

No. _____

In the Supreme Court of the United States

AMMAR IDLIBI,

Petitioner,

v.

STATE OF CONNECTICUT,

Respondent.

On Petition for a Writ of Certiorari to the Appellate
Court and the Supreme Court of the State of
Connecticut

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Petitioner in this case is the natural father of three children, removed from their natural mother's care and kept in 'temporary' foster placement (while on a plan of reunification with their parents) for 48 months between the date of their removal and the date of the decision terminating the Petitioner's parental rights. The foster household practices a religion different than that of the children's. In the termination proceeding, the court relied on reconsidered findings from a prior (neglect) proceeding to terminate Petitioner's parental rights and disregarded the children's religious affiliation.

The questions presented are:

- 1- Whether the State's prolonged 'temporary' foster placement (in excess of 40 months) of children on a plan of reunification, violated federal law, impinged upon a claimed religious freedom and violated the Petitioner's rights under the Fourteenth Amendment's Due Process Clause.
- 2- Whether the State court's reconsideration/relitigation of findings from a prior proceeding:
 - a) Violated the Fifth and Fourteenth Amendment's Due Process Clause, and;
 - b) Deprived the Petitioner of his fundamental right to a fair trial resulting in the erroneous deprivation of his parental rights.

PARTIES TO THE PROCEEDING

Petitioner Ammar Idlibi, is the natural father of the three children who were the subject of a neglect proceeding and a subsequent parental rights termination proceeding.

Respondent is the State of Connecticut whose agency, the Department of Children and Families (“DCF”), was responsible for fostering the children during almost five years of litigation, whose Appellate Court affirmed the termination of parental rights of Petitioner and whose Supreme Court denied Petitioner certification.

To preserve confidentiality, the identities of the petitioner’s children are in a sealed letter on file with the clerk.

The three children are represented by three state-appointed counsels: Brian T. Walsh, Esq., Robert Lewonka, Esq., and Kata Maluszewski. Esq.

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INTRODUCTION

This is a tragic case of three normal, healthy young children, whom the State removed from the care of their natural mother, and kept in 'temporary' foster placement on a plan of reunification for over 48 months in a household that practices a different faith of that of the children's.

This Petition does not attempt to dispute factual findings made by the lower courts.

After 29 months of temporary foster placement, the children were adjudicated neglected. After 48 months of temporary foster placement, parental rights were terminated for both parents. The termination petitions were exclusively triggered by the children's expressed desire to remain in the foster home permanently and to be adopted by the foster parents. The trial court reconsidered the neglect findings from the prior neglect proceeding and used those reconsidered findings to terminate the Petitioner's parental rights in the subsequent termination proceeding. The Petitioner appealed to Connecticut Appellate Court. In his Brief to the Appellate Court, the Petitioner emphasized at length, the State's violation of the Federal Adoption and Safe Families Act, which is the sole responsibility of the State to comply with. In response, the Respondent declined to hold its State agency ("Department of Children and Families") responsible for this violation. There was never a finding, by any standard of proof, that the children would be unsafe in the care of the Petitioner. The petitioner invoked the Doctrine of Collateral Estoppel, claimed relitigation of findings from a prior proceeding, and claimed deprivation of his right to a fair trial.

Respondent affirmed losing the Petitioner's parental rights to the foster parents on the 'best interest' ground of "permanency and stability" with the foster parents after 48 months of temporary foster placement. Respondent declined to give collateral estoppel effect to the prior judgment (of neglect.)

Losing the constitutionally protected parental rights of the Petitioner to the foster parents on the ground that the children's 'best interest' is better served by being adopted by the foster parents, not only violates the Fourteenth Amendment's Due Process Clause, but also gives greater weight to the foster

parents interest in keeping the children, whom they developed an emotional attachment to, over the constitutional rights of the natural parent. Reconsidering findings from a prior proceeding violates the Doctrine of Collateral Estoppel long observed by this Court, and violates Petitioner's right to Due Process and his fundamental right to a fair trial.

OPINIONS BELOW

The trial court's oral decision adjudicating the children neglected is reprinted at 1a and 43a.

The trial court court's written Memorandum of Decision terminating the Petitioner's parental rights is reprinted at 44a and 120a.

The Appellate Court's decisions are reported at *In re Omar I.*, No. 43251, 2020 WL 2763313 (Conn. App. Ct. May 27, 2020), and reprinted at 121a and 211a.

The Petitioner's Motion for Articulation is reprinted at 211a and 221a. The Petitioner's Motion for Review of trial court's denial of articulation is reprinted at 222a and 230a. The Appellate Court's denial of Petitioner's Motion for Review is reprinted at 231a. The Connecticut Supreme Court's denial of Petitioner's Petition for Certification is reprinted at 232a.

JURISDICTION

The Appellate Court's opinion was issued on May 27, 2020. The Connecticut Supreme Court denied certification on June 23, 2010. This petition is timely filed within 90 days, pursuant to Supreme Court Rule 13.1 This Court has jurisdiction under 28 U.S.C. 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

Right To Fundamental Fairness. The Fifth Amendment to the United States Constitution provides:

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

The Fourteenth Amendment states in relevant part:

“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.”

The Free Exercise Clause of the First Amendment protects citizens' right to practice their religion as they please, so long as the practice does not run afoul of a "public morals" or a "compelling" governmental interest.

