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# Attachment A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

JUN 25 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JAMES JOSEPH KNOCHEL,  
  
                                Petitioner-Appellant,  
  
and  
  
EMILY NOELLE MIHAYLO,  
  
                                Petitioner,  
  
v.  
  
AMY FACKRELL; et al.,  
  
                                Respondents-Appellees.

No. 20-17326

D.C. No.  
3:19-cv-08086-GMS-JZB  
District of Arizona,  
Prescott

ORDER

Before: Lisa B. Fitzgerald, Appellate Commissioner.

Appellant's motion to proceed in forma pauperis (Docket Entry No. 3) is granted. The Clerk will amend the docket to reflect this status.

A certificate of appealability is not required because appellant seeks review only of the district court's November 13, 2020, vexatious litigant order.

Appellant's opening brief is due August 13, 2021. Appellees have not appeared, so briefing will be complete upon filing of the opening brief.

# Attachment B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

DEC 8 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

In re: JAMES JOSEPH KNOCHEL; et al.

No. 20-73382

JAMES JOSEPH KNOCHEL; et al.,

Petitioners,

v.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA,  
PHOENIX,

Respondent,

AMY FACKRELL; et al.,

Real Parties in Interest.

D.C. No.

3:19-cv-08086-GMS-JZB

District of Arizona,

Prescott

ORDER

Before: THOMAS, Chief Judge, HURWITZ and BADE, Circuit Judges.

Petitioners have not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus or any other writ. *See Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied.

All pending motions are denied as moot.

No further filings will be accepted in this closed case, and any continued attempts by James Knochel to submit filings in this court on behalf of Emily Mihaylo may result in sanctions or a vexatious litigant order.

**DENIED.**

# Attachment C

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Emily Noelle Mihaylo, et al.,  
Petitioners,

No. CV 19-08086-PCT-GMS (JZB)

v.

**ORDER**

Amy Fackrell, et al.,  
Respondents.

**I. Background**

On January 11, 2018, James Joseph Knochel filed, as “next friend” of purported Petitioner Emily Noelle Mihaylo, a pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, paid the filing fee, and sought a Temporary Restraining Order and “Ex-Parte Evidentiary Hearing,” as well as the appointment of counsel for Ms. Mihaylo. In order to facilitate consideration of the documents, the Clerk of Court assigned the matter as case no. CV 18-08004-PCT-GMS (JZB). In the Petition, Mr. Knochel alleged that Ms. Mihaylo had been ordered into treatment at a mental health facility, that she was being compulsorily medicated, and that the medications were making her condition worse, all in violation of the Constitution and laws of the State of Arizona. On January 24, 2018, Ms. Mihaylo sent a letter to the Court — which the Clerk of Court docketed as a Motion to Dismiss — stating that

“[A]t no time did I file this claim and I would like it to be removed. I believe that my ex-boyfriend used my information to file this claim. The reason he filed this claim is unknown to me. Moving forward[,] I would like to have this case dismissed, thrown out, and terminated all together.”

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2 On January 26, 2018, Mr. Knochel filed a “Response” to the Motion, suggesting  
3 that the Motion had not been written by Ms. Mihaylo, or at least not by her “of her own  
4 free will,” and that the Motion otherwise is “evidence of [Petitioner’s] status as a vulnerable  
5 person, and as further justification for the necessity of appointed counsel for [Ms.]  
6 Mihaylo.”

7 By Order dated February 7, 2018, the Court found that Mr. Knochel had failed to  
8 demonstrate that Ms. Mihaylo was unable to prosecute this action on her own and that he  
9 was acting in the best interests of Ms. Mihaylo, and that he thus did not have standing to  
10 sue as “next friend.” Accordingly, the Petition was dismissed without prejudice for lack  
11 of jurisdiction. Judgment was entered the same day, and case no. CV 18-08004-PCT-GMS  
12 (JZB) was closed. Mr. Knochel thereafter filed several additional documents that either  
13 failed to request any relief or were dismissed for lack of standing.

14 On March 25, 2019, Mr. Knochel filed, again as the purported “next friend” of Ms.  
15 Mihaylo, the instant action. Therein, Mr. Knochel again alleged that the January 24, 2018  
16 letter in case no. CV 18-08004-PCT-GMS (JZB) was not sent by Ms. Mihaylo, but was  
17 rather a fraudulent document sent by the administrators of Ms. Mihaylo’s mental healthcare  
18 facility. Mr. Knochel also provided a letter, which he purported to have been handwritten  
19 by Ms. Mihaylo, stating that “the letter that I signed was not written by me. I was pressured  
20 into signing it by ViewPoint staff.” Attached to the Petition were also numerous exhibits,  
21 including a November 29, 2018 Minute Entry in a Yavapai County Mental Health Court  
22 hearing noting that “Defendant [apparently referring to Ms. Mihaylo] has been contacted  
23 by James. The Court notes to block James from phone...”; a December 13, 2018 Minute  
24 Entry in the same Yavapai County Mental Health Court case ordering that “Defendant shall  
25 have no contact with James Knochel”; a December 13, 2018 “Comprehensive Mental  
26 Health Court Contract” in the same case that is signed by Ms. Mihaylo and stipulates that  
27 Ms. Mihaylo will have “no contact with James Knochel”; and a December 27, 2018  
28 “Comprehensive Mental Health Court Contract” that was again signed by Ms. Mihaylo and  
again stipulates that she will have “no contact with James Knochel.”

1           Accordingly, by Order dated May 7, 2019, the Court found that, given the multiple  
2 no-contact orders entered against Mr. Knochel, Mr. Knochel had again failed to  
3 demonstrate that he had standing to sue as “next friend.” Accordingly, the Petition was  
4 dismissed without prejudice for lack of jurisdiction (Doc. 4). Judgment was entered the  
5 same day, and case no. CV 19-08086-PCT-GMS (JZB) was closed (Doc. 6). On June 3,  
6 2019, Mr. Knochel appealed the dismissal to the Ninth Circuit Court of Appeals (Doc. 7).

7           Further, on May 5, 2019, Mr. Knochel attempted to “remove” an Order of Protection  
8 that Ms. Mihaylo had sought, and obtained, against him in Prescott Justice Court, case no.  
9 J1303-PO2019000067.<sup>1</sup> In order to facilitate consideration of the “removal,” the Clerk of  
10 Court opened case no. CV-19-08137-PCT-GMS (JZB). Therein, Mr. Knochel asserted  
11 that the Order of Protection was the result of a “conspiracy ... to deprive [Ms. Mihaylo]  
12 and [Mr. Knochel] of rights secured by the Constitution,” namely, as Mr. Knochel put it,  
13 the “freedom of association guaranteed by the [First] Amendment and the equal protection  
14 of the law and privilege of habeas corpus guaranteed by the [Fourteenth] Amendment.”  
15 Mr. Knochel further requested that this Court “intervene in the conspiracy against  
16 Plaintiff’s and Defendant’s civil rights.” By Order dated May 20, 2019, the Court  
17 remanded the matter to the Prescott Justice Court for lack of jurisdiction. The Court further  
18 warned Mr. Knochel that “if [he] persists in using this Court as what appears to be a vehicle  
19 to further his harassment of Ms. Mihaylo,” the Court may impose a vexatious litigant order  
20 against him. On June 18, 2019, Mr. Knochel appealed the dismissal to the Ninth Circuit.

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22           <sup>1</sup> The Petition for the Order of Protection, which is signed by Ms. Mihaylo, details  
23 multiple instances in which Mr. Knochel has harassed Ms. Mihaylo, including by  
24 “show[ing] up at ViewPoint after he has been asked not to come back”; “writ[ing] letters  
25 to the Adult Probation Department [ ] trying to get [Ms. Mihaylo] off probation [and that  
26 she] asked [Mr. Knochel] to stop doing this”; “showing up at [a] mental health hearing  
27 after being asked by the probation department in months prior not to come back to mental  
28 health court,”; and showing up at the mental health court “for the third time, [being]  
escorted out of the court room” but not leaving the building, and then “harass[ing]” Ms.  
Mihaylo, an employee from her mental health facility, and a court employee “by taking  
pictures on his phone.” (Doc. 1 at 14-15 in CV 19-08137-PCT-GMS (JZB)). Ms. Mihaylo  
further states that she has “asked [Mr. Knochel] to stop writing letters to the courts  
pertaining to [her].” (*Id.*). The Order of Protection itself mandates that Mr. Knochel have  
no contact with Ms. Mihaylo. (*Id.* at 10). It is dated April 4, 2019, and was effective for  
one year from that date. (*Id.*).

1           On July 7, 2019, the Ninth Circuit dismissed Mr. Knochel's appeal of case no. CV  
2 19-08137-PCT-GMS (JZB) as frivolous, and, on July 22, 2019, it declined to issue a  
3 certificate of appealability for the Court's May 7, 2019 dismissal of the instant case. The  
4 Ninth Circuit further stated that "any continued attempts by James Knochel to submit  
5 filings in this court on behalf of Emily Mihaylo may result in sanctions or a vexatious  
6 litigant order." (Doc. 9 at 1-2).

