

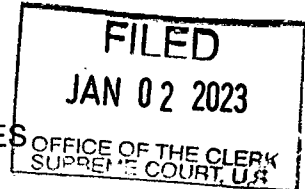
40 handwritten
pages, plus
Appendices
A through T.
Table of Contents
is on page 5.
302 pages total.

22-6618
No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Josiah E. — PETITIONER
(Your Name)

vs.

Arizona Department of Child Safety,
M.E. and V.E. — RESPONDENT(S)
Termination of Parental Rights
ON PETITION FOR A WRIT OF CERTIORARI TO

*Parties
All parties
appear in
the caption
of this case.

Arizona Court of Appeals - Division One
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

Arizona Supreme Court
No. CV-22-0054-PR
Petition For Review
denied on 8-26-2022

PETITION FOR WRIT OF CERTIORARI

Arizona Court of Appeals-
Division One
No. 1 CA-JV 20-0400
severance affirmed

Maricopa County Arizona
Superior Court No. JS18922
(Termination of Father's
Parental Rights)

No. JD33768
(Dependency)

Josiah English III [Pro Se Petitioner/Biological Father]
(Your Name) Pretrial Detainee # T337357 in the
Maricopa County Jail
3250 W. Lower Buckeye Rd.
(Address)

Phoenix, Arizona 85009
(City, State, Zip Code)

Email Address: josi202082@yahoo.com
~~(Phone Number)~~

[can check email approximately once a week]

*Re-filed on 1-17-2023

①

Questions Presented

- #1 Did the Arizona Court of Appeals - Division One err by affirming the termination of Father's parental rights over his two biological children in a Maricopa County Superior Court order that does not make any finding of "parental unfitness", as is required under the Due Process and Equal Protection clauses of the 14th Amendment to The U.S. Constitution and by this Court in Santosky v. Kramer, 455 U.S. 745 (1982)?
- #2 Are Arizona Revised Statutes § 8-533 (B) 8. (a) and (c) (9 and 15 months time-in-care) unconstitutional as applied to a pretrial detainee parent, when they are used as the sole grounds to terminate the parental rights of a pretrial detainee parent who is merely accused and is awaiting trial in the criminal court, in violation of the Due Process Clause of the 14th Amendment to The U.S. Constitution?
- #3 Are Arizona Revised Statutes § 8-533 (B) 8. (a) and (c) Unconstitutionally overbroad in violation of The U.S. Constitution?
- #4 Are Arizona Revised Statutes § 8-533 (B) 8. (a) and (c) Unconstitutionally vague in violation of The U.S. Constitution?
- #5 Did the Arizona Court of Appeals - Division One err by affirming the Maricopa County Superior/Juvenile Court's denial of Father's and Arizona DCS's motions for a continuance of trial due to the highly contagious and potentially fatal Covid-19 virus, in violation of Father's right to "fundamentally fair procedures" in a termination of parental rights proceeding under the 14th Amend. and Santosky v. Kramer, 455 U.S. 745 (1982)?

Related Cases

II

Arizona Supreme Court
No. CV-22-0054-PR

Petition For Review denied on 8-26-2022

II

Arizona Court of Appeals - Division One
No. 1 CA-JV 20-0400

Termination of parental rights affirmed on 2-10-2022

3

Maricopa County Arizona Superior Court (Juvenile Court)
No. JS18922 / Hon. Jo Lynn Gentry presiding

Termination of Father's parental rights (order filed on 12-2-2020)
(Father contested the severance)
No. JD33768 (Dependency)

IV

Supreme Court of The United States

No. 20-5413 / Josiah English III vs. Hon. Jo Lynn Gentry, et al.
Petition For A Writ of Certiorari to the Arizona Supreme Court
requesting a stay of the above listed termination of parental
rights and dependency cases until the final disposition of
Father's criminal case. Certiorari was denied. Father's request
for a stay in the Arizona Supreme Court case number below was
also denied.

↑
Please see
the first 6
pages of that
petition
attached
to this
document
as
Appendix E

5

Arizona Supreme Court
No. CV-20-0048-PR

In an order dated 3-2-2020 the Arizona Supreme Court denied
Father's request for a stay of the above listed severance and dependency cases.

See attached
as Appendix A
to case #20-
5413 filed in
AZ S.Ct.
on 7-9-2020
Supreme Court

Related Cases Continued

[6] Arizona Court of Appeals - Division One

No. 1 CA-SA 20-0023

Father - Josiah English III filed a Petition For Special Action requesting a stay of the juvenile termination of parental rights and dependency proceedings until the final disposition of his criminal case. On 2-13-2020 the Arizona Court of Appeals - Division One filed their "Order Declining Special Action Jurisdiction". Please see a copy of that order attached as Appendix B to case number 20-5413 filed in this U.S. Supreme Court on 7-9-2020.

[7] Maricopa County Arizona Superior Court

No. CR 2017-105183-001 / State v. English

Still pending. Trial is scheduled to commence on 2-28-2023. Father has been detained in the Maricopa County Arizona jail for more than 5-five years and 11-Eleven months now, since 2-1-2017.

[8] Supreme Court of The United States

Filed on 7-23-2019 → No. 19-5557 / Josiah English III vs. Theodore Campagnolo, et al.
Petition For A Writ of Certiorari, to the U.S. 9th Circuit Court of Appeals - Case # 18-16258, stemming from U.S. District Court - District of Arizona Case # CV-17-03221-PHX-GMS (JZB) [Civil Rights Violations]
Father challenged the constitutionality of the Arizona Termination of Parental Rights statute (ARS 8-533) and asked the U.S. 9th Circuit Court of Appeals for a stay of the dependency and termination of parental rights cases (case numbers JS18922-Severance and JD33768-Dependency) which was denied. Certiorari was also subsequently denied.