STATEMENT

A. Legal Framework

This case is about fundamental fairness and preserving a parent's liberty “to direct the upbringing and education of his children,” a right protected by the Fourteenth Amendment as interpreted in decisions such as *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 529 (1925). This Court has reaffirmed this right in several other cases over the years, including *Wisconsin v. Yoder*, 406 U.S. 205, 232-233 (1972), and *Troxel v. Granville*, 530 U.S. 57, 61 (2000). *Yoder* reaffirmed a parent's rights to direct the education of their children, while *Troxel* decided that, absent a compelling reason, the State could not interfere in a parent's right to raise his or

her children.

“It is the interest of the parent in the ‘companionship, care, custody and management of his or her children,’ *Stanley v. Illinois*, [supra], and of the children in not being dislocated from the ‘emotional attachments that derive from the intimacy of daily association,’ with the parent, [*Smith v. Organization of Foster Families* [for *Equality and Reform*, 431 U.S. 816, 844, 97 S.Ct. 2094, 2109, 53 L.Ed.2d 14 (1977)].” *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir.1977). This right to family integrity includes “the most essential and basic aspect of familial privacy—the right of the family to remain together without the coercive interference of the awesome power of the state.” *Duchesne v. Sugarman*, supra.

This Court has also specifically held that these rights are enjoyed only by those who are the children’s biological or adoptive parents, regardless of the relationship a third party may have with them. Foreexample, in *Smith v. Organization of Foster Families for Equality and Reform*, 431 U.S. 816 (1977), foster parents sought rights similar to biological and adoptive parents, based on the idea that a psychological bond was created between the foster parents and foster children. The Court re-affirmed that biological parents retain the constitutional right to direct the upbringing and education of their children, regardless of the interests of others who might have played a parenting role. *Id.* at 842-847.

This Court has held that “Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n. 5 (1979); Scott, Collateral Estoppel by Judgment, 56 Harv. L. Rev. 1, 2-3 (1942); Restatement (Second) of Judgments § 68 (Tent. Draft No. 4, Apr. 15, 1977) (issue preclusion). Application of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions. *Southern Pacific R. Co., supra*, at 49; *Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 299 (1917).

“We said that collateral estoppel “means simply that when an issue of ultimate fact has once been determined by a

valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." 397 U.S., at 443. " *Harris v. Washington*, 404 U.S. 55, 56 (1971).

[The doctrine] "ordinarily applies to parties on each side of the litigation who have the same interest as or who are identical with the parties in the initial litigation. *Ashe v. Swenson*, 397 U.S. 436, 464 (1970).

B. Factual And Procedural Background

The two biological parents had three children born to their marriage in 2008, 2009, and 2010. On May 2015, the mother filed for divorce, and the two parents separated. Around the same time (of separation/divorce filing), the Petitioner discovered that the mother has been having an extramarital affair with a convicted pedophile/sex offender. Pet. 10a, 22a. Alarmed by this discovery, the Petitioner filed an Affidavit in family court in July 2015, seeking an Ex Parte Order of Custody of the children, expressing, amongst other allegations, a concern that the mother might allow her paramour to access the children. Subsequently, the Superior Court for Juvenile Matters ordered the children into the temporary custody (OTC) of the State's Department of Children and Families ("DCF" hereafter.)

Within two hours of being notified of the court's OTC decision, the mother called 911 alleging that the Petitioner was actively assaulting her. The Petitioner was arrested and charged. After a thorough police investigation, the charges against the Petitioner were dismissed with prejudice. The Petitioner always maintained that the mother staged a fabricated assault with self-inflicted injuries. DCF initially substantiated physical neglect against the Petitioner as to the three children, but that substantiation was later reversed by order of the Hearing Officer pursuant to an Administrative Hearing requested by the Petitioner.

DCF filed neglect petitions on behalf of the three children in juvenile court alleging that a 'domestic violence' incident put the children at risk of physical harm. On August 7, 2015, the OTC was sustained by agreement as the Petitioner was still facing criminal charges at that time with an automatic protective order typically associated with such charges. The Petitioner does not have a criminal history, nor any other form

of violence history. Pet. 9a.

After removal, the children have consistently expressed a strong desire to return to the care of their parents. Approximately three months after removal, 'Safiyah' was video-recorded in hysterical tears begging her father (the Petitioner) to return to his care. (Ex. J41.) The children grew up in a practicing Muslim household. The children were placed in a practicing Christian household (per DCF's Social Studies.)

On October 2015, court-assigned psychologist ("Dr. Humphrey" hereafter) conducted a court-ordered Psychological Evaluation of the children and of their parents, which also included interactional evaluations. Ex. J2. Dr. Humphrey reported that the children wanted to go home to their parents, that they had positive memories of their family life, and that all three children had positive interaction with the petitioner (Ex. J2, pp. 49, 50, 59, 79.) No psychological or mental issues were reported as to the three children. Both parents were reported not to be mentally ill (p.55.)

On May 26, 2017, approximately twenty-two months after temporary foster placement, counsel for the children withdrew because the three children had developed three different positions in terms of their desired permanency, after they were all united on a strong desire to return back to their natural parents. Three different counsels were appointed accordingly. Children counsels' motions for mistrial were granted.¹

A neglect trial was held after over 24 months of temporary foster placement. In an oral decision dated December 18, 2017, the Court adjudicated the three children neglected due to "the injurious conditions around the children regardless of whom caused the mother's injuries." Pet. 8a. During the neglect trial, the Petitioner called the police detective to testify. In his testimony the police detective identified many reasons to believe that the alleged assault did not happen. Pet. 7a, and Ex. J-48.

