21-5075

No. 21-_____

THE SUPREME COURT OF THE UNITED STATES

Elizabeth Shaw,

Petitioner,

vs.

Derek Shaw,

Respondent.

On a Petition for Writ of Certiorari
to the
Michigan Supreme Court.

PETITION FOR A WRIT OF CERTIORARI

Elizabeth Shaw
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QUESTIONS

1. In violation of court orders, MIFPA, ICWA, federal law, state law, and tribal law, the Tribe illegally seized my children from their school and refuse to return them to my custody. The immediate return of the children to me, their mother, Elizabeth Shaw is required by 25 U.S.C. § 1920 and MCL 712B.19. **Will the Supreme Court of the United States order the immediate return of my children?**

2. Orders violating Elizabeth's constitutionally protected rights were entered in excess of the court's jurisdiction, absent due process, and contrary to equal protection under the law. "An order that exceeds the jurisdiction of the court, is void, or voidable, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue." *Rose v. Himely (1808) 4 Cranch 241, 2 L ed 608.* See also *Vallely v. Northern Fire and Marine Ins. Co.,* 254 U.S. 348 (1920). **Will the Supreme Court of the United States enter an order vacating the void orders and subsequent proceedings?**

3. Elizabeth is not a respondent in the MCPP case initiated against father, Derek Shaw for the sexual abuse of MS. The children were ordered to remain home with Elizabeth under the jurisdiction of the divorce case. The Michigan Supreme Court abolished the one-parent doctrine deeming it a violation of due process. See *In re Sanders,* 495 Mich. 394, 407 (2014). **Will the Supreme Court of the United States provide the active custody order and status of proceedings?**

PARTIES

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

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RELATED CASES

All of these court cases have entered multiple judgments/orders. The most recent is listed.

- *Shaw v. Shaw*, No. 162505, Michigan Supreme Court. Unsigned judgment issued March 30, 2021
- *Shaw v. Shaw,* No. 161945, Michigan Supreme Court. Unsigned judgment issued October 16, 2020.
- *Shaw v. Shaw,* No. 352851, Michigan Court of Appeals. Judgment entered December 10, 2020.
- *In re Shaw minors,* No. 353213, Michigan Court of Appeals. Judgment entered May 12, 2020.
- *Derek Shaw v. Elizabeth Shaw,* No. 14-35535-DM, Sanilac County Circuit Court. Judgment entered February 3, 2020.
- *DHHS v. Derek Shaw*, No. 15-35887-NA-01-02, Sanilac County Circuit Court in the Child Protection Proceeding. Judgment entered February 27, 2020.
- *In the Matter of Jackson Shaw and Maya Shaw,* No. CW-2015-003, Miami Tribe of Oklahoma District Court. Judgment entered March 26, 2021.
- *In the Matter of Jackson Shaw and Maya Shaw,* No. 18-001, Miami Tribe of Oklahoma Appellate Court. Judgment entered September 10, 2019.

TABLE OF CONTENTS

INDEX OF APPENDICES

TABLE OF AUTHORITIES

CASE LAW

FEDERAL STATUTES

Other Authorities

MICHIGAN COURT RULES

MICHIGAN LEGISLATURE

TRIBAL LAW OF THE MIAMI TRIBE OF OKLAHOMA

I. OPINIONS BELOW

The opinions of the courts are all unpublished.

- *Shaw v. Shaw*, No. 162505, Michigan Supreme Court. Unsigned judgment issued March 30, 2021
- *Shaw v. Shaw,* No. 161945, Michigan Supreme Court. Unsigned judgment issued October 16, 2020.
- *Shaw v. Shaw,* No. 352851, Michigan Court of Appeals. Judgment entered December 10, 2020. ("divorce case appeal")
- *In re Shaw minors,* No. 353213, Michigan Court of Appeals. Judgment entered May 12, 2020. ("MCPP appeal")
- *In the Matter of Jackson Shaw and Maya Shaw,* No. CW-2015-003, Miami Tribe of Oklahoma District Court. Judgment entered March 26, 2021. ("tribal court")
- *In the Matter of Jackson Shaw and Maya Shaw,* No. 18-001, Miami Tribe of Oklahoma Appellate Court. Judgment entered September 10, 2019. ("tribal appeals court")

II. JURISDICTION

This Court's jurisdiction rests on 28 U.S.C. § 1651 and 50 U.S.C. § 1803, 50 U.S.C. § 1861(f). This Court's jurisdiction is further invoked under 28 U.S.C. § 1257 and 28 U.S.C. 2101(e). Supreme Court Rule 11 allows Certiorari before judgment. Since the Michigan Supreme Court ("MSC") did not sign their order dated March 30, 2021 and because service was insufficient, technically judgment has not been entered (Appendix "App" C, p.8). See MCR 7.315 (C)(1).

See also MCR 7.315(A). Supreme Court Rule 13 allows a Petition for Writ of Certiorari to be filed up to 90 days following judgment.

The MSC also issued an ***unsigned*** order (App. T, p.157) to deny petitioner's Application for Leave to Appeal an order denying Peremptory Reversal entered in the Michigan Court of Appeals "MCOA" (App. S, p.156). The MSC denial "order" did not address petitioner's request for discretionary review of the appeal that had been pending in the MCOA for nearly six months despite being filed with a Motion for Immediate Consideration. Supreme Court Rule 11 allows Certiorari before judgment. Since the Michigan Supreme Court did not sign their order dated October 12, 2021, technically judgment has not been entered. See MCR 7.315 (C)(1). See also MCR 7.315(A).

A federal court may order relief that the Constitution would not of its own force initially require if such relief is necessary to remedy a constitutional violation.", *Toussaint,* 801 F.2d at 1087. Likewise, if a court has allowed state officials to try to fix a proven violation and they have failed, the court can order much more specific relief than it could have immediately after trial, *Hutto v. Finney,* 437 U.S. 678 (1978); *Balla v. Idaho State Board of Corrections*, 869 F.2d 461, 471 - 472 (9th Cir. 1989).

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Amendment V

> 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 offense 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.

