No.

IN THE

Supreme Court of the United States

Christopher Gary Baylor,
Petitioner,

v.

AYANO ETO,
Respondent.

On Petition For Writ Of Certiorari
To The Minnesota Supreme Court for the Third District

EXPEDITED PETITION FOR WRIT OF CERTIORARI

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EXPEDITED

QUESTIONS PRESENTED

The Fourteenth Amendment of the United States Constitution protects against the deprivation by state action, of a constitutionally protected interest in "life, liberty, or property" without the due process of law. The Fourteenth Amendment's Due Process Clause requires the United States government to practice equal protection, crucial to the protection of civil rights. A violation of either these protections includes that a state may not interfere with a parent's marital or custodial status absent due process protections. The marital and parent-child relationship is a liberty interest that is said must be protected by the Due Process Clause of the 14th Amendment.

In *Simon v. Southern Railway Company,* 236 U.S. 115, 35 S. Ct. 255, 59 L. Ed. 492, this Court held that "a judgment against a person on whom no process has been served is not erroneous and voidable, but, upon principles of natural justice, and also under the due process clause of the Fourteenth Amendment, is absolutely void." The question that follows is: May a state court terminate the rights of a parent without notice or due process of service?

This Court answered the next question in *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996). May a state court deny an indigent person relief based on inability to pay?

The federal questions presented here conflict with decisions made by the state court of last resort, and are based on important issues of federal law.

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PETITION FOR A WRIT OF CERTIORARI

Christopher Gary Baylor respectfully petitions for a writ of certiorari to review the decisions of the state supreme court for the third district of Minnesota in this case.

OPINIONS BELOW

The decisions of the Minnesota supreme court (App., *infra*, 1a; 1c; 1d & 1f). The decisions of the Minnesota court of appeals denying petitioner's *writ of review* (App., *infra*, 1b-3b), and *leave for review* (App., *infra*, 1e-3e). The opinions of district court fam. (App., *infra*, 1g-3g, 1i-5i, 1j-4j). The opinion of district court civil (App., *infra*, 1h-12h).

JURISDICTION

The decisions of the Minnesota supreme court were entered on August 11, 2020 and October 20, 2020. This Court's jurisdiction rests on 28 U.S.C. § 1257(a).

STATUTORY PROVISION INVOLVED

Section 1657, Title 28, of the U.S. Code provides:

(a) Notwithstanding any other provision of law, each court of the United States shall determine the order in which civil actions are heard and determined, except that the court shall expedite the consideration of any. . . action if good cause therefor is shown. For purposes of this subsection, "good cause" is shown if a right under the Constitution of the United States or a Federal Statute (including rights under section 552 of title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit.

STATEMENT

The Federal Constitution provides Due Process, Equal Protection by law and outlaws discrimination based on race, color and sex. This Court's decisions provide that a court shall hear any case challenging certain decisions in derogation of these laws, upon a duty conferred by Congress and the Constitution, guaranteeing all citizens protection under that which is rooted in Fourteenth Amendment principles. In the case at bar, discrimination against non-resident Baylor, a protected class indigent male self litigant, plays a major role in the arbitrary use of the state court's legal impairments designed to block his right to obtain lawful relief, remedy or redress against void decisions made without notice or service of process obtained through fraud. This in turn has colorfully terminated his parental rights for more than 3 years in dozens of actions without Due Process of law.

This petition — involves a First and Fourteenth Amendment challenge to the final 2020 state court decisions, recognizing the Minnesota court's convoluted redistribution of protected rights to its own state members, rather than affording the same equal protection to out-of-state residents such as Baylor, which includes the rights of a large swath of non-residents, indigents, males, fathers and self litigants when a court of last resort declines to consider Due Process infringements obtained through an obvious use of fraud evinced on the face of the record. For even where there has been process and service, if the court "finds that the parties have been guilty of fraud in obtaining a judgment . . . it will deprive them of the benefit of it." *Simon,* 236 U.S. 115 at 122.

The Fourteenth Amendment claim in this case is — not because one district court judge determined that a claim is wholly frivolous (it is not), but because, in its singular view, Baylor's pleadings vitiate the district court's jurisdiction under state, this Court's precedence and Federal Law.

In taking that approach, fourth district court was following the third district appellate court's decision, without making an independent review of *prima facie* evidence not once considered by any court in the state of Minnesota. There, the third district court held that respondent's ineffective service procured by fraud was proper; district court's denial of Baylor's telephonic civil trial appearance while residing more than 1600 miles outside the territory of Minnesota — resulting in a default judgment against a non-resident indigent — did not violate Due Process; And that issuance of a decree dissolving a common-law marriage was a lawful exercise of the court's statutory authority; and that destruction of Baylor's evidence and pleadings was somehow remedied by a subsequent decision.

On the other hand, another fourth district court judge in a satellite case declined to review the merits of Baylor's case brought in an independent action, solely based on prior reasoning. Nevertheless, when a court of last resort sanctions such a departure by a lower court, certiorari calls for an exercise of this Court's supervisory power when state court departs so far from the accepted and usual course of proceedings, intervention is a must. Baylor's claims under the Fourteenth Amendment inextricably intertwine with First Amendment protections which implicate a deprivation of free speech when access to

the same court procedures as the respondent, state residents and other persons similarly situated, is denied to a non-resident.