In the neglect proceeding, several key issues were raised, discussed and ruled upon, mostly referenced in the oral decision.

¹ Judge Frazzini offered the children's counsels to waive their right for appointing a new Judge in order to expedite permanency for the children through reunification with their parents, but his offer was met with rejection by the children's counsels.

Pet.1a-43a. For example, the alleged incident of assault (and the potential domestic violence) was raised, extensively discussed and referenced in the oral decision. The Court determined it was inconclusive as to what happened on that incident. Pet. 7a. The court did not make a finding that the Petitioner is domestically violent. The court did not make a finding that the reported incident was an “incident of domestic violence.” Accordingly, the court did not enter an order for the Petitioner to participate in a domestic violence program. Moreover, the criminal court dismissed all charges against Petitioner with prejudice.

The circumstances surrounding the children’s removal were raised, litigated and discussed. The court did not make a finding that the Petitioner “misrepresented the circumstances surrounding the children’s removal.” The issue of the Petitioner’s parenting style was raised, extensively discussed and referenced in the oral decision. Pet. 14a-15a. The court did not make a finding of an atypical parenting style that might raise concerns. Accordingly, the court did not order the Petitioner to take parenting classes.²

The Petitioner’s affidavit regarding the mother was raised, extensively discussed and referenced in the oral decision. Pet. 5a, 6a, 7a, 8a. The court did not find that the Petitioner’s affidavit contained any misrepresentations or false statements. The mother’s allegations (investigated and unsubstantiated by DCF in 2011) about inert-sibling sexualized behavior were raised and discussed. The court did not credit those 8 years old unsubstantiated allegations and did not enter any orders regarding them.

The Petitioner’s motions in the prior proceeding were heard by the court in the prior proceeding; the court never indicated that any of the Petitioner’s motions contained misrepresentations or falsehoods. The petitioner’s mental health was raised, discussed and referenced in the oral decision. The Court did not find that the Petitioner is mentally ill, nor did the court-assigned psychologist. (Ex. J2, p. 55.)

² Connecticut child protection courts utilize a standard form with ‘boxes’ that delineate the ‘Specific Steps’ ordered for each party. Both the ‘parenting classes’ and the ‘domestic violence program’ boxes were left unchecked by the court. Furthermore, the court-assigned physiologist did not recommend a domestic violence program for the Petitioner. Ex. 4.

The children's absences from school were raised and discussed. The court did not make a finding of educational neglect, as all three children were at their normal grade levels.

The court made a finding that the children's religious upbringing is Islam and ordered the foster parents to support their Islamic religious upbringing. Pet. 29a. The court expressed great concern that the children, while in foster placement, developed a fear of getting killed if they remain Muslims. Pet. 10a and 26a.

The prolonged foster placement was raised and discussed. Pet. 23a. The court did not make a finding that the Petitioner was responsible, in any way, for the prolonged foster placement. The court did not make a finding that it would be unsafe for the children to return to either parent's care after 29 months of temporary foster placement have lapsed since removal.³

Committing the children to DCF was on the basis of two categories of grounds that gave rise to 'Specific Steps' issued to DCF and to both parents. The first category that is directly related to the children, was the court's finding that the children have developed misunderstandings of the Petitioner and of their religion during their extended foster placement. Pet. 29a. DCF was ordered to address those misunderstandings in the form of therapy for the children. Pet. 29a. The second category was indirectly related to the children, which was resolving parental conflict through individual therapy and co-parenting coordination.⁴ Pet. 29a.

³ "Foster care is a temporary setting and not a place for children to grow up. To ensure that the system respects a child's developmental needs and sense of time, the law includes provisions that shorten the timeframe for making permanency planning decisions, and that establish a timeframe for initiating proceedings to terminate parental rights. The law also strongly promotes the timely adoption of children who cannot return safely to their own homes." Source: U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration for Children, Youth and Families. Log No: ACYF-CB-PI-98-02. Issuance Date: January 8, 1998. Originating Office: Children's Bureau."

⁴ Judge Frazzini, who presided on the case before the mistrial, openly criticized the heavy emphasis during the proceeding on the 'intimate partner' relationship and the conflictual relationship between the two divorced parents who have been living separately since the children's removal.

The court ordered updated psychological evaluations, partially because the court found the mother misrepresented and was untruthful about her sexual relationship with her paramour. Pet. 41a.

The [neglect] court (*Lobo, J.*) made a finding that there was a dynamic of control in the relationship between the two parents while they were married prior to their separation and prior to the children's removal. Pet. 20a.

The [neglect] court (*Lobo, J.*) found that the children were very attached to the petitioner and struggled to separate from him. Pet. 10a. The Court also noted that "all three kids are bonded with, and love both parents." Pet. 35a.

After about 25 months of temporary foster placement, 'Omar' started refusing to participate with some of the visits with the Petitioner, while also enjoying the visits with the Petitioner. Pet 39a. The court ordered such refusal be addressed in therapy. Pet. 38a.

In his second report, Court-assigned psychologist recommended that the children be reunified with the Petitioner as the primary caretaker. Ex. 5, p. 83. DCF filed annual Permanency Plans of reunification with the natural parents, but consistently advocated for the mother to be the sole custodian of the children, opposing the recommendation of Court-assigned psychologist and opposing the plan of co-parenting coordinator. The Petitioner objected to the mother being the sole custodian. The Petitioner withdrew his objection after DCF agreed to file a plan of reunification with 'either' parent. Pet. 49a.