- Amendment XIV, Section 1

  All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- Article 3, Section 3

  Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No person shall be convicted of Treason unless on the Testimony of two witnesses to the same overt Act, or on Confession in open Court.
  The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

- Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901-63 (App. D, p.9-16)

- 25 USC § 1920

  Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception. Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

- The All Writs Act – 28 U.S.C. § 1651(a)

  The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

- 18 U.S.C. § 1201(a)

  Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—(1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary, or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense;
  (2) any such act against the person is done within the special maritime and territorial jurisdiction of the United States;
  (3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 46501 of title 49;
  (4) the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116(b) of this title; or
  (5) the person is among those officers and employees described in section 1114 of this title and any such act against the person is done while the person is engaged in, or on account of, the performance of official duties,
  shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.
  (b) With respect to subsection (a)(1), above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce. Notwithstanding the preceding sentence, the fact that the presumption under this section has not yet taken effect does not preclude a Federal investigation of a possible violation of this section before the 24-hour period has ended.
  (c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.
  (d) Whoever attempts to violate subsection (a) shall be punished by imprisonment for not more than twenty years.

(e) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent

- The Indian Civil Rights Act (App. E, p.17-19)

IV. STATE OF MICHIGAN LAW AND MIAMI TRIBE OF OKLAHOMA CODE INVOLVED

- Michigan Child Custody Act (App. F, p.20-32)
- Michigan Indian Child Preservation Act (App. G, p.33-43)
- Miami Tribe of Oklahoma Children's Code (App. H, p.44-71)
- Constitution of the Miami Tribe of Oklahoma (App. I, p.72-84)

V. STATEMENT OF THE CASE

Due to lengthiness, a narrative of the divorce case, MCPP, tribal court case, and tribal appellate court case is provided in Appendix J **(p.85-131).**

On February 18, 2018, *two months prior* to the illegal seizure of my children, the Miami Tribe of Oklahoma ("Tribe") Guardian ad Litem ("GAL"), Curt Lawrence, called Marsha Wetzel, maternal grandmother, and asked her if she would be willing to take MS and JS to live with her. Marsha asked GAL why the placement would be necessary and GAL told her that they wanted MS to attend joint counseling with Derek and knew that Elizabeth would be against reunification. Said statements are affirmed by sworn affidavit of Marsha Wetzel (App. K, p.132-133). GAL and Indian

Child Welfare Worker ("ICW"), Janet Grant, had already met with Donna Greenhaw, a counselor at Concepts in Counseling LLC. Donna Greenhaw agreed to counsel MS for the prospective reunification therapy and wrote a letter dated February 17, 201[8] that stated I was to take MS to counseling appointments, but I would not be allowed to have contact with the counselor (App. L, p.134).

On April 13, 2018, ICW, Janet Grant, and GAL, Curt Lawrence executed their intent and illegally removed JS and MS from their schools and from my custody. An order did not exist for the removal of my children from my custody and in fact, there were court orders prohibiting the removal, the most recent dated April 13, 2018, the same day as the kidnapping (App. M, 135-142). Despite this, ICW and GAL were still able to gain the assistance of non-tribal authoritative agencies such as the St. Clair County Sheriff's Department ("SCCSD") who provided the Tribe with a civil standby at the school and at my home.

This was not the first time the Tribe kidnapped or attempted to kidnap my children. On September 6, 2016 after ICW and GAL kidnapped JS and "placed" him in the custody of Derek, the tribal court ordered the immediate return of JS to my custody. For this kidnapping, the Tribe also utilized Concepts in Counseling LLC. The counselor, Sarah Shelton, wrote a report dated September 20, 2016 for the tribal court reflecting her counseling with Derek and with JS during the time JS was kidnapped. In her report, without speaking to me, MS's counselor, or MS, Sarah Shelton indicated her approval for reunification of MS with Derek by way of her recommendations concerning such (App. N, p.143-144). The report further states that

Derek reported to Sarah Shelton that JS was ordered back to his home with me. GAL and ICW "placed" JS with Derek and the tribal court ordered JS returned to my rightful custody. ICW admitted to the kidnapping of JS in her "Update to the Court" (App. O, p.145), MCL 750.350. See also 18 U.S.C. § 1153. In her Update, ICW further states that GAL was in full knowledge and agreement.

On June 30, 2017, when again, the behaviors and actions of ICW and GAL indicated premeditated intent to kidnap both children, upon motion, the tribal court entered a Protection Order to thwart and prevent the kidnapping (App. P, p.146). The timing of the attempted kidnapping was amid the Sanilac County Friend of the Court ("FOC") conducting their three-year review. Derek had repeatedly failed to return his income verification paperwork which delayed the process causing the FOC to schedule a hearing. The FOC mailed notice of this hearing on July 6, 2017 which aligns seamlessly with ICW and GAL's intended trip to Michigan over the long 4th of July weekend to "interview" the kids alone for a few hours. Aware of the FOC process and desperate to protect Derek from having his child support payments increased, they plotted together to kidnap JS and MS, but the tribal court entered a protection order to stop them.

Child support played a role in the April 13, 2018 kidnapping as well. Derek's child support payment history was to make a lump sum payment the day before his show cause hearings rather than making timely monthly payments. For over *three years*, Derek's payment was $145.00/month. After the three-year review in 2017, child support was increased to $729.00/month. Derek failed to make payments, but

this time he did not make a lump sum payoff before his show cause hearing on December 20, 2017. Judge Ross found Derek guilty of civil contempt and ordered him to pay child support or he would be sentenced to jail beginning January 2018.

After 16 months of not having a hearing in tribal court since closing arguments, a hearing for entry of adjudication was held on January 18, 2018. The Tribe wanted JS's visitation with Derek to return to the custody order in the divorce case and for Derek to have reunification with MS. Although unaware at that time, I now believe the Tribe exacted these provisions to cause a reduction in Derek's child support.

On April 18, 2018, *less than four months* after Derek was found guilty of civil contempt and *five days* after kidnapping my kids, they contacted the FOC and lied saying JS and MS were both residing with Derek so that child support would be abated to which the FOC quickly obliged[1]. The FOC filed a Notice of Abatement of Child Support applied retroactive to April 13, 2018, the same date as the kidnapping. The FOC did not initiate enforcement proceedings as required by MCR 3.208(B)[2]. Instead, the FOC immediately implemented the abatement and did not even wait the required 21 days purposed to allow me the opportunity to contest or respond. In doing so, I was denied my constitutionally protected right to due process and since the FOC required me to adhere to this process during past proceedings, I was further denied equal protection under the law.

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[1] JS was "placed" with Derek and MS was "placed" with maternal grandmother.

[2] MCR 3.208(B) – Enforcement. The friend of the court is responsible for initiating proceedings to enforce an order or judgment for support, parenting time, or custody. The procedures in this subrule govern contempt proceedings under the Support and Parenting Time Enforcement Act. MCR 3.606 governs contempt proceedings under MCL 600.1701.

