IN THE SUPREME COURT OF THE UNITED STATES

Nishith Patel,

Applicant,

Case No:

v.

Anne Albright, et. al.

Respondents.

On Emergency Application for Writ of Injunction to Chief Justice John Roberts

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EMERGENCY APPLICATION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

This Application is made to Chief Justice Roberts because a father has been unconstitutionally separated from his child for **almost two years.**

This case is unique because the state trial court has proffered **absolutely no reason** to justify the separation of father and child. Almost two years after parent and child were separated, **there still remains no justification** for the prolonged separation. Making matters worse, over the last two months, Mr. Patel has not been even permitted to see or hear from his daughter even virtually – again without any explanation or justification by the state court. The case requires emergency injunctive relief because there is no room to doubt that the state court is acting with either a malicious and corrupt motive. Further, this case represents a rare example of a full-frontal attack on the United States Constitution by a state judge.

Specifically, the state court's actions violate Mr. Patel's sacred constitutional right to raise his child, as well as his constitutional right to fair process. The state court judge is so unconstitutionally biased against the Applicant that not only do her past actions need to be remedied, but her continued presence in the case is constitutionally intolerable. As such, the emergency relief Mr. Patel requests is not only for constitutional violations in the past, but for *ongoing* constitutional violations today, and almost guaranteed constitutional violations that will happen in the future.

The pertinent procedural posture is as follows: Mr. Patel filed an action in the federal district court in Maryland which sought, *inter alia*, that the

unconstitutionally biased state court judge be disqualified from presiding over his case, that her biased orders be vacated, and that Mr. Patel be reunited with his daughter. The District Court *sua sponte* dismissed Mr. Patel's Complaint as 'frivolous,' and therefore did not even consider his Emergency Motion for Preliminary Injunctive Relief. The decision was clearly erroneous because the District Court's reasoning – that 42 U.S.C. § 1983 cloaked the defendant with absolute immunity for *monetary* damages – was entirely inapplicable to Mr. Patel's numerous claims for declaratory and injunctive relief.

Further, there was nothing frivolous about Mr. Patel's Complaint, which described how a loving father was illegally separated from his daughter (and she from her father) for (now) almost two years by a biased judge. The written text in the Complaint (or in this Application) cannot adequately capture the anguish and pain caused by this separation, nor can it quantify the irreparable damage done to the relationship between child and father. This case is anything but frivolous because, in addition to the personal pain inflicted upon the father and child, critical tenets of the United States Constitution have been severely undermined, including the constitutional right for a parent to raise his child, as well as the constitutional right to due process.

Mr. Patel subsequently applied for emergency relief with the Court of Appeals for the Fourth Circuit, requesting that it overturn the District Court's flawed ruling. But on April 24, 2022, the Fourth Circuit denied Mr. Patel's emergency injunction with almost no explanation, except that it deemed that Mr. Patel "did not establish

that he is entitled to the extraordinary relief that he seeks." It is important to note that the "extraordinary" relief Mr. Patel sought was the very ordinary and natural right of wanting to spend time with his daughter.

Mr. Patel files this Emergency Application so that the Supreme Court can expeditiously restore constitutional order to the lower courts, which have run amuck in this case. Mr. Patel further requests that this Court remedy a terrible injustice inflicted upon him and his child by permitting their reunification after an unjustifiably long and cruel separation by a biased and potentially corrupt state court judge. Finally, Mr. Patel intends to request that the doctrine of absolute judicial immunity be abolished because it is fundamentally incompatible with the United States Constitution, and so that he may obtain relief for the constitutional injuries he has suffered.[1]

[1] The Fourth Circuit has not yet ruled on this aspect of the appeal. Accordingly, the issue may not yet be ripe for review by this Court.

PARTIES TO THE PROCEEDING

The parties to the proceeding are as follows:

1. Nishith Patel is the applicant. He is a *pro se* individual parent who has been unconstitutionally separated from his child for almost two years. He has been the Plaintiff and Appellant in the District Court and in the Court of Appeals for the Fourth Circuit.
2. Defendants are Anne Albright, Mary Ellen Barbera, and Stuart Berger. Anne Albright is a trial judge in a county court in Maryland. Stuart Berger is a judge in the Court of Special Appeals in Maryland, which is the intermediate appellate court. Mary Ellen Barbera is a judge at the Court of Appeals in Maryland, the highest-level appellate court in Maryland.

RELATED PROCEEDINGS BELOW

United States District Court for Maryland

- *Nishith Patel v. Anne Albright, et. al. 21-cv-02409-GJH* – Judgment dismissing Plaintiff's Amended Complaint entered on October 26, 2021.