On May 21, 2018 (approximately 34 months after the temporary foster placement), Dr. Humphrey reported, once again, positive interaction of the children with the Petitioner and recommended reunification of the children with the petitioner as the primary caretaker. Ex. J5, p. 30 and p.83. Dr. Humphrey later testified that the children's stability is better secured with the Petitioner. Tr. 3/21/2019, p. 23. He also expressed in his testimony (and report) that the children have been influenced with negative information to reject the Petitioner. Ex. 5, p. 67 and Tr. 3/21/2019, p. 11. Yet, in spite of all that, the children's interactive with the Petitioner remained consistently positive. Dr. Humphrey reported that during their

extended foster placement, children developed a belief that Islam is an undesirable religion. Ex. J5, p. 80, and developed a belief that that the Petitioner “perpetrated physical violence.” Ex. J5, p. 76. Dr. Humphrey testified that he “was not convinced after conducting the interviews, that the children had directly witnessed physical violence.” Tr. 3/21/2019, p. 17.

In the second evaluation conducted approximately 3 months after the neglect court’s decision, Dr. Humphrey reported that the Petitioner exhibited some elements of control (that are not coercive in nature.) Specifically, the Petitioner’s request to communicate with the mother’s therapist (already referenced by the neglect court’s decision at pet. 15a), Petitioner’s attempt to communicate with the mother’s counsel, and removing items from a vehicle that Petitioner leased for the mother when the lease expired and Petitioner returned the vehicle to the dealership. Ex. J5, p. 75.⁵

About 40 months after foster placement, the children expressed a desire to remain in foster home permanently and expressed to their counsels a desire to be adopted by the foster parents Pet. 188a. The oldest child (‘Omar’) reasoned his desire to be adopted because he does not want to remain Muslim, and he is now adamant to become a Christian. Pet. 84a. Accordingly, the children’s counsels filed petitions for termination of parental rights on November 8, 2018. Initially, DCF opposed the termination petitions and submitted in its pretrial memorandum that both parents “have made significant progress in addressing the issues that lead to the children’s commitment, and appropriate during visitation with the children.” (DCF’s pretrial Memorandum filed on 11-19-18, p.2.) DCF opposed revocation of commitment holding that temporary foster placement of the children needed to be extended even longer. However, at the commencement of the trial, DCF changed its position and supported the termination petitions.

⁵ The trial court characterized those observations by Dr. Humphrey in the following manner:

“Dr. Humphrey opined after the second evaluation, that the issues of intimate partner violence and coercive control continued to exist in the family dynamic and that Father continued with his controlling behavior since the prior evaluation.” Pet. 69a. Appellate Court affirmed at Pet. 144a.

After about 40 months of temporary foster placement, a subsequent termination of parental rights trial was held. In its written decision terminating the Petitioner's parental rights, the trial court (*Burgdorff, J.*) reconsidered/relitigated many findings from the prior neglect proceeding.

The most important and most serious reconsideration was the trial court's subsequent (criminal) finding that the mother's accounts of assault are "credible." Pet. 66a, and that the Petitioner is guilty of a "horrific" crime of assault. Accordingly, the trial court labeled the Petitioner with a "criminal history." Pet. 63a, affirmed by the Appellate Court at Pet. 138a⁶. In fact, the reported incident was referenced as a "domestic violence incident" *at least 18 times* throughout the Appellate Court's decision. See Pet. 121a-211a.

The Petitioner argued that trying a parent whom the court improperly presumed to be a criminal, guilty of a "domestic violence incident", is a violation of the Petitioner's right to fundamental fairness, which had deprived the Petitioner of his right to a fair trial.

Other serious reconsiderations included, but not limited to; a subsequent finding that: "many of the motions and affidavits, and specifically, the affidavit filed with the OTC on July 29, 2015, contained clear misrepresentations, falsehoods, and inconsistencies." Pet. 65a. That the Petitioner "misrepresented and lied about the circumstances of the children's removal." Pet. 104a. That the mother's 8 years old unsubstantiated allegations are credible.⁷ Pet. 154a, 161a, and supervisory measures must be taken accordingly. Pet. 161a, because of which the petitioner's supervision was inadequate.⁸ That there was a finding of 'educational neglect'. That the Petitioner continues to have "ongoing mental health and

⁶ The Petitioner does not have a criminal history. *Id.*

⁷ Judge Burgdorff credited all of the mother's allegations including those dismissed by Judge Lobo in the prior proceeding, but did not credit mother's sworn testimony that the Petitioner did not attempt to control her in any way since the children's removal, in the mother's answer to judge Burgdorff direct question. Tr. 2/26/19, p. 70.

⁸ Judge Lavine, one of the three panelists' judges on the Appellate Court, explicitly opined during oral argument that the [relitigated] finding of 'inadequate supervision' is "speculative" because of lack of evidence and the sole reliance on unsubstantiated allegations by the mother from 2011.

parenting deficiencies.” Pet. 133a. The trial Court determined the Petitioner’s filing of a motion requesting his expert to examine the children ‘coercive control’ (of the court) that continued “up to the commencement of the trial” (which is indicative of a failure to rehabilitate from being controlling.) Pet. 172a. The court ruled that the children best interest in “continuity and stability” is with the foster parents. Pet. 92a and 109a. The statutory element used by the court to terminate the petitioner’s parental rights was a finding that petitioner had failed to rehabilitate (from being controlling.)