Order of Transfer Void

The tribal court became involved via the Indian Child Welfare Act ("ICWA") during a Michigan Child Protection Proceeding ("MCPP") initiated by a petition filed by the Sanilac County Department of Health and Human Services ("DHHS") against Derek for the sexual abuse of MS. At this time DHHS was also required by law to place Derek's name on the Child Abuse and Neglect Registry for life which they failed to do. MCR 7.305(5)(B)(a).

As a non-respondent to said petition and since the Michigan Supreme Court ("MSC") abolished the one-parent doctrine in *In re Sanders*, my parental rights are <u>not</u> subject matter of the MCPP case thereby depriving that court of jurisdiction in regard to my legal and physical custody. The divorce case is the court with the jurisdiction and authority to govern my parental rights. Consent Judgment of Divorce, inclusive of a custodial and child support order was entered by Judge Ross on September 12, 2014. On October 15, 2014, from the bench, declaratory judgment was entered modifying Derek's custody following a motion and hearing regarding physical medical evidence that Derek sexually abused MS. On November 26, 2014, Judge Ross signed the modification order. According to MCL 722.25(2), entry of this modification order following a fact-finding hearing is legal representative that there was clear and convincing evidence that Derek sexually abused MS and it was in the best interests of the children to modify custody, MCL 722.23, 722.26a(2), MCL 722.27a(2).

In addition to the modification order entered in the divorce case, on March 18, 2015, following a fact-finding hearing in the MCPP, Judge Ross entered an order suspending Derek's parenting time of both children and further ordered the children to remain home with me under the jurisdiction of the divorce case (App. Q, p.149¶17, ¶19b). See *In re Sanders,* 495 Mich. 394, 407 (2014). Despite these orders, applicable law, and case facts, prior to a hearing being held and prior to having an opportunity to respond, Judge Ross signed an order on March 24, 2014 transferring the MCPP in Michigan to tribal court in Oklahoma. The Order, in excess of jurisdiction and absent due process, declared the children wards of the court and assigned legal custody of the children to the Oklahoma Department of Human Services (App. R, p.155). The Order of Transfer is void and yet it is being upheld as valid by all courts involved thus far. See *Elliot v. Piersol,* 1 Pet. 328, 340, 26 U.S. 328, 340 (1828). In *People v. Massengale* and *In re Sandel,* the courts confirmed the judicial power and responsibility to correct void judgments. I was not served with the Order of Transfer and did not know the terms decreed therein until *over four years later,* on or about June 2019, after I purchased a copy of the case file.

The Order of Transfer is not a judicial determination of my rights and is not entitled to respect in any tribunal. See *Sabariego v Maverick*, 124 US 261, 31 L Ed 430, 8 S Ct 461. As a void judgment, the Order of Transfer fails to create any binding obligation, *Kalb v. Feuerstein* (1940) 308 US 433, 60 S Ct 343, 84 L ed 370; *Rowland* (1882) 104 U.S. 604, 26 L. Ed. 86. Under Federal law, which is applicable to all states, the Supreme Court of the United States stated that if a court is "without authority,

its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers. "*Elliot v. Piersol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828).

All proceedings founded on the Order of Transfer are themselves regarded as void. A void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficacy for any purpose or at any place... it is not entitled to enforcement. 30A Am Jur Judgments 43, 44, 45. *Henderson v. Henderson*, 232 NC 380, 100 SE 2d 227. The Supreme Court of the United States has clearly, and repeatedly, held that any judge who acts without jurisdiction is engaged in an act of treason. *U.S. v. Will*, 449 U.S. 200, 216, 101, S. Ct. 471, 66 L.Ed. 2d 392, 406 (1980): *Cohens v. Virginia*, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821). "If a court grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that extent void." "A void judgment is no judgment at all and is without legal effect." *Jordon v. Gilligan*, 500 F.2d 701, 710 (6th Cir. 1974) "a court must vacate any judgment entered in excess of its jurisdiction." *Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645 (1st Cir. 1972).

The same day the Order of Transfer was entered in the state court, the tribal court emailed a petition to accept jurisdiction and an order to accept jurisdiction. The tribal court order declared the children wards of the tribal court. Assigned legal

custody of the children to the Tribe and decreed that the Tribe has the power to place the children with me, Elizabeth Shaw (App. AA, p.175-178). Having been served with these court documents at the same time and absent a hearing, they are void. The tribal court also filed these documents with the state court. The order accepting jurisdiction is a void order. The MCPP was never legally transferred to tribal court. Additionally, the state court excessively assigned legal custody of my children to the Oklahoma Department of Human Services and hours later the tribal court excessively assigned legal custody of my children to the Tribe. This is beyond shocking to the conscience and yet every entity involved has upheld the terms of these orders by failing to provide me assistance in the return of my children that were blatantly kidnapped.

State Court Following Illegal Seizure

I filed multiple motions for the return of my children in the tribal court, in the tribal appellate court, in the state court MCPP, and in the state court divorce case. The Sanilac County Circuit Court entered judgment on February 3, 2020 denying my request to enforce custodial orders entered in the divorce case (App. B, p.7). Judge Ross further denied my request to vacate the Order of Transfer as a void order and failed to order the immediate return of my children in accordance with custodial orders entered in the divorce case, the Indian Child Welfare Act ("ICWA"), the Michigan Indian Family Preservation Act ("MIFPA"), MCL 750.349, MCL 750.350. See also 18 U.S.C. § 1201 and 18 U.S.C. § 1204. Rather, Judge Ross repeatedly upheld

the terms of the Order of Transfer which he entered in excess of his jurisdiction and absent due process. See *Vallely v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348, 41 S. Ct. 116 (1920). See also *Elliot v. Piersol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828).

Upon appeal of said February 3, 2020 order, I filed a motion for immediate consideration for peremptory reversal on April 20, 2020. *Three months later* on July 16, 2016, MCOA entered an order requiring Derek to file a response by July 30, 2020. Derek filed his response on August 3, 2020 and since he did not provide service, the MCOA clerk served me with his response. I filed a reply on August 10, 2020. *Two days later,* MCOA entered an order denying peremptory reversal on August 12, 2020 (App. S, p.156). I filed an application for leave to appeal the MCOA order in the MSC which was denied via an ***unsigned*** "order" on October 16, 2020 which also failed to respond to my request for discretionary review of the pending MCOA appeal (App. T, 157). Without a signature, this order is in essence, no order at all in accordance with MCR 2.602. See also MCR 7.315(C)(1); MCR 7.315(A); MCR 7.315(B). This order was issued via USPS rather than via the MI-file system. Meanwhile, absent motion or order, the MCOA stayed proceedings in opposition of MCR 7.305(I) and MCR 7.209(E)(7). Proceedings resumed in MCOA after MSC issued their "denial order".