Court of Appeals for the Fourth Circuit

- *Nishith Patel v. Anne Albright, et. al. 22-1162* – Judgment denying preliminary injunctive relief entered on April 19, 2022.

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The United States' District Court's decision *sua sponte* dismissing Mr. Patel's Amended Complaint is attached in the Appendix as Exhibit A. The Fourth Circuit's decision denying Mr. Patel's Emergency Motion for Preliminary Injunction is attached in the Appendix as Exhibit B.

JURISDICTION

The United States Constitution affords federal courts jurisdiction for all matters arising out of the Constitution. *See* U.S. Const. Art. III, § 2. This case implicates numerous aspects of the Constitution, including the constitutional right for a parent to raise his child, the due process clause, and the Supremacy Clause. Furthermore, this Court has jurisdiction under the All Writs Act, 28 U.S.C. § 1651(a), which gives this Court broad discretion to rule upon a lower court's order in "exigent circumstances" where the "legal rights at issue are indisputably clear." *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regul. Comm'n,* 479 U.S. 1312 (1986).

The Supreme Court and numerous Courts of Appeals have exercised jurisdiction over cases implicating a party's constitutional right to raise, care for, and nurture his child, as outlined more thoroughly below. *See e.g. Meyer v. Nebraska*, 262 U.S. 390 (1923); *Prince v. Massachusetts*, 321 U. S. 158 (1944); *Troxel v. Granville*, 530 U.S. 57 (2000); *D.B. v. Cardall,* 826 F.3d 721, 741 (4th Cir. 2016); *Jordan v. Jackson*, 15 F.3d 333, 342 (4th Cir. 1994); *Duchesne v. Sugarman*, 566 F.2d

817, 825 (2d Cir. 1977); *Lassiter v. Dept. of Soc. Services of Durham County, N.C.,* 452 U.S. 18 (1981)

The Supreme Court has also often exercised jurisdiction over cases in which a biased judge has violated a party's constitutional due process rights. *See e.g. Rippo v. Baker*, 137 S. Ct. 905 (2017); *Withrow v. Larkin*, 421 U.S. 35, 47 (1975); *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905 (2016); *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1666 (2015).

Finally, federal courts have exercised jurisdiction in cases involving foreign children who were separated at the border from their parents under the previous presidential administration. *See e.g. Ms. L v. U.S. Immigrations and Customs Enforcement, et al.,* Case 3:18 cv-00428-DMS-MDD, 2018 WL 2725736 (S.D. Cal.); *Dora v. Sessions*, Case 1:18-cv-01938 (D.D.C.); *M.M.M. v. Sessions,* Case No. 1:18-cv-1835-PLF (D.D.C.); *Ms. J.P. v. Sessions*, Case 2:18-cv-06081 (C.D. Cal.). As such, it would be appropriate for the Supreme Court to extend jurisdiction to the present case, which involves the unconstitutional separation **for almost two years** of a native-born American girl and her United States citizen father.

CONSTITUTIONAL AND STATUTORY MATTERS INVOLVED

This case involves several rights protected by United States Constitution, including a parent's right to raise, nurture and care for his child, which is a god-given, natural right; the due process clause of the Fourteenth Amendment, the Supremacy Clause; and 42 U.S.C. § 1983.

STATEMENT OF THE CASE

This case began as a family law matter in the Montgomery County Circuit Court in Maryland (*Patel v. Patel,* 149996FL). The minor child central to this case was five years old when the present dispute between the parties arose, and when she was unconstitutionally separated from her father by an unconstitutionally biased judge. It has been almost two years since they were unconstitutionally separated. The pertinent procedural history is described below.

a. Maryland State Courts

In a hearing for Mr. Patel's petition for emergency custody for his child, Defendant Ms. Albright,[2] the presiding judge, denied Mr. Patel's petition and instead granted mother sole legal and physical custody. The result is that the minor child was returned to the very person under whose custody she was being subjected to physical abuse. To make matters worse, Ms. Albright also suspended Mr. Patel's access to his daughter (and minor child's access to her father). To date, Ms. Albright has provided no justification – nor can she – for denying the minor child a wonderful relationship she had with her father.

[2] Mr. Patel refers to Defendant as "Ms. Albright," instead of "Judge Albright" for several reasons. First, as a Defendant in a case in which her very integrity and partiality as a judge is at issue, she should not benefit from the privileged status and presumption of being referred to as 'judge' in the pleadings – especially because other sitting judges are tasked with evaluating her. Second, any person who has suffered the loss of a beautiful relationship with their child for almost two years because of the atrocious and unconstitutional conduct of a judge would be hard-pressed to continue referring them as a "judge," as Mr. Patel does here. Finally, under the American legal tenet that no person is above the law (or that all persons are equal in the eyes of the law), Defendant should be referred to by her salutary title just like every other person in a legal proceeding. Theoretically, she should not suffer any unfair prejudice by being called "Ms. Albright."