The reconsideration went as far as using the ‘intimate’ relationship between the parents, while they were married, as grounds to terminate Petitioner’s parental rights as if the two separated and divorced parents were still ‘intimate partners’ during the 4 years while the children were in foster placement.

After the written decision was issued, the petitioner felt he was ambushed by the excessive reconsiderations of the prior neglect proceeding and complained to the Appellate Court that this form of relitigation deprived him of his fundamental right to a fair trial (Appellant’s Brief, p. 10.) The Appellate Court rejected the Petitioner’s argument and held that trial courts may reassess evidence from neglect trials in subsequent termination trials. Pet. 122a.

Based on an evaluation dated 11/19/18 (about 40 months after foster placement) of an expert psychologist hired by the children’s counsels, the court found that the children have developed “significant psychological issues”, “anxiety about their religious identity” and have (tragically) become children with special needs. Pet. 84a.

Children’s counsels’ expert psychologist (Dr. Frazer) testified that the children wanted to maintain a connection with the Petitioner even if they were to be adopted by the foster parents. Tr. 2/4/2019, p. 57.

The Petitioner filed his appeal to the Appellate Court on August 1, 2019. On August 13, 2019, the Petitioner filed a Motion for Articulation on the basis of his right to Due Process and Equal Protection. Pet. 212a-221a. In that Motion, the Petitioner moved for on articulation on the distinction between the attendant findings from the prior neglect proceeding and the

findings from the subsequent termination proceeding (for the purpose of arguing on invoking The Doctrine of Collateral Estoppel.) The trial court denied the Petitioner's Motion for articulation. The Petitioner subsequently invoked the Appellate court's jurisdiction and filed a Motion for Review of the denial for articulation, but the Appellate Court denied the Petitioner relief and refused to direct the trial court to articulate. Pet. 231a.

The Appellate Court held that the State's DCF is not to blame for the prolonged foster placement." Pet. 125a.

In its Statement of Opposition to the Petitioner's Petition for Certification to the Connecticut Supreme Court, filed on June 15, 2020, DCF reasoned the length in temporary foster placement as follows:

"The neglect petition, along with several other motions filed by the respondent, were litigated over the course of 2 years and 4 months, including a mistrial after the children changed their positions on placement."

On pages 3-4 of the same above Statement, DCF reasoned its support of the termination petitions as follows:

"Due to the lapse in time since filing and the children's decision to seek termination of their parent's parental rights and adoption."

The Connecticut Appellate court acknowledged that it is a very rare occurrence that children file parental rights terminations petitions at pet. 211a, but did not articulate the underlying causes for such rare occurrence.

REASONS FOR GRANTING THE PETITION

I. This Court needs to interpret federal law as it pertains to the biological parents' constitutional rights.

There is an inherent connection between federal adoption laws, specifically the Adoption and Safe Families Act (ASFA) enacted in 1997, and the constitutionally protected rights of biological parents, under the Due Process Clause of the Fourteenth Amendment. The interpretation and clarification of

this connection merits this Court's review.

Disputes involving State's compliance with the Adoption and Safe Families Act (ASFA) enacted in 1997, were never raised before this Court.

Provisions of the Adoption Assistance and Child Welfare Act of 1980, Pub.L. No. 96-272, 94 Stat. 500, 516 (June 17, 1980) (codified as amended at 42 U.S.C. §§ 620- 628 and §§ 670-679a) ("the Adoption Act") " 31 *Foster Children v. Bush*, 329 F.3d 1255, 1261 (11th Cir. 2003) clearly emphasize the priority of "timely permanent placement of waiting children", which is the sole responsibility of the state agency per the plain language of the federal statute.

The Adoption and Safe Families Act (ASFA) enacted in 1997 provides the following in relevant parts:

SEC. 101. CLARIFICATION OF THE REASONABLE EFFORTS REQUIREMENT. (a) IN GENERAL.—Section 471(a)(15) of the Social Security Act (42 U.S.C. 671(a)(15)) is amended to read as follows: "(15) provides that— "(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern; "(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families— "(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and "(ii) to make it possible for a child to safely return to the child's home; "(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child

"(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child

SEC. 202. “(12) contain assurances that the State shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children.”

SEC. 305 “(A) IN GENERAL.—The term ‘time-limited family reunification services’ means the services and activities described in subparagraph (B) that are provided to a child that is removed from the child’s home and placed in a foster family home or a child care institution and to the parents or primary caregiver of such a child, in order to facilitate the reunification of the child safely and appropriately within a timely fashion, but only during the 15-month period that begins on the date that the child, pursuant to section 475(5)(F), is considered to have entered foster care.