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Appendix K Arizona DCS reports, Child Forensic Interview reports, M.E. questioned on scene, and Child Therapist reports and emails / pgs. 138 to 170

Appendix L Crime Scene Photos [Children's Car Seats], Available Light Photos [page 177 was accidentally skipped] / pgs. 171 to 188

Appendix M Father's Reply Brief On Appeal, filed on 11-17-2021 / pgs. 189 to 241

Appendix N Father's Opening Brief On Appeal, filed on 8-30-2021 / pgs. 242 to 263

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Appendix P Transcript of Severance Trial on 3-2-2020 [Prosecutors From District Attorney's Office Sitting In The Audience] [Pg. 281 was skipped] pgs. 279 and 280

Appendix Q Juvenile Court Judge Alison Bachus's 3-1-2018 Minute Entry [Detectives from Father's criminal case were in the audience taking notes] pgs. 282 to 289
↳ See Hobson's Choice, pg. 285

Appendix R Josiah English III's 20th Assertion of Right To A Speedy Trial / pgs. 290 to 295

Table of Authorities Cited

Statutes and Rules

- | | | |
|--|--|---|
| ① Estelle v. Williams, 425 U.S. 501 (1976) / pg. 12 | ⑫ M.L.B. v. S.L.J., 519 U.S. 102 (1996) pg. 36 | ARS 8-533 (B) |
| ② Taylor v. Kentucky, 436 U.S. 478 (1978) / pg. 12 | ⑬ Broadrick v. Oklahoma, 413 U.S. 601 (1973) pg. 37 | 8. (a) and (c), |
| ③ Santosky v. Kramer, 455 U.S. 745 (1982) / pgs. 13, 14, 21, 22, 28, 29, 30, 31, 36, | ⑭ Lawrence T. v. DCS, 246 Ariz. 260 (2019) pg. 37 | See pages 36, 78, |
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| ⑤ Alma S. v. Department of Child Safety, 245 Ariz. 146 (2018) / pgs. 22, 36, 37, 38 | ⑯ Mathews v. Eldridge, 424 U.S. 319 (1976) pg. 40 | ation of Parental Rights] |
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| ⑦ In re Yetta, Appeals Ct. of Mass. 84 Mass. (2014) / pg. 29 | ⑱ Grayned v. City of Rockford, 408 U.S. 104 (1972) pg. 260 | Rule 45 E. of the |
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| ⑨ In re Y.B., 143 VT. 344 (1983) / pg. 30 | | for the Juvenile Court |
| ⑩ Donald W. v. DCS, 247 Ariz. 9 (2019) / pgs. 32 and 33 | Appendix S U.S. Citizenship documents for children M.E. and V.E., pgs. 296, 297 and 298 | See pages 81 and 82. |
| ⑪ Sandra R. v. DCS, 248 Ariz. 224 (2020) / pgs. 34, 36, 38 | Appendix T No evidence of "domestic violence". Pgs. 299 to 302 | ARS 13-3905, Detention for obtaining Evidence of Identifying Physical Characteristics. See pg. 24 |

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

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished. [See pages 42 to 51]

The opinion of the Arizona Court of Appeals - Division One appears at Appendix A to the petition and is unpublished.

Jurisdiction

The date on which the highest state court decided my case was 8-26-2022. A copy of that decision appears at Appendix C. [pg. 66]

An extension of time to file the Petition For A Writ of Certiorari was granted to and including January 23, 2023 on November 30th 2022 in Application No. 22 A475.

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

Constitutional And Statutory Provisions Involved

- [1] 14th Amendment to The Constitution of The United States, Which provides in relevant part:
"No State shall... deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
- [2] Arizona Revised Statutes § 8-533 (B) 8. (a) and (c) (Termination of Parent-Child Relationship), Nine and Fifteen Months Time-In-Care. Please see a copy of the text of the above statutes as they were at the time of severance in 2020, attached to this Petition as Appendix F, pages 78 and 79.
- [3] Rule 45 E. of the Arizona Rules of Procedure for the Juvenile Court: Admissibility of Evidence. Please see a copy of the full text of Rule 45 E. attached to this Petition as Appendix G, pages 81 and 82.

- ★ Father was unable to secure an Attorney to represent him in this matter.
- ★ Father filed a declaration in the Arizona Court of Appeals - Division 1 on 1-3-2022 regarding this matter, stating that he has never in his life used the name Josiah Adam English Jr. and that is his Father's name. At the severance trial Asst. AZ Att. General Kawamura tried to falsely make it appear as if Petitioner's Father's criminal record was Petitioner's, but it is not. Petitioner called it out.
- ★ The two U.S. Citizen children who are the subjects of this Petition, M.E. and V.E. have been staying with their maternal aunt in Mexico since 4-26-2018, although The United States is the children's Country of habitual residence pursuant to The Hague Convention.

My two children's names have been published in numerous public court filings over the course of the last five and a half years. My children who are the subjects of this petition are my daughter M.E. (Currently 9-nine years old) and my son V.E. (Currently 8-eight years old). M.E. and V.E.'s names have appeared in pleadings filed in the Maricopa County Arizona Superior Court, the Arizona Court of Appeals - Division One, the Arizona Supreme Court, the U.S. District Court - District of Arizona, the U.S. 9th Circuit Court of Appeals, and in this Court - the U.S. Supreme Court. M.E. and V.E. have two biological sisters here in The United States, K.E. (currently 20 years old) and S.E. (currently 6 years old).

Statement of The Case

Biological Mother of the two children was shot and killed by an unknown assailant in the parking lot of her Phoenix, Arizona apartment Complex, in the presence of the two children, on the morning of 1-31-2017. Mother was a citizen of the Republic of Mexico. The two children are both citizens of the United States. At that time, Mother and the biological Father of the two children (Petitioner), had been separated for more than two and a half years, and their divorce had been finalized approximately one year and five months prior. Father was born in the United States and is a U.S. Citizen. Via family ⑨

please see pictures of Daddy and the Kids attached as Appendix H, pgs. 84 to 98

My daughter M.E.'s name is not spelled with an ~~at~~ at the end. Respectfully,
J III

see CHILDS 0096 of Appendix K, page 139.

M.E. was 3-three years old and V.E. was 2-two years old.

See children's U.S. citizenship documents on pgs. 297 & 298

DNA
testing in
the Maricopa
County
Family Court
in 2015
proved
that
Josiah
English III
is the
biological
Father of
M.E.
and
V.E.