During the hearing, Ms. Albright demonstrated a profound bias against the father, and committed numerous errors of law. Making matters worse, Ms. Albright anointed herself the permanent judge of the family law case under a local (and unconstitutional) one family, one judge ("1F1J") policy.[3] She did this *sua sponte*. Under the "1F1J" policy, Ms. Albright has total, autocratic power to remain biased against Mr. Patel for perpetuity. She has relished in that role, and her complete disregard for what is in the best interests of the minor child has also continued unabated. Almost two years later, father and child remain separated.

Mr. Patel filed a motion for disqualification to remove Ms. Albright from the case, but unsurprisingly, Ms. Albright declined to disqualify herself, most likely because it would require her to publicly admit that she was biased. Mr. Patel filed an appeal with the Court of Special Appeals in Maryland, requesting, *inter alia*, that Ms. Albright be disqualified. In an illogical ruling, the Court of Special Appeals dismissed Mr. Patel's appeal as 'moot,' even though Ms. Albright remained the judge under the "1F1J" policy and continued to preside over the matter.

Mr. Patel then appealed to the Court of Appeals in Maryland, who also made a plainly illogical decision to dismiss his petition, deeming that it was not in the public interest to review the *ongoing* constitutional violations committed by a sitting judge. Essentially, the Court of Appeals affirmed the lower court's ruling that Mr. Patel's appeal was 'moot,' even though the very same biased judge continued to preside over his case as the "1F1J."

[3] Mr. Patel is unable to find the text of this policy, but several news articles indicate that this policy was enacted in 2016 and affects family law cases in Montgomery County, Maryland.

b. Federal Courts

Mr. Patel subsequently filed a Complaint against in the Federal District Court in Greenbelt, Maryland on September 20, 2021. It had been approximately sixteen (16) months since Defendant Ms. Albright had maliciously and unjustifiably separated Mr. Patel from his child when the federal action commenced. Mr. Patel later amended his Complaint to include counts against the signing judge of the Maryland Court of Special Appeals and also the Maryland Court of Appeals. *See* Appendix, Ex. C.

Mr. Patel's Amended Complaint alleged numerous acts of judicial misconduct against Ms. Albright. For example, Mr. Patel alleged the following facts in his Amended Complaint:

- Ms. Albright determined prior to the hearing – before any evidence was presented and before any arguments were made – that she would separate father from daughter. *Id.* at ¶ 14.
- Ms. Albright had also determined prior to the hearing – again, before any evidence was presented or any arguments were made – that she would only permit supervised access between father and daughter. *Id.* at ¶ 15.
- Ms. Albright also assumed facts not in evidence in favor of the Defendant. For example, she discredited testimony from Mr. Patel even when it was *supported* by the opposing party in the case. *Id.* at ¶ 16.

- Among the Circuit Court's horrific rulings was her complete denial of Mr. Patel's access to his daughter (and her access to her father) except for a 1-hour virtual visitation per week. *Id.* at ¶ 17.
- The minor child's relationship with her father has been severely harmed because of Ms. Albright's decisions. Prior to the Circuit Court's ruling, the minor child enjoyed spending 2-3 days per week with her father and could depend on his judgment as he had joint legal custody (the terms of the physical and legal custody were agreed upon by the parents after considerable negotiation during the divorce proceedings). *Id.* at ¶ 18.
- Mr. Patel filed a motion requesting that Ms. Albright disqualify herself from the case. Not surprisingly, she declined to admit her bias publicly and denied Mr. Patel's motions for disqualification. *Id.* at ¶ 19.

Importantly, Mr. Patel's Amended Complaint primarily sought declaratory and injunctive relief. In the segment titled "Requested Relief," Mr. Patel identified, *inter alia*, the following requests for relief, all of which are either declaratory or injunctive:

REQUEST FOR RELIEF

WHEREFORE, Mr. Patel respectfully requests that this Court:

a) issue a writ of mandamus or injunctive order requiring the defendant Ms. Albright to disqualify herself from the family law case pending this litigation;
b) issue a writ of mandamus or injunctive order vacating the [sic] Ms. Albright's rulings in the family law case pending this litigation;
c) declare that defendant Ms. Albright's actions deprived Mr. Patel of his constitutionally protected rights;

d) declare that the "1F1J" policy is unconstitutional as a matter of law;
e) declare that the "1F1J" policy is unconstitutional as applied to this case;
f) declare that the defendant's actions are so biased as to be constitutionally intolerable;
g) declare that the Maryland Court of Special Appeals deprived Mr. Patel's constitutional rights to seek access and relief from the courts;
h) declare that the Maryland Court of Appeals deprived Mr. Patel's constitutional rights to seek access and relief from the courts; ...