Per the plain language of the Adoption Act and ASFA, excessive and unreasonable delay of foster placement and not placing the children “in a timely manner in accordance with the permanency plan” violates the Federal Adoption and Safe Families Act (ASFA) specifically sec. 101 (15) (B) and Sec. 202 (12) and the ‘adoption statute’. In this case, three annual Permanency Plans were filed prior to the termination trial. All three Permanency Plans called for reunification. With every filing, the trial court made a finding that DCF had made ‘reasonable efforts’ to reunify, but never made a finding that those reasonable efforts were timely. The court never made a finding that it would be unsafe for the children to return to Petitioner, although Sec. 305 (A) holds the child safety as the primary determinant factor in reunification.⁹

⁹ This is a deficiency in Connecticut law that requires an annual finding of ‘reasonable efforts’ to reunify, but does not address the time and the safety elements as provided in language of the federal adoption statutes. The Petitioner argued that the prolonged foster placement amounts to violation of the statute even if a finding of ‘reasonable efforts’ was made (absent the statutory timing element and absent the statutory safety element.)

A. This Court must intervene to determine whether prolonged foster placement amounts to violating federal law, and the determinant benchmark when such violation occurs.

In his Brief to the Appellate Court (pp. 32-36) and in his Reply Brief to children's counsels (p.18), the Petitioner argued that a violation of the Federal Adoption and Safe Families Act occurred by extending foster placement for an unreasonably long period of time. The Petitioner further argued that such violation created an 'untrue barrier' between the Petitioner and his children, thus violating the statutory mandate of reasonable efforts. Pet. 194a. This untrue barrier inevitably infringes on the constitutionally protected parental rights. In this case, this infringement was manifested by the very filing of termination petitions by the children as a direct result of the prolonged foster placement.¹⁰ In response, Connecticut highest authority now permits its State agency to prolong foster placement of children on a plan of reunification indefinitely (48 months in this case.) The cited justifications, were "the difficulties the father posed in participating in the services the department offered him and his failure to provide adequate supervision."¹¹ And therefore, "it was disingenuous for him [the Petitioner] to blame the department for the fact that the children were in foster care for a lengthy period of time." Pet. 197a. If that was indeed the case, then this Court needs to determine whether the State was mandated by the federal provisions to file for termination of parental rights within 15 month of foster placement, and if so, whether the State is mandated to prove by clear and convincing evidence that it would be unsafe for the child to return to the care of their natural parent. In this case, the State did not do that. Instead, it kept the children on a Permanency Plan of reunification and even filed a pretrial memorandum with the court on November 19, 2018 (40 months after foster placement) opposing

¹⁰ See pet. 118a: "The court must reiterate and emphasize in its best interest findings that Omar, Safiyah, and Muneer have consistently, repeatedly, and adamantly stated that they do not want to return to either Mother's or Father's care."

¹¹ This is in stark contrast with what DCF submitted to the Connecticut Supreme Court; that the reason for delay was the mistrial and the several motions. With regards to supervision: Judge Lavine, one of the three panelists' judges on the Appellate Court, orally opined during oral argument that the finding of inadequate supervision is "speculative." *Id.*

termination and attesting that the petitioner was “appropriate during visits.” *Id.* Moreover, in the prior neglect proceeding, the court on December 18, 2017 (29 months after foster placement) did not make a finding of “difficulties” on the Petitioner’s part in participating with services, nor did it make a finding of inadequate supervision by the Petitioner. This takes us to the second question presented in this Petition before this Court, which is the constitutionality of reconsidering/relitigating findings from the prior proceeding of neglect. If after 29 months of foster placement, a full trial by a competent jurisdiction did not make a finding of adverse conduct by the Petitioner that might have delayed permanency, then a violation of federal law must have occurred at the 15 months mark after foster placement. This Court needs to determine whether this is the sole responsibility of the State or not.

This Court needs to review whether this excessive delay amounts to the State’s noncompliance with federal law and to review the impact of this noncompliance on the constitutionally protected rights of the natural parent, and on the children’s welfare. Furthermore, this Court needs to intervene to establish whether another party (other than the State) could be held responsible for noncompliance with federal law by causing the extended foster placement, and the required standard of proof for such finding.

There was never a finding that the Petitioner was unable to provide an environment where the children will be nourished and protected. There was never a finding that the Petitioner was an unfit parent.¹²

This court needs to establish the benchmark at which a violation of the above federal provisions occurs in the case of prolonged foster placement, and at what point such violation infringes on the protected parental rights of natural parents, and whether this infringement deems a termination petition filed by the children unlawful and unconstitutional.

¹² “proof of unfitness must rise to the level of clear and convincing evidence before a parent’s rights could be terminated, and observing that “until the state proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their relationship” *Santosky v. Kramer*, 455 U.S. 745 (1982).

B. Losing parental rights to foster parents after 40 months of extended foster placement, is flawed, and must be deemed unlawful and unconstitutional.

On the 'best interest' grounds, the trial court clearly gave much heavier weight to the "stability, continuity sustained growth, development, well-being and permanency" of the children with the foster parents over the constitutionally parental rights of the natural parents. Pet. 116a, 118a, 176a, 177a. The only reason this much weight was given was because of the prolonged foster placement. Therefore, this Court's review is triply warranted for the following reasons:

If this Courts holds the prolonged foster placement unlawful, this would mean not only the trial court allowed the foster relationship to occupy the same constitutional plane as that of the natural family, but also transferred the constitutionally protected rights of the natural parents to the foster parents on unlawful grounds.

"If the foster family relationship were to occupy the same constitutional plane as that of the natural family, the conflict between the constitutional rights of natural and foster parents would be totally irreconcilable. *Smith v. Organization of Foster Families*, 431 U.S. 816, 862 n. 3 (1977).

