the Marines, he never established another domicile or residence in any other state. Petitioner further proved that during his time in the military, he

maintained a Georgia driver's license, voted in state and national elections as an absentee voter from Georgia, and paid taxes in Georgia. As noted, Respondent, as Petitioner's wife, is also considered to retain the same domicile and residence as that of Petitioner by virtue of his status as an active-duty member of the military at the time of his filing for divorce.

If the state of Georgia had followed established law, it would have correctly assumed jurisdiction over Petitioner's divorce petition, and it would have then been able to adjudicate the *prima facie* constitutional rights of Petitioner and those of his minor children vis-à-vis Respondent, who is herself a United States citizen.

If the state is not compelled to assume jurisdiction over a petition for divorce filed by a military servicemember in the state that is his or her HOR, then these particular American citizens will be fundamentally deprived of their ability to assert their constitutional rights and avail themselves and their families of all the protections afforded by the Constitution.

In refusing to exercise jurisdiction over Petitioner's lawsuit, the State of Georgia leaves military servicemembers who are for all intents and purposes domiciled in that state, but temporarily serving their country, without a forum in which to claim residency and file for divorce. In doing so, Georgia also leaves the children of such military servicemembers without a home state pursuant to the Uniform Child Custody Jurisdiction Enforcement Act

(UCCJEA), O.C.G.A. § 19-9-40 through § 19-9-64. This, even though children are considered to be domiciles of the domicile of their parents, *Yarborough v. Yarborough*, 290 U.S. 202, 211; 54 S.Ct. 181; 78 L.Ed. 269 (1933), and the UCCJEA in Georgia adopts this well-established and unremarkable proposition, see O.C.G.A. § 19-9-61(a)(1), and indeed *requires* the state court to take jurisdiction over a potential custody matter where there has been no other custody proceeding “commenced in a court of a state having jurisdiction” as defined in the statute. See O.C.G.A. § 19-9-64(b). There was no other forum with jurisdiction in this case at its inception.

CONCLUSION

Not only has Petitioner and his minor children been deprived of their constitutional rights by the State of Georgia’s refusal to litigate his petition for divorce, but Petitioner is now being subjected to court proceedings in the state of Maryland concerning his support obligations even though the state of Maryland still has not provided Petitioner a forum in which to litigate his and his minor children’s constitutional rights. Petitioner has been deprived of constitutional protections afforded every other citizen of the United States. He has not received due process.

It is also the case that the minor children are themselves being deprived of their constitutional rights. Apparently, no one can assert jurisdiction over them, nor can a guardian even be appointed to represent their interests. They are being kept from the state courts by the actions of Respondent.

The states, the United States, and the nation of Japan have not provided a forum for Petitioner to adjudicate his and his minor children's constitutional rights. That another state court (i.e., Maryland) may eventually provide such a forum is of no moment to the present deprivation of these constitutional rights, which has been ongoing for more than three years.

CONCLUSION

Petitioner raises significant issues concerning the constitutional rights of military servicemembers and their families. Petitioner has demonstrated error in the decision of the Supreme Court of Georgia and the Georgia Court of Appeals. Petitioner has further demonstrated that as a result of this error he and his minor children have been and continue to be deprived of their constitutional rights.

RELIEF REQUESTED

For the reasons stated above, Petitioner requests the Court to grant his Petition for Rehearing to consider his Writ of Certiorari to the Supreme Court of Georgia.

Respectfully submitted,



Carson J. Tucker
Lex Fori, PLLC
Attorney for Petitioner
(734) 887-9261

Dated: July 23, 2021