7           Despite the warnings from both this Court and the Ninth Circuit, Mr. Knochel  
8 continued to make filings in this case, including a Motion to Set Aside the Order of  
9 Dismissal and to Reinstate the Petition for a Writ of Habeas Corpus pursuant to Rule 60 of  
10 the Federal Rules of Civil Procedure, and a Declaration in support thereof (the "Rule 60  
11 Motion"). Additionally, Mr. Knochel filed an Affidavit in which he sought to "remove"  
12 the undersigned from this case pursuant to 28 U.S.C. § 144. By Order dated September 9,  
13 2020, the Court declined to recuse itself, denied the Rule 60 Motion, and ordered Mr.  
14 Knochel to show cause for why a vexatious litigant order should not be entered against  
15 him. On October 8, 2020, Mr. Knochel filed his Response to the Order to Show Cause  
16 (Doc. 16).

## 17 **II. Discussion**

18           Federal courts have the responsibility to ensure that their limited resources "are  
19 allocated in a way that promotes the interests of justice." *In re McDonald*, 489 U.S. 180,  
20 184 (1989). "Flagrant abuse of the judicial process cannot be tolerated because it enables  
21 one person to preempt the use of judicial time that properly could be used to consider the  
22 meritorious claims of other litigants." *DeLong v. Hennessey*, 912 F.2d 1144, 1148 (9th  
23 Cir. 1990); *see also O'Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990). District courts  
24 have the inherent power to act to ensure that the business of the Court is conducted in an  
25 orderly and reasonable fashion. *See e.g. Visser v. Supreme Court of the State of California*,  
26 919 F.2d 113, 114 (9th Cir. 1990). This inherent authority includes the power to "regulate  
27 the activities of abusive litigants by imposing carefully tailored restrictions under the  
28 appropriate circumstances." *DeLong v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990)



1 (quoting *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989)).

2 Although the Court has the authority to enjoin abusive litigants from future access  
3 to the courts, that authority should be exercised only rarely. *Molski v. Evergeen Dynasty*  
4 *Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007); *DeLong*, 912 F.2d at 1147. Before imposing  
5 such an injunction, the Court must provide the abusive litigant with notice of the impending  
6 injunction and an opportunity to oppose it. *DeLong*, 912 F.2d at 1147. The Court must  
7 also furnish an adequate record for review—one that includes “a listing of all the cases and  
8 motions that led the district court to conclude that a vexatious litigant order was needed.”  
9 *Id.* The Court must make a substantive finding of “the frivolous or harassing nature of the  
10 litigant’s actions.” *Id.* at 1148 (quoting *In re Powell*, 851 F.2d 427, 431 (D.C. Cir. 1988)).  
11 Litigiousness is not enough; the court must consider “both the number and content of the  
12 filings.” *Id.* (quoting *In re Powell*, 851 F.2d at 431).

### 13 1. Filing History

14 Mr. Knochel has filed three separate actions in this Court,<sup>2</sup> as well as two separate  
15 appeals to the Ninth Circuit.<sup>3</sup> This Court dismissed CV 18-08004-PCT-GMS (JZB) and  
16 CV 19-08086-PCT-GMS (JZB) for lack of standing, and dismissed CV 19-08137-PCT-  
17 GMS (JZB) for lack of jurisdiction. The Ninth Circuit declined to issue a certificate of  
18 appealability in case no. 19-16135, and dismissed case no. 19-16261 as frivolous.

19 In his Response, Mr. Knochel argues that this low volume of filings does not support  
20 issuance of a vexatious litigant order because he did not file “large numbers of pointless  
21 cases,” and the only cost is “this Court’s time in figuring out how to avoid its duty to  
22 justice.” (Doc. 16 at 4). Mr. Knochel further argues that the cases he brought in this Court  
23 were dismissed without prejudice. (*Id.* at 3).

24 Although the volume of Mr. Knochel’s filings is relatively low, and thus weighs  
25 against entry of a vexatious litigant order, this Court has repeatedly found that Mr. Knochel

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26 <sup>2</sup> CV 18-08004-PCT-GMS (JZB), CV 19-08086-PCT-GMS (JZB), and CV 19-  
27 08137-PCT-GMS (JZB).

28 <sup>3</sup> Ninth Circuit case no. 19-16135 (appealing CV 19-08086-PCT-GMS (JZB)), and  
Ninth Circuit case no. 19-16261 (appealing CV 19-08137-PCT-GMS (JZB)).

1 lacks standing to bring the filings at all, or that it lacks jurisdiction to consider them, and  
2 the Ninth Circuit has found that one of Mr. Knochel's appeals was frivolous. That the  
3 Court dismissed the actions without prejudice was to preserve *Ms. Mihaylo's* rights to bring  
4 any claims she wished, not an adjudication of the "good faith" of Mr. Knochel.  
5 Accordingly, the Court thus finds that, on balance, Mr. Knochel's filing history weighs in  
6 favor of entry of a vexatious litigant order.

7 **2. Harassing Nature of Mr. Knochel's Filings**

8 Although the volume of Mr. Knochel's filing history is relatively low, both this  
9 Court and the Ninth Circuit have previously warned Mr. Knochel that a vexatious litigant  
10 order may be entered against him "if [he] persists in using this Court as what appears to be  
11 a vehicle to further his harassment of Ms. Mihaylo." (Doc. 11 at 6 in CV 19-08137-PCT-  
12 GMS (JZB)); *see also* (Doc. 9 at 1-2) (stating that "any continued attempts by James  
13 Knochel to submit filings in this court on behalf of Emily Mihaylo may result in sanctions  
14 or a vexatious litigant order.") Despite those warnings, Mr. Knochel remains undeterred  
15 in making such filings, supporting the conclusion that they are intended "to be a vehicle to  
16 further his harassment of Ms. Mihaylo." This is evidenced by the following:

17 After initiating CV 18-08004-PCT-GMS (JZB), his first action in this court, Ms.  
18 Mihaylo filed a letter with the Court stating that

19 "[A]t no time did I file this claim and I would like it to be removed. I believe  
20 that my ex-boyfriend used my information to file this claim. The reason he  
21 filed this claim is unknown to me. Moving forward[,] I would like to have  
22 this case dismissed, thrown out, and terminated all together."

(Doc. 8 in CV 18-08004-PCT-GMS (JZB)).

23 Similarly, in the instant case, Mr. Knochel has provided handwritten notes from Ms.  
24 Mihaylo in which she states that Mr. Knochel

25 has been writing letters to the Supreme Court [and] Federal Court to get me  
26 out of the treatment center I am paying to be at. He has [filed] a filing called  
27 Next Friend saying I am not capable of making my own decisions. I have  
28 asked him to stop writing letters to the courts pertaining to me. He has  
shown up at ViewPoint after he has been asked to not come back. He has  
written letter to the Adult Probation Department also trying to get me off  
probation. I asked him to stop doing this.

(Doc. 14 at 22) (emphasis in original).

1 Ms. Mihaylo has also been directed by a Yavapai Mental Health Court to “block  
2 James [Knochel] from phone [contact],” and repeatedly ordered to “have no contact with  
3 James Knochel.” (Doc. 2-1 at 8-11).

4 Ms. Mihaylo has also sought, and obtained, an Order of Protection against Mr  
5 Knochel. (Doc. 1 at 9 in CV 19-08137-PCT-GMS (JZB)). The Petition for the Order of  
6 Protection, which is signed by Ms. Mihaylo, details multiple instances in which Mr.  
7 Knochel harassed Ms. Mihaylo, including by “show[ing] up at ViewPoint after he has been  
8 asked not to come back”; “writ[ing] letters to the Adult Probation Department [] trying to  
9 get [Ms. Mihaylo] off probation [and that she] asked [Mr. Knochel] to stop doing this”;  
10 “showing up at [a] mental health hearing after being asked by the probation department in  
11 months prior not to come back to mental health court,”; and showing up at the mental health  
12 court “for the third time, [being] escorted out of the court room” but not leaving the  
13 building, and then “harass[ing]” Ms. Mihaylo, an employee from her mental health facility,  
14 and a court employee “by taking pictures on his phone.” (*Id.* at 14-15). Ms. Mihaylo  
15 further states she “asked [Mr. Knochel] to stop writing letters to the courts pertaining to  
16 [her].” (*Id.*). The Order of Protection itself mandates that Mr. Knochel have no contact  
17 with Ms. Mihaylo. (*Id.* at 10).

18 Finally, Ms. Mihaylo has recently had a Guardian appointed to act on her behalf by  
19 Maricopa County Superior Court (Doc. 14 at 19-20), and Mr. Knochel himself states that  
20 this Guardian has “formally prohibit[ed] Mihaylo and Knochel’s contact.” (*Id.* at 6).