This Court's review is further warranted to prevent a preferential competition between natural parents and foster parents resulting from prolonged foster placement, which is undoubtedly detrimental to a child's psyche. Foster parents who bond long enough with a child, inevitably develop an emotional attachment to that child. As long as foster parents are lead to believe that all it takes is for a child preference to file termination petition for them to win the parental rights of that child, they will be in a preferential competition with the natural parents. This is exactly what happened in this case.

C. This Court needs to determine whether prolonged foster placement in a household of a different faith impinges upon the religious freedom of the children and the on the constitutional rights of their parents.

42 U.S. Code § 2000bb (a) provides: "Government shall

not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b)."

"This, first, because when state action impinges upon a claimed religious freedom, it must fall unless shown to be necessary for or conducive to the child's protection against some clear and present danger, cf. *Schenck v. United States*, 249 U.S. 47;" *Prince v. Massachusetts*, 321 U.S. 158, 167 (1944).

While fostered for 40 months in a family that practices a different religion, all three children end up rejecting their faith and explicitly expressed a desire to embrace the religion of the foster parents, even used that reason to request to be adopted by the foster parents. *Id.* The Connecticut Appellate Court determined that since the Petitioner's "visitation time with the children was increased by thirty minutes [weekly] for the purpose of religious education", this was sufficient to satisfy the protection requirement of the claimed religious freedom. Pet 170a. The Petitioner's argued that no amount of religious education in half hour a week could offset the religious influence in the foster home 24/7, especially after 40 months of foster placement. The Petitioner argued that he stopped providing religious education to the children as soon as he sensed their novel rejection to their religious upbringing in order to avoid propagating an internal conflict of faith in the children's minds.

D. This Court must intervene to prevent this form of State-sponsored child abuse.

In This case, within a span of 48 months of temporary foster placement under the watchful eye of the State of Connecticut, three young healthy, normal children, bonded and attached to their natural parents were turned into three torn children, persistently depressed children, anxious children with significant psychological issues, and children with psychological special needs, desperately begging to convert to Christianity.

State Supreme Courts' Case law is replete with strong warnings of the adverse effects of prolonged foster placement described as 'deleterious', 'detrimental', 'devastating.' In fact, in his testimony, Dr. Humphrey strongly stressed the importance of "recognizing the state of anxiety the children can be held in, the degree to which anxiety can affect the brain and the brain

functioning.” Tr. 3/21/19, p. 23.

Omar’s therapist, Mr. Michael DeRosa, testified that Omar now suffers from “persistent depressive disorder”. Tr. 1/29/19, p. 79, and anxiety spectrum. Tr. 1/29/19, p. 89. On July 27, 2019, based on the most recent psychological evaluation of the children, conducted after 40 months of temporary foster placement, the court found that the children have “significant psychological issues, anxiety about their religious identity and are now children with special needs.” Pet. 84a.

One can only imagine the mental state of three young children, now depressed and anxious with special needs, who have been very bonded with and love the Petitioner, then less than 12 months later, they file Petitions to sever all connection with the Petitioner. Yet they want to maintain a connection with the Petitioner after adoption. *Id.* Rejecting visits while enjoying them at the same time. Caught in a conflict between their allegiance to their foster parents and their love for their natural parents. Their brains’ functioning has been affected by lack of permanency for over 40 months. *Id.*

This Court needs to hold that the mere filing of termination petitions by children under this kind of emotional distress, confusion and mental malfunction, as unconstitutional and unlawful. This Court should intervene to prevent similar tragic situations that lead to such devastating effects on children and unlawful filings of transferring parental rights to foster parents.

II. This Court’s intervention is warranted to prevent erroneous deprivation of parental rights by ambush.

Blurring the lines between attendant findings from prior proceedings and subsequent findings in subsequent proceedings, is a sure way to violate due process and ensure the erroneous deprivation of parental rights.

According to Connecticut Appellate Court’s analysis in this case; because “An adjudication of neglect relates to the status of the child and not necessarily parental fault”, it is perfectly within the trial court’s discretion in the subsequent proceeding to make “subordinate factual findings that, while not made during the [prior] neglect proceeding, were not in any way

contrary to the finding of neglect.” Pet. 183a. Thus, subjecting the unsuspecting parent to a trial by ambush, only to receive the shock of adverse relitigation after the final decision is issued. In this case, the ‘subordinate factual findings’ in the subsequent proceeding rose to the level of a finding of a criminal offense (assaulting the mother.)¹³ Something as serious as a subsequent finding of a criminal offense is a compelling example on how far disregarding the doctrine of collateral estoppel can go in stripping parents of their constitutionally protected rights.

Clarifying the application of the Doctrine of Collateral Estoppel in neglect proceedings followed by termination proceedings in child protection cases merits this Court’s review, considering the common pattern of termination proceedings that are almost always preceded by prior proceedings of neglect or abuse. Blurring the lines between the findings in the two consecutive proceedings not only violates the doctrine of Collateral Estoppel, long observed by this Court, but also infringes on the constitutionally protected parental rights of biological parents risking the erroneous deprivation of their parental rights.