(emphasis supplied).

Along with filing the Amended Complaint with the District Court, Mr. Patel also filed an Emergency Motion for Preliminary Injunction. However, on October 26, 2021, the District Court *sua sponte* dismissed Mr. Patel's Amended Complaint (before the Defendant's responsive pleading was filed). Further, the District Court did not even rule upon Mr. Patel's Emergency Motion for Preliminary Injunction, meaning that Mr. Patel's request to be reunited with his child went unaddressed yet again, but this time in federal court.

The District Court dismissed Mr. Patel's Amended Complaint under the theory that judges are immune from monetary actions proceeding under 42 U.S.C. § 1983. *See* Appendix Ex. A. While this may be true under current law, it is largely irrelevant to this case because, as identified above, Mr. Patel's Complaint pleaded eight (8) claims for declaratory and injunctive relief. This is because Mr. Patel's main goal, ever since this saga began approximately two years ago, is to spend time with his daughter in-person again. Nevertheless, as if the federal District Court was infected

with the same cowardice of the Maryland appellate courts, it turned a blind eye to Mr. Patel's actual pleas for relief – most likely because it wanted to avoid addressing the facts showing Ms. Albright's unconstitutional conduct and her cruel orders separating Mr. Patel and his child.

Subsequently, Mr. Patel filed an Emergency Motion for Preliminary Injunctive Relief with the Court of Appeals for the Fourth Circuit ("Fourth Circuit").[4] *See* Appendix, Ex. D. In that motion, Mr. Patel described in great detail how he and his daughter had been separated for almost two years by a biased judge. Inexplicably, the Court of Appeals denied Mr. Patel's Emergency Motion with almost no explanation, stating vaguely that "he has not established that he is entitled to the extraordinary relief that he seeks." *See* Appendix, Ex. B.

The Fourth Circuit's denial of Mr. Patel's Emergency Motion for Preliminary Injunction is clearly erroneous and unsupported by established law. The Fourth Circuit's rationale that a parent seeking to spend time with his child is "extraordinary" is so plainly wrong it should require no explanation. Mr. Patel respectfully requests this Court reverse the Court of Appeals and the District Court and grant his Emergency Motion for Preliminary Injunction, so that a biased and potentially corrupt judge is disqualified from presiding over this family law case, her orders are vacated, and Mr. Patel and his daughter are reunited.

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[4] The Emergency Motion was before the Court of Appeals because the District Court in Greenbelt, Maryland erroneously determined that Mr. Patel's Complaint was "frivolous" and *sua sponte* dismissed his Complaint. As a consequence of the District Court's erroneous dismissal, it also failed to rule upon Mr. Patel's Emergency Motion for Preliminary Injunction, which was filed shortly after the Complaint. As such, Mr. Patel's Emergency Motion for Injunctive Relief in the Fourth Circuit was properly filed pursuant to Local Rule 8 (a) (1) and Local Rule 27(e).

REASONS FOR GRANTING THE APPLICATION

This Court should grant Mr. Patel's application because he and his daughter have been unconstitutionally separated for almost two years. That unconstitutional separation was caused by an unconstitutionally biased judge. Such unconstitutional conduct should not be left unremedied in the United States.

Mr. Patel meets the standard for issuing a preliminary injunction on the ground "[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008).

The preliminary injunction Mr. Patel requests would remedy two serious deprivations of constitutional rights caused by the lower courts. The first is Mr. Patel's constitutional right to raise his child. The second is Mr. Patel's constitutional right to fair and impartial process. A described in greater detail below, both of these constitutional deprivations are *ongoing* and require immediate remedial action from a higher court. Specifically, Mr. Patel requests that Defendant Ms. Albright be immediately disqualified as judge from the Maryland family law case *Patel v. Patel*, 149996FL, that her orders be vacated, and that Mr. Patel be reunited with his daughter.[5]

[5] This case will also likely present this Court an opportunity to abolish the antiquated and antidemocratic doctrine of absolute judicial immunity, an issue which has been briefed with the Fourth Circuit but not yet ruled upon. The doctrine defies common sense – even a small child would take issue with the concept that a judge can intentionally and maliciously commit grave injustices against the United States Constitution – the very same document she has sworn an oath to uphold – and yet be held completely unaccountable for her actions.

A. This Court Should Grant Mr. Patel's Preliminary Injunction Because He Will Succeed On The Merits

a. Ms. Albright Deprived Mr. Patel of His Fundamental Constitutional Right to Raise His Child

This Supreme Court has declared that the right for parents to raise their children is one of the oldest fundamental rights granted by the due process clause of the Fourteenth Amendment. For example, in *Meyer v. Nebraska*, 262 U.S. 390 (1923), the Supreme Court stated that the liberty interest protected by the Fourteenth Amendment "denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men" (emphasis supplied.)