The third district summarily affirmed both district court dismissals of Baylors' claims on that basis, disregarding improper service, absent notice, and the inability of an indigent to pay court cost, which involves a direct infringement and deprivation of Fourteenth Amendment protections when this Court has already said, "[d]ue process and equal protection principles converge." The equal protection concern relates to the legitimacy of fencing out would be [Baylor] based solely on [his] inability to pay core costs" *M.L.B.*, 519 U.S. 102 at 120.

Both decisions, refusing to consider failure of notice and service, combined with denial of the right of access to court based on the inability to pay costs are claims by definition that are not "insubstantial", properly subject to review.

The third district's interpretation of Due Process conflicts with its own holdings, this Court's precedents, and Eighth Circuit. Because the claims at issue are non-frivolous (indeed, should not have been dismissed or denied at all), it should have been heard by a three-judge panel under the state court teachings, and it would have been heard by a court if it had been brought in any other jurisdiction, or by an attorney, or state resident, or non-minority.

Proper resolution of the questions presented is a matter of great practical importance. The current issues are frequently recurring for more than 3 years, imposing an undue burden on the State, government and the American taxpayer, capable of repeating and

evading review for the next 13 years, as in challenges like this one, and in other cases brought under the Civil Rights Act e.g. 20-CV-1811-ECT/ECW, and other statutes e.g. 27-CV-20-4935. The constitution confers a duty upon this Court precisely because a state will implicate important and sensitive matters: The rather *colorful* termination of Baylor's parental rights is opposite *M.L.B* and lack of service thus procured by fraud, rejected in *Simon*. These authorities should guarantee the irrevocable loss of child custody which has severed Baylor's parent-child bond, "irretrievabl[y] destructi[ve]" of the most fundamentally important rights. Timely resolution not only promotes national public policy but guards against the influence of any one court's predilections, ensuring greater public confidence and more accurate judicial decision-making involving African-Native Americans, non-residents, indigents, males, fathers and self litigants. Further review is warranted.

A. Statutory background

This case concerns generally, the permanent and irrevocable loss of Baylor's familial rights through the existential and imminent removal of his only daughter from the United States of America — to a foreign country that is generally known not to honor the provisions of the Hague Convention, and without given Due Process of law — thus promoting the priority of this civil action. As since amended, Section 1657 provides that "for "good cause" shown, if a right under the Constitution of the United States exists, this factual context indicates that a request for expedited consideration has merit." Section 1657 of Code 28 (Pub. L. 98–620, title IV, §401(a), Nov. 8, 1984, 98 Stat. 3356).

At issue here is the "forced dissolution of [Baylor's] parental rights — that are large and more substantial than mere loss of money" *Id.* at 519 U.S. 102. Additionally, the long-settled rule "recogniz[ing] a narrow category of civil cases in which the State must provide access to its judicial processes without regard to a party's ability to pay court fees." *Id* at 113, instead lies solely with lower court's unilateral discretion and loyalty to its own state residents, not the fair and equal protection for minorities, non-residents, males, father's, indigents or self litigants found in the United States constitution. The district court itself lacks personal jurisdiction over Baylor and of the respondent's complaints, as to the subject-matter. Furthermore, lower courts have repeatedly exercised racial discrimination against Baylor.

In this context, expedited intervention by this Court is necessary, since the lower courts have not provided a fair means for Baylor to have his day in court, and his "choices about marriage, family life, and the upbringing of [his] child are among associational rights this Court has ranked as of basic importance in our society, rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect." *Id* at 116 (quotations and citations omitted).

Baylor's claims 'wholly' and 'obviously' have cogent legal significance, indicating that said issues are constitutionally insubstantial only if the prior decisions inescapably rendered with bias, unfairness and absent relevant law, have merit. In contrast, previous opinions that merely render Baylor's claims doubtful or questionable, do not render them insubstantial for the purposes of 28 U.S. Code §1257.

B. Factual background

Preceding the deprivation of Baylor's protected rights, the Minnesota court recently decided on a similar case in *Cook v. Arimitsu*, 907 N.W.2d 233, Ct. App. Minn.(2018), rev. denied (Minn. Apr. 17, 2018); See also *Cook v. Arimitsu* (In re Marriage of Cook), A19-1235 (27 Apr, 2020). The news media has described James E. Cook's non-existent familial rights as "the most problematic thing with Japan." Additionally it said "a lot of cases about return orders are actually about access, about the noncustodial parent being able to maintain a relationship with their child". Anna Fifield, *Japan signed abduction treaty but for 'left-behind' parents that doesn't mean much* (Jul. 16, 2017), https://www.washingtonpost.com/world/asia_pacific/japan-signed-abduction-treaty-but-forleft-behind-parents-that-doesnt-mean-much/2017/07/14/ffb0209-677a-11e7-83d7-7a628c56bde7story.html "For three years of their lives, these kids have not had their dad. Kids need their dad" *Id.* James Cook, at the forefront of some major media outlets, is a White male resident of Hennepin county 4th district Minnesota in a custody battle with the Japanese mother of his 4 children. To date, Mr. Cook has not once in 5 years seen, heard or spoken to his children since taken from the United States of America.

In an alike case, Daniel Richard Larson, a White male resident of Hennepin county 4th district Minnesota, similarly situated as Mr. Cook, is the author of *Lost in Japan – Taking Our Kids* ISBN 9780998774336 (2018), nevertheless with much less media attention, in civil case 27-FA-12-5260, lost the familial rights to his 2 children — through no fault of his own. Due to the countervailing intervention of 4th district court, while Mr. Larson retained physical and

legal custody, enforced the removal of his 2 children from the United States. At the looming deprivation of his familial rights — was the exercise of law by his own hands, resulting in the brief return of his children, inevitably sent to a foreign country despite his objections to the intrusion of rights. When a court undertakes to proscribe the exercise of a citizen's constitutional rights, it acts lawlessly; and the citizen can take matters in his own hands and proceed on the basis that such a law is no law at all. Dissenting, *Poulos v. New Hampshire*, 345 U.S. 395 (1953).

