

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Jessie Wilder Darrin — PETITIONER
(Your Name)

vs.

Department of Child Safety, F.V., M.D., M.D., C.D., - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of the State of Arizona
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jessie Wilder Darrin
(Your Name)

A.S.P.C. EYMAN - P.O. Box Number 3200
(Address)

Florence, Arizona, 85132
(City, State, Zip Code)

(Phone Number)

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☒ 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:

- Arizona Department of Child Safety, 5800 W. Glen Dr., Glendale, Az., 85301.

- ~~Mark Brnovich, Attorney General, 1275 West Jefferson, Phoenix, Az., 85007.~~ ^{Returned}

- Sandra L. Nahigan, Assistant Attorney General, 2005 N. Central Ave. C007AG, Phoenix, Az., 85004.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Arizona Court of Appeals, Division One court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

1.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 10/08/2021.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

QUESTION(S) PRESENTED :

WHETHER THE PRO SE LITIGANT NEEDS HELP IN PRESENTING THE ESSENTIAL MERITS OF HIS POSITION TO THE COURT

WHETHER DCS' ACTS AND OMISSIONS FRUSTRATE FUNDAMENTAL FAIRNESS, AND WHETHER DCS' SELF-SERVING POSITION AND RECKLESS INDIFFERENCE TO PROTECTED RIGHTS OF AGGRIEVED PARENT WARRANTS REVERSAL OF SEVERANCE ORDER UNDER NEW LAW PRECEDENT; THAT WHICH UNDER RECENT ARIZONA SUPREME COURT DECISION IN JESSIE D. V. DCS, ET AL., ANNOUNCING NEW LAW AND DIFFERENT RIGHTS FOR INCARCERATED PARENTS MAY BE GIVEN FULL RETROACTIVE EFFECT SO AS TO REVERSE THE SEVERANCE ORDER BASED ON FINDING OF UNCONSTITUTIONALITY OF THEN EXISTING LAW WHICH THE COURT OF APPEALS RELIED UPON IN ITS DECISION TO AFFIRM THE JUVENILE COURTS SEVERANCE ORDER, BUT THAT WHICH WAS OVERRULED IN THE SUPREME COURTS DECISION

WHETHER DECISION OF STATE COURT UPON QUESTION OF LAW VIOLATE FOURTEENTH AMENDMENT TO FEDERAL CONSTITUTION; WHERE PRIOR LAW DEEMED UNCONSTITUTIONAL IN ITS APPLICATION WHICH CONTRIBUTED TO SEVERANCE, AND COURT CHANGED EXISTING LAW BUT AFFIRMED SEVERANCE, AND AS SUCH, HOLDING IS CONTRARY TO NEW LAW ON SAME ISSUE IN WHICH REVIEW WAS SOUGHT

WHETHER HOLDING UNDER EXISTING LAW WAS MOOTED BY CHANGE OF LAW AT ISSUE IN THAT HOLDING, WHERE THE SUPREME COURT AFFIRMED SEVERANCE AFTER IT HELD UNCONSTITUTIONAL THE STATE'S APPLICATION IN EARLIER STAGE OF SAME LITIGATION, TO EFFECT THAT SOME OTHER ASPECTS OF STATE'S SEVERANCE PROCEDURE, UNDER CHANGE IN LAW THAT WAS JUDICIALLY CREATED LATER, VIOLATED CONSTITUTION

STATEMENT OF THE CASE

The Father, fundamentally, enjoyed a parent-child relationship with his four Children as well as the nurturement to thier bond. The Father, Mother and their four Children suffered hardship through a house fire resulting in homelessness. The Mother and the children temporarily resided in a family shelter. But the Father was not permitted to stay due to an arrest warrant. Later, the Father was incarcerated, yet the Father enjoyed his fundamental rights to visitation with his four Children while the care, custody and management of his children resided with the Mother and the Paternal Grand Parents, and through this Familial Association the Father was able to nurture their bonds and maintain their Parent-child relationships, moving forward, the Father sought emergency relief for his Family by initiating the Department of Child Safety ("DCS") involvement on 05/19/2017; Meanwhile, the Father's Submission's - to: P.O. Box - 6030 SVC CH 010-23A, PHX, Az. 85005 - had an adverse effect resulting in the temporary custody on 08/01/2017, However, notice was not served on Parents; rendering the Honorable Glenn Allen, Superior Court Judges' order - JD-34609 In the Matter of Tracy Lynn Ronacher aka Tracy Byus (dob 08/08/1994) and Jason Samuel Byus (dob 07/13/1975), dated 08/04/2017 - Void as well as any and all subsequent orders based on it. (Appendix E)

In August 2017, DCS removed the children from the Mother's care; the Mother's additions defeated her parenting efforts and the children were were placed with non-relatives whom did not have a significant relationship with the children.