Please see
DNA results
filed on
6-8-2015

in Maricopa
County Superior
Court
Case #
FC2014-
093711

Court order, Mother had primary custody of the two children and Father had his parenting time with the children three weekends per month, and two phone calls (20-20 minutes each) per week with the children. Father faithfully exercised his parenting time with the two children. At that time, Father lived in an apartment in Scottsdale, Arizona with his then girlfriend (whom he had been with for almost two years) and their six month old daughter whom they are ^{biological} parents to. Father and his girlfriend had a happy relationship.

On 1-31-2017 Phoenix police detectives quickly got tunnel vision, erroneously accused Father of the homicide, and then arrested

Father that evening in the parking lot of his residence on his way to work, without a warrant and without probable cause, less than 12-12 hours after the first 911 call came in that morning (at 5:51 A.M.). Arizona Department of Child Safety took possession of the two children and placed them with a foster family in Phoenix, Arizona on the night of 1-31-2017. Father was subsequently charged in the Maricopa County Superior Court with one count of murder in the first degree and two counts of endangerment, in case # CR2017-105183-001. Father has represented himself in that criminal case since 2-21-2020.

Please see a copy of the docket history for that case attached as Appendix I pg. 99.

That case is still pending and trial is currently scheduled to commence on 2-28-2023. Father has asserted his right to a speedy trial in that case on 20-20 separate occasions. See Father's Twentieth Assertion attached as Appendix R, pg. 291. Father has been continuously detained in a Maricopa County jail for over 5 years and 11 months, since 2-1-2017.

Arizona DCS filed a parallel Dependency Petition regarding the two children in the Juvenile Court on 2-3-2017; in Maricopa (10)

in Phoenix
Arizona

Arizona DCS
Plans to adopt
the two
children out
to their
Maternal Aunt
in Mexico,
then Father,
their two
biological Sisters
and M.E.
and V.E.'s
family
members on
their Father's
side of their
family tree
will never
see or speak
to M.E.
or V.E.
ever again.
Arizona DCS
may have
already
started the
adoption process
with Mexico.

Their
final
version.

County Superior Court case # JD33768. Arizona DCS also filed a parallel petition to terminate Father's parental rights over the two children in the Juvenile Court on 3-14-2017; in Maricopa County Superior Court case # JS18922. The two children were placed with a foster family and stayed with them (together) from 1-31-2017 to 4-26-2018. On 4-26-2018, Juvenile Court Judge Alison S. Bachus, via court order, sent the two children to stay with their Maternal Aunt in Mexico until a final disposition of these juvenile court proceedings. The two U.S. Citizen children have been staying with their Maternal Aunt in Mexico for the last four and a half years. Father has not been allowed to have any communication with his two biological children (with whom he previously had a very strong Parent-Child bond), for more than 5 years and 11 months now, based entirely on the false homicide accusation that has been made against him in the criminal court. Deprived of any communication with his children M.E. and V.E., Father's heart is filled with deep sorrow. Arizona DCS and the Maricopa County Juvenile Court made it very clear from the beginning (in 2017), that Father's parental rights over his two biological children were going to be terminated and then his two children were going to be adopted out to their Maternal Aunt in Mexico. Arizona DCS ultimately filed 3-three different versions of their dependency petition and 4-four different versions of their Petition To Terminate Parental Rights in the Maricopa County Juvenile Court. In their Third Amended Severance Petition, Arizona DCS did not claim that Father ever abused, neglected, or abandoned his children as grounds to terminate his parental rights. Rather, the only grounds that Arizona DCS alleged in their petition to forever terminate Father's parental rights, was (11) (12)

that Father's two children had been in DCS's care for longer than 9-nine months and 15-fifteen months because Father was "incarcerated" (detained) in the Maricopa County jail waiting to go to trial to address the accusations in the criminal court. Father is still detained in the Maricopa County jail waiting to go to trial in the Criminal Court. The statute invoked by Arizona DCS is Arizona Revised Statutes 8-533 (B) 8. (a) and (c). Father unequivocally stated in the Juvenile Court that he has never abused, neglected, or abandoned his children.

See at
Appendix F
pg. 77

Nor has
Arizona
DCS ever
provided
any evidence
to the
contrary

Father represented himself for the majority of the 3-three years and 10-ten months that these proceedings carried on in the Juvenile Court. Father was pro se at the combined dependency and severance trial held in the Juvenile Court in 2020. In the Juvenile Court Father argued that ARS 8-533 (B) 8. (a) and (c) are unconstitutionally vague and overbroad, and are unconstitutional as applied to a pretrial detainee parent who has not yet been taken to trial in the criminal court and is therefore still clothed with the "presumption of innocence" under the 14th Amendment. Please see Estelle v. Williams, 425 U.S. 501 (1976), and Taylor v. Kentucky, 436 U.S. 478 (1978/U.S. Supreme Court), stating: Only two terms ago, this court observed that the "presumption of innocence, although not articulated in the constitution, is a basic component of a fair trial under our system of criminal justice". Also see Rule 7.2 of the Arizona Rules of Criminal Procedure: Right to Release (a)(2) Presumption of Innocence "A defendant charged with a crime but not yet convicted is presumed to be innocent". Please see a copy of

Father's opening statement at the 3-2-2020 juvenile trial, attached as Appendix J, 15 pgs.

Pages 124

Father argued that the above listed statutes are unconstitutional when they are used as the sole basis to terminate the parental rights of a pretrial detainee parent, and that they violate (12)

that parent's rights of association and companionship with their biological child that are protected under the 14th Amendment to the U.S. Constitution, and were articulated by this Court in Stanley v. Illinois, 405 U.S. 645 (1972 / U.S. Supreme Court), and Santosky v. Kramer, 455 U.S. 745 (1982 / U.S. Supreme Court). Father argued that the State of Arizona (via the Phoenix Police Department and the prosecutors within the Maricopa County Attorney's office), can not create the grounds for termination of parental rights by arresting Father without a warrant and without probable cause, accuse Father of murder via Grand Jury Indictment, deceive the Grand Jury with perjured testimony to acquire that indictment, secure an oppressive one million dollar cash-only bail + bond to ensure that Father can not afford to pay that amount of money to be released pending his trial, keep Father continuously detained in the county jail until he is taken to trial in the criminal court, and during that time acquire a court order from a Maricopa County Superior Court Judge prohibiting any form of communication between Father and his two children whom they know he loves so much (achieving parental alienation in its most potent form).