In *Prince v. Massachusetts*, 321 U. S. 158 (1944), this Court again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children, stating that "[it] is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Id.* at 166. More recently, the Supreme Court stated that "The liberty interest...the interest of parents in the care, custody, and control of their children — is perhaps the oldest of the fundamental liberty interests recognized by this [Supreme] Court...It is

cardinal with us that the custody, care and nurture of the child reside first in the parents..." *Troxel v. Granville*, 530 U.S. 57 (2000). (emphasis supplied).

Furthermore, there is a presumption that fit parents act in their children's best interests, *Troxel at 58 citing Parham v. J. R.*, 442 U. S. 584, 602 (1979). Therefore, "the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a 'better' decision could be made." *Troxel* at 73.

It is indisputable that Mr. Patel has been deprived of his constitutional right to the care, custody and nurture of his child. As Mr. Patel alleged in his Amended Complaint, prior to Ms. Albright's biased orders, Mr. Patel enjoyed spending two to three days per week with his child, pursuant to a shared "60/40" custody arrangement that the parents of the minor child *agreed to* because of their mutual understanding that the child should maintain strong bonds with both parents. Furthermore, not only had the parents agreed to the "60/40" shared custody schedule, but they also agreed to share legal custody, with father retaining the tiebreaker for educational decisions and mother retaining the tiebreaker for health decisions.

When the minor child stayed with Mr. Patel, they enjoyed many special and unique activities that were instrumental to the child's growth, such as going on hiking trips, going to the movies, watching tv shows together, reading together, and dancing to their favorite songs. Mr. Patel taught his child how to ride a bike and they learned how to ice skate. Because of Ms. Albright's horrendous order, Mr. Patel and his daughter can no longer do all the activities that they previously did together (and

other parents do with their children). They cannot spend time cooking and eating together, they cannot visit family and friends together, they cannot attend community or religious events together. They cannot hug each other. Mr. Patel cannot tuck his daughter into bed, read her a bedtime story, or kiss her goodnight. These are critical components of their relationship that not only Mr. Patel misses, but his daughter greatly misses also.[6]

Ms. Albright wrecked it all. She separated Mr. Patel from his daughter and prohibited them from spending time with each other, except for a 1-hour per week supervised visitation. Ms. Albright also denied Mr. Patel legal custody over this daughter. All of it was totally unjustified. By any measure, it cannot be disputed that Ms. Albright deprived Mr. Patel of his constitutional right to care for and nurture his child.

The constitutional deprivations have been ongoing for almost two years, and to date, none of Ms. Albright's orders provide <u>any</u> rationale for the prolonged separation (and indefinite deprivation of constitutional rights), never mind a compelling reason. *See* Appendix, Exs. E and F. As such, Mr. Patel will prevail on the merits during this litigation – it is beyond dispute that Ms. Albright has unjustifiably deprived him of his constitutional right to raise his child.

[6] The minor child repeatedly requested to meet with her father because she misses him – this fact has been documented during the supervised visits. Although Applicant does not believe the documentation of the supervised visits is entirely accurate, it does correctly portray how the minor child repeatedly requests to see her father in-person and that he 'try harder' to make it happen. *See* Appendix, Ex. D at 187.

b. Mr. Patel Has Been Deprived Of His Constitutional Right To Due Process

Mr. Patel's due process rights have been violated (and continue to be violated) because Ms. Albright is biased against him, and she continues to make rulings that clearly demonstrate that bias. *See* Appendix, Ex. C at ¶ 13-17 and ¶ 25-28. The United States Supreme Court applies an objective standard for assessing whether the Due Process Clause has been violated by a judge. In *Rippo v. Baker*, 137 S. Ct. 905 (2017), the Supreme Court stated, "[r]ecusal is required when, objectively speaking, 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'" *Rippo*, 137 S. Ct. at 907 (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)).

Critically, in evaluating that risk of bias, courts must ask "not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias." *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905 (2016). Accordingly, this Court has explained that "the Due Process Clause may sometimes demand recusal even when a judge 'ha[s] no actual bias.'" *Rippo*, 137 S. Ct. at 907 (alteration in original) (quoting *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 825 (1986)).