The Case plan goal was reunification. However, DCS ultimately refused to facilitate visitation and provide the Father reunification Services to preserve the Family. The Father made diligent efforts for visitation, and too, the Court ordered visitation but DCS disregarded the Court's order.

The Father objected to Placement and requested placement with a more statutorily Preferred Placement; despite efforts being made, this matter was not resolved and the case proceeded in termination. See, (M.E. 08/08/2017), "Mr. Darrin is not in agreement with current placement and would like for his Mother and/or Brother to be considered placement of the children." (Id. at P.3); (M.E. 06/18/2018), "Mrs. Lauer request an update from the Department regarding the Paternal Grandparents being considered as Placement for the children... and the Mother objects to Case Plan goal." (Id. at P.2), "The Court directs that the Department follow up on Mrs. Lauer's request." (Id. at P.3). Parents enjoy a fundamental liberty interest in "the care, custody, and management" of their children. *Santosky, v. Kramer*, 455 U.S. 745, 753 (1982). Subsequently, the Mother's rights were terminated.

The Father objected to the Lack of visitation and made numerous requests to his Counsel regarding his visitation rights via legal calls, legal correspondenees, third party (i.e. his parents facilitating his requests to Counsel and DCS), and too, during open Court; despite protracted efforts being made, this matter was not resolved and a termination of Parental rights was sought of which fundamentally Frustrates the fairness of the Proceedings as a whole. See, (M.E. 08/08/2017), "The Court order's visitation." (Id. at P.5); (M.E. 09/06/2017), "Court directs DCS to follow up with visits." (Id. at PP 5-6); (M.E. 04/09/2018), "The Father requests that the children's Placements transport the children to visit him while he is incarcerated in the Arizona Department of Corrections." (Id.); (M.E. 06/18/2018), "The Paternal Grandparents would like to be able to take the Children to visit their Father in the Arizona Department of

corrections," "Mrs. Laner request that the issue be left at the children's discretion."¹

"The Court directs Department to Conduct a follow up." (Id. at P.3). Because Parents incarcerated for a lengthy period still possess a fundamental liberty interest in the care, custody, and management of their children, *Troxel v. Granville*, 530 U.S. 57, 65 (2000), DCS must make diligent efforts to preserve the family by providing services to assist parents in maintaining a bond with their children. If DCS seeks to terminate Parental rights under § 8-533 (B)(4)'s provision addressing the Parent's length of felony sentence, and an incarcerated parent requests reunification services, such as visitation, and providing the services will not endanger the child, DCS must make reasonable efforts to provide these services.

In June 2018, DCS moved to terminate Father's Parental rights to the children under § 8-533 (B)(4). There is "no 'bright line' definition of when a sentence is sufficiently long to deprive a child of a normal home for a period of years." *Michael J.*, 196 Ariz. at 251 ¶ 29. (Appendix D.)

DCS actively dissuaded a statutorily preferred placement of Children with their Paternal Grandparents whom had a significant relationship with the Children, but too, DCS Thwarted any and all meaningful opportunity to maintain the Parent-Child relationship necessary to nurture the bond through visitation; meanwhile, DCS created a lengthy duration of Non-Contact between the Father and Children of which afflicted mental anguish and emotional distress, then concerted to action with DCS' unit Psychologist to recommend, and allege later during the termination hearing that transporting the children for visitation is not in the best interest in order to satisfy a finding that termination of Father's Parental rights would be in the Children's best interest. see, (Transcript 11/1/2018, PP 17-18, 21-30; Id. at PP 36-44, 55-57)

¹ Notably, Father's letter to Children, of which was withheld as deemed inappropriate, is consistent with Mrs. Laner's advisement: "He's encouraged the kids to, I mean, speak out about what it is that

they want,..." (Id. at Transcript 11/1/2018 P.21) A court may terminate "parental rights under certain circumstances, so long as the parents whose rights are to be severed are provided with 'fundamentally fair procedures' that satisfy due process requirements," *Kent K. v. Bobby M.*, 210 Ariz. 279, 284 ¶ 24 (2005) (quoting *Santosky*, 455 U.S. at 754). Incarceration does not automatically render a parent unfit and DCS "has a responsibility to assist parents, incarcerated or not, who face termination of their rights," *Michael J.*, 196 Ariz. at 253 ¶ 38 (Zlaket, C.J., Concurring in part and dissenting in part). Indeed, "[a] lack of evidence on one or several of the *Michael J.* factors may or may not require reversal or remand on a severance order." *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, 450 ¶ 15 (App. 2007).