Then once Arizona DCS has ensured that Father has been detained in the county jail for longer than 9 and 15 months, they file their petition to forever terminate Father's parental rights over his two children based on the grounds that he is unable to care for his children as a parent who is detained in the county jail waiting to go to trial to address the criminal accusations that were initiated against him by government officials acting "In The Name of The State of Arizona". This is precisely what happened to Father in this case. (13) (2)

ARS 8-533
(B) 8. (a) and
(c)

In the Juvenile Court Father argued that if the criminal charges that are alleged against him get dismissed, or if he is acquitted of those charges at trial, he will then be free to care for his two children M.E. and V.E. and to continue to raise them with lots of love, share their family history with them, and reunite them with their biological big sister K.E. (now 20 years old) and their biological "baby sister" S.E. (now 6 years old). K.E. and S.E. each have different Mothers and they both live here in The United States. Father also argued that because he was merely detained in the county jail, only accused of criminal offenses, not convicted of any of those alleged offenses, and has not even yet been taken to trial to address them, he has only lost temporary custody to his two children to the State of Arizona, and the U.S. Supreme Court has already held in Santosky v. Kramer that a parent does not lose their parental rights over his or her child simply because they have lost temporary custody of their child to the State.

Father quoted Santosky in the Juvenile Court as follows:
Santosky v. Kramer, 455 U.S. 745 (1982 / U.S. Supreme Court) at
**1395 stating:

"The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."

"Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life."

Affirmation of the severance order would allow the State of Arizona to irrevocably destroy Father's sacred bond that he shares with his two young children, based on circumstances that were created by the state, and without affording Father an opportunity to be exonerated of the criminal accusations that have been made against him in the criminal court. Father respectfully argues that such an affirmation would nullify his presumption of innocence.

Father's arguments in the Maricopa County Juvenile Court were disregarded. Father's Sacred Parent - Child relationship that he shares with his biological children M.E. and V.E. was also treated with disregard. The combined dependency/severance trial was held in two separate halves in 2020 in the Juvenile Court. The first half was

Before
Covid-19
hit
Arizona

→ held in person, and during the second half Father testified over the phone from the county jail due to health concerns caused by the highly contagious and potentially fatal Covid-19 virus. Several witnesses testified over the telephone and several other witnesses testified via video. Both Arizona DCS and Father (pro se at the juvenile trial) filed motions to continue the dependency/severance trial to a time when they could be safely reconvened in person (because of Covid-19). Judge Jo Lynn Gentry denied both motions to continue. Father argues that this has violated Father's right to "fundamentally fair procedures" and the judge could not have adequately assessed witness demeanor over the phone.

→ please see a
copy of that
order attached
to this
petition as
Appendix B
12 pages,
page 53.

→ In an order filed in the Maricopa County Juvenile Court on 12-2-2020, Judge Jo Lynn Gentry found the children M.E. (age 7 at that time) and V.E. (age 6 at that time) to be dependent, and she also terminated Father - Josiah English III's parental rights over M.E. and V.E. in that same court order, based on the ARS 8-533 (B) 8. (a) and (c), 9 and 15 months time-in-care statutes.

In the Maricopa County Juvenile Court and in the Criminal Court, neither Arizona DCS nor the prosecutors from Father's criminal case have produced any evidence that Father allegedly committed "domestic violence" or murder. No Judge in the State of Arizona, in The United States, or anywhere else in the world, has ever made any factual or legally supported finding that Father has allegedly committed an act of "domestic violence" upon anyone. These allegations are not supported by any evidence, and they never have been, and that's because the allegations are not true. In April of 2022 the Judge in Father's criminal case made a written judicial finding that the prosecutors from the Maricopa County Attorney's office were unable to prove that Father had committed an act of "domestic violence" (an alleged elbow on the nose allegation from June of 2014). For more details regarding this issue, please see the Familial History section of this petition. Josiah English III has never been convicted of a felony criminal offense nor any domestic violence related offense.

This was
the one
and only
allegation
of "domestic
violence".

The Phoenix Police Department fed these false and uncorroborated claims to the media, which has resulted in the extreme prejudice that has unjustly attached to Father's name. In the Juvenile Court and in the criminal court, the attorneys from the Arizona Attorney General's office and the prosecutors from the Maricopa County Attorney's office have continuously repeated that Father is charged with "murder", as if the charge is actual "evidence", but it is not, it is merely an accusation, and a false one at that. Father has been perpetually treated as if he has been convicted of the criminal accusations, (16) but he has not, and he has not even been to trial to address them in the criminal court.

*I apologize that the documents under Appendix K have writing on them. These are the only copies that I have, and I have been unable to locate the clean copies of these Arizona DCS pages.

On the morning that M.E. and V.E.'s Mother was shot and killed by an unknown assailant (on 1-31-2017), M.E. and V.E. were both forensically interviewed, but neither of them made any significant disclosures. The interviews were audio and video-recorded. M.E. (who was three years old at that time), was very quiet, she was whispering and did not say much at all. The most significant statement that V.E. made was "Mommy fall". Also, on that night around 7:30 P.M., an investigator from the Arizona office of

Child Welfare Investigations reported that while she was transporting M.E. and V.E. in her vehicle, M.E. stated to her "a monster shot Mommy". This is an indication that whoever shot and killed their Mother on 1-31-2017 looked like a "monster" to M.E.

Please see
CHILDOS page
0097, which
is the second
page of

Appendix K
attached to
this Petition.
See page
140.