Connecticut highest authority now permits the reconsideration and relitigation of findings already determined in a prior neglect proceeding through ‘reassessment’ of evidence in a subsequent termination proceeding. Pet 122a. Additionally, Connecticut law now dangerously transfers a matter of constitutional magnitude already defined by federal law, into the discretionary realm of lower state courts. The Appellate Court held that, in addition to permitting ‘reassessing’ evidence from a prior proceeding, the appellant also has the burden of “demonstrating a different outcome”, which transfers a basic constitutional right into the Appellate Court’s discretion. Thus, makes it subject to the broad discretion of the court to determine whether an appellant “demonstrated” a different outcome or not, thereby, denying the appellant the right to a constitutional error review.¹⁴

¹³ In this case, no new evidence was admitted regarding the assault allegations (not even old evidence.) The Petitioner admitted the police detective testimony from the prior proceeding as a full exhibit (ex. J48) to highlight the findings of the criminal investigation supporting the Petitioner’s claim of a fabricated assault.

¹⁴ In his Appellant’s brief, the Petitioner dedicated 13 pages to analyze a review of constitutional violation error on the basis of relitigation which deprived him of his fundamental right to a fair trial.

The review of this Court is doubly warranted when ‘failure to rehabilitate’ is alleged in the subsequent termination proceeding, when a parent is expected to ‘rehabilitate’ from condition that was not even identified in the prior proceeding.

III. Certiorari is warranted to determine whether judicial bias can manifest after the trial court issues its final decision, thus depriving the unsuspecting litigant of his fundamental right to a fair trial.

The Fifth Amendment, inheres in the right to a fair trial. A right to a fair trial is a right admittedly protected by the due process clause of the Fourteenth Amendment. *Moore v. Dempsey*, 261 U.S. 86, 91; *Chambers v. Florida*, 309 U.S. 227, 238; *Buchalter v. New York*, 319 U.S. 427.

In this case, the Petitioner was shocked to find that the trial court in the subsequent termination proceeding found him guilty of assault, labeled him with a “criminal history” (pet. 63a), and found that he lied in his affidavits and motions in the prior proceeding, absent any evidence, old or new. *Id.* The Appellate Court rejected the Petitioner’s argument that he was deprived of his right to a fair trial because the Petitioner did not move for disqualification of the judge, nor asked the judge to recuse herself. Pet. 179a. In his brief, the Petitioner argued that Judge Burgdorff made questionable comments in a trial held four years after the children’s removal. Any motion for a mistrial would have delayed the proceedings by at least another year, and would have extended the children’s temporary foster placement even longer; something that was unthinkable to the Petitioner at that time.¹⁵

The Petitioner argued in his brief to the Appellate Court, that judge Burgdorff was obligated to recuse herself once she realized she was unable to be impartial, see 28 U.S. Code § 455. (a) “Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”

¹⁵ In a pretrial conference, Judge Barba Quinn advised children’s counsels not to pursue termination petitions as they did not have legal nor factual grounds to prevail. This gave the Petitioner a (false) sense of assurance that granting the termination petitions was almost a nonexistent possibility.

“[u]nder our precedents, the Due Process Clause may sometimes demand recusal even when a judge ‘ha[s] no actual bias.’ Recusal is required when, objectively speaking, the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.” *Aetna Life Ins. Co. v. LaVoie*, 475 U.S. 813, 825 (1986); *Withrow v. Larkin*, 421 U.S. 35, 47 (1975).

“At a basic level, procedural due process is essentially based on the concept of “fundamental fairness.” In 1934, the United States Supreme Court held that due process is violated “if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental”. As construed by the courts, it includes an individual’s right to be adequately notified of charges or proceedings, the opportunity to be heard at these proceedings, and that the person or panel making the final decision over the proceedings be impartial in regards to the matter before them.” *O’Toole v. Northrop Grumman Corp.*, No. 091468, at *8 (Apr. 30, 2010).

The Petitioner was not notified that he had the burden of defending himself against criminal allegations in a trial that was meant for revocation of commitment and termination of parental rights. The Petitioner was completely oblivious that he had the burden of proving the truthfulness of his filed motions and affidavits from the prior proceeding.

This Court’s review is urgently needed to determine whether a judge’s bias manifested in the final decision, is a violation of fundamental fairness. In his appeal, the Petitioner argued that clear and extreme reconsideration of findings from the prior (neglect) proceeding was indicative of judicial bias, especially when linked to some of the judge’s questionable comments during trial. In his Rely Brief to the children’s counsels’ Brief, the Petitioner claimed:

“Judge Burgdorff tried a father whom she predetermined to be a liar, domestically violent, guilty of a horrific crime of assault, and has not

rehabilitated form 'coercive control' because he coerced the court with his motion, which clearly deprived the father of his fundamental right to fair trial." Appellant's Reply Brief, pp.9-10.

The opinion of the Appellate Court affirming judgment, demonstrates the harm of judicial bias, manifested after the issuance of the decision, through its holding that the grounds supporting termination of parental rights on the basis of 'failure to rehabilitate' are "a pattern of intimate personal violence between the parents in the presence of the children." Pet. 122a. As if the two divorced parents have been 'intimate partners' living with the children during the 4 years of foster placement. No evidence of parental unfitness was identified.

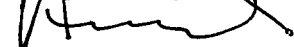
CONCLUSION

Innocent children are in jeopardy of devastation by incompetent State agencies. The overall judicial fundamental fairness is at stake.

State agencies are now permitted to operate with impunity, harming children while violating the Federal Adoption and Safe Families Act at will, and eroding the constitutional rights of fit biological parents recognized by *Troxel* and *Pierce*.

Children and families will continue to face the threat of similar tragedies until this Court intervenes. This case presents a compelling vehicle for that needed intervention. The petition should be granted.

Respectfully submitted,


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