Counsel objected; arguing; "visitation, those issues. I have a feeling that we're not going to be able to hash any of that stuff out today, obviously, with the termination ruling pending." (Transcript 11/1/2018, P.62)

DCS asked for ASFA findings. (Transcript 11/1/2018, P.62) The Juvenile Court inquired about objections which trial counsel for Father made at that time. "MR. ECKHARDT: I would object based on the lack of visitation." (Transcript 11/1/2018, pp.62-63)

DCS essentially conceded that preventing Father from having visitation and contact would diminish Father's ability to keep or maintain a bond with his children. (TR 23)

DCS case manager Reeve conceded that any type of visit with a parent helps nurture a bond between a parent and child. (TR 28) She also agreed that it is impossible to nurture a bond or relationship when no visitation occurs. (TR 28) so whatever relationship existed before the case, without visitation the bond would not be nurtured, grown, or maintained. (TR 28)

DCS agrees that the Father did request visitation. (TR 28) DCS never filed a motion to suspend visitation. (TR 29) The case manager did not contact the Department,

of Corrections to discuss Services for Father or Visitation even though the DCS handbook states the Case manager should Contact the Department of Corrections. (TR 30)

DCS also failed to provide Father with telephone Calls with the children. (TR 29) The Case manager did not discuss telephone or video Calls with Psychologist at the Staffing. (TR 29) Thus, DCS failed to Fulfill its Constitution obligation to Facilitate such Contact (Id).

The Juvenile Court misapplied several of the *Michael J.* factors, including but not limited to the Second factor and terminated Father's Parental rights on 02/08/2019; the Juvenile Court's rationale and conclusion regarding this factor renders it self-fulfilling and implies that incarcerated parents could never adequately maintain a parent-child relationship with their young children. This implication is Contrary to Law. As previously stated, maintaining a relationship with one's children while incarcerated would undoubtedly be a difficult task, but an incarcerated parent can maintain a bond with a child in other ways, such as through visits, Phone calls, letters, pictures, and gifts. See *Michael J.*, 196 Ariz. at 251 ¶ 24. And it is crucial to remember that parent's right to custody and control of their children is fundamental and "does not evaporate simply because they have not been model parents or have lost temporary Custody of their child to the state." *Santosky*, 455 U.S. at 753. (*Jessie D. v. Dep't of Child Safety*, 2021 Ariz. LEXIS 360 (Ariz. Oct. 8, 2021), Opinion of the Court, Id. at P.8, ¶ 17)).

Thereafter, Father, aggrieved by order appealed from the Lack of Notice and Person's involved in the initial order commencing the proceedings, and subsequent orders, including but not limited to the Final order terminating Parental rights Pursuant to a statute that which, self-fulfilling in its application by the state, directly and substantially impaired his Constitutionally Protected rights and deprived him of Parent-Child relationship and fundamental right to maintain and nurture that bond, but too, the Lack of fair Consideration towards statutorily preferred Placement.

with Paternal Grandparent's whom were viable Custodians of the children with Grandparent natural rights but whose application were not processed, and the court's initial orders with visitation which were Violated by Custodial Parents, untill, children began to adjust to having no parents and the one bit of Contact Father had the Foster Parents Concerted to action in turning it against the Father and Claimed when the children Cried, reached out, wanted, and asked for Father - They said it justified Cutting off all contact with Father and also the Paternal Grandparents and Uncle which the Court did order against the Fathers Consistant Opposition. (Appendix C)

The Court of Appeals incorrectly deferred to the Juvenile Courts findings; the court of Appeals erred when it found that Appellant Father did not properly raise the issues of DCS's Failure to provide Visitation and Contact with the Children at the Juvenile Court and because that lack of Visitation and Contact impacted Father's ability to maintain and foster a relationship with his children which the Juvenile Court improperly analyzed,

The Lack of Visitation and Contact resulted in error by the Juvenile Court in its reasonable or diligent efforts analysis, its analysis under the *Michael J. Factors*, and its totality of Circumstances analysis for best interests. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 995 P2d 682 (2000) The Lack of efforts for Visitation and Contact Violated Father's Fundamental rights to Contact and Visitation with his children. (Appendix B)