In the case at bar which raises separate but similar issues, Baylor, a Black male non-resident, for more than 3 years, has been denied in more than several dozen actions, suits and proceedings across venues separated by more than 1000 miles, in both state and Federal jurisdictions from the lowest to highest court, from commencement to exhaustion as a matter of course, never deemed a frivolous litigant — at every step — has been deprived of all statutory and lawful rights. Not once has any Minnesota court granted a single iota of lawful relief, remedy or redress despite showing judgments void on the face of the record. Similarly situated as *Cook* and *Larson*, Black Baylor remains adversely treated as a non-resident minority male indigent self litigant, seeking to enforce the retention and restoration of his familial rights for the sole purpose of remaining a parent, and keeping his only daughter in the United States of America — apart from the latter.
https://www.blacknews.com/news/christopher-baylor-black-father-fights-paternal-rights-prevent-international-abduction-daughter/?fbclid=IwAR1Oh8Xb1COegqR9g0Nt-Gz7UNCbQH4KMIs1xaxpcn0A0B4XNIEgJoxxTFw

Further review is warranted.

C. Procedural background

Due to the reason this case spans over 3-years because of the exhaustive measures taken as a literal matter of course — listing every decision or step taken in every action, suit or proceeding would be impractical, undoubtedly exceeding 20 pages. The more imperative unanswered question here is —Why?

1. Four petitions were filed in the Minnesota supreme court (App., *infra*, 1a; 1c; 1d & 1f) seeking review of two decisions made by the Minnesota court of appeals (App., *infra*, 2b & 3e) affirming district courts.

2. On one hand, the state's supreme court denied review of Baylor's petitions (App., *infra*, 1a; 1c) which raised federal questions, this Court's precedent and its own, regarding the denial of the right to appeal based on the inability to pay, by which Baylor has shown his indigency for the past 2 years by means of public and housing assistance.

3. On the other hand, that same court denied review of petitions (App., *infra*,1d & 1f) which raised the federal question of Due Process based on mail and other fraud both extrinsic and upon the court, depriving notice and personal service causing the colorful termination of familial rights. Even so, proof lies on the face of the record that shows beyond a reasonable doubt, *prima facie* evidence of ineffective personal service and lack of notice. Nevertheless, the state supreme court contemporaneously denied review of petition's raising constitutional claims on October 20, 2020 (App., *infra*, 1c; 1f).

4. In total, six petitions raising federal questions and this court's decisions on constitutional issues, were denied in state courts, concluding on a decision

in conflict with governing state and Federal Supreme Court precedent in cases squarely presenting important issues of federal law such as parental and marital rights thus denied. These petitions have significant practical consequences upon public policy, the life of the father, and the rights of the child who remains at risk for imminent removal from the United States of America absent intervention by this Court — or by extra-judicial self help.

Applying the Due Process standard, the state courts dismissed Baylors' First and Fourteenth Amendment claims wholly based on recent opinions drawn from works of unfairness, absence relevant law, review of the merits or evidence raised in his pleadings. The court was not mindful of Baylors' contentions raised for independent review of fraud or void judgments, impeding acts currently recognized as unconstitutional under 3rd, 5th, 7th, 8th, 10th and 11th district, at issue in this case since "state officials may not directly or indirectly take retaliatory action against an individual designed either to punish him for having exercised his constitutional right to seek judicial relief, or to intimidate or chill his exercise of that right in the future." see *Gunter v. Morrison*, 497 F.3d 868, 873 (8th Cir. 2007). The court nevertheless rejects Baylors' First and Fourteenth Amendment claims because, in its unilateral view, concluded that due to the reason the merits where unworthy of review, on that basis, no independent review or consideration was made of Baylors' evidence, or of the pleadings — and therefore these claims were settled and dismissed as non-justiciable or because of his inability to pay.

Ever so, fraud in the procurement of jurisdiction and lack of the subject-matter — cannot be waived.

Further review is warranted.

REASONS FOR GRANTING THE PETITION

This case presents questions of whether a state court may refuse to hear substantial claims governed by First and Fourteenth Amendment principles, where claims based on no findings made on the merits or evidence introduced, warrants dismissal and the colorful termination of parental rights because of the inability to pay court costs.

These singular views deferred to without independent review percolates throughout the state courts as a boilerpoint statement to the denial of constitutional relief in excess of 3 years, in over several dozen proceedings, on more than 100 occasions, colorfully terminating familial rights and threatening the imminent removal of an American born child from her American born father. The state court's decision to deprive right of access, free speech, equal protection, notice and service conflict with the United States constitution and Civil Rights Act, also with the state's own teachings, and are contrary to Eighth Circuit and this Court's holdings.

The state court's decisions obviously void, should not stand. Aside from ignoring this Court's precedents, it creates a conflict of public trust because, the cities of Minneapolis and Saint Paul Minnesota were most recently at the epicenter of the murder of *George Floyd*, creating a global incident resulting in triple digit revenue lose to governments and American taxpayers. That state is now at the hypocenter of a disposition that will not only affect the national, but international public.