21 Although Mr. Knochel argues that these filings were made “in good faith,” that the  
22 litigation history recited by this Court is “incomplete and misleading,” and that he “only  
23 filed in District Court after he and Mihaylo were denied due process of law by ... the  
24 Arizona Superior Court, the Arizona Court of Appeals, and the Arizona Supreme  
25 Court...”<sup>4</sup> he cherry-picks the record to support his actions. (Doc. 16 at 2-3). Mr. Knochel  
26 omits any mention of Ms. Mihaylo’s written pleas that he desist in both contacting her and  
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28 <sup>4</sup> The fact that Mr. Knochel is apparently seeking in the state courts the same relief he seeks in this Court and the Ninth Circuit only further supports the harassing nature of Mr. Knochel’s filings.

1 seeking judicial relief on her behalf, the Yavapai State Mental Health Court's numerous  
 2 orders prohibiting Mr. Knochel from contacting Ms. Mihaylo, the entry of an Order of  
 3 Protection against him obtained by Ms. Mihaylo, and the appointment of a Guardian for  
 4 Ms. Mihaylo who has "formally prohibit[ed] Mihaylo and Knochel's contact." As such,  
 5 Mr. Knochel's continued filings do not support that he is acting "in good faith," nor does  
 6 it support that his litigation history militates against entry of a vexations litigant order. To  
 7 the contrary, the Court finds that the harassing nature of Mr. Knochel's filings strongly  
 8 supports the entry of a vexatious litigant order against him.

### 9 **III. Type of Injunctive Order**

10 An order enjoining an abusive litigant from future access to the courts must be  
 11 "narrowly tailored to closely fit the specific vice encountered." *DeLong*, 912 F.2d at 1148.  
 12 Here, that vice is Mr. Knochel's continued harassment of Ms. Mihaylo. As such, the Court  
 13 sees no basis to enjoin Mr. Knochel from filing any actions that do not relate to Ms.  
 14 Mihaylo, thus preserving his access to the Court should he seek to file an action that does  
 15 not relate to Ms. Mihaylo. Further, given Mr. Knochel's relative paucity of filings, the  
 16 Court does not, at this time, find that a pre-filing monetary sanction is either warranted or  
 17 sufficient to prevent Mr. Knochel's continued filings related to Ms. Mihaylo.<sup>5</sup>  
 18 Accordingly, the Court's vexatious litigant order will be limited to preventing Mr.  
 19 Knochel's continued filings in the three cases he has already brought in this Court, and  
 20 preventing him from filing any new cases in this Court related to Ms. Mihaylo.

### 21 **IV. Vexatious Litigant Order**

22 The Court's September 9, 2020 Order served as notice of the Court's intent to  
 23 impose a vexatious litigant order against Mr. Knochel. Mr. Knochel was permitted an

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24  
 25 <sup>5</sup> The Court notes that two of the three actions Mr. Knochel has filed in this Court  
 26 —CV 18-08004-PCT-GMS (JZB) and CV 19-08086-PCT-GMS (JZB)— were filed as  
 27 habeas corpus actions, for which the filing fee is only \$5.00 and which Mr. Knochel paid  
 28 in full at the time he initiated both cases. In the third case — CV 19-08137-PCT-GMS  
 (JZB) — Mr. Knochel sought to proceed in forma pauperis, attesting that he had  
 insufficient monies to pay the \$400 filing and administrative fees. Although in forma  
 pauperis status is a privilege, not a right, it seems possible that, given Mr. Knochel's  
 professed indigency, a pre-filing monetary sanction would effectively bar him from all  
 access to the courts.

1 opportunity to show cause for why such an order should not be entered, and has failed to  
2 persuade the Court that a vexatious litigant order is not warranted. Accordingly, the Court  
3 will enter the injunction proposed in its September 9, 2020 Order, with the following terms:

4 1. James Joseph Knochel is prohibited from making any  
5 further filings in cases CV 18-08004-PCT-GMS (JZB), CV 19-  
6 08086-PCT-GMS (JZB), and CV 19-08137-PCT-GMS (JZB).  
7 If Mr. Knochel makes any further filings in these cases, the  
8 Court will not consider them, and the Clerk of Court will  
9 summarily strike them from the record.

10 2. If James Joseph Knochel attempts to file any new  
11 actions in this Court, he must include therewith a Declaration,  
12 signed under penalty of perjury, that the filing is not brought  
13 on behalf of, as "next friend" to, or in any way related to Emily  
14 Noelle Mihaylo. If Mr. Knochel fails to include the required  
15 Declaration, or if the Declaration indicates that the action is  
16 being brought on behalf of, as "next friend" to, or is otherwise  
17 related to Ms. Mihaylo, the Court will not consider the new  
18 action and will summarily dismiss the action for failure to  
19 comply with this Order.

20 **IT IS ORDERED:**

21 (1) Mr. Knochel having failed to show cause for why the injunction proposed in  
22 the Court's September 9, 2020 Order should not be imposed, the Injunction described in  
23 that Order is entered as set forth below.

24 (2) James Joseph Knochel is prohibited from making any further filings in cases  
25 CV 18-08004-PCT-GMS (JZB), CV 19-08086-PCT-GMS (JZB), and CV 19-08137-PCT-  
26 GMS (JZB). If Mr. Knochel makes any further filings in those three cases, the Court will  
27 not consider them, and the Clerk of Court is directed to summarily strike them from the  
28 record.

(3) If James Joseph Knochel attempts to file any new actions in this Court, he  
must include therewith a Declaration, signed under penalty of perjury, that the filing is not  
brought on behalf of, as "next friend" to, or in any way related to Emily Noelle Mihaylo.  
If Mr. Knochel fails to include the required Declaration, or if the Declaration indicates that  
the action is being brought on behalf of, as "next friend" to, or is otherwise related to Ms.

1 Mihaylo, the Court will not consider the new action and will summarily dismiss the action  
2 for failure to comply with this Order.

3 Dated this 13th day of November, 2020.

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5 G. Murray Snow  
6 Chief United States District Judge

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# Attachment D

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Emily Noelle Mihaylo, et al.,  
Petitioners,  
v.  
Amy Fackrell, et al.,  
Respondents.

No. CV 19-08086-PCT-GMS (JZB)

**ORDER  
and  
ORDER TO SHOW CAUSE**

**I. Background**

On January 11, 2018, James Joseph Knochel filed, as “next friend” of purported Petitioner Emily Noelle Mihaylo, a pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, paid the filing fee, and sought a Temporary Restraining Order and “Ex-Parte Evidentiary Hearing,” as well as the appointment of counsel for Ms. Mihaylo. In order to facilitate consideration of the documents, the Clerk of Court assigned the matter as case no. CV 18-08004-PCT-GMS (JZB). In the Petition, Mr. Knochel alleged that Ms. Mihaylo had been ordered into treatment at a mental health facility, that she was being compulsorily medicated, and that the medications were making her condition worse, all in violation of the Constitution and laws of the State of Arizona. On January 24, 2018, Ms. Mihaylo sent a letter to the Court — which the Clerk of Court docketed as a Motion to Dismiss — stating that

1 “[A]t no time did I file this claim and I would like it to be removed. I believe  
2 that my ex-boyfriend used my information to file this claim. The reason he  
3 filed this claim is unknown to me. Moving forward[,] I would like to have  
4 this case dismissed, thrown out, and terminated all together.”

5 On January 26, 2018, Mr. Knochel filed a “Response” to the Motion, suggesting  
6 that the Motion had not been written by Ms. Mihaylo, or at least not by her “of her own  
7 free will,” and that the Motion otherwise is “evidence of [Petitioner’s] status as a vulnerable  
8 person, and as further justification for the necessity of appointed counsel for [Ms.]  
9 Mihaylo.”

10 By Order dated February 7, 2018, the Court found that Mr. Knochel had failed to  
11 demonstrate that Ms. Mihaylo was unable to prosecute this action on her own and that he  
12 was acting in the best interests of Ms. Mihaylo, and that he thus did not have standing to  
13 sue as “next friend.” Accordingly, the Petition was dismissed without prejudice for lack  
14 of jurisdiction. Judgment was entered the same day, and case no. CV 18-08004-PCT-GMS  
15 (JZB) was closed. Mr. Knochel thereafter filed several additional documents that either  
16 failed to request any relief or were dismissed for lack of standing.