M.E. and V.E. were placed with a foster family in Phoenix on the night of 1-31-2017. Shockingly, the foster mother - Elva Ramirez and the adult foster sister - Ana Ramirez, approximately two weeks after the shooting, began to falsely claim to a child therapist and to employees from Arizona DCS that M.E. and V.E. all of a sudden were being

"much more vocal", and were allegedly making outrageous statements that were obviously fabricated, at the ages of two and three years old and then three and four years old, that would place their Father at the crime scene. This was precisely the "evidence" that the Phoenix Police detectives and the prosecutors from the Maricopa County Attorney's office needed to move forward with the murder charge. Phoenix detectives were unable to place Father at the crime scene (and that is because he was NOT even there). Then prosecutors from the Maricopa County Attorney's office exploited the fabricated statements that the

Upon information and belief, Ana Ramirez is an employee with the Arizona Supreme Court, pursuant to a ruling on 12-20-2017

foster mother and sister were claiming that M.E. and V.E. were allegedly making, to try and bolster the murder charge that was filed against Father. False statements such as:

★ "My Dad shot my Mom and drove away in a black car"

★ A 2-14-2017 email from Child Therapist - Aaron Wolfley states: Ana explained that over the past week M. made the following statements: "The monster got mommy", and that "he's black". Ana also shared that V. had stated that "it was Papi", and when Ana assured V. that he was safe from the monster, V. added "the monster left in a black car". (see email under Appendix K), pages 151 and 152.

Two weeks after the shooting
Also see Crime scene photos on pgs 172 to 188.

★ A 3-8-2017 email from a child Therapist states: "Neither of the siblings made any disclosures to me in session, but placement (Elva) did state that over the weekend V. made a comment along the lines of "I want to kill my dad"... (My son V.E. was still two years old at that time and he never would have made an outrageous statement like that). Please see that email under Appendix K." page 155

Please see page 000851 under Appendix K see page 156.

★ In an Arizona Department of Child Safety report authored by DCS caseworker Cassandra Alves on W. 3-22-2017, she states: "Neither child has made any disclosures during sessions. Therapist does not believe the children are ready for another forensic interview." "Placement reports the children have opened up to them about the incident. The children refer to their father as monster and report they want to find him to shoot him." "Placement reports it appears as if the children are more angry at their father versus scared". "Placement reports they are concerned about their confidentiality. They asked if they would be subpoenaed to court since they have been the ones to hear the children's disclosures". "Placement reports that the children have been facetimeing their maternal aunt in Mexico almost daily." (18)

consciousness of guilt.

These Claims are clearly a manipulation of what AZ OCWE Investigator Julie Favila reported that 3 year old M.E. told her the night of the shooting on 1-31-2017, that "a monster shot mommy". See CHILDS page 0097 of Appendix K See pg. 140

Also see pages 142 to 150 of

Appendix K

See pg. 532 Please see the order attached as

Appendix B 12 pages.

* In an Arizona DCS report authored by DCS Caseworker Cassandra Alves on 2-2-2018, ^{A year and 2 days after the shooting.} She states: "M _____ has talked about the incident that brought her into out of home care with placement and with her therapist". "She has stated to placement that "daddy shot mommy" and points to all the places where Ms. Gutierrez was shot." "She reported that "daddy" was driving a black car and wearing a monster mask". Please see pages 169. and 170 under AppX.K

However, M.E. had already identified the person who shot and killed her Mother as a "Monster" on the night of the shooting, 1-31-2017, see pg. 140. The prosecutors in Father's criminal case have exploited these false claims as "evidence" to wrongfully place Father at the crime scene (a key element in a homicide case). The State's Attorneys also used these false claims to prevent Father from acquiring a bond - reduction or any other form of pretrial release from custody. These false claims have unlawfully prejudiced Father's constitutional rights in the juvenile proceedings, as well as in his criminal case. Father knew from the moment that he read these false statements back in 2017, that they were one hundred percent fabricated. Father quickly suspected that Rule 45 E. of the Arizona Rules of Procedure for the Juvenile Court "out-of-court statements or nonverbal conduct of a child" was being manipulated to benefit Arizona DCS in the Juvenile Court and the prosecutors from the District Attorney's Office in Father's criminal case. Please see a copy of Rule 45 E. attached as AppX.G, pgs. 81 and 82. These false claims have unjustly prejudiced the courts and the public against Father. For example, in Judge Jo Lynn Gentry's order terminating Father's parental rights over M.E. and V.E. that was filed in the Maricopa County Superior Court on 12-2-2020, she states 8-eight different times that (19).

the children are allegedly referring to their Father as a "monster". At the termination of parental rights fact-finding phase of trial in the Juvenile Court, Father entered several videos and audio evidence of him together with his children M.E. and V.E. which clearly demonstrates his children calling him "Daddy, Daddy, Daddy". Father argued in the Juvenile Court and in the AZ Court of Appeals that his children M.E. and V.E. would never call him a "monster" unless an adult coached them to say that, and that M.E. and V.E. always called him "Daddy", not "monster", not "Dad", not "Papi", just "Daddy". M.E. and V.E. were two and three years old when Father last had possession of them in January of 2017. At the severance trial in the Juvenile Court in 2020 Father also entered pictures of some of the crime scene photos from 1-31-2017 which show M.E. and V.E.'s car seats from the inside of their Mother's car and "Available Light" photos that were taken by the Phoenix Police Department. These photos demonstrate that the statements that the Foster mother and sister and Arizona DCS employees claimed that M.E. and V.E. were making are outrageously false and some of the claims are simply impossible. Please see some of those crime scene photos attached as Appendix L, pgs. 172 to 188. Father made an extensive argument regarding false statements and coaching in the AZ Court of Appeals - Division one, in his Reply Brief filed in that Court on 11-17-2021 (Please see a copy attached as Appendix M, ^{pages 190 to 241}). Father's juvenile court matter and criminal court case share many of the same witnesses. In the Juvenile Court Father was forced to expose his Defense in the criminal case (in front of Phoenix Detectives and prosecutors who were sitting in the audience) years in advance of his trial in the criminal court. On March 1st

in 2020

entered into evidence

From Father's still pending criminal court case.

See
page 280

* On March 21st 2020, two Prosecutors from the Maricopa County Attorney's Office that were assigned to Josiah English III's still pending criminal case (Mr. Chris Sammons and Ms. Erin Otis) were sitting in the audience of the juvenile Severance trial taking notes. See AX-P of 2018, Maricopa County Juvenile Court Judge - Alison Bachus Ordered

Father has
a video
and audio-
recording
of this
proceeding.