As it currently stands, no where in American legislative history can it be found other than during the abolishment of American slavery or its civil rights era, this degree or extended denial and deprivation of

constitutional and inalienable rights. In the previous child custody cases where there were 4, then 2 children — now remains one child ensnared by the same court, county, city and state, who remains at imminent risk of removal from the United States of America based on fraud and a scheme. It is Baylor, an "individual, vulnerable to intense personal pain, substantial financial losses, and a loss of reputation (falsely charged with abusing an alien spouse)." https://cis.org/North/Marriage-Fraud-and-Awkward-Public-Policy-Question ; https://cis.org/North/Two-Small-Bits-Good-News-Marriage-Fraud-Front

This Court should reject the known practices of a court and county known to non-citizens as a safe haven in which the taking of American father's familial rights, are prone to lose by aid of 3rd and 4th district courts run afoul, misconstruing the letter and spirit of law.

The lower court's denial to the quintessential meaning of liberty, happiness and freedom results in no meaning to life — at all. Denial in this very last Court of last resort when there is no other, would implicate hopelessness to the very citizen who entrusts in "essential privileges" and a system which has said, to uphold the law, however in absence would merely stand as a last will and testament to a child left behind.

What is more, is a proper resolution of the questions presented is this matter of substantial importance. It is the taking of this case which presents a suitable vehicle to resolve the greater conflict of loss that is the very essence of life itself, the colorful termination of parental rights. Baylors' claims are not obviously frivolous and would be proven very real absent a morally justifiable decision by a four-judge panel. Further review is warranted.

A. The state court's decisions conflict with this Court's precedence

According to the U.S. Supreme Court's decision in *Simon*, "for in such a case where the person named as defendant is obtained without service can no more be regarded as a party than any other member of the community. Such judgments are not erroneous and not voidable but upon principles of natural justice, and under the due process clause of the Fourteenth Amendment, are absolutely void." 236 U.S. 115, 35 S. Ct. 255, 59 L. Ed. 492.

The state court's decision is flatly inconsistent with this Court's precedent in three separate respects.

First, *Melillo v. Heitland,* 880 N.W.2d 862, 864 (Minn. 2016) forbids personal service by mail, and warrants reversal of a case by a single-judge even in a lower court in a case which involves no arguable legal theory. A meritorious defense is not required and the state supreme court permits reversal. Accordingly, "under Section 548.14, lower court has power set aside a supreme court judgment when there has been extrinsic fraud in its procurement." see *Tankar Gas v. Lumbermen's Mutual Casualty Co.*, 215 Minn. 265, 272, 9 N.W.2d 754, 759 (1943).

Section 548.14, based on fraud, does not require the fraud to be intrinsic, rather *any* fraud.[1]

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[1] Section 548.14 of the Minnesota statute states that "any judgment obtained in a court of record by means of perjury, subornation of perjury, or any fraudulent act, practice, or representation of the prevailing party, may be set aside in an action brought for that purpose by the aggrieved party in the same judicial district within three years after the discovery by the aggrieved party of such perjury or fraud." (2019).

But it hardly requires stating an arguable legal theory under the 548.14 framework when a district court must vacate a void judgment "without regard to such factors as the existence of a meritorious defense."[2] Thus, the sufficiency of a constitutional Due Process claim of defective service which fails to meet any statutory or Due Process requirement for service[3], is a question of law that "involves no discretion on part of the district court; and judgment must be set aside."[4]

The basis for that conclusion is evident in *Halloran v. Blue White Liberty Cab Co.*, where that court said "a judgment may be set aside at any time if it is later discovered that there was fraud." 253 Minn. 436, 442, 92 N.W.2d 794, 798 (1958). On the contrary, Section 548.14 and *Halloran* merely authorizes lower court to set aside judgment obtained without Due Process of service or notice on the basis of discretion — without regard to whether the claim is based on federal question, governing case precedence or constitutional principles — but on an outlandish legal theory and recantation of previous decisions foreclosed upon ultimately by an unavailing lower court decision which decided that, service only of summons upon Baylor by U.S. mail 2 days prior to time to answer expires, satisfied this personal service requirement to initiate a cause of action. Served separately from complaint in this manner is fraud.

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[2] *Peterson v. Eishen*, 495 N.W.2d 223, 225 (Minn. App. 1993), aff'd, 512 N.W.2d 338 (Minn. 1994)).

[3] Minn.R.Gen.Prac. 355.02, Subd.2; Minn. Stat. § 518.09, Minn.R.Civ.P. 3.01; Minn.R.Civ.P. 4.03/05 or Minn.R.Civ.P. 5.01.

[4] *Hengel v. Hyatt*, 312 Minn. 317, 318, 252 N.W.2d 105, 106 (1977).

There is no way to reconcile this Court's holding in *Simon* with the state supreme court decision in *Halloran*. *Simon*, indeed equates to the same concept as *Halloran*, which forbids the use of fraud to forego Due Process in order to obtain jurisdiction.

Likewise, "requires the initiation of an independent equitable action." *Johnson v. Johnson*, 243 Minn. 403, 68 N.W.2d 398 (1955). "But, manifestly, if a new and independent suit could have been brought in a state court. . . a like new and independent suit could have been brought for a like purpose in a Federal court", *Simon*, 236 U.S. 115 at 123. Which has then bound this Court to act within its jurisdiction to afford redress concepts that this Court repeatedly has said are distinct. By doing so, it permits precisely what *Simon* forbids: It allows redress from a court which refuses to defer to its own case precedence when jurisdiction over the person, is obtained by the obvious use of fraud.