Despite having received notice on April 20, 2020 that the appeal would be placed on the upcoming case call session, the case was set for oral argument *seven months later* on December 2, 2020. I was further required to file a motion, incurring fees, to be granted oral argument even though my brief was timely filed. The motion was granted, but my oral argument was limited to ten minutes which the judges

strictly held me to despite their repeated interruptions. This was unequal treatment in comparison to the oral arguments I listened to while waiting for my case to be called. See *Ross v Stokely,* 258 Mich. App 283, 296; 673 NW2d 413 (2003). On December 10, 2020, *nearly a year* after the uncontested appeal for immediate consideration was timely filed, MCOA issued their Decision upholding the lower court (App. A, p.1-6).

During the time the divorce case appeal pended in the MCOA, I also timely filed a separate appeal in MCOA on March 19, 2020 in the MCPP case. Curiously, this appeal was processed much faster than the appeal in the divorce case. I filed my appellant's brief on April 7, 2020. A response brief was not filed prior to MCOA entering a dismissal order on April 30, 2020 for lack of jurisdiction (App. U, p.158). I filed a motion for reconsideration on May 3, 2020 and Phoebe Moore on behalf of DHHS filed a response to said motion on May 7, 2020. MCOA issued an order on May 12, 2020 denying reconsideration and denying the request for an order declaring the Order of Transfer void (App. V, p.159).

To compare, the MCPP appeal was completed within *two months* (Mar.19 – May12) during which time, the divorce appeal pended for nearly *ten months* (Feb.24 – Dec.10). Even the motion for peremptory reversal in the divorce case pended *twice as long* as the MCPP appeal (Apr.20 – Aug.12). Both appeals were attended by the Chief Judge who referenced his MCPP appeal decision in the divorce case appeal decision.

I filed, in MSC, a timely Immediate Consideration Application for Leave to Appeal the MCOA Decision on January 21, 2021 using the Mi-File system. I updated my address in the Mi-File system and provided my updated address on my filings. Despite my updated address, *over two months later* on March 30, 2021, via USPS, the MSC clerk mailed the ***unsigned*** "order" granting immediate consideration and denying the application for leave to appeal to my former address. No signature makes this no judgment and the manner of service is incomplete. MCR 7.315(C)(1). See MCR 7.315(A); MCR 7.315(B); MCR 2.107(C). The clerk mailed the order from the MSC to an address in Virginia rather than my address in Michigan. Had the "order" actually been signed officially making it an order rather than a "blank piece of paper", *Vallely v. Northern Fire and Marine Ins. Co.,* 254 U.S. 348 (1920), my 21-day timeline to file a Motion for Reconsideration would have been defeated due to the extended amount of time imposed on delivery by the mail forwarding system. See 18 U.S.C. § 1341. See also *Schmuck v. United States*, 489 U.S. 705, 721 n. 10 (1989); *see also Pereira v. United States*, 347 U.S. 1, 8 (1954). As of the 21-day deadline to file a Motion for Reconsideration, the order still had not been received at my Michigan address.

While awaiting the extraordinarily delayed decisions in the MCOA and the MSC, the Tribe, dependent on said delays, capitalized on the erroneous judgments provided by the Michigan state court system as an opportunity to usurp jurisdiction. Not immediate, timely, or in abidance of tribal law, but rather, ***nearly three years*** after kidnapping my children, in excess of jurisdiction, the tribe petitioned and held proceedings in the tribal court to terminate the parental rights of non-Indian,

non-tribal member, and non-respondent mother, Elizabeth Shaw, in an ICWA case against Indian, tribal member, and respondent father, Derek Shaw (App. W, p.160-162). To the knowledge of all involved, the children, victim of the substantiated child sexual abuse, are residing with Derek who moved the children from the State of Michigan to the State of Oregon. The tribe has exacted, allowed, and ordered such actions without the jurisdiction to do so and absent due process. Despite my many requests, the Michigan State court system has repeatedly failed to intervene. *D.J. v. P.C.,* 36 P.3d 663 (Alaska 2002) (ICWA applies to a proceeding where Indian custodian attempting to terminate parental rights of parent).

In *Troxel,* the U.S. Supreme Court used forceful language describing the significance of parents' fundamental liberty interest in the care, custody, and control of their children. It noted that this interest "is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Id.* at 65, 120 S. Ct. 2054 citing *Meyer,* 262 U.S. at 399, 401, 43 S. Ct. 625. I am being denied these fundamental liberty interests that *Troxel* was forceful, intent, and passionate about. My children must be returned to my custody in accordance with laws such as, but not limited to, the Child Custody Act, MCL 722.25(1), the Indian Child Welfare Act, 25 U.S.C. § 1920, the Michigan Indian Family Preservation Act, MCL 712B.19, the Due Process Clause of the 5th Amendment, the Due Process Clause of the 14th Amendment, the Equal Protection Clause of the Fourteenth Amendment, the Indian Civil Rights Act, MCL 750.350, 18 U.S.C. § 1201, 18 U.S.C. § 1204, *In re Sanders,* 495 Mich. 394, 407 (2014), *Troxel v.*

Granville, 530 U.S. 57 (2000), and *Vallely v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348 (1920).

A tribe's denial of notice and failure to hold an evidentiary hearing before depriving a person of even a property right violates the due process clause of 25 U.S.C. § 1302. *Crowe v Eastern Band of Cherokee Indians,* 506 F 2nd 1231 (CA4, 1974). The tribe's actions of removing the children from my legal and physical custody is *ultra vires.* They are acting without jurisdiction, in violation of court orders, and despite *stare decisis,* case facts, court rule, federal law, state law, and tribal law. See MCL 750.350, 18 U.S.C. § 1201, and 18 U.S.C. § 1204. The Indian Civil Right Act ("ICRA"), 25 USC 1302(8) has been applied to uphold the rights of a tribal member to a hearing before rights are taken away. *Johnson v Lower Elwha Tribal Community (Property), 484 F2nd 200(CA9, 1973)* and *Stands Over Bull v Bureau of Indian Affairs (Impeachment), 442 F Supp 360(DC Montana, 1977).* ICRA creates a substantive body of rights, patterned in part on the Bill of Rights, to protect the individual Indian from the excesses of tribal authority. *Stand Over Bull v Bureau of Indian Rights, 442 F Supp 360 (DC Montana, 1977).* **ICRA has also been applied to non-Indians.** *See Dodge v Nakai, 298 F Supp 20 (DC Arizona, 1969).*

The gist of the matter is that the tribe is falsely claiming they have legal custody of my children and are issuing fraudulent documents asserting same. I am disputing their claims and supporting my position with a plethora of case facts, court transcripts, court documents, and law. The tribe has confused and depraved this matter into a dispute of custody in effort to fulfill their odious intent. Michigan law

directly addresses that if there is a child custody dispute between a parent and an agency or third person, which would be the Tribe, the court shall presume the best interests of the child are served by awarding custody to the parent, unless the contrary is shown by clear and convincing evidence, MCL 722.25(1).