Father to explain in open court and on the record in front of a very occupied audience, why Father was calling each of his witnesses to testify in the juvenile dependency and Severance trial. Father did so (Father was present at that hearing). Phoenix Detective Sergio Dominguez and an Investigator from

Father's
constitutionally
protected
due process
rights in his
criminal
case have
been obliterated
by the juvenile
court proceedings.

the Maricopa County Attorney's Office - Alfredo Richard (from Father's criminal case) were both surreptitiously sitting in the audience writing notes. Father was also compelled to testify about the murder charge (that is still pending) at the 2020 Severance trial. Father was cross-examined about the homicide allegation by Assistant Arizona Attorney General - Jennifer Hunter, at the 2020 Severance trial in the Juvenile Court. See October 2020 transcripts.

Arizona Court of Appeals - Division One

Father appealed Judge Jo Lynn Gentry's 12-2-2020 order

For more
details
please see
Father's
petition

terminating his parental rights over M.E. and V.E. in the Arizona Court of Appeals - Division one, case # 1 CA-JV 20-0400. Judge Gentry's order does not make any finding of "parental unfitness".

For a Writ
of Certiorari
filed in this
Court on
7-9-2020,
in case #
20-5413.

It merely states that the sole grounds for terminating Father's parental rights are that Father is "incarcerated" (detained) in the County jail waiting to go to trial in the criminal court, and is therefore unable to care for his children at this time, and because M.E. and V.E. have been under Arizona DCS's care for longer than 9

Also see
pg. 3 of Judge
Bachus's
3-9-2018
Minute
Entry
attached to
this petition
as

months and 15 months (pursuant to ARS 8-533 (B) 8. (a) and (s).), this qualifies as grounds to forever terminate Father's rights over his two biological children, regardless of whether or not Father later gets acquitted at trial, or if his criminal charges get dismissed and he is released from the Maricopa County jail. In his opening Brief and in

Appendix Q.
see page
285.

his Reply Brief on appeal, Father argued that because Judge Gentry's Severance order does not make any finding of "parental unfitness", the order is constitutionally infirm because it does not comply with this Court's requirement under Santosky v. Kramer, 455 U.S. 745 (1982 / U.S. Supreme court) and the 14th Amendment, that before a state may irrevocably (211)

terminate the parental rights of a parent, it must prove "parental unfitness" by "clear and convincing evidence". Father argued that Judge Gentry's severance order should be vacated. Father quoted Santosky v. Kramer, stating at *761 "But until the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship". Father also quoted Stanley v. Illinois, 405 U.S. 645 (1972 / U.S. Supreme Court), stating at *1210: "Held: 1. Under the Due Process clause of the Fourteenth Amendment petitioner was entitled to a hearing on his fitness as a parent before his children were taken from him". (b) "Parental unfitness must be established on the basis of individualized proof". Please see a copy of Father's Opening Brief filed in the AZ Court of Appeals on 8-30-2021 attached as Appendix N, ^{pg. 243}.

The Arizona Court of Appeals - Division one disregarded Santosky v. Kramer, and it even disregarded its own case law and the case law from the Arizona Supreme Court which has upheld the requirement under Santosky that before a state court may terminate the parental rights of a parent, it must make a finding of parental unfitness by clear and convincing evidence. Please see Alma S. v. Department of Child Safety, 245 Ariz. 146 (2018 / Arizona Supreme Court), stating at paragraph 9:

"We now explicitly reiterate that conclusion, which ensures compliance with the due process requirement that a court find, by clear and convincing evidence, parental unfitness when a severance is contested." see Santosky v. Kramer. Kent K... "If a statutory ground were not synonymous with unfitness, a contested severance based on such ground would be constitutionally infirm" ← This last sentence at least

acknowledges the possibility that a statutory ground under ARS 8-533 (22) may be constitutionally inadequate.

On appeal, Father also made all of the arguments that he made in the Maricopa County Juvenile / Superior Court regarding the unconstitutionality of ARS 8-533 (B) 8. (a) and (c). In their Memorandum Decision dated 2-10-2022, a three judge panel of the Arizona Court of Appeals - Division One affirmed Judge Jo Lynn Gentry's order terminating Father's parental rights over M. E. and V. E. Please see a copy of that Memorandum Decision attached to this Petition as Appendix A, 10 pages. [Pages 42 to 51]

Arizona Supreme Court

Father appealed the decision of the Arizona Court of Appeals - Division One in a Petition For Review that was filed in the Arizona Supreme Court, case # CV-22-0054-PR, on 3-14-2022. Please see a copy of Father's Petition For Review attached as Appendix O, 14 pgs. ^(pages 265 to 278).

In his Petition For Review, Father made the same arguments regarding the unconstitutionality of ARS 8-533 (B) 8. (a) and (c) that he made in the Arizona Court of Appeals and in the Maricopa County Juvenile / Superior Court. Father again argued that because Judge Jo Lynn Gentry's severance order does not make any finding of "parental Unfitness" by "clear and convincing evidence", the order is Unconstitutional, it suffers fatal error, and therefore must be vacated. Please see page 12 of Petition For Review, attached as Appendix O.

please see
a copy
attached
as

Appendix D

on
page.

See
page 68.

In an order filed on 3-31-2022, the clerk of the AZ Supreme Court stated: "IT IS ORDERED that no response to the petition for review is necessary. The Court will consider the petition for review in due course". After a 5 1/2 month wait, in an order entered on 8-26-2022, the Arizona Supreme Court summarily denied Father's Petition For Review. Please see a copy of that one page order attached to this Petition as Appendix C. [See pg. 66] (23)

Familial History As I previously indicated, the Mother of two of my 4 Children (Blanca Gutierrez Calzoncit) was shot and killed by an unknown assailant on 1-31-2017.