As applied to the facts of this case, the conclusion that a biased judge presides over Mr. Patel's family matter case is inescapable. Of particular note, at this juncture, the Court must accept Mr. Patel's factual allegations as true (and Mr. Patel submits

that the evidence will show that they are factually true). Thus, this Court must accept the following facts as true:

- During Circuit Court proceedings, Ms. Albright made numerous errors of law and findings of fact. She also displayed an obvious bias for the mother. *Am. Compl.* at ¶ 11.
- Ms. Albright demonstrated a complete disregard for what is in the best interests of the child. *Am. Compl.* at ¶ 13.
- Ms. Albright determined prior to the hearing – before any evidence was presented and before any arguments were made – that she would separate father from daughter. *Am. Compl.* at ¶ 14.
- Ms. Albright had also determined prior to the hearing – again, before any evidence was presented or any arguments were made – that she would only permit supervised access between father and daughter. *Am Compl.* at ¶ 15.
- Ms. Albright also assumed facts not in evidence in favor of the Defendant. For example, she discredited testimony from Mr. Patel even when it was *supported* by the opposing party in the case. *Am. Compl.* at ¶ 16.
- Ms. Albright's bias is demonstrated by her horrific rulings, including her complete denial of Mr. Patel's access to his daughter (and her access to her father) except for a 1-hour virtual visitation per week. *Am. Compl.* at ¶ 17.

- To compound the problems, she made herself the "1F1J" (one family, one judge) of the family law case, meaning that she appointed herself the permanent judge of all family law matters between the parties *indefinitely. Am. Compl.* at ¶ 12.
- The Maryland Court of Appeals' holding has given Ms. Albright *carte blanche* to continue acting with utter disregard for Mr. Patel's rights and for what is in the best interests of the child. Mr. Patel has twice requested Ms. Albright to permit him to spend in-person time with his daughter, but she has denied his requests. On Mr. Patel's last motion for physical access to his daughter, Ms. Albright demonstrated her callousness toward him by stating that "it appear[ed] that the parties agree that Plaintiff's supervised virtual visitation with the minor child should continue..." despite Mr. Patel's repeated and clearly stated requests to spend time with his daughter in person. *Am. Compl.* at ¶ 25.

As described in the Amended Complaint, not only did Ms. Albright display an outright bias against Mr. Patel in the initial Circuit Court proceedings (causing Mr. Patel to file his appeal to the Maryland Court of Special Appeals) but she continues to do so at the present moment. She has twice summarily denied Mr. Patel's motions for physical access to his daughter (the latest entered on August 10, 2020). On both occasions, she denied his requests for access to his daughter without a hearing. *See* Appendix, Exs. E and F. Ms. Albright made these disastrous rulings even though she was presented with evidence that not only did Mr. Patel seek to be reunited with his

daughter, but even Mr. Patel's daughter was asking her father to "try harder" for him to spend time with her. *See* Appendix, Ex. D at 187.

In fact, Mr. Patel has not even been able to see his daughter for the weekly virtual meeting because the biased judge is refusing to rule on his pending motion for access. Despite Mr. Patel's numerous requests for the judge to issue an order, she flatly refuses to do so, and Mr. Patel has not seen his daughter or heard her voice for more than two months. This has been very traumatic for Mr. Patel, yet the judge remains entirely callous towards him, which further and unequivocally demonstrates her malicious bias.

Furthermore, Mr. Patel was deprived of his constitutional right to appellate review because neither the Court of Special Appeals nor the Court of Appeals determined Mr. Patel's appeals on the merits. Unfortunately, rather than making the important decision on whether the judge was indeed biased, the Maryland appellate courts dismissed Mr. Patel's appeal on the absurd reasoning that it was 'moot' because Ms. Albright later issued a final order. This result is illogical, even to the most casual citizen. A judge's bias and behavior cannot go unexcused simply because at some later point she issued another order. This result is especially dangerous in this case because of the "1F1J" policy, which entrenches the very same biased judge to preside over the family law matter in perpetuity.

By failing to decide Mr. Patel's appeals on the merits, both the intermediate and highest appellate courts in Maryland have undermined their own authority as

an arbiter of the lower courts. More importantly, for Mr. Patel, their actions have denied him his due process rights under the United States Constitution.

c. Mr. Patel Will Prevail On The Merits Of The Litigation Because The District Court Improperly Dismissed His Complaint

The District Court outright failed to address the requests for the relief sought by Mr. Patel. Specifically, Mr. Patel requested the following declaratory or injunctive relief from the District Court: a) require Ms. Albright to disqualify herself pending this litigation; b) vacate Ms. Albright's orders in the family law case; c) declare that Ms. Albright deprived Mr. Patel of his constitutionally protected rights; d) declare that the "1F1J" policy is unconstitutional as a matter of law; e) declare that the "1F1J" policy is unconstitutional as applied to this case; f) declare that the defendants' actions are so biased as to be constitutionally intolerable; g) declare that the Maryland Court of Special Appeals deprived Mr. Patel's constitutional rights to seek access and relief from the courts; h) declare that the Maryland Court of Appeals deprived Mr. Patel's constitutional rights to seek access and relief from the courts.