This provision in Michigan law parallels the following:

> On June 17, 1744, the commissioners from Maryland and Virginia negotiated a treaty with the Indians of the Six Nations at Lancaster, Pennsylvania. The Indians were invited to send boys to William and Mary College. The next day, the Six Nations politely declined the offer. Their letter stated:
> "We know that you highly esteem the kind of learning taught in those Colleges, and the Maintenance of our young Men, while with you, would be very expensive to you. We are convinced, that you mean to do us Good by your Proposal; and we thank you heartily. But you, who are wise must know that different Nations have different Conceptions of things and you will therefore not take it amiss, if our Ideas of this kind of Education happen not to be the same as yours. We have had some Experience of it. Several of our Young People were formerly brought up at the Colleges of the Northern Provinces; they were instructed in all your Sciences; but, when they came back to us, they were bad Runners, ignorant of every means of living in the woods . . . neither fit for Hunters, Warriors, nor Counsellors, they were totally good for nothing. We are, however, not the less oblig'd by your kind Offer, tho' we decline accepting it; and, to show our grateful Sense of it, if the Gentlemen of Virginia will send us a Dozen of their Sons, we will take Care of their Education, instruct them in all we know, and make Men of them. See Drake, Biography and History of the Indians of North America, Ch. 35, p. 27 (3d. ed. 1834).

It is a well-established maxim of constitutional law that "the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."62. See *Troxel v. Granville*, 530 U.S. 57, 66, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). Under the Due Process Clause of the Fourteenth Amendment petitioner was entitled to a hearing on his fitness as a parent before his children were taken from him. 405 U. S.

647-658. *Stanley v. Illinois,* 405 U.S. 645 (1972). Parental unfitness must be established on the basis of individualized proof. *See Bell v. Burson,* 402 U. S. 535. The Fourteenth Amendment's Due Process Clause has a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests," *Washington* v. *Glucksberg,* 521 U. S. 702, 720, including parents' fundamental right to make decisions concerning the care, custody, and control of their children, see, *e. g., Stanley* v. *Illinois,* 405 U. S. 645, 651. Pp.63-66.

A court in Michigan is limited to addressing the issues raised in the petition. If additional allegations are made against you, the court cannot inquire into those allegations unless the petition is amended. *In re Hatcher,* 443 Mich 426 (1993). In State court the petition is against Derek Shaw. In tribal court the petition is against Derek Shaw. I am a non-respondent. My outlet for justice is the divorce case, the case before this Court.

VI. REASON FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

This petition should be granted to avoid further erroneous deprivation of constitutional rights and interference with the inherent parent-child relationship. To further, this petition should be granted to prevent further obstruction of justice and violations of federal statute, tribal law, and state law. Case facts, the law, court rule, valid orders, void orders, and precedent, together provide extensive reason why this

petition should be granted.

This case edifies exceptional circumstances of peculiar emergency and is of great public importance. See *LaBuy v. Howes Leather Co.,* 352 U.S. 249 (1957); *United States v. McGarr,* 461 F.2d 1 (7th Cir. 1972). April 13, 2021 marked ***three years*** since the Tribe by and through their ICW and GAL, unlawfully and illegally seized my children from their schools while the SCCSD provided a civil standby. Ever since, I, mother, Elizabeth Shaw, have been exhausting recourse for the return of my children to no avail. As set forth, certiorari before judgment is justified. See Supreme Court Rule 11. See also 28 U.S.C. § 2101(e).

I, Elizabeth Shaw am respectfully petitioning this court for a Writ of Certiorari to review the illegal removal and withholding of my children from me, as well as, the processes of the following courts involved in said matter that have caused this to occur and enabled it to continue:

- *Shaw v. Shaw,* No. 162505, Michigan Supreme Court.
- *Shaw v. Shaw,* No. 161945, Michigan Supreme Court.
- *Shaw v. Shaw,* No. 352851, Michigan Court of Appeals.
- *In re Shaw minors,* No. 353213, Michigan Court of Appeals.
- *Derek Shaw v. Elizabeth Shaw,* No. 14-35535-DM, Sanilac County Circuit Court.
- *DHHS v. Derek Shaw,* No. 15-35887-NA-01-02, Sanilac County Circuit Court in the Child Protection Proceeding.
- *In the Matter of Jackson Shaw and Maya Shaw,* No. CW-2015-003, Miami Tribe of Oklahoma District Court.

- *In the Matter of Jackson Shaw and Maya Shaw,* No. 18-001, Miami Tribe of Oklahoma Appellate Court. Judgment entered September 10, 2019.

State Court Custodial Orders

Consent Judgment of Divorce, inclusive of a custodial and child support order was entered by Judge Ross on September 12, 2014. On October 15, 2014, guest judge, Honorable Michael Higgins, entered a declaratory judgment from the bench modifying said custody order due to a filed motion and hearing regarding physical medical evidence of the sexual abuse MS suffered. As a guest, Judge Higgins did not sign this order and instead Judge Ross finally signed the modification order on November 26, 2014 (App. X, p.163). According to MCL 722.25(2), entry of this modification order following a fact-finding hearing is legal representative that there was clear and convincing evidence that Derek sexually abused MS and it was in the best interests of the children to modify custody, MCL 722.23, 722.26a(2), MCL 722.27a(2).

My signature is needed to reverse or alter the modification order. For this reason, Donna Greenhaw, counselor at Concepts in Counseling LLC, repeatedly and forcefully tried to coerce me into signing custodial paperwork allowing reunification of MS with Derek, a change in parenting time, and a change in legal custody. Remember, the Tribe sought out Donna Greenhaw. Donna Greenhaw continually bullied me during the court ordered "counseling sessions" to sign the proposed custody documents that she presented (App. Y, p.164). How would the Tribe ever get

me to sign the custodial agreements that are not in the best interests of my children? By kidnapping JS and MS, lying about me to the authorities capable of helping me so they won't, only allowing me to see my son at a counselor's office so that I will go, having the counselor tell me that I have to sign custody forms for her to recommend the Tribe return my kids to me, and when I won't sign, the counselor recommended for JS and MS to live with Derek, for Derek to move the children across the country in summertime, and that my children should not be returned home to me. If the Tribe truly thought they had custody of my children, if the Tribe was not in full knowledge that I have full legal and physical custody of my children, if the Tribe was not in full knowledge that the tribal court does not have jurisdiction to modify custody or parenting time; then why were they so determined and desperate to acquire my signature? A doubtless showing that my signature is more powerful than the tribal courts, that the transfer orders and subsequent proceedings are knowingly void, and that my children were unlawfully removed, illegally seized and criminally kidnapped.