Naturally, "service on [Baylor], even if in compliance with the requirements of [355.02[5]], was not that kind of process which could give the court jurisdiction over the person of the defendant for a cause of action" *Simon*, 236 U.S. at 132. When a [summons] cannot legally be served on a defendant, the court can exercise no jurisdiction over him. The service defines the court's jurisdiction. *Id* at 129. The lower court's holding in *DeCook v. Olmsted Med. Ctr., Inc.*, 875 N.W.2d 263, 270–71 (Minn.2016), recognizes that "first-class mail, even if received, is simply not personal service."

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[5] "Service by U.S. mail means mailing a copy of the document by first-class mail, postage prepaid, addressed to the person to be served at the person's last known address."

Second, unsurprisingly, without review of any evidence or merits, the lower court decision further conflicts with Due Process. With the decision of the court of appeals, the supreme court should have confronted the question of whether district courts are permitted to allow "*sewer service*"[6], since it has held that they cannot.

Contrary to whether "petitioner had remedies in the ordinary course of the law." App., *infra*, 2e.¶4, "that conclusion is inevitable. . . [when] such a ruling involve[s] a contradiction in terms, and treat[ed] as valid for some purposes that which the courts have universally held to be a nullity for all purposes." 236 U.S. at 128. And in a different legal context, the lower court expressly rejected the reasoning that underlies Due Process of service. The outcome of this case would have been different in any other jurisdiction had fairness been the sole proprietor for the lower court's reasoning.

No *other* "*remedies in the ordinary course of the law*" exist when no notice or service of an order was served, received or sent by respondent due to fraud.

Notice was in fact shown received through e-mail correspondence by the respondent's counsel of record, but after the time allowed to respond to an amended order made ex-parte without Due Process of notice or service, less proven served, but procured by fraud. Two Eighth Circuit state supreme courts require state district court to obtain proof of *effective* service.

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[6] "Sewer service is an epithet for the intentional failure to provide service of process on a named party in a lawsuit, in order to prevent the party from having a chance to respond. This practice usually involves filing a false affidavit claiming that the defendant had been properly served court papers"

Minnesota supreme court of third district. The Minnesota supreme court's holding in *Shamrock Dev., Inc. v. Smith,* 754 N.W.2d 377, 382 (Minn.2008), expressly requires the plaintiff to submit evidence of *effective* service when challenged.

North Dakota supreme court of south central district. The North Dakota supreme court's holding in *Thorson v. Thorson,* 541 N.W.2d 692, 694-95 (N.D. 1996), expressly rejects the exception to Due Process of service where the mere affidavit of mailing may be record notice, but it does not equate with actual notice.

Lastly, whereas *Simon* forbids the use of fraud to obtain personal service, "this court refrains from passing upon propositions not necessary to the decision of the case although passed upon by the courts below." 236 U.S. at 130. "The district court ruled that petitioner's claims [under Section 548.14] were not properly before that court and entered judgment dismissing the action, without prejudice to petitioner's ability to bring his claims in an appropriate forum." App., *infra*, 1e.¶1. But —

> "Authorities would seem to place beyond question the jurisdiction of the [district] court to take cognizance of the present suit, which is none the less an original, independent suit, because it relates to judgments obtained in the court of another [forum]. While [discretion] cannot require the state court itself to set aside or vacate the judgments in question, it may, as between the parties before it, if the facts justify such relief, adjudge that [respondent] shall not enjoy the inequitable advantage obtained by h[er] judgments." 236 U.S. at 124.

Nevertheless, review of state court decisions absent review on the merits which particularly plead the use of fraud in the procurement of jurisdiction, should not in a like manner as lower court, be overlooked when *prima facie* evidence, when properly viewed, ends the controversy and decides the matter based on law. If lower court properly considered the proposition of Baylor's evidence attached to his complaint, Compl. Exh.LET, (Doc.No.5), 27-CV-20-4202, that case should have been decided on Due Process principles by the district court, the court of appeals or the supreme court. *Simon* frequently requires it. This conflict is fundamental when the constitutional question raised is proven and shown substantial. If these requirements are met, this case must be reserved exclusively for this Court's mandatory docket.

Likewise, absent proof of effective service of the amended order based on void orders, must not stand when "the interest of a parent in the relationship with [his] child is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment". 519 U.S. 102 at 119.

Thus, when a petitioner seeks review of a state court's refusal to hear constitutional matters, this Court must determine whether the refusal was proper, *and no more* is it precluded from reviewing the constitutional merits of the case which should have originally been determined by a court below. Contrary to this assured result guaranteed by the United States constitution, left unchecked, the state court will inevitably find itself issuing holdings that paradoxically deprive it of jurisdiction or to issue merits holdings, in manifest conflict with this Court's precedence. There is no way around this conflict.

Further review is warranted.

B. The lower court sanctioned a departure from the usual requirement of Due Process over a non-resident

"Regarding the assertion of personal jurisdiction over petitioner by the court that dissolved the parties' marriage, this court previously affirmed the dissolution court's determination that petitioner failed to properly raise the question of personal jurisdiction when he had the opportunity to do so." App., *infra*, 3e.¶4.

This Court recently held in *Bauman and Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017), "the personal jurisdiction of state courts is subject to review for compatibility with the Fourteenth Amendment's Due Process Clause; which limits the power of a state court to render a valid personal judgment against a nonresident defendant".