The lead Phoenix detective on the case was Tyler J. Kipper. Without any evidence connecting me to this homicide, detective Kipper and the other Phoenix detectives abused ARS 13-3905 to hastily "detain" me in approximately 12-twelve hours from the first 911 call (which came in at 5:51 A.M. on 1-31-2017). I was arrested and charged with murder without a warrant. The current lead Phoenix detective in my criminal case is Michelle Cervantes, Maricopa Co. Sup. Ct. case # CR2017-105183-001.

At the time of Blanca's homicide (on 1-31-2017) I was living in my apartment in Scottsdale, Arizona with my girlfriend at that time (Cheyenne) and our six month old daughter (S.E.). Cheyenne and I had been together at that point for almost two years and her and I had a happy relationship. I worked a full-time job as a licensed Arizona security guard, and prior to that I worked as a licensed Private Investigator here in Arizona and in the State of Texas for a combined total of more than 5-five years. I have also previously worked as a licensed Process Server for more than 5 years and I operated my own Process Service Company in the State of Texas.

Prior to my relationship with Cheyenne, I was in a relationship with Blanca Calzoncit for approximately two and a half years and we had two children together (M.E. and V.E. the subjects of this petition). Blanca and I lived in an apartment in Scottsdale, Arizona with our daughter M.E., our son V.E., and my daughter from a previous relationship (K.E.). K.E. was 10-ten and 11-eleven years of age at that time (in 2013 and 2014), and by court order I had sole custody of K.E. Blanca and I got married in Arizona. (24)

One time
false
allegation
of
domestic
Violence

On 6-15-2014 I asked Blanca to leave my apartment because she was having a sexual relationship with my next door neighbor. Blanca later thought that she might have been pregnant with his baby. On 6-15-2014 Blanca told me "I am your wife" and she told me that she was not going to leave the home, and then she begged me to not make her leave the home. I told Blanca that if she did not leave my apartment I was going to call the police and ask them to make her leave. This was merely a verbal exchange in my car and absolutely no physical confrontation took place. Blanca was a citizen of Mexico and she had a review of her visa status by U.S. Immigration officials coming up sometime in September of that year (2014). This all took place more than 8 and a half years ago.

Audio-
recorded
that
conversation

After 6-15-2014 I did not reiterate my request for Blanca to leave my apartment, we just simply did not talk about it. Ten days later on 6-25-2014 Blanca and I had a verbal argument around 2:00 A.M. that morning. Then around 2:30 p.m. that day (while I was at my job as a Security Guard), Blanca called the Scottsdale Police Department non-emergency line and falsely claimed that I had allegedly elbowed her in her nose approximately 12 - twelve hours earlier. Prior to this no police calls for service had ever been made to our home. Scottsdale Police Officers Michael Hertko and Gene McClanahan responded to the call (at my apartment) and determined that Blanca did not have any injuries to corroborate her "elbow on the nose" claim. The officers therefore concluded that "no crime has been committed". Blanca then left the apartment with our children M.E. and V.E. and left my 11 - eleven year old daughter K.E. in the apartment by herself. I was at work and I had no idea that (25)

Please see
7-31-2015

testimony
of Officer
Michael
Hertko,
and of
Josiah
English III,
and Josiah
English III's

6-26-2014
Motion To
Quash order
of Protection
on pages
300, 301, and
302

Appendix I

all of this was happening. Blanca left the apartment with M.E. and V.E. and went straight up to the Scottsdale City Courthouse and falsely told a judge that I had allegedly elbowed her in the nose (even though a few minutes earlier two Scottsdale police officers had already determined that there was no evidence to corroborate that claim and that "no crime has been committed"). Even with no evidence the Scottsdale City judge still granted Blanca's request for an order of protection, which expired after one year.

While I was at work that evening, Wed. 6-25-2014, I received a call from K.E.'s Mother who informed me that Blanca had left my apartment with our babies M.E. and V.E. and that K.E. was at the apartment alone. At this time M.E. was a year and four months old and V.E. was three months old. I rushed home from work and I arrived at my apartment at approximately 8:30 p.m. that night. I then spoke to Scottsdale Police Officers Michael Hertko and Gene McManahan who were standing outside of my apartment. My daughter K.E. was inside of my apartment. Officer Hertko quickly told me that I was not under arrest for anything. Officer Hertko told me that Blanca claimed that I allegedly elbowed her in the nose early that morning. I told Officer Hertko that this claim was completely false and that I did not assault Blanca in any way, and that we only had a verbal argument. I told Officer Hertko that I suspected that Blanca had made this false claim of assault because I asked her to leave my apartment ten days earlier, and for immigration benefits. Officer Hertko told me that Blanca did not have any injuries to corroborate her. (26)

K.E.
was
11-eleven
years
old.

as a security guard

From officer
Hertko's
Field
Interview
Detail

"elbow on the nose" claim, and that Blanca refused any medical attention. Officer Hertko told me that Blanca told him "numerous times that her injuries are emotional" (which indicates that her injuries were never physical). Officer Mcclanahan told me that Blanca told him that I yelled at her, and that he then explained to Blanca, that is not a crime. Officer Hertko told me that Blanca claimed that she "might be pregnant". I then told Officer Hertko that there is no way that the baby could be mine because I had not had sex with Blanca in several months because I suspected that she was having sexual relations with another man. I told officer Hertko that when I asked Blanca to leave my apartment, she threatened to take M.E. and V.E. to Mexico and that I would "never see them again".

I have
never
been
convicted
of a
"domestic
violence
related
offense or
any felony
criminal
offense
in my life.

J III

→ The officers' supervising Sergeant arrived on the scene that night. Officers Hertko, Mcclanahan, and their Sergeant all told me that night that they have determined that "no crime has been committed". I was never arrested, charged, nor prosecuted for any alleged criminal offense in that matter. In the last 8-eight years in my family court and juvenile court matters, Scottsdale Police officer - Michael Hertko has testified under oath to these facts in the Maricopa County Superior Courts on 4 separate occasions including at the severance trial ^{in the juvenile court} during the week of M.3.2.2020. Please see the transcripts as part of the record in this appeal.