The Supreme Court Granted review; Ultimately, as in *Michael M. v. Ariz. Dep't of Econ. Sec.*, The Supreme Court should have Found that the Lack of efforts for Visitation and Contact Violates Father's Fundamental rights to Contact and Visitation with his children. 202 Ariz. 198 (2002) And, accordingly; the decisions of the Juvenile Court and Court of Appeals should have been reversed and the Court should have denied Severance of Father's parental rights, However, the Supreme Court Found that the Juvenile Court Correctly relied on then existing precedent when it Concluded that DCS was not required to provide reunification services to the Father under *James H. v. Ariz. Dep't of*

Econ. Sec., 210 Ariz. 1, 2 ¶ 6 (App. 2005). Meanwhile; the Supreme Court that, the rationale for denying incarcerated parents reunification services as expressed in *James H.* is not Persuasive and changed existing law; where the Father was incarcerated for a lengthy Prison Sentence, the court was permitted to terminate his parental rights pursuant to this section, "(A.R.S. § 8-533(B)(4).)" without making a diligent effort to provide reunification; Prolonged incarceration is something neither the Arizona Department of Economic Security nor the Parent can ameliorate through reunification services. *James H. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 1, 106 P.3d 327, 447 Ariz. Adv. Rep. 8, 2005 Ariz. App. LEXIS 18 (Ariz. Ct. App. 2005), OVERRULED in *Jessie D. v. Dep't of Child Safety*, 2021 Ariz. LEXIS 360 (Ariz. Oct. 8, 2021).

Henceforth; In this decision, the Court has begun to reattach the standards for termination of parental rights to their essential due process moorings, in two significant and commendable ways: First, it tightens the factors that should be considered in terminating a child's relationship with an incarcerated parent, so that they are no longer "self-fulfilling" such that "incarcerated parents could never adequately maintain a parent-child relationship with their young children," an implication the Court correctly concludes is "contrary to law," and; Second, the Court makes clear that DCS must facilitate, and certainly may not affirmatively thwart, a parent's efforts to maintain a relationship with his or her children while in custody. Justice Bolick stated, "I trust that in future cases, lower courts will require DCS to facilitate maintaining the parental relationship as it is constitutionally required to do, and that this Court will overturn termination orders where DCS fails to do so."

Hence, Father's Pro Se Petition For a Writ of Certiorari in the Supreme Court of the United States as necessary to draw the conscience of the Court; enjoining retroactive application of now new law in instant case giving it some different legal effect from that which it had under the law when it occurred, making applicable in its effect the intentment of law. (Appendix A)

REASONS FOR GRANTING THE PETITION : Important Considerations

For accepting this Case for review include the existence of a conflict between the decision of the Court of Appeals of which review was sought and a decision of the Supreme Court on the same issue in which changed existing Law

1. Due process requires as general matter opportunity to be heard at a meaningful time and in a meaningful manner.
2. Citizens must be afforded due process 'before' deprivation of life, liberty, or property. *Nat. Council of resistance of Iran v. Department of State*, 251 F3d 192 (D.C. cir. 2001)

Parents have a "fundamental interest in the Care, custody and Control of their Children," which interest is protected by the Due Process Clause of the United States Constitution. *Christy A. v. Ariz. Dep't of Economic Sec.*, 173 P.3d 463, 217 Ariz. 299 (2007). *Santosky v. Kramer*, 455 U.S. 745 (1982); *P.O.S. v. Gardner*, 998 F2d 764 (9th cir. 1993) (rights to marry, have children, and maintain relationships with children are fundamental rights protected by the fourteenth Amendment and thus, strict scrutiny is required of any statute that directly and substantially impair those rights); Parents interest in the Custody of a child is a Constitutionally Protected Liberty interest subject to due process protection. *Wilkinson Ex Rel. Wilkinson v. Russell*, 182 F3d. 89 (2nd Cir. 1999), Parent-child relationships lies at the heart of Constitutionally Protected familial associations. *Kipps v. Caillier*, 205 F3d 203 (5th cir. 2000).