In, *Practice Management Support Services, Inc. v. Cirque du Soleil, Inc.*, ___ F. Supp.3d ___, 2018 WL 1255021 (N.D. Ill. March 12, 2018), one Circuit found amongst other that "even if a defendant had waived this defense, some Courts find that it would be appropriate to excuse the forfeiture." Court found it proper to excuse any waiver on an alternative ground, contrary to "proper construction of governing law" to allow questionable waiver to preserve litigation that – after BMS – was now clearly barred by Due Process limits on personal jurisdiction.

That basis should be applied in this case, since the adjudicated facts which show respondent's use of fraud in this case are, as follows:

The respondent on May 14, 2018, filed in the fourth district court of Hennepin county, Minnesota, a complaint for dissolution of a common-law marriage by decree — and termination of Baylor's custodial

and visitation rights, as stated relief on the last page of the Compl.¶2. Non-resident Baylor, while making an physical appearance in another proceeding, was personally served by opposing counsel of record May 30, 2018, who unknowingly served a complaint (only) in a closed envelope, without summons. On June 24, 2018, respondent subsequently sent Baylor summons through an agency employee, via first class U.S mail pursuant to Minn.R.Gen.Prac. 355.02, Subd.2.[7]

Evidence of service of summons by mail is clearly established on the face of the lower court record, nevertheless, ignored. Baylor received notice on June 27, 2018, 2 days prior to the time required to serve an answer within 30 days of service of summons and complaint — as required by statute for service upon a defendant in an action for dissolution in that state.

Two days prior to the time required for service of an answer, Baylor retained the temporary legal counsel of *Heimerl & Lammers* of Minnesota to make a limited appearance. Following receipt of a copy of both the complaint (served by opposing counsel) and summons (served via U.S. mail), H&L filed on the same day of expiration, the requisite answer, June 29, 2020, contemporaneously with a *letter of judicial approval* stating that a Rule 12(b)(2) motion would be filed. H&L asserts on the first page of the answer, a challenge to jurisdiction: "*Respondent Christopher Gary Baylor, pursuant to a Special Appearance for the purpose of challenging jurisdiction. . . hereby states*" Ans,Pg.1,¶1.

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[7] Service by mail shall be made only by the sheriff or by any other person who is at least 18 years of age who is not a party to the proceeding. Pursuant to Minnesota Statutes 2006, section 518A.46, subdivision 2, paragraph (c), clause (4), an employee of the county agency may serve documents on the parties."

But due to Baylor's limited financial resources, H&L withdrew as counsel of record August 10, 2018, without first filing a Rule 12(b)(2) motion. Whereon August 15, 2018, Baylor hastily filed a *pro se* motion *to dismiss* challenging venue and lack of personal jurisdiction under Minn.Stat.518.09, which says in part:

> "A proceeding for dissolution or legal separation may be brought by either or both spouses and *shall* be commenced by personal service of the summons and petition venued in the county where either spouse resides."

With personal jurisdiction squarely challenged, if somehow Baylor's answer was assumed technically deficient, fault lies with representation, where even if that were the case, for 50 years the lower court has said, "a litigant is not to be penalized for the neglect or mistakes of his lawyer. Courts will relieve parties from the consequences of the neglect or mistakes of their attorney." *Duenow v. Lindeman*, 223 Minn. 505, 518, 27 N.W.2d 421, 429 (1947); *Charson v. Temple Israel*, 419 N.W.2d 488, 491 (Minn. 1988)(explaining courts' reluctance to punish client for attorney's oversight).

In spite of these facts, this Court has said "jurisdiction of the United States courts cannot be lessened or increased by state statutes regulating venue or establishing rules of procedure; It also makes it unnecessary to consider the question of fact as to whether the judgment was void because of fraud in its procurement." *Simon*, 236 U.S. at 123, 132.

Lastly, upon initial argument, respondent failed to specifically identify what Baylor did that resulted in waiver. Respondent had thus waived her waiver argument. Further review is warranted.

C. The decision below conflicts with governing Supreme Court precedent, and has significant consequences based on an important issue of federal law.

The matter here is grounded by one of the oldest principles known to man, the very fundamental right of invoking the marital privilege and the existence of a valid marriage. In a legal context, the test is not whether the parties believe they are married, but whether they are married under the law.

First, the lower court has adopted an unduly narrow view of the facts, and depreciated the significance of undisputed, disinterested adverse evidence showing nothing more than a meretricious relationship. A different question would be here, whether the parties contract ever came into existence and hence was void? In association with the language preceding the valid existence of a purported contract, courts have long held that the law of the state in which the marriage was alleged to have taken place, governs the validity of the marriage in regard to the capacity of the parties to enter into the *contract of marriage*. As a corollary, the general rule of law is that a marriage valid where it is performed is valid everywhere. *Loughran v. Loughran*, 292 U.S. 216, 223, 54 S. Ct. 684, 78 L. Ed. 1219 (1934). The converse of this proposition is equally well settled: a marriage void where it is performed is void everywhere, notwithstanding, procedures that cover who may perform the marriage ceremony, what licenses or *witnesses are needed*, 20 CFR 404.725(a).

This basis is consistent with the lower court legislature's explicit prohibition of common-law marriages. see *Baker v. Baker*, 222 Minn. 169, 171, 23 N.W.2d 582, 583 (1946); see also *Abbott v. Abbott*, 282

N.W.2d 561, 566 (Minn. 1979)(recognizing only marriages accomplished through the formal ceremonial process described in Chapter 517 are "legal" marriages in Minnesota).

The Minnesota legislature enacted Section 517.01 which says in part:

> "a lawful civil marriage may be contracted — only when in the presence of two witnesses. Marriages subsequent to April 26, 1941, not so contracted shall be null and void."