None of the requests for relief seek monetary relief. Therefore, the District Court's justification for dismissing Mr. Patel's complaint – that judicial immunity is afforded to judges against claims for monetary relief – does not even apply, and therefore the District Court's ruling is clearly erroneous. Mr. Patel does not understand how the District Court failed to understand that the crux of his complaint did not even seek monetary relief. Again, Mr. Patel's primary requests for relief are declaratory and/or injunctive, because his chief concern, as has been the case from

the very beginning, is to be reunited with his child. Because of the District Court's blatant errors, Mr. Patel will prevail on the merits of the underlying litigation with respect to its dismissal.

B. Plaintiff (and the Minor Child) Will Suffer Irreparable Harm In The Absence of Preliminary Relief

Mr. Patel has already been denied almost two years of spending time with his daughter. He has missed so many landmarks during this time, including her first day at kindergarten, her sixth and seventh birthdays, and holidays such as Thanksgiving and the 4th of July. They have not been able to enjoy all the activities they used to do together such as hiking, cooking, ice skating, bike riding, and playing soccer. The prolonged absence has been a horrendous experience for Mr. Patel, especially considering the circumstances in which he was separated, when he was trying to prevent his daughter from being harmed. His relationship with his daughter has already suffered tremendous damage, and the continued separation only worsens the bond on a daily basis.

Further, Mr. Patel has been mired in a prolonged battle in the Maryland Courts trying to remove a biased judge. Mr. Patel has become despondent with even trying to obtain relief in Maryland state courts because the "1F1J" policy remains in place, and a biased autocratic judge continues to preside over his relationship with his daughter. Neither the Maryland Court of Special Appeals nor the Maryland Court of Appeals decided his appeal on the merits, which has also caused tremendous grief to Mr. Patel, because the reasoning provided by the Maryland appellate courts (or

lack thereof) is completely illogical, and his faith in the judicial system has reached the point of near exhaustion.

In other words, irreparable harm is an ongoing fact in Mr. Patel's life. Every day that passes without him being permitted to spend time with his child is one that can never be recovered. The last time they spent time together in-person was when she was five years old – she is now seven. Every day that he is denied justice as a direct result of judicial bias and appellate failure undermines the due process clause of the United States Constitution and the liberty interest afforded to parents to raise their children under Supreme Court precedent. It is therefore critically important that preliminary relief be afforded to Mr. Patel pending the litigation.

C. The Balance of Equities Are in Plaintiff's Favor

Perhaps the worst outcome of the biased trial court judge's horrific ruling is that a completely innocent third party – a five-year-old girl was suddenly deprived of a wonderful relationship that she had with her father. That sudden deprivation was shocking to her at the time it happened, and the prolonged separation has taken a toll on her (as well as her father). Tragically, the lesson taught to the minor child is that talking about the abuse inflicted upon her will only result in her being separated from the very person in whom she confided and was trying to protect her.

The equitable result would be to reunite a parent with his child, especially because there are no justifiable reasons for the continued separation. It is beyond Mr. Patel's understanding why this result of separation still stands, despite Mr. Patel's extensive efforts for reunification, and despite the child's desire to be reunited with

her father. The only explanation is that there is a biased judge in the case, who is motivated by some ulterior motive to punish Mr. Patel and his daughter, and there appears to be a concerted effort to cover up for the corrupt judge by other judges.

While Mr. Patel and his daughter would benefit greatly from being reunited, there are no drawbacks to their reunion. It is again worth repeating that the minor child *also* greatly misses spending time with her father, and the equitable result would be to permit her to do so again.

Moreover, very little is lost by having another (unbiased) judge take the current judge's place. Even the opposing party, *theoretically*, has little to lose by having another judge replace the current one.

Finally, preliminary relief is equitable here because "the burden of litigating a domestic relations proceeding can itself be so disruptive of the parent-child relationship that the constitutional right of a custodial parent to make certain basic determinations for the child's welfare becomes implicated." *Troxel v. Granville*, 530 U.S. at 75. In fact, the litigation over the last two years has already cost Mr. Patel dearly, and he rues ever calling the police and Child Protective Services and seeking the assistance of the Courts when he saw scratch marks all over his child's torso.[7] He obviously miscalculated that trying to protect his daughter would lead, inexplicably, to this tragic and prolonged separation of the relationship he most cherished.

D. This Court Should Grant the Requested Injunction Because It Is In The Public Interest

[7] This was the third time that the minor child reported physical abuse to her father.