It should not be surprising that Judge Ross did not vacate the Order of Transfer in his February 3, 2020 order because that would be an admission in open court that he entered the Order of Transfer in excess of his jurisdiction in the MCPP. See *U.S. v. Will*, 449 U.S. 200, 216, 101, S. Ct. 471, 66 L.Ed. 2d 392, 406 (1980): *Cohens v. Virginia*, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821). It should not be surprising that Judge Teeple did not vacate the Order of Transfer in his February 27, 2020 order after upholding the terms of the Order of Transfer in his October 23, 2019 order because that would be an admission in open court that he decreed the execution

of a void order. See *Elliot v. Piersol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828). These same principles extend and apply to the Michigan Court of Appeals and the Michigan Supreme Court, as well as, the tribal court and the tribal appellate court which are both self-governed by the Miami Tribe of Oklahoma. All of these courts willingly and repeatedly misused their position of power and authority to violate the law rather than uphold the law. By executing the provisions of a void order, these courts have obstructed justice, enabled unlawful and illegal activity, and they did this in full knowledge that the order was entered in excess of jurisdiction and absent due process.

A party may have a court vacate a void order, but the void order is still *void ab initio*, whether vacated or not; a piece of paper does not determine whether an order is void, it just memorializes it, makes it legally binding and voids out all previous orders returning the case to the date prior to action leading to *void ab initio*. This principle of law was stated by the U.S. Supreme Court as "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply VOID, AND THIS IS EVEN PRIOR TO REVERSAL." [Emphasis added]. *Vallely v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348, 41 S. Ct. 116 (1920). See also *Old Wayne Mut. I. Assoc. v. McDonough*, 204 U.S. 8, 27 S.Ct. 236 (1907); *Williamson v. Berry*, 8 How. 495, 540, 12 L. Ed, 1170, 1189, (1850); *Rose v. Himely*, 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808).

Pursuant to the *Vallely* court decision, the Order of Transfer cannot be appealed as referenced in the MCOA Dismissal Order in the MCPP case (App. U, p.158). Courts have held that, since a void order is not a final order, but is in effect no order at all, it cannot even be appealed. Courts have held that a void decision is not in essence a decision at all, and never becomes final. Consistent with this holding, in 1991, the U.S. Supreme Court stated that, "Since such jurisdictional defect deprives not only the initial court but also the appellate court of its power over the case or controversy, ***to permit the appellate court to ignore it. ...[Would be an] unlawful action by the appellate court itself.***" [emphasis added] *Freytag v. Commissioner*, 501 U.S. 868 (1991); *Miller, supra.*

As a non-respondent, with the Order of Transfer being void, and according to valid custodial orders and the law, neither the tribal court nor the MCPP case has jurisdiction of or the authority to impede upon my parental rights. See *In re Sanders,* 495 Mich. 394, 407 (2014). See also *Troxel v. Granville*, 530 U.S. 57 (2000) and *Vallely v. Northern Fire and Marine Ins. Co.,* 254 U.S. 348 (1920). The MCPP case and the tribal court have as much jurisdiction and authority over you, your Honor, as they do me – which is none!

The Michigan courts should have enforced their jurisdiction and orders, but failed repeatedly. All of the courts involved have failed to vacate the Order of Transfer and subsequent proceedings as void. Rather, they have all upheld the Order of Transfer as valid in their judgments, thereby obstructing justice, enabling illegal activity to escalate, and trapping the children and I in a position of irreparable harm.

In tribal court, Judge Tripp outlined incontrovertible evidence in his order (App. M, p.135-142). The testimony he summarizes, the petition filed by DHHS against Derek, the petition filed by the Tribe against Derek that incorporated the Minors in Need of Care Petition (App. Z, p.165-174), the November 26, 2014 order entered in the divorce case modifying custody (App. X, p.163), and the March 18, 2015 order entered in the MCPP case (App. Q, p.147-154), *all* substantiate as fact by at least clear and convincing evidence that Derek repeatedly sexually abused MS. The clear and convincing evidence standard is "the most demanding standard applied in civil cases...." This showing must "'produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.'" See *Hunter v. Hunter*, 771 N.W.2d 694 (Mich. 2009).

It is not an allegation. Multiple fact-finding hearings resulted in the determination that Derek sexually abused MS, and yet, the tribe has unlawfully and illegally seized the children from my custody, placed them with Derek, and seemingly "terminated" my parental rights. All of which the Michigan State Court system has provided them the leeway to do by failing to uphold state law, federal law, and the Constitution of the United States, thereby obstructing justice, permitting illegal activity, and enabling the illegal activity to escalate. Activity that is exposing the children and me to irreparable harm. As a general rule, there is a presumption of irreparable harm when there is an alleged deprivation of constitutional rights. *Elrod*

v. Burns, 427 U.S. 347, 373 (1976). No separate showing of irreparable harm is necessary when there is an allegation of deprivation of a constitutional right, *Bery v. City of New York*, 97 F.3d 689, 694 (2d Cir .1996). It is "cruel and unusual punishment" for JS, MS, and I to be separated, 25 U.S.C. §1302(a)(7)(a). Judge Tripp may like to claim his determinations in the Order of Adjudication as an exercise of his discretion, but in using discretion, a judge must still call the game by the rules. See *Fox v. Vice,* 131 S. Ct. 2205, 2211 (2011). Parental unfitness must be established on the basis of individualized proof. *See Bell v. Burson,* 402 U. S. 535.

ICWA and MIFPA Violations

Unlike the Tribe's priors, the kidnapping that occurred on April 13, 2018 involved other non-tribal agencies thereby complicating the tribal court's perceived choices as limited to (1) returning my children to my rightful custody, which would act as a formal admission that the tribe unlawfully seized my children and deceived authorities, 18 U.S.C. § 1201, or (2) fail to return my children, in effort to deny their knowingly illegal activity, and rather, heighten their illegal activity to maintain their rouse in effort to cover their crimes. Despite multiple motions and hearings since the illegal seizure, the tribal court repeatedly failed to return my children and in doing so, further violated tribal law, state law, and federal law.