Eighth Circuit supports this basis in Radtke v. Miscellaneous Drivers & Helpers Union Local No. 638 Health, Welfare, Eye & Dental Fund, 867 F. Supp. 2d 1023, 1032 (D. Minn. 2012).

Both marriages and marriage dissolutions are controlled by statute in Minnesota. Here, on the face of the record, Baylor has shown *prima facie* evidence that no witnesses appeared or signed the parties purported marriage contract because of the existing impediment of marriage fraud, whereas respondent cannot prove the existence of a valid marriage by the raising of any evidence:

- showing joint ownership of property;
- lease or joint tenancy of a common residence;
- commingling of financial resources;
- affidavits of third parties attesting to the legitimacy of the marital relationship;
- a full, partial or any civil ceremony; or any
- other documentation (e.g. photos, videos etc.)

Not once has the respondent raised any such challenge to the fraudulent marriage, nor does she produce any new or existing evidence regarding the validity of the contract. The lower court held in *Robertson v. Roth*, 163 Minn. 501, 204 N.W. 329, 39 A.L.R. 1342. "marriage is a civil contract which, if

procured by fraud, may, under certain conditions, be set aside." Notwithstanding the presumption of marriage when the legitimacy of a child is involved, the presumption does not arise where legitimacy is impossible because an impediment to marriage exists at the time of the child's birth.

Argued below by Baylor in the court of appeals on June 18, 2020, was a 15 page *motion for review* of the district court's denial of his application to proceed *In Forma Pauperis* on wholly substantial matters, identical to the argument to proceed IFP raised in the district court. Pursuant to Minn.R.Civ.App.Proc.109. 02(b)[8], Baylor cited from the lowest to highest court precedents: *Wallace v. State*, 820 N.W.2d 843, 850 n.3 (Minn. 2012); *Freeman v. Abdullah*, 925 F.2d 266, 267 (8th Cir. 1991); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989), asking the federal question of whether his claim of a void marriage under state and Federal law "lacked an arguable basis either in law or in fact"?

From a legal standpoint, Baylor's claim is wholly - substantial. However, on that basis, the lower court decided the matter merely by deferring to its own opinion concluded neither on legal principles nor the factual basis that Baylor's claim is wholly insubstantial because — the lower court recognized that Baylor's claims were arguable. The lower court did not from a legal standpoint, decide that Baylor's claims are wholly insubstantial.

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[8] If the trial court denies the motion, the party shall, within 14 days from the date of the trial court administrator's filing of the order, either: (b) serve and file a motion in the Court of Appeals for review of the trial court's order denying in forma pauperis status. The record on the motion shall be limited to the record presented to the trial court.

Second, in *M.L.B.*, 519 U.S at 113, this Court said in *Boddie v. Connecticut*, 401 U.S. 371 (1971), due process "prohibit[s] a State from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages." *Id.* Despite Baylor filing a motion to proceed IFP based on 'wholly substantial' matters of marriage grounded in legal principles and concepts of constitutional significance, the lower court, in its limited view and sole reliance on an unconstitutional procedural rule e.g. Minn.R.Civ.App.Proc.109.02, said:

> "because petitioner still has not paid the filing fee for this petition, the petition and associated motions are not properly before this court, and dismissal is warranted." App., *infra*, 2b.¶10.

The constitutional conundrum here besides the Due Process deprivation of Baylor's right to proceed on wholly substantial claims, is his inability to pay, but not his indigency, because lower court made no findings on Baylor's *pauperis* status, or his actual ability *to* pay. Rule 109 expressly states in part:

> "The trial court *shall* grant the motion if the court finds that the party is indigent *and* that the appeal is not frivolous."

Whether a case like this one should be dismissed solely on "indigency" or "insubstantial claims" is ambiguously vague, a matter of substantial practical importance when this case, generally affects the public and indigents as a whole, affording an ideal opportunity to address this issue. Nevertheless, when the Rule expresses that a district court must find a party both "indigent" and the appeal "not frivolous", lower court merely found Baylor's claim insubstantial, but based on his clearly established

inability to pay court costs in dozens of prior and present actions, the lower court denied Due Process "because petitioner still ha[d] not paid the filing fee for this petition" App., *infra*, 2b.¶10.

"The district court found the petition frivolous under Minn. R. Civ. App. P. 109.02. Accordingly, the district court declined to waive the filing fee." App., *infra*, 2b.¶5. But the district court had not found Baylor's petition insubstantial according to Section 563.01 of the Minnesota statute, rather conversely different from Rule 109 of the Appellate Rules of Civil Procedure, which in turn provides a more amenable solution to the statutory "*right of appeal*", however under Rule 109, a court must find that a party is both "non-indigent" and that the appeal is "frivolous" to warrant dismissal, in lieu of either or. The lower court's decision is contrary, and not only conflicts its own rule of law, but with this Court's precedent on the denial of an indigent party's inability to pay, having significant consequences to the termination of Baylor's familial rights, based on an important issue of federal law.

Further review is warranted.

D. The other questions presented below are important

Another proposition at issue before this Court, but passed below, is the consideration of a joint issue that should be preserved, App., *infra*, 2e¶4. That is the challenge to lower court's refusal to vacate a decision based on void judgments, which lacks a basis for subject-matter jurisdiction over an action without standing, directly and collaterally contributing to the colorful termination of Baylor's familial rights when this issue continues to remain eluded by lower courts without jurisdiction.