Family Court

Less than two weeks later, on 7-7-2014 I filed for a divorce (Pro Se) against Blanca in Maricopa County Superior Court Cause # FC 2014-093711. The divorce was finalized via a final decree that was filed on 9-2-2015. Blanca was the custodial parent and I had my court (27)

ordered parenting time with M.E. and V.E. 3-three weekends every month, on holidays, Father's Day, and in the summertime. I faithfully exercised my parenting time with M.E. and V.E. and they loved to come to Daddy's house and play with their "baby sister" S.E. I was also able to call and speak to M.E. and V.E. over the phone two times per week via the Court order, and I did call and speak to them two times during the week. Blanca and I did the drop off and pick ups of M.E. and V.E. at many different public places in Scottsdale and Phoenix Arizona such as: police stations, public libraries, Wal-Mart, Fry's grocery store, McDonald's, Jack N The Box, and public bus stops and bus stations. I audio and video-recorded the drop off and pick ups of M.E. and V.E. to protect myself from false allegations. Sometimes I would bring my then girlfriend Cheyenne and our daughter S.E. to drop off and pick up M.E. and V.E. The events alluded to in this section and the evidence attached in the appendices were also submitted at the combined dependency and termination of parental rights - Severance trial in the Maricopa County Juvenile / Superior Court in 2020.

Argument in
Conjunction
With
question

1 on
pg. 2

Should The Maricopa County Arizona Superior Court's Order Terminating Father's Parental Rights Over His Two Biological Children Be Vacated Because It Fails To Make a Finding of Parental Unfitness?

Father is respectfully asking this Honorable U.S. Supreme Court to vacate the Maricopa County Superior Court order terminating his parental rights over his two biological children M.E. and V.E. because it fails to make any finding of parental unfitness as is required by the clearly established precedent that was set by this Court in Santosky v. Kramer, 455 U.S. 745 (1982) and in (28)

*Other states have complied with Santosky. See In re Adoption of Zigmunt, Appeals Court of Massachusetts, 89 Mass. App. Ct. 1133 (2016). To terminate parental rights, the trial judge's subsidiary findings taken as a whole, must demonstrate parental unfitness by clear and convincing evidence. See In re Yetta, Appeals Ct. of Mass. 84 Mass. (2014). "Parental unfitness" as required to support a finding that a child is in need of care and protection, means more than ineptitude, handicap, character flaw, conviction of crime, unusual lifestyle, or inability to do as good a job as the child's foster parent; rather, parental unfitness means grievous shortcomings or handicaps that put the child's welfare much at hazard. Stanley v. Illinois, 405 U.S. 645 (1972). Please see a copy of the 12-2-2020 Maricopa County Superior Court Severance order attached

as AppX. B, pg. 53. This Court has held that at the factfinding stage of the severance proceeding, the state can not presume that the interests of the child and the parent diverge and that they are adversaries. Such a determination can be made only after the state has proven parental unfitness upon completion of the factfinding stage of the termination of parental rights proceeding. Please see Santosky v. Kramer, at **1398, fourth paragraph, stating: "At the factfinding, the state cannot presume that a child and his parents are adversaries. After the state has established parental unfitness at that initial proceeding, the court may assume at the dispositional stage that the interests of the child and the natural parents do diverge". "But until the state proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship. Thus, at the factfinding, the interests of the child and his natural parents coincide to favor use of error-reducing procedures". On numerous occasions in the Juvenile Court, I argued in my written pleadings and in open court that as a parent in a termination of parental rights proceeding, I was entitled to "heightened procedural protections". However, my legal contentions were met with disregard. Please see Santosky at **1399, stating: "... we have no difficulty finding that the balance of private interests strongly favors heightened procedural protections". In Santosky this Court established a brightline rule that increased the minimum standard of proof from preponderance of the evidence to "clear and convincing evidence" in severance proceedings. This ruling recognized the serious nature of severance proceedings. This Court held that before a state may irrevocably terminate a parent's parental rights over his (29)

* Other States have complied with Santosky. See In re Parental Rights as to A.G. 129 Nev. 125 (2013/ Supreme Ct. of Nevada) "These substantive due process rights prohibit the government from depriving parents of the custody of their children without a finding of parental unfitness". "When a parent did not cause the child's removal and was never found to have neglected the child, the statutory presumptions cannot apply to support the termination of the parent's rights". Also see In re X.B., 143 Vt. 344 (1983/Sup. Ct. Vermont) or her natural child or children, the state must prove parental unfitness by clear and convincing evidence during the factfinding stage, and if the state court's ruling has deemed the parent to be an unfit parent to his or her child or children, then such a ruling must be supported by clear and convincing evidence. Please see Santosky v. Kramer, 455 U.S. 745 (1982) at **1390; Held: 3.

"Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence". Even before that, in Stanley v. Illinois, 405 U.S. 645 (1972) this Court held that before a state court can take a parent's child or children away from them, that parent is entitled to a hearing on his or her fitness and that parental unfitness must be proven by the state. Please see Stanley v. Illinois at **1210: "Held: 1. "Under the Due Process Clause of the Fourteenth Amendment petitioner was entitled to a hearing on his fitness as a parent before his children were taken from him". (b) "Parental unfitness must be established on the basis of individualized proof". See Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed. 2d 90. Pp. 1211-1216.

Maricopa
County Order
Terminating
The Parent-
Child
Relationship
Filed on
12-2-2020

↓
see

Appendix B
Page 53

The Maricopa County Superior Court order terminating my Parent-child relationship with my biological daughter M.E. and my biological son V.E., fails to make any finding of parental unfitness. As I have mentioned above, this Honorable U.S. Supreme Court requires a finding of parental unfitness before a state may irrevocably terminate the parental rights of a parent, and because the Maricopa County severance order fails to make any finding of parental unfitness, I respectfully argue that the absence of this constitutional requirement alone constitutes fatal error and that the severance order should therefore be vacated. I respectfully contend that based on the absence of (30)

Filed on
2-10-2022
See page
42.

this constitutional requirement alone, it was erroneous for the Arizona Court of Appeals - Division one to affirm the severance order, rather than vacate it (please see the Arizona Court of Appeals - Division one Memorandum attached as Appendix A). In their Memorandum Decision, the 3-three judge panel never denied that the Superior Court's Severance order fails to make any finding of parental unfitness, they simply alleged