By admitting in his MCOA August 3, 2020 response, that ***after nearly two and a half years from when the children were taken from my custody,*** a petition still had

not been filed against me and a hearing still had not been held regarding removal of my parental rights, Derek was by inference admitting the removal of the children is a violation of due process, 25 U.S.C. § 1912(a), and 25 U.S.C. § 1911(e). In accordance with state and federal law, I filed motions showing the removal violated 25 U.S.C. § 1914, MCL 712B.39, and MCL 712B.15(5); also admitted by Derek who said we have "dealt with these issues". Upon said showing, the Court is required to order the immediate return of the children to my rightful custody, 25 U.S.C. § 1920, but the courts have failed despite case facts, court rule, and applicable law. Derek's admissions to MCOA cease to make this a case of "he said, she said". Together, Derek's admissions and the Tribe's judicial admissions, support my plea that my kids were illegally removed from my custody and are being illegally withheld from me. The Tribe's judicial admissions in regard to Derek's guilt are just as binding as their judicial admissions in regard to my innocence.

The removal of the children violates 25 U.S.C. § 1912(a) because the Child Custody Proceeding does not have jurisdiction of me. To initiate a Child Custody Proceeding, the state must file in the family division of the circuit court a petition containing facts that constitute an offense against the child under the juvenile code, MCR 3.961; MCL 712A.2. In tribal court, proceedings shall be instituted by a petition, CC§1.17.1. As a non-respondent in both state court and tribal court, my parental rights are not subject-matter of the MCPP case. Instead, my parental rights continue to reside under the jurisdiction of the divorce case. Presumption of law is that a fit parent acts in the best interests of their children, *Troxel v. Granville*, 530 U.S. 57, 68;

120 S Ct 2054; 147 L.Ed.2d 49 (2000). For the state court or tribal court to deprive me, as a fit parent, of my constitutionally protected parental rights violates Due Process, *In re Sanders*, 495 Mich. 394 (2014). Under the Due Process Clause of the Fourteenth Amendment petitioner was entitled to a hearing on his fitness as a parent before his children were taken from him. 405 U. S. 647-658. See *Stanley v. Illinois*, 405 U.S. 645 (1972).

Without a petition filed against me, for the state courts to determine custody of my children can be modified by the tribal court is a deprivation of my constitutionally protected rights of due process and fair trial. Since Derek was afforded his constitutionally protected rights of due process and fair trial, this causes me to be further denied my constitutionally protected right of equal protection under the law because there are not characteristics that justify such disparate treatment *Ross v Stokely*, 258 Mich App 283, 296; 673 NW2d 413 (2003). The lack of a petition is a violation of 25 U.S.C. § 1912(a) demanding the immediate return of the children to my rightful custody, 25 U.S.C. § 1920; MCL 712B.19.

The removal violates 25 U.S.C. § 1912(b) and MCL 712B.21 because I filed a motion in tribal court requesting court-appointed counsel following the illegal removal. Judge Tripp denied said motion at the May 3, 2018 hearing. 25 U.S.C. Sec.1912(b) mandates the appointment of counsel for parents or Indian custodian in a "removal, placement or termination proceeding". This appears broad enough to mandate the appointment of counsel in pre-adoptive and adoptive placement proceedings. This appears to include purely private disputes not involving a state,

such as stepparent adoptions and intra-family squabbles. See *Matter of J.W.*, 742 P.2d 1171 (Okla. App. 1987) (failure to appoint counsel is basis for reversal of trial court's action).

The removal violates 25 U.S.C. § 1912(d) because active efforts were not made to prevent the removal, MCL 712B.3; MCR 3.002. Michigan Indian Legal Services ("MILS") appealed a termination of parental rights case based on a lack of active efforts being made in accordance with ICWA. MCOA agreed that the termination order should be reversed because ICWA was not followed, *In re Roe*, 281 Mich App 88; 764 NW 2d 789 (2008).

The removal violates 25 U.S.C. § 1912(e) because there was **not** any reason to believe my continued custody of the children was likely to cause them harm. According to state, federal, and tribal law, ICW and GAL placing the children in foster care was illegal. ICW shall not place a minor in Shelter Care or Foster Care unless a petition is filed, or the Children's Court ***orders*** the minor taken into custody pursuant section 10 of the Tribe's Children's Code, CC§1.12.2. ICW, GAL, and Derek addressed their allegations regarding me to Judge Tripp during the April 13, 2018 tribal court hearing. A petition was not filed and the Judge did **not** order removal meaning probable cause does not exist regarding abuse or neglect of the children by me, CC§1.11.1. A sworn statement of facts showing probable cause exists against me was not presented to the tribal court by ICW or GAL which is the required procedure, according to CC§1.11.2, to request ***an order of removal signed by the Judge***. The hearing held April 13, 2018 prior to the removal of the children mimicked a probable

cause hearing and preliminary hearing prior to removal of the children, CC§1.11.5; CC§1.14.1. Said hearing ***did not*** result in the Court issuing an order to remove the children from me because probable cause does not exist that I have caused the children to be abused or neglected. Having attended and participated in the hearing on April 13, 2018, ICW, GAL, and Derek were in full knowledge that the Judge did not order the children removed from me, and in fact, ordered "no change of placement" (App. M, p.135-142).

Fully aware that only state authorities in Michigan could file a petition against me, ICW and GAL had repeated communication with St. Clair County and Sanilac County DHHS and law enforcement agencies prior to the illegal removal of the children on April 13, 2018. The local agencies did not perform an emergency removal of the children and did not file a petition against me in the state court despite the aggressive pressure of ICW and GAL to do so. Lacking emergency circumstances and despite not having probable cause, valid court order, proper jurisdiction or the authority to do so, ICW, GAL, and Derek, in desperation to execute their malicious intent, kidnapped the children. See MCL 750.349, MCL 750.350; 18 U.S.C. § 1201; 18 U.S.C. § 1204.

The removal violates 25 U.S.C. § 1913(a) and MCL 712B.13 because if the Service Plan issued to me in tribal court was purposed as "voluntary" consent to foster care placement, I did not voluntarily consent. On May 3, 2018 in tribal court, Judge Tripp came down off his bench and stood over me along with ICW when I was distraught and clearly emotional. Judge Tripp told me I had to sign IF I wanted my

children returned. The Service Plan was issued ***after*** the removal of the children and past the 14-day deadline imposed by the Tribe's Children's Code. The Service Plan was already signed by Judge Tripp and ICW when given to me to sign. Consequences of signing were not detailed, MCL 712B.13(1)(a). Rather, the Service Plan was issued in a manner equivalent to ransom – if you want your children returned, you have to sign and complete this Service Plan, MCL 750.349(1)(a).