17 On March 25, 2019, Mr. Knochel filed, again as the purported “next friend” of Ms.  
18 Mihaylo, the instant action. Therein, Mr. Knochel again alleged that the letter filed on  
19 January 24, 2018 in case no. CV 18-08004-PCT-GMS (JZB) was not sent by Ms. Mihaylo,  
20 but was rather a fraudulent document sent by the administrators of Ms. Mihaylo’s mental  
21 healthcare facility. Mr. Knochel also provided a letter, which he purported to have been  
22 handwritten by Ms. Mihaylo, stating that “the letter that I signed was not written by me. I  
23 was pressured into signing it by ViewPoint staff.” Attached to the Petition in case no.  
24 CV 19-08086-PCT-GMS (JZB) were also numerous exhibits, including a November 29,  
25 2018 Minute Entry in a Yavapai County Mental Health Court hearing noting that  
26 “Defendant [apparently referring to Ms. Mihaylo] has been contacted by James. The Court  
27 notes to block James from phone...”; a December 13, 2018 Minute Entry in the same  
28 Yavapai County Mental Health Court case ordering that “Defendant shall have no contact  
with James Knochel”; a December 13, 2018 “Comprehensive Mental Health Court  
Contract” in the same case that is signed by Ms. Mihaylo and stipulates that Ms. Mihaylo



1 will have “no contact with James Knochel”; and a December 27, 2018 “Comprehensive  
2 Mental Health Court Contract” that was again signed by Ms. Mihaylo and again stipulates  
3 that she will have “no contact with James Knochel.”

4 Accordingly, by Order dated May 7, 2019, the Court found that, given the multiple  
5 no-contact orders entered against Mr. Knochel, Mr. Knochel had again failed to  
6 demonstrate that he had standing to sue as “next friend.” Accordingly, the Petition was  
7 dismissed without prejudice for lack of jurisdiction (Doc. 4). Judgment was entered the  
8 same day, and case no. CV 19-08086-PCT-GMS (JZB) was closed (Doc. 6). On June 3,  
9 2019, Mr. Knochel appealed the dismissal to the Ninth Circuit Court of Appeals (Doc. 7).

10 Further, on May 5, 2019, Mr. Knochel attempted to “remove” an Order of Protection  
11 that Ms. Mihaylo had sought, and obtained, against him in Prescott Justice Court, case  
12 number J1303-PO2019000067.<sup>1</sup> In order to facilitate consideration of the “removal,” the  
13 Clerk of Court opened case no. CV-19-08137-PCT-GMS (JZB). Therein, Mr. Knochel  
14 asserted that the Order of Protection was the result of a “conspiracy ... to deprive [Ms.  
15 Mihaylo] and [Mr. Knochel] of rights secured by the Constitution,” namely, as Mr.  
16 Knochel put it, the “freedom of association guaranteed by the [First] Amendment and the  
17 equal protection of the law and privilege of habeas corpus guaranteed by the [Fourteenth]  
18 Amendment.” Mr. Knochel further requested that this Court “intervene in the conspiracy  
19 against Plaintiff’s and Defendant’s civil rights.” By Order dated May 20, 2019, the Court  
20 remanded the matter to the Prescott Justice Court for lack of jurisdiction. The Court further  
21

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22 <sup>1</sup> The Petition for the Order of Protection, which is signed by Ms. Mihaylo, details  
23 multiple instances in which Mr. Knochel has harassed Ms. Mihaylo, including by  
24 “show[ing] up at ViewPoint after he has been asked not to come back”; “writ[ing] letters  
25 to the Adult Probation Department [] trying to get [Ms. Mihaylo] off probation [and that  
26 she] asked [Mr. Knochel] to stop doing this”; “showing up at [a] mental health hearing  
27 after being asked by the probation department in months prior not to come back to mental  
28 health court,”; and showing up at the mental health court “for the third time, [being]  
escorted out of the court room” but not leaving the building, and then “harass[ing]” Ms.  
Mihaylo, an employee from her mental health facility, and a court employee “by taking  
pictures on his phone.” (Doc. 1 at 14-15 in CV 19-08137-PCT-GMS (JZB)). Ms. Mihaylo  
further states that she has “asked [Mr. Knochel] to stop writing letters to the courts  
pertaining to [her].” (*Id.*). The Order of Protection itself mandates that Mr. Knochel have  
no contact with Ms. Mihaylo. (*Id.* at 10). It is dated April 4, 2019, and was effective for  
one year from that date. (*Id.*).

1 warned Mr. Knochel that “if [he] persists in using this Court as what appears to be a vehicle  
2 to further his harassment of Ms. Mihaylo,” the Court may impose a vexatious litigant order  
3 against him. On June 18, 2019, Mr. Knochel appealed the dismissal to the Ninth Circuit.

4 On October 24, 2019, the Ninth Circuit dismissed Mr. Knochel’s appeal of case  
5 number CV 19-08137-PCT-GMS (JZB) as frivolous, and, on July 22, 2019, it declined to  
6 issue a certificate of appealability for the Court’s May 7, 2019 dismissal of CV 19-08086-  
7 PCT-GMS (JZB). The Ninth Circuit further stated that “any continued attempts by James  
8 Knochel to submit filings in this court on behalf of Emily Mihaylo may result in sanctions  
9 or a vexatious litigant order.” (Doc. 9 at 1-2). Despite the warnings from both this Court  
10 and the Ninth Circuit, Mr. Knochel continued to make filings in case no. CV 19-08086-  
11 PCT-GMS (JZB) (*see* Docs. 10, 11, and 12).

12 Mr. Knochel has now filed a Motion to Set Aside the Order of Dismissal and to  
13 Reinstate the Petition for a Writ of Habeas Corpus pursuant to Rule 60 of the Federal Rules  
14 of Civil Procedure, and a Declaration in support thereof (the “Rule 60 Motion”) (Docs. 13,  
15 14). Additionally, Mr. Knochel has filed an Affidavit (Doc. 12), in which he purports to  
16 “remove” the undersigned from this case pursuant to 28 U.S.C. § 144.

## 17 **II. Discussion**

### 18 **A. Recusal or Removal**

19 In his Affidavit, Mr. Knochel asserts that the undersigned is “prejudiced” against  
20 people with mental illness. He asserts that this prejudice “is related to [the undersigned’s]  
21 being on the Court when this Court’s former Chief Judge, John Roll, was assassinated at  
22 the January 8, 2011 shooting at Congresswomen Giffords’ event in Tucson”; that this event  
23 “traumatized” the undersigned into “believ[ing] that any mental health treatment is better  
24 than no treatment”; that “the specifics of these two Petitions [i.e. CV 18-08004-PCT-GMS  
25 (JZB) and CV 19-08086-PCT-GMS (JZB)] ‘triggered’ [the undersigned] which motivated  
26 him to overlook the actual requirements of the case law”; and left the undersigned unable  
27 to “impartially rule on the present Petition for Writ of Habeas Corpus.” (Doc. 12 at 2).

28

1 Motions to disqualify or recuse a federal judge fall under two statutory provisions,  
2 28 U.S.C. §§ 144 and 455. Section 144 provides for recusal where a party files a “timely  
3 and sufficient affidavit that the judge before whom the matter is pending has a personal  
4 bias or prejudice either against him or in favor of any adverse party.” The affidavit must  
5 state the facts and reasons for the belief that the bias or prejudice exists. 28 U.S.C. § 144.  
6 If the judge finds the affidavit timely and legally sufficient, the judge must proceed no  
7 further and another judge must be assigned to hear the motion. *Id.*; *United States v. Sibla*,  
8 624 F.2d 864, 867 (9th Cir. 1980).

9 On the other hand, § 455 is self-enforcing on the judge and requires a judge to recuse  
10 himself “in any proceeding in which his impartiality might reasonably be questioned,”  
11 where he “has a personal bias or prejudice concerning a party,” or when he is “a party to  
12 the proceeding.” 28 U.S.C. § 455(a), (b)(1), and (b)(5)(i). *See also Sibla*, 624 F.2d at 867-  
13 68.