The gravamen of the matter at issue here arose on October 2017, when non-resident Baylor was coerced by respondent to enter into the state of Minnesota for the sole purpose of service of a complaint alleging abuse within two weeks of him visiting Rice county, a lure specially set out to commence an action in fourth district Hennepin county, where neither non-resident respondent or Baylor resided, or where the single act alleged to have taken place, allegedly occurred outside that county and state. In fourth county, where fathers are known to lose the familial rights to their children taken overseas, this matter is also at issue below, particularly stated in Baylor's complaint for fraud in addition to the respondent's use of fraud to procure jurisdiction over a common-law marriage by service of process through mail, and the subsequent amended order never received by Baylor through notice or personal service, an order derived from void orders in question here and below, App., *infra*, 1i-5i, 1j-4j, absent any findings, albeit, ignored and dismissed as non-justiciable.

As set out in the lower court's own holdings, in *Schmidt*, Justice KELLY said, that if an "ex parte order fails to contain any particularized finding of immediate danger of physical harm and nothing in the record supports such a finding, it is void."

Chief Justice MAGNUSAN, citing *Schmidt* in *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009), said that a "district court shall make factual findings to support its choice." This Court also said in *Goldberg v. Kelly*, 397 U.S. 254 (1970), due process requires that the decision-maker demonstrate compliance with this elementary requirement by stating the reasons for his determination and indicating the evidence he relied on.

In the case of, *In re Marriage of Schmidt*, 436 N.W.2d 99, 106-07 (Minn. 1989), the lower court set aside several ex-parte orders contrary to Due Process, Section 518B.01, Subd.7 — and Section 518.131, Subd.2(a) which says in part:

> "a void order is a temporary order which denies parenting time. Court must find that parenting time is likely to cause physical or emotional harm to child"

The lower court's issuance of an ex-parte order lacking any particularized findings, thus denying Baylor parenting time (3 years to date), is contrary to Due Process, when Section 518B.01, Subd.7 first requires that the applicant allege an "immediate or present danger" for issuance of an ex-parte order. No immediate danger was alleged by respondent. In Minnesota, it is insufficient to establish "domestic abuse" under the Domestic Abuse Act by merely demonstrating that domestic abuse occurred within a family or household. *Schmidt ex rel. P.M.S. v. Coons*, 818 N.W.2d 523, 526 (Minn. 2012). Here, even if found in a subsequent proceeding (it was not), cannot cure void order(s). That court has held for 20 years, a judgments is void if court acted in a manner inconsistent with due process." *Bode v. Minn. Dep't of Natural Res.*, 594 N.W.2d 257, 261 (Minn. App. 1999), aff'd, 612 N.W.2d 862 (Minn. 2000).

That court also recognizes, that a parent's right to make decisions concerning the care, custody, and control of his child is a protected fundamental right. *SooHoo v. Johnson*, 731 N.W.2d 815, 825 (Minn. 2007) citing *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L.Ed.2d 49 (2000).

Proving the state court's decisions are in derogation to the laws of United States constitution

and this Court's governing case precedent, Baylor's First and Fourteenth Amendment claims are not obviously frivolous, and should not have been dismissed. None of this Court's precedents compels these conclusions. Thus, First and Fourteenth Amendment concerns arise where a State disregards laws that have the purpose and effect of subjecting a party to disfavored treatment by reason of its own narrow views. In combination with Baylor's exercise of core First and Fourteenth Amendment rights, the lower court's discouragement from further participation in protecting these rights, condemns Baylor's fate, in other words, chills those First Amendment activities that are most essential to the proper functioning of non-residents, indigents, self litigants, males, fathers and minorities to proceed against government wrongs.

State may not act to maintain the 'status quo' by making it virtually impossible for Baylor to achieve certain measures of lawful relief, remedy or redress, asserted herein.

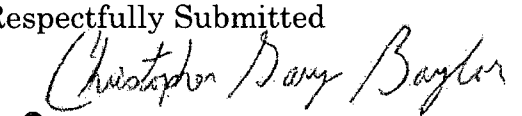
In dismissing Baylors' First and Fourteenth Amendment claims all the same, the lower court relied exclusively on prior opinions, but in the arguments laid out below, repeated here, claim the existence of supportive decisions which are rather inconsistent with the lower court decision-making and intervening Supreme Court precedent. In dismissing Baylors' First and Fourteenth Amendment claims all the same, the lower court relied exclusively on prior opinions, but in the arguments laid out above, claim the existence of adverse decisions rather inconsistent with state and intervening Supreme Court precedent. Against this legal backdrop, Baylors' First and Fourteenth Amendment claims are non-frivolous and, indeed, should have been adjudicated under the

principles of the United States constitution. Baylor, accordingly is entitled to a remedy.

CONCLUSION

This petition should be granted when Due Process impediments asserted herein deny notice, service of process, access to court, familial rights, free speech and equal protection, but ignored by the lower court through exhaustive measures for over 3 years, in more than several dozen actions, suits and proceedings, across horizontal and vertical venue/jurisdictions, resulting in excess of 100 denials without a scintilla of lawful relief, redress or remedy, causing substantial prejudice and injury to a protected class non-resident indigent male father, forced to represent himself in a foreign jurisdiction, in every matter for a single brief exception of legal counsel achieving gross error, all without protections or safeguards afforded to state residents, but guaranteed to all citizens by the United States constitution. The colorful termination of Baylor's parental rights and imminent removal of his only American child from the United States of America, warrants review. Denial here, encourages self remedy and self relief.

Respectfully Submitted



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