The removal violates 25 U.S.C. § 1913(b), 25 U.S.C. § 1913(c), and MCL 712B.13 because I withdrew my signature from the Service Plan by written motion and affidavit filed May 9, 2018 and stated on the record May 31, 2018 during tribal court. The children still were not returned home. The Tribe maliciously and fraudulently enticed my children away from the school and then from me with the Service Plan with the specific intent of detaining and concealing them from me because I am a non-respondent, a non-tribal member, and a non-Indian, MCL 750.350. Their motive may be fueled by the intentions admitted in a tribal resolution,

> WHEREAS, the Tribe acknowledges the importance of the Indian Child Welfare Act (ICWA), the 1978 Act passed by Congress to protect the Indian child, family, and the tribe from unwarranted **interference by the non-Indian Culture**; and, [emphasis added].

This resolution further tells us that under self-government, the Tribe is required to follow ICWA, which should be expected given ICWA is a federal statute that U.S. law requires them to follow. The MTOK Tribal Constitution, Article VII....Bill of Rights states, [t]*he Miami Tribe, in exercising its powers of self-government, shall not take any action which is in violation of the laws of the United States as the same shall exist from time to time respecting civil rights and civil liberties of persons.* The MTOK

Tribal Constitution further states at Article VII....Bill of Rights that [t]*he protections guaranteed by the Indian Civil Rights Act of 1968 (82 Stat. 78) shall apply to all members of the Miami Tribe.* JS and MS are members of the Tribe. According to Rule 202-Mich. R. Evid. 202, the Michigan court system should have considered tribal law.

Even with my signature legally withdrawn from the Service Plan and the Service Plan satisfied by completion, MCR 2.620, Judge Tripp continues to fraudulently refer to the Service Plan as an obligation I must fulfill for the return of my children and dismissal of the case from tribal court, MCL 750.349. Judge Tripp did this in an email and in his August 5, 2019 order that illegally granted Derek the authority to remove the children from Michigan and move them to Oregon despite my objection. Judge Tripp is deflecting blame and responsibility onto me, but he is only telling on himself. Judge Tripp repeatedly referencing the Service Plan is only admitting the despicable scheme behind it. The Tribe and the tribal court system are not operating off of fact, jurisdiction, ethics, or law; they are acting upon what they can get away with doing and what they can trick people/entities into believing. See *Daubert v Merrell-Dow*, 509 US 579 (1993). See also *Christian v Gray*, 65 P 3rd 591, 594 (Oklahoma 2003).

According to 25 U.S.C. § 1920 and MCL 712B.19, the Court must immediately return my children home to me and the Tribe and tribal court must decline further jurisdiction of the petition. The highest standard of protection to my rights and the rights of my children are to be applied, 25 U.S.C. § 1921.

The children must be returned to me in accordance with the Child Custody Act, MCL 722.25(1), ICWA, 25 U.S.C. § 1920, MIFPA, MCL 712B.19, the Due Process Clause of the 5th and 14th Amendments, the Equal Protection Clause of the Fourteenth Amendment, the Indian Civil Rights Act, and *In re Sanders,* 495 Mich. 394, 407 (2014). One court observed, *every* attorney involved in matters concerning Indian children subject to the Indian Child Welfare Acts is under an affirmative duty to insure full and complete compliance with these Acts [federal and state ICWAs]. *In re Baby Girl B.*, 2003 OK CIV APP 24, 78-83, 67 P.3d 359, 374. Any failure of the attorney may result in finding of malpractice. *Doe v. Hughes*, 838 P.2d 804 (Alaska 1992). **All attorneys involved, including the attorneys in tribal court, are state bar licensed.** For example, GAL, Curt Lawrence is an attorney. The Indian Child Welfare Act was not intended "as a shield to permit abusive treatment of Indian children by their parents" or to allow Indian children "to be abused, neglected, or forlorned under the guise of cultural identity." *In the Interest of M.S.*, 624 N.W.2d 678 (N.D. 2001) (quoting *Matter of S.D.*, 402 N.W.2d 346, 351 (S.D. 1987).

The children have been illegally seized and are being illegally withheld from me. By clearly failing in their legal duty, corruption has been caused to the justice system and manifest injustice has resulted. This is a case of imperative public importance warranting Certiorari prior to judgment according to Supreme Court Rule 11.

Major Crimes Act and General Crimes Act

My children were not illegally seized by the Tribe in Indian Country. The crime was committed in Michigan. Crimes after the fact occurred in Michigan and Oregon, but many of them committed by the Tribe and tribal court did occur from their territory in Indian Country. Since said crimes involve kidnapping, incest, and carnal knowledge of a child under the age of 16, the Major Crimes Act applies and the United States has exclusive jurisdiction of these matters. Exclusive jurisdiction resides with the United States in regard to their crimes of kidnapping and felony child abuse and neglect of which they are subject to the same law and penalties of such as governed by 18 U.S.C. § 1153. As for the offenses which are not defined and punished by federal law, they are to be defined and punished in accordance with the law of the state where the crime was committed. See 18 U.S.C. § 1153(b). Under 18 U.S.C. § 1153, federal courts have jurisdiction exclusive of the states over offenses enumerated in the section when committed by a tribal Indian against the person or property of another tribal Indian or other person in Indian country. *United States v. John,* 437 U.S. 634 (1978). Legislative history indicates that the words "or other person" were incorporated in the 1885 Act to make certain the Indians were to be prosecuted in federal court. 48th Cong., 2d Sess., 16 Cong. Rec 934 (1885). Whether the crime is Indian against Indian (the Tribe and Derek against my children) or Indian against Non-Indian (the Tribe and Derek against me), there is federal jurisdiction, exclusive of the state, and not of the tribe.

VII. CONCLUSION

The kids were illegally seized. The tribal court is without jurisdiction. The Order of Transfer is a void order. According to this Court in *Vallely,* proceedings resume from the entry of the March 18, 2015 order causing it to be the current custodial order. This order should modify the previous custodial orders entered in the divorce case which are the Judgment of Divorce and the November 26, 2014 modification order. The children must be returned to the custody of Elizabeth immediately. For the foregoing reasons, I respectfully request that this Court issue a writ of Certiorari to review the proceedings in state court, as well as, tribal court. Most important of all, I am asking this Court to return my children home to me.

Respectfully Submitted,

Elizabeth Shaw 7/2/2021

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