14 The undersigned must initially determine whether Mr. Knochel has filed an affidavit  
15 that is timely and legally sufficient. *See United States v. Azhocar*, 581 F.2d 735, 738 (9th  
16 Cir. 1978) (“the judge against whom an affidavit of bias is filed may pass on its legal  
17 sufficiency” (citing *Berger v. United States*, 255 U.S. 22 (1921))). He has not. To be  
18 timely, the affidavit “shall be filed not less than 10 days before the beginning of the term  
19 at which the proceeding is to be heard, or good cause shall be shown for failure to file it  
20 within such time.” 28 U.S.C. § 144. There are two branches to the timeliness inquiry.  
21 “First, the timing of a submission must be measured on an absolute scale. That is, the  
22 remoteness of the disqualification request from the commencement of the proceeding  
23 necessarily bears on its timeliness.” *United States v. International Business Machine*  
24 *Corp.*, 475 F.Supp. 1372, 1377 (S.D.N.Y. 1979) (citing *Craven v. United States*, 22 F.2d  
25 605, 608 (1st Cir. 1927). Second, the submission must be filed at the earliest moment after  
26 knowledge of the facts alleged to require disqualification are obtained. *Id.*

27 Here, Mr. Knochel asserts that the basis giving rise to the undersigned’s purported  
28 prejudice was the shooting of former Chief Judge John Roll on January 8, 2011. This event

1 occurred seven years before Mr. Knochel filed case no. CV 18-08004-PCT-GMS (JZB),  
 2 eight years before he initiated the instant action, and nine years before his filed his  
 3 Affidavit. Indeed, Mr. Knochel's Affidavit was not filed until nearly a year *after* this action  
 4 had already been closed. Mr. Knochel has not shown good cause for this delay.  
 5 Accordingly, the Court concludes that Mr. Knochel's Affidavit was not timely filed, and  
 6 is thus not required to assign the recusal request to another judge. *See Azhocar*, 581 F.2d  
 7 at 738 ("Only after the legal sufficiency of the affidavit is determined does it become the  
 8 duty of the judge to 'proceed no further' in the case.").<sup>2</sup>

9 Under §§ 144 and 455, recusal is appropriate where "a reasonable person with  
 10 knowledge of all the facts would conclude that the judge's impartiality might reasonably  
 11 be questioned." *Pesnell v. Arsenault*, 543 F.3d 1038, 1043 (9th Cir. 2008) (quoting *United*  
 12 *States v. Hernandez*, 109 F.3d 1450, 1453 (9th Cir. 1997)), *abrogated on other grounds in*  
 13 *Simmons v. Himmelreich*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 1843 (2016).

14 Based on the history of Mr. Knochel's past filings in this Court and his assertions  
 15 in the Affidavit, the undersigned concludes that no reasonable person with knowledge of  
 16 all the relevant facts would question the impartiality of the undersigned. Accordingly, the  
 17 Court, in its discretion, will deny Petitioner's Affidavit to the extent he seeks the  
 18 undersigned's recusal or removal pursuant to either 28 U.S.C. §§ 144 or 455.

#### 19 **B. Rule 60**

20 Motions pursuant to Rule 60 should be granted only in rare circumstances.  
 21 *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995). "Rule 60(b)  
 22 'provides for reconsideration only upon a showing of (1) mistake, surprise, or excusable  
 23 neglect; (2) newly discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied or  
 24 discharged judgment; or (6) 'extraordinary circumstances' which would justify relief."  
 25 *School Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)  
 26 (quoting *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1442 (9th Cir. 1991)); *Backlund v.*

27 \_\_\_\_\_  
 28 <sup>2</sup> For the reasons set forth in Part II.B, *infra*, the Court further finds that Mr. Knochel  
 has not properly brought the Affidavit because he has no standing to make any filings in  
 this case.

1 *Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985). Mere disagreement with a previous order  
 2 is an insufficient basis for reconsideration. *See Leong v. Hilton Hotels Corp.*, 689 F. Supp.  
 3 1572, 1573 (D. Haw. 1988). A motion for reconsideration “may not be used to raise  
 4 arguments or present evidence for the first time when they could reasonably have been  
 5 raised earlier in the litigation.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890  
 6 (9th Cir. 2000). Nor may a Rule 60 motion simply repeat any argument previously made  
 7 in support of or in opposition to a filing. *Motorola, Inc. v. J.B. Rodgers Mech. Contractors,*  
 8 *Inc.*, 215 F.R.D. 581, 586 (D. Ariz. 2003).

9 In his Rule 60 Motion, Mr. Knochel continues to insist that the January 24, 2018  
 10 letter in case no. CV 18-08004-PCT-GMS (JZB) was not sent by Ms. Mihaylo, but was a  
 11 fraudulent document sent by the administrators of Ms. Mihaylo’s mental healthcare facility  
 12 that constituted a “fraud on the court”; states that the Order of Protection that Ms. Mihaylo  
 13 obtained against him was “coerced”; and argues that he should be granted “next friend”  
 14 status because he “is working for [Ms. Mahaylo’s] best interests.” (Doc. 14 at 5, 11). Mr.  
 15 Knochel also attaches several “exhibits” to his Motion, including a February 18, 2020  
 16 “Letter of Appointment as Guardian for an Adult” in Maricopa County Superior Court case  
 17 no. PB2019-002031 indicating that Ms. Mihaylo has had a guardian appointed to represent  
 18 her. (*Id.* at 19-20). Mr. Knochel states that the guardian “formally prohibits Mihaylo and  
 19 Knochel’s contact.” (*Id.* at 6). Mr. Knochel also attaches a set of handwritten notes that  
 20 he purports to have been written by Ms. Mihaylo, in which she states that Mr. Knochel

21 has been writing letters to the Supreme Court [and] Federal Court to get me  
 22 out of the treatment center I am paying to be at. He has called a filing called  
 23 Next Friend saying I am not capable of making my own decisions. I have  
 24 asked him to stop writing letters to the courts pertaining to me. He has  
 25 showed up at ViewPoint after he has been asked to not come back. He has  
 26 written letter to the Adult Probation Department also trying to get me off  
 27 probation. I asked him to stop doing this.

28 (*Id.* at 22) (emphasis in original). Mr. Knochel has also attached a “Motion for Status  
 Hearing” in the same Maricopa County case, and avows that Ms. Mihaylo sent the request  
 to state court on her own. (*Id.* at 10, 23-25).

1 As an initial matter, Mr. Knochel's Rule 60 Motion is untimely. Rule 60(c)(1) of  
2 the Federal Rules of Civil Procedure requires that "[a] motion under Rule 60(b) must be  
3 made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after  
4 the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1).  
5 Mr. Knochel appears to seek relief based upon Rules 60(b)(2) and (3). (Doc. 14 at 12).  
6 Therefore, Mr. Knochel had no more than one year from the judgment, order, or proceeding  
7 from which he seeks relief in order to file his Motion. Mr. Knochel seeks relief from this  
8 Court's "order of dismissal, dated MAY 7, 2019" (Doc. 14 at 1) and thus had one year  
9 from that date in which to timely file his Motion pursuant to Rule 60(b).<sup>3</sup> Because he did  
10 not file the Motion until August 4, 2020, the Motion is untimely.

11 To the extent Mr. Knochel also argues that Rule 60(d)(3) allows this Court to "set  
12 aside a judgment for fraud on the Court," he has failed to demonstrate that he has standing  
13 to seek such relief. Indeed, the fact that Ms. Mihaylo has had a guardian appointed for her  
14 who "formally prohibits Mihaylo and Knochel's contact" supports that Mr. Knochel is  
15 *legally unable* to act in Ms. Mihaylo's interests. Further, the fact that Ms. Mihaylo was  
16 able to file, on her own, a motion challenging her guardian's actions in Maricopa County  
17 Superior Court (*see* Doc. 14 at 23-25) suggests that she is able to pursue relief without Mr.  
18 Knochel's assistance. *Whitmore v. Arkansas*, 495 U.S. 149, 163–64 (1990). In short, for  
19 all of the reasons previously set forth in this Court's prior orders in this case, case number  
20 CV 18-08004-PCT-GMS (JZB), and case number CV 19-08137-PCT-GMS (JZB), Mr.  
21 Knochel has yet again failed to demonstrate that he is acting as Ms. Mihaylo's "next  
22 friend," and he thus continues to lack standing to make any filings on Ms. Mihaylo's behalf.  
23 Accordingly, Mr. Knochel's Rule 60 Motion will be denied.

24  
25 <sup>3</sup> To the extent Mr. Knochel argues that the limitations period was "tolled while the  
26 appeal was pending, or that the rule tolls from July 22, 2019, the date which Mihaylo  
27 contacted Knochel following her escape from her captors" (Doc. 14 at 12), his argument  
28 has no merit. Mr. Knochel cites no authority providing that the limitations period is tolled  
during the pendency of an appeal, *see* Fed.R.Civ.P. 60(c)(2), or until "contact" is initiated.  
Further, even assuming *arguendo* that the limitations period *was* tolled until either the  
Ninth Circuit's Order dismissed his appeal or until Ms. Mihaylo allegedly contacted him—  
both of which occurred on July 22, 2019—the Motion would *still* be untimely because it  
was filed more than one year after that date.

### III. Vexatious Litigant Warning and Order to Show Cause

Both this Court and the Ninth Circuit have previously warned Mr. Knochel that a vexatious litigant order may be entered against him “if [he] persists in using this Court as what appears to be a vehicle to further his harassment of Ms. Mihaylo.” (Doc. 11 at 6 in CV 19-08137-PCT-GMS (JZB)); *see also* (Doc. 9 at 1-2 in CV 19-08086-PCT-GMS (JZB)) (stating that “any continued attempts by James Knochel to submit filings in this court on behalf of Emily Mihaylo may result in sanctions or a vexatious litigant order.”) Despite those warnings, Mr. Knochel remains undeterred in making such filings, and the Court thus notices its intent to now enter a vexatious litigant order against him.

Federal courts have the responsibility to ensure that their limited resources “are allocated in a way that promotes the interests of justice.” *In re McDonald*, 489 U.S. 180, 184 (1989). “Flagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants.” *DeLong v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990); *see also O’Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990). District courts have the inherent power to act to ensure that the business of the Court is conducted in an orderly and reasonable fashion. *See e.g. Visser v. Supreme Court of the State of California*, 919 F.2d 113, 114 (9th Cir. 1990). This inherent authority includes the power to “regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances.” *DeLong v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990) (quoting *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989)).

Although the Court has the authority to enjoin abusive litigants from future access to the courts, that authority should be exercised only rarely. *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007); *DeLong*, 912 F.2d at 1147. Before imposing such an injunction, the Court must provide the abusive litigant with notice of the impending injunction and an opportunity to oppose it. *DeLong*, 912 F.2d at 1147. The Court must also furnish an adequate record for review—one that includes “a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed.”

1 *Id.* The Court must make a substantive finding of “the frivolous or harassing nature of the  
2 litigant’s actions.” *Id.* at 1148 (quoting *In re Powell*, 851 F.2d 427, 431 (D.C. Cir. 1988)).  
3 Litigiousness is not enough; the court must consider “both the number and content of the  
4 filings.” *Id.* (quoting *In re Powell*, 851 F.2d at 431).

5 **A. Need for an Injunction**

6 **1. Filing History**

7 Mr. Knochel has filed three separate actions in this Court,<sup>4</sup> as well as two separate  
8 appeals to the Ninth Circuit.<sup>5</sup> This Court dismissed CV 18-08004-PCT-GMS (JZB) and  
9 CV 19-08086-PCT-GMS (JZB) for lack of standing, and dismissed CV 19-08137-PCT-  
10 GMS (JZB) for lack of jurisdiction. The Ninth Circuit declined to issue a certificate of  
11 appealability in case number 19-16135, and dismissed case number 19-16261 as frivolous.

12 Although the volume of Mr. Knochel’s filings is relatively low, and thus weighs  
13 against entry of a vexatious litigant order, this Court has repeatedly found that Mr. Knochel  
14 lacks standing to bring the filings at all, or that it lacks jurisdiction to consider them, and  
15 the Ninth Circuit has found that one of Mr. Knochel’s appeals was frivolous. Accordingly,  
16 the Court thus finds that, on balance, Mr. Knochel’s filing history weighs in favor of entry  
17 of a vexatious litigant order.

18 **2. Harassing Nature of Mr. Knochel’s Filings**

19 Although the volume of Mr. Knochel’s filing history is relatively low, the nature of  
20 the filings supports that they are intended “to be a vehicle to further his harassment of Ms.  
21 Mihaylo.” (Doc. 11 at 6 in case no. CV 19-08137-PCT-GMS (JZB)). This is evidenced  
22 by the following:

23 After initiating CV 18-08004-PCT-GMS (JZB), his first action in this court, Ms.  
24 Mihaylo filed a letter with the Court stating that

25  
26  
27 <sup>4</sup> CV 18-08004-PCT-GMS (JZB), CV 19-08086-PCT-GMS (JZB), and CV  
19-08137-PCT-GMS (JZB).

28 <sup>5</sup> Ninth Circuit case no. 19-16135 (appealing CV 19-08086-PCT-GMS (JZB)), and  
Ninth Circuit case no. 19-16261 (appealing CV 19-08137-PCT-GMS (JZB)).



1 “[A]t no time did I file this claim and I would like it to be removed. I believe  
2 that my ex-boyfriend used my information to file this claim. The reason he  
filed this claim is unknown to me. Moving forward[,] I would like to have  
this case dismissed, thrown out, and terminated all together.”

3 (Doc. 8 in CV 18-08004-PCT-GMS (JZB)).

4 Similarly, in the instant case, Mr. Knochel has provided handwritten notes from Ms.  
5 Mihaylo in which she states that Mr. Knochel

6 has been writing letters to the Supreme Court [and] Federal Court to get me  
out of the treatment center I am paying to be at. He has called a filing called  
7 Next Friend saying I am not capable of making my own decisions. I have  
asked him to stop writing letters to the courts pertaining to me. He has  
8 showed up at ViewPoint after he has been asked to not come back. He has  
written letter to the Adult Probation Department also trying to get me off  
9 probation. I asked him to stop doing this.

10 (Doc. 14 at 22) (emphasis in original).

11 Ms. Mihaylo has also been directed by a Yavapai Mental Health Court to “block  
12 James [Knochel] from phone [contact],” and repeatedly ordered to “have no contact with  
13 James Knochel.” (Doc. 2-1 at 8-11).

14 Ms. Mihaylo has also sought, and obtained, an Order of Protection against Mr  
15 Knochel. (Doc. 1 at 9 in CV 19-08137-PCT-GMS (JZB)). The Petition for the Order of  
16 Protection, which is signed by Ms. Mihaylo, details multiple instances in which Mr.  
17 Knochel harassed Ms. Mihaylo, including by “show[ing] up at ViewPoint after he has been  
18 asked not to come back”; “writ[ing] letters to the Adult Probation Department [] trying to  
19 get [Ms. Mihaylo] off probation [and that she] asked [Mr. Knochel] to stop doing this”;  
20 “showing up at [a] mental health hearing after being asked by the probation department in  
21 months prior not to come back to mental health court,”; and showing up at the mental health  
22 court “for the third time, [being] escorted out of the court room” but not leaving the  
23 building, and then “harass[ing]” Ms. Mihaylo, an employee from her mental health facility,  
24 and a court employee “by taking pictures on his phone.” (*Id.* at 14-15). Ms. Mihaylo  
25 further states she “asked [Mr. Knochel] to stop writing letters to the courts pertaining to  
26 [her].” (*Id.*). The Order of Protection itself mandates that Mr. Knochel have no contact  
27 with Ms. Mihaylo. (*Id.* at 10).

28 Finally, Ms. Mihaylo has recently had a Guardian appointed to act on her behalf by

1 Maricopa County Superior Court (Doc. 14 at 19-20), and Mr. Knochel himself states that  
2 this Guardian has “formally prohibit[ed] Mihaylo and Knochel’s contact.” (*Id.* at 6).

3 As such, despite Ms. Mihaylo’s written pleas that Mr. Knochel desist in both  
4 contacting her and seeking judicial relief on her behalf, the Yavapai State Mental Health  
5 Court’s numerous orders prohibiting Mr. Knochel from contacting Ms. Mihaylo, the entry  
6 of an Order of Protection against him obtained by Ms. Mihaylo, and the appointment of a  
7 Guardian for Ms. Mihaylo who has “formally prohibit[ed] Mihaylo and Knochel’s  
8 contact,” Mr. Knochel continues to attempt to act as Ms. Mihaylo’s “next friend” in this  
9 Court and to pursue various forms of “relief” on her behalf. As such, the Court finds that  
10 the harassing nature of Mr. Knochel’s filings strongly supports the entry of a vexatious  
11 litigant order against him.

#### 12 **B. Type of Injunctive Order**

13 An order enjoining an abusive litigant from future access to the courts must be  
14 “narrowly tailored to closely fit the specific vice encountered.” *DeLong*, 912 F.2d at 1148.  
15 Here, that vice is Mr. Knochel’s continued harassment of Ms. Mihaylo. As such, the Court  
16 sees no basis to enjoin Mr. Knochel from filing any actions that do not relate to Ms.  
17 Mihaylo, thus preserving his access to the Court should he seek to file an action that does  
18 not relate to Ms. Mihaylo. Further, given Mr. Knochel’s relative paucity of filings, the  
19 Court does not, at this time, find that a pre-filing monetary sanction is either warranted or  
20 sufficient to prevent Mr. Knochel’s continued filings related to Ms. Mihaylo.<sup>6</sup>  
21 Accordingly, the Court’s intended vexatious litigant order will be limited to preventing Mr.  
22 Knochel’s continued filings in the three cases he has already brought in this Court, and  
23 preventing him from filing any new cases in this Court related to Ms. Mihaylo.

24 \_\_\_\_\_  
25 <sup>6</sup> The Court notes that two of the three actions Mr. Knochel has filed in this Court  
26 —CV 18-08004-PCT-GMS (JZB) and CV 19-08086-PCT-GMS (JZB) — were filed as  
27 habeas corpus actions, for which the filing fee is only \$5.00 and which Mr. Knochel paid  
28 in full at the time he initiated both cases. In the third case — CV 19-08137-PCT-GMS  
(JZB) — Mr. Knochel sought to proceed in forma pauperis, attesting that he had  
insufficient monies to pay the \$400 filing and administrative fees. Although in forma  
pauperis status is a privilege, not a right, it seems possible that, given Mr. Knochel’s  
professed indigency, a pre-filing monetary sanction would effectively bar him from all  
access to the courts.

1           **C. Notice and Opportunity to Show Cause**

2           This Order serves as notice of the Court’s intent to impose a vexatious litigant order  
3 against Mr. Knochel. The Court will permit Mr. Knochel an opportunity to show cause in  
4 writing why such an injunction should not be imposed. Mr. Knochel’s response to this  
5 Order **MUST BE LIMITED TO THIS ISSUE** and must be filed within **30 DAYS** of the  
6 date this Order is filed.

7           If Mr. Knochel fails to timely respond to this Order or fails to persuade the Court  
8 that an injunction should not be imposed, the Court will enter a vexatious litigant injunction  
9 with the following terms:

10           1. James Joseph Knochel is prohibited from making any  
11 further filings in cases CV 18-08004-PCT-GMS (JZB), CV  
12 19-08086-PCT-GMS (JZB), and CV 19-08137-PCT-GMS  
13 (JZB). If Mr. Knochel makes any further filings in these cases,  
14 the Court will not consider them, and the Clerk of Court will  
15 summarily strike them from the record.

16           2. If James Joseph Knochel attempts to file any new  
17 actions in this Court, he must include therewith a Declaration,  
18 signed under penalty of perjury, that the filing is not brought  
19 on behalf of, as “next friend” to, or in any way related to Emily  
20 Noelle Mihaylo. If Mr. Knochel fails to include the required  
21 Declaration, or if the Declaration indicates that the action is  
22 being brought on behalf of, as “next friend” to, or is otherwise  
23 related to Ms. Mihaylo, the Court will not consider the new  
24 action and will summarily dismiss the action for failure to  
25 comply with this Order.

26           **IT IS ORDERED:**

27           (1) Mr. Knochel’s Affidavit (Doc. 12) is **denied** to the extent he seeks the recusal  
28 or removal of the undersigned pursuant to either 28 U.S.C. §§ 144 or 455.


          (2) Mr. Knochel’s Motion to Set Aside the Order of Dismissal and to Reinstate  
the Petition for a Writ of Habeas Corpus (Doc. 14) is **denied**.

          (3) Mr. Knochel is **ORDERED TO SHOW CAUSE**, in writing, within 30 days  
of the date this Order is filed, why the injunction proposed in this Order should not be  
imposed. Plaintiff’s response to this Order must be **limited to this issue**.

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(4) If Mr. Knochel fails to timely respond to this Order or fails to persuade the Court that an injunction should not be imposed, the Court will issue an injunction with the terms set forth in this Order.

Dated this 9th day of September, 2020.

  
\_\_\_\_\_  
G. Murray Snow  
Chief United States District Judge

# Attachment E

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

JUL 22 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JAMES JOSEPH KNOCHEL,

Petitioner-Appellant,

and

EMILY NOELLE MIHAYLO,

Petitioner,

v.

AMY FACKRELL; et al.,

Respondents-Appellees.

No. 19-16135

D.C. No. 3:19-cv-08086-GMS-JZB  
District of Arizona,  
Prescott

ORDER

Before: IKUTA and N.R. SMITH, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.”

*Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2);

*Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Appellant’s motions to file submissions under seal are denied, and the motions with attachments are instead stricken from the record (Docket Entry Nos. 2, 5). No further filings will be entertained in this case, and any continued

attempts by James Knochel to submit filings in this court on behalf of Emily Mihaylo may result in sanctions or a vexatious litigant order.

Any other pending motions are denied as moot.

**DENIED.**

# Attachment F

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Emily Noelle Mihaylo, et al.,  
Petitioners,

v.

Shane Russell-Jenkins, et al.,  
Respondents.

No. CV 19-08086-PCT-GMS (JZB)

**ORDER**

On January 11, 2018, James Joseph Knochel filed, as “next friend” of Petitioner Emily Noelle Mihaylo, a pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, paid the filing fee, and sought a Temporary Restraining Order and “Ex-Parte Evidentiary Hearing,” as well as the appointment of counsel for Petitioner. In order to facilitate consideration of the documents, the Clerk of Court assigned the matter as case no. 18-08006-PCT-GMS (JZB). In the Petition, Mr. Knochel alleged that Petitioner had been ordered into treatment at a mental health facility, that she was being compulsorily medicated, and that the medications were making her condition worse, all in violation of the Constitution and laws of the State of Arizona. On January 24, 2018, Petitioner sent a letter to the Court — which the Clerk of Court docketed as a Motion to Dismiss — stating that

“[A]t no time did I file this claim and I would like it to be removed. I believe that my ex-boyfriend used my information to file this claim. The reason he filed this claim is unknown to me. Moving forward[,] I would to have this case dismissed, thrown out, and terminated all together.”

1           On January 26, 2018, Mr. Knochel filed a “Response” to the Motion, suggesting  
2 that the Motion had not been written by Petitioner, or at least not by her “of her own free  
3 will,” and that the Motion otherwise is “evidence of [Petitioner’s] status as a vulnerable  
4 person, and as further justification for the necessity of appointed counsel for Mihaylo.”

5           By Order dated February 7, 2018, the Court found that Mr. Knochel had failed to  
6 demonstrate that Petitioner was unable to prosecute this action on her own, and that he thus  
7 did not have standing to sue as “next friend.” Accordingly, the Petition and this action  
8 were dismissed without prejudice for lack of jurisdiction. Judgment was entered the same  
9 day, and case no. 18-08006-PCT-GMS (JZB) was closed. Mr. Knochel thereafter filed  
10 several additional documents that either failed to request any relief, or were dismissed for  
11 lack of standing.

12           On March 25, 2019, Mr. Knochel filed, again as the purported “next friend” of  
13 Petitioner, the instant pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C.  
14 § 2254 (Doc. 2), as well as a Motion to Seal the Petition (Doc. 1). Therein, Mr. Knochel  
15 again alleges that the January 24, 2018 letter in case no. 18-08006-PCT-GMS (JZB) was  
16 not sent by Petitioner, but was rather a fraudulent document sent by the administrators of  
17 Petitioner’s mental healthcare facility. Mr. Knochel also provides a letter, which he  
18 purports to have been handwritten by Petitioner, stating that “the letter that I signed was  
19 not written by me. I was pressured into signing it by ViewPoint staff.” (Doc. 2-1 at 1).  
20 Attached to the Petition are also numerous exhibits, including a November 29, 2018 Minute  
21 Entry in a Yavapai County Mental Health Court hearing noting that “Defendant [apparently  
22 referring to Petitioner] has been contacted by James. The Court notes to block James from  
23 phone...” (*Id.* at 8); a December 13, 2018 Minute Entry in the same Yavapai County  
24 Mental Health Court case ordering that “Defendant shall have no contact with James  
25 Knochel” (*id.* at 9); a December 13, 2018 “Comprehensive Mental Health Court Contract”  
26 in the same case that is signed by Petitioner and stipulates that Petitioner will have “no  
27 contact with James Knochel” (*id.* at 10); and a December 27, 2018 “Comprehensive Mental  
28 Health Court Contract” that is again signed by Petitioner and again stipulates that she will



1 have “no contact with James Knochel” (*id.* at 11).

2 As the Court previously noted in its January 26, 2018 order in case no. 18-08006-  
3 PCT-GMS (JZB), under Article III, a federal court cannot consider the merits of a legal  
4 claim unless the person seeking to invoke the jurisdiction of the court establishes the  
5 requisite standing to sue. *Whitmore v. Arkansas*, 495 U.S. 149, 154 (1990). A litigant  
6 demonstrates standing by showing that she has suffered an injury in fact that is fairly  
7 traceable to the challenged action and is redressable by a favorable judicial decision. *Steel*  
8 *Company v. Citizens for a Better Environment*, 523 U.S. 83, \_\_\_, 118 S.Ct. 1003, 1017  
9 (1998).

10 The Supreme Court recognized in *Whitmore* that a habeas petitioner may  
11 demonstrate standing as a “next friend.” 495 U.S. at 163. A next friend does not himself  
12 become a party to the habeas petition, “but simply pursues the cause on behalf of the  
13 detained person, who remains the real party in interest.” *Id.* The Court set out “at least  
14 two firmly rooted prerequisites to ‘next friend’ standing”:

15 First, a next friend must provide an adequate explanation—such as  
16 inaccessibility, mental incompetence, or other disability—why the real party  
17 in interest cannot appear on his own behalf to prosecute the action. Second,  
18 the next friend must be truly dedicated to the best interests of the person on  
19 whose behalf he seeks to litigate and it has been further suggested that a next  
20 friend must have some significant relationship with the real party in interest.  
21 The burden is on the next friend clearly to establish the propriety of his status  
22 and thereby justify the jurisdiction of the court.

23 *Id.* at 163–64 (citations omitted).

24 Here, however, given the conflicting accounts between Petitioner’s submissions to  
25 the court, and the numerous no contact orders entered against Mr. Knochel on Petitioner’s  
26 behalf in Yavapai state court, Mr. Knochel has again failed to establish that he should be  
27 allowed to bring this action as Petitioner’s “next friend.” Accordingly, the Court will  
28 dismiss the Petition and this action without prejudice. If Petitioner wishes to bring her own  
habeas action in the future, she remains free to do so.

.....

.....

1 **IT IS ORDERED:**


2 (1) Mr. Knochel's Motion to Seal Case (Doc. 1) is **denied**.

3 (2) The Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254,  
4 currently lodged at Doc. 2, must be **filed** by the Clerk of Court. The filing shall **not** be  
5 under seal.

6 (3) The Petition for Habeas Corpus (Doc. 2) and this case are **dismissed without**  
7 **prejudice**. The Clerk of Court must enter judgment accordingly and close this case.

8 (4) Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, in the  
9 event Petitioner files an appeal, the Court declines to issue a certificate of appealability  
10 because reasonable jurists would not find the Court's procedural ruling debatable. *See*  
11 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

12 Dated this 7th day of May, 2019.

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15 G. Murray Snow  
16 Chief United States District Judge  
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# Attachment G

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Emily Noelle Mihaylo, et al.,  
Petitioners,  
v.  
Shane Russell-Jenkins, et al.,  
Respondents.

No. CV 18-08004-PCT-GMS (JZB)

**ORDER**

On January 11, 2018, James Joseph Knochel filed, as “next friend” of Petitioner Emily Noelle Mihaylo, a pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1), paid the filing fee, and sought a Temporary Restraining Order and “Ex-Parte Evidentiary Hearing” (Doc. 2), as well as the appointment of counsel (Doc. 3). Mr. Knochel alleged that Petitioner had been ordered into treatment at a mental health facility, that she was being compulsorily medicated, and that the medications were making her condition worse but that she was being “brainwash[ed]... into thinking she’s benefitting from her treatment.” (Doc. 1 at 24).<sup>1</sup> On January 24, 2018, Petitioner sent a letter (Doc. 8) to the Court — which the Clerk of Court has docketed as a Motion to Dismiss (Doc. 8) — stating that

“at no time did I file this claim and I would like it to be removed. I believe that my ex-boyfriend used my information to file this claim. The reason he

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<sup>1</sup> The Petition also alleges that Petitioner’s mental illness should be a bar to her recent conviction for the “strict liability offense” of drug possession (Doc. 1 at 26), that her bail was excessive (*Id.* at 27), and that her attorney provided ineffective assistance (*Id.* at 30).

1 filed this claim is unknown to me. Moving forward[,] I would like to have  
2 this case dismissed, thrown out, and terminated all together.”

3 On January 26, 2018, Mr. Knochel filed a “Response” to the Motion, suggesting  
4 that the Motion had not been written by Petitioner, or at least not by her “of her own free  
5 will,” and that the Motion otherwise is “evidence of [Petitioner’s] status as a vulnerable  
6 person, and as further justification for the necessity of appointed counsel for Mihaylo.”  
(Doc. 9).

7 Under Article III, a federal court cannot consider the merits of a legal claim unless  
8 the person seeking to invoke the jurisdiction of the court establishes the requisite standing  
9 to sue. *Whitmore v. Arkansas*, 495 U.S. 149, 154 (1990). A litigant demonstrates  
10 standing by showing that she has suffered an injury in fact that is fairly traceable to the  
11 challenged action and is redressable by a favorable judicial decision. *Steel Company v.*  
12 *Citizens for a Better Environment*, 523 U.S. 83, \_\_\_, 118 S.Ct. 1003, 1017 (1998).

13 The Supreme Court recognized in *Whitmore* that a habeas petitioner may  
14 demonstrate standing as a “next friend.” 495 U.S. at 163. A next friend does not himself  
15 become a party to the habeas petition, “but simply pursues the cause on behalf of the  
16 detained person, who remains the real party in interest.” *Id.* The Court set out “at least  
17 two firmly rooted prerequisites to ‘next friend’ standing”:

18 First, a next friend must provide an adequate explanation—such as  
19 inaccessibility, mental incompetence, or other disability—why the real  
20 party in interest cannot appear on his own behalf to prosecute the action.  
21 Second, the next friend must be truly dedicated to the best interests of the  
22 person on whose behalf he seeks to litigate and it has been further  
23 suggested that a next friend must have some significant relationship with  
24 the real party in interest. The burden is on the next friend clearly to  
25 establish the propriety of his status and thereby justify the jurisdiction of  
26 the court.

27 *Id.* at 163–64 (citations omitted).

28 Given the conflicting accounts between Mr. Knochel’s filings and Petitioner’s  
Motion to Dismiss, Mr. Knochel has failed to establish that he should be allowed to bring  
this action as Petitioner’s “next friend.” That is, Mr. Knochel has not presented sufficient  
evidence to support that Petitioner is unable to appear on her own behalf to prosecute this

1 action; indeed, it appears that Petitioner is capable of appearing on her own behalf, as  
2 evidence by the Motion to Dismiss. *Whitmore*, 495 U.S. at 164–166; *Demosthenes v.*  
3 *Baal*, 495 U.S. 731, 736-37 (1990). Further, given that Petitioner herself has indicated  
4 that she has no interest in this action or, it seems, with Mr. Knochel, he has failed to  
5 clearly establish the propriety of his status *vis a vis* Petitioner so as to justify this Court’s  
6 jurisdiction. Accordingly, the Court will dismiss the Petition and this action without  
7 prejudice. If Petitioner wishes to bring her own habeas action in the future, she remains  
8 free to do so.


9 **IT IS ORDERED:**

10 (1) The Petition for Habeas Corpus (Doc. 1) and this case are **dismissed**  
11 **without prejudice**. The Clerk of Court must enter judgment accordingly and close this  
12 case.

13 (2) The “Motion for Ex-Parte Evidentiary Hearing in Support of ‘Next Friend,’  
14 and for a Temporary Restraining Order” (Doc. 2), Motion for Appointment of Counsel  
15 (Doc. 3) and Motion to Dismiss Case (Doc. 8) are **denied as moot**.

16 (3) Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, in the  
17 event Petitioner files an appeal, the Court declines to issue a certificate of appealability  
18 because reasonable jurists would not find the Court’s procedural ruling debatable. *See*  
19 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

20 Dated this 7th day of February, 2018.

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22 \_\_\_\_\_  
23 Honorable G. Murray Snow  
24 United States District Judge  
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# Attachment H

Michael K. Jeanes, Clerk of Court

\*\*\* Filed \*\*\*

9/23/2015

8:00 am

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

PB 2015-003427

09/22/2015

COMMISSIONER KERSTIN LEMAIRE

CLERK OF THE COURT  
P. Valenzuela  
Deputy

IN THE MATTER OF

EMILY NOELLE MIHAYLO

AN ADULT.

JAMES KNOCHEL  
2041 W BETHANY HOME RD  
PHOENIX AZ 85015  
BANNER THUNDERBIRD MEDICAL  
CENTER  
PURPLE ZONE  
5555 W THUNDERBIRD ROAD  
GLENDALE AZ 85306

COLLECTIONS - COC

HEARING

Courtroom OCH 209

3:54 p.m. This is the time set for hearing re: Writ of Habeas Corpus. Petitioner, James Knochel, boyfriend, is present on his own behalf.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

On this date, this division received a phone call from Banner Thunderbird Medical Center stating that Emily Mihaylo was not going to be delivered to this hearing as a Petition for Court Ordered Evaluation has been filed.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

PB 2015-003427

09/22/2015

The court, having received the documents e-mailed by Banner Thunderbird Medical Center, finds that Banner Thunderbird Medical Center filed an Application for Involuntary Evaluation and not a Petition for Court Ordered Evaluation.

Mr. Knochel provides the court an affidavit reflecting that John Cox, a private process server, attempted to serve Banner Thunderbird Medical Center on September 22, 2015, but the security supervisor refused to allow anyone to accept service.

The court finds that Banner Thunderbird Medical Center was aware of this hearing as Banner Thunderbird Medical Center phoned this division earlier to notify the court that Ms. Mihaylo was not going to be delivered to court.

IT IS ORDERED granting the Writ of Habeas Corpus.

IT IS FURTHER ORDERED that Banner Thunderbird Medical Center shall release Emily Noelle Mihaylo unless a properly filed Petition for Court Ordered Evaluation is filed.

4:02 p.m. Hearing concludes.

LATER:

IT IS ORDERED waiving all fees and costs relating to this Writ of Habeas Corpus.

The court signs this minute entry as an enforceable Order.

  
\_\_\_\_\_  
JUDICIAL OFFICER OF THE SUPERIOR COURT

All parties representing themselves must keep the court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

The foregoing instrument is a full, true and correct copy of the original document.

Attest ISEP 22 2015

MICHAEL K. JEANES, Clerk of the Superior Court  
State of Arizona, in and for the County of Maricopa

By P. Valenzuela De