This Court should grant Mr. Patel's Emergency Motion for Preliminary Injunction because gross **ongoing** violations of constitutional rights should not be permitted to continue in our country, and a corrupt and biased judiciary is incompatible with the Constitution.

Specifically, an injunction is in the public interest because the integrity of the judicial system is at stake in this case. As this case presently stands, the principle being upheld is that even if a trial judge utterly violates judicial ethics, and even if she unabashedly violates a party's constitutional rights, she may evade appellate scrutiny so long as she issues a final order. This result is offensive to the United States Constitution and undermines the integrity of the judicial system.

If a United States court has the discretion to save the integrity of the judicial system, it should do so. Because the Maryland appellate courts and the lower federal courts failed to provide Mr. Patel an opportunity to appeal and protect his constitutional rights, it has now fallen upon this Court to preserve Mr. Patel's constitutional rights.

The Supreme Court has articulated strong public policy reasons supporting the constitutional right to have fair and neutral judges. The Due Process Clause's objective recusal standard preserves the "'vital state interest' in safeguarding 'public confidence in the fairness and integrity of the nation's elected judges.'" *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1666 (2015). The perception of a biased tribunal can erode public confidence in the judiciary as a whole. See *Williams*, 136 S. Ct. at 1909

From Mr. Patel's personal perspective, an injunction is also in the public interest because the relationship between a parent and child is one of the strongest interests protected by law. *Lassiter v. Dept. of Soc. Services of Durham County, N.C.,* 452 U.S. 18 (1981)) (stating it is "'plain beyond the need for multiple citation' that a natural parent's 'desire for and right to the companionship, care, custody, and management of his or her children' is an interest far more precious than any property right.") (internal quotation marks omitted). *See also Santosky v. Kramer*, 455 U.S. 745, 753 (1982). In this case, a biased judge forcibly separated a daughter from her loving father, who had previously spent approximately 40% of their time together. It is now almost two years since father and daughter were separated. This Court has the power to remedy a terrible injustice committed upon Mr. Patel and his daughter, and granting them Mr. Patel's requested preliminary injunction would be the right first step to take toward undoing the injuries that have been inflicted.

Finally, there is a public interest in the federal courts exercising jurisdiction over this matter. Considering that *the state courts themselves* – including the state appellate courts – deprived Mr. Patel of his constitutional rights, if he cannot seek redress from the federal courts, to whom else can he turn? The Constitution was amended to include the Fourteenth Amendment for precisely this reason—to permit the people an avenue to seek federal protection when states violate their constitutional rights. The very purpose of 42 U.S.C. § 1983 is to provide a remedy for exactly the type of case brought forth by Mr. Patel. It is in the public interest that the

federal courts exercise jurisdiction over this case and preserve the Constitution by efficiently remedying its violations.

CONCLUSION AND REQUESTED INJUNCTION

The injunctive relief sought by Mr. Patel's would immediately prohibit the very same biased judge who has caused so much harm to continue presiding over future proceedings in the family law matter (during the pendency of this litigation and the petition for writ of certiorari).

Not only is this the morally and legally correct result, but also the constitutional one, because the injunctive relief sought by Mr. Patel would help preserve the integrity of the judicial process and the sanctity of the United States Constitution by remedying *ongoing* violations of the Constitution.

Mr. Patel urges this Court to consider that at its very essence, the relief Mr. Patel seeks is to spend in-person time with his daughter again. It is an abject failure of the legal system that despite it having been almost two years, and despite requesting relief from multiple courts, Mr. Patel and his daughter remain separated for absolutely no reason. It has been a very long time, and both father and daughter are losing precious time from each other that they can never recapture. The reunification of a father and a minor child – both of whom love each other very much and cannot wait to meet again – is in this Court's hands. The reunification can happen if this Court affirms Mr. Patel's constitutional rights. The reunification will happen when this Court declares that Ms. Albright's behavior was unconstitutionally biased,

that she remains unconstitutionally biased, and that her continued presence on the family law case will continue to deprive Mr. Patel of his constitutional rights.

For the foregoing reasons, Mr. Patel respectfully requests that this Court issue an injunction, or a writ of mandamus directing the district court to require:

a) Ms. Albright be immediately disqualified from presiding over the Maryland family law case *Patel v. Patel*, 149996FL.

b) Ms. Albright's orders be vacated pending this litigation.

c) That Mr. Patel be reunited with his daughter as soon as practicable.

Respectfully submitted,

Dated: May 17, 2022

/s/ Nishith Patel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date below, a copy of the foregoing document was served on Kathryn Hummel, Office of the Attorney General, 200 St. Paul Place, Baltimore, MD 21202, via email at khummel@oag.state.md.us (per permission).

Dated: May 17, 2022

/s/ Nishith Patel

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