DCS failed to provide reunification services before they sought termination of Parental rights. A court may terminate "Parental rights under certain circumstances, so long as the parents whose rights are to be severed are provided with 'fundamentally fair Procedures' that satisfy due process requirements." *Kent K. v. Bobby M.*, 210 Ariz. 279, 284 ¶ 24 (2005) (quoting *Santosky*, 455 U.S. at 754). Here DCS alleged felony sentence was of such a length as to deprive the children of a normal home for a period of years." *Michael J.*, 196 Ariz. at 251 ¶ 29. Indeed, "[a] lack of evidence on one or several of the *Michael J.* factors may or may not require reversal or remand on a severance order." *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, 450 ¶ 15 (App. 2007). The Juvenile Court incorrectly applied the *Michael J.* factors to terminate Parental rights. (Id). And the lack of Contact between children was created by DCS to allege reunification is not in the best interest of the children. The Court of Appeals incorrectly deferred to the Juvenile courts Finding (No. 1 CA-JV 19-0073, Mem. Dec.) filed 11/14/2019. (Id).

In addition, the Court of Appeals erred in finding that appellant Father did not properly raise the issue of reasonable efforts and the Lack of Visitation at the Juvenile Court. Appellant Father raised the issue throughout the proceedings and the case. Accordingly, as were applied, *Shawnee S. v. ADES*, 234 Ariz. 174, 179, ¶¶ 17-18 (App. 2014) does not apply to these facts in either the grounds analysis or the best interests analysis. Thus, since reasonable or diligent efforts were not made, and Father raised the issue of Visitation with the Juvenile Court, the decision should be reversed.

A parent, even an inadequate one, is better than no parent at all unless the children can benefit from losing Father. See *Maricopa Cnty Juv. Action No. JS-500274*, 167 Ariz. 1. The petitioner failed to show the benefit of severance. In addition to the foregoing, the Juvenile Court failed to consider the degree to which the children's relationship with Father can be nurtured and developed in the future. See *Dept. of Econ. Sec.*, 202 Ariz. 198, 42 P.3d 1163 (Ariz. App. 200Fa2); *Michael J. v. A.D.E.S.*, 196 Ariz.

216, 995 P.2d 682 (2002). A parent has a fundamental interest in the care, custody and control of their children. See *Graville v. Dodge*, 195 Ariz. 119, 985 P.2d 604 (App. 1999). The Arizona Supreme Court recently held that "we recognize that although the focus of the best-interest inquiry is on the child, courts should consider a parent's rehabilitation efforts as part of the best-interests analysis." *Alma S. v. DCS*, 245 Ariz. 146 (2018). Given the foregoing, insufficient evidence was presented that a termination of the relationship between the children and Father is in the best interests of the children. Since DCS failed in its obligation to use diligent or reasonable efforts, the Juvenile Court's decision regarding the felony length ground and its finding on best interests should be reversed.

The Supreme Court, in its Memorandum Decision, No. CV-19-0321-PR, Filed October 8, 2021, opined, "Although § 8-533(B)(4) does not impose an explicit duty on DCS to provide reunification services, the absence of a statutory duty does not obviate the state's obligation to provide these services. *Id.* at P.8, ¶ 18." Arizona Courts have previously recognized a requirement to engage in reunification efforts "on Constitutional grounds as a necessary element of any state attempt to overcome... the 'fundamental liberty interest of the natural parents in the care, custody and management of their child.'" *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192 ¶ 32 (App. 1999) (quoting *Santosky*, 455 U.S. at 753). Providing reunification services is imperative in severance proceedings because "[t]he combined effect of the fundamental character of a parent's right to his child and the severity and permanence of termination dictates that the court sever the parent-child relationship only in the most extraordinary circumstances, when all other efforts to preserve the relationship have failed." *In re Appeal in Maricopa Cnty. Juv. Action No. JA 33794*, 171 Ariz. 90, 91-92 (App. 1991) (emphasis added).

The Supreme Court of Arizona agreed that the Juvenile Court incorrectly applied

Several of the Michael J. factors in its severance analysis, including the Juvenile Court's finding on the length and strength of Father's relationship with the children, and also related to the degree to which the parent-child relationship can be continued and nurtured during his incarceration.

In addition, the Supreme Court agreed that ~~then~~ existing law that DCS did not have to provide Father reunification services including visitation and contact with his children was unconstitutional, and; thus, the Supreme Court changed existing law, and the Supreme Court imposed a duty on DCS to provide services to an incarcerated parent, finding for the first time in Arizona that DCS is required to provide the Father reunification services, such as visitation, which are designed to maintain a parent-child relationship while incarcerated. This new law is very beneficial to incarcerated parents as well as consistent with fundamentally protected rights.

Justice Bolick, stated, concurring in part and in the judgment: "I cannot join the opinion in full as I disagree that Arizona's termination of parental rights statute, as applied by this Court's rules and opinions, satisfies due process requirements. 'To the contrary,' it falls short, often depriving parents of their fundamental rights." See, e.g., *Trisha A. v. Dep't of Child Safety*, 247 Ariz. 84, 92-95 ¶¶ 33-48, 100 ¶ 73 (2019) (Bolick, J., dissenting) ("[T]he process our state has 'constructed' creates the very real prospect that parents will lose their children ~~not~~ because they deserve to, ~~but~~ because they are 'unable to effectively defend their rights in a system that is stacked hopelessly against them.'"); *Alma S.*, 245 Ariz. at 154-55 ¶¶ 30-36 (Bolick, J., concurring in the result); *Brenda D. v. Dep't of Child Safety*, 243 Ariz. 437, 450 ¶ 48 (2018) (Timmer, J., dissenting in part and concurring in part); *Marianne N. v. Dep't of Child Safety*, 243 Ariz. 53, 59 ¶ 33 (2017) (Eckerson, J., dissenting).

"In this decision, 'the court has begun to reattach the standards for termination of

parental rights to their essential due process moorings, in two significant and commendable ways. First, it tightens the factors that should be considered in terminating a child's relationship with an incarcerated parent, so that they are no longer "self-fulfilling" such that "incarcerated parents could never adequately maintain a parent-child relationship with their young children," an implication the court correctly concludes is "contrary to law." Second, the court makes clear that DCS must facilitate, and certainly may not "affirmatively thwart," a parent's efforts to maintain a relationship with his or her children while in custody. I trust that in future cases, lower courts will require DCS to facilitate maintaining the parental relationship as it is constitutionally required to do, and that this court will overturn termination orders where DCS fails to do so. "Matter Sub Judice"

A parent has a fundamental liberty interest in the companionship and society of her child, and the state's interference with that liberty interest without due process of law is remediable under § 1983. *Lee v. County of Los Angeles*, 240 F.3d 754 (9th Cir. 2001). See, *Meachum v. Fano*, 427 U.S. 215, 49 L. ed. 451, 96 S. Ct. 2532 (1976). A reviewing court has the right to determine whether an inmate was deprived of a state-created or liberty interest granted by rule or statute or regulation promulgated by the government.

In considering the substance of the conflict between the decision of the court of appeals wherein the court concluded the juvenile court correctly relied on then-existing precedent when it concluded that DCS was not required to provide reunification services to father, "where the father was incarcerated for a lengthy prison sentence, the court was permitted to terminate his parental rights pursuant to this section without making a diligent effort to provide reunification; prolonged incarceration is something neither the Arizona Department of Economic Security nor the parent can

ameliorate through reunification services." *James H. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 1, 106 P.3d 327, 447 Ariz. Adv. Rep. 8, 2005 Ariz. App. LEXIS 18 (Ariz. Ct. App. 2005), of which review was sought and the decision of the Supreme Court overruled in *Jessie D. v. Dep't of Child Safety*, 2021 Ariz. LEXIS 360 (Ariz. Oct. 8, 2021), on the same issue in which *James H.*'s categorical refusal to provide reunification services to parents serving lengthy sentences is contrary to the well-settled axiom that "severance of the parent-child relationship should be resorted to 'only when concerted effort to preserve the relationship fails.'" *In re Appeal in Maricopa Cnty. Juv. Action No. JS-5209 & No. JS-4963*, 143 Ariz. 178, 189 (App. 1984) (quoting *In re Appeal in Maricopa Cnty. Juv. Action No. S-111*, 25 Ariz. App. 380, 387 (1975), overruled on other grounds by *In re Appeal in Yavapai Cnty. Juv. Action No. J-8545*, 140 Ariz. 10, 14 (1984)). Because parents incarcerated for a lengthy period still possess a fundamental liberty interest in the care, custody, and management of their children, *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Sub Silentio*, "DCS must make diligent efforts to preserve the family by providing services to assist parents in maintaining a bond with their children"; such that, "Lower courts will require DCS to facilitate maintaining the parental relationship as it is Constitutionally required to do," and that this Court will 'overturn termination orders where DCS fails to do so.'" And, as such; Retrospectively, new Law should apply. SUB JUDICE

CONCLUSION

Based on the Cumulative and progressive nature of acts and omissions Perpetrated by DCS of which frustrate the fairness of the Proceedings such that renders the termination of Parental rights, but to, Adoptive Placement wrong in a fundamental sense; and, as such, Under new Law precedent such termination order should be overturned respectively.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jeddie Wilder Darrin

Date: January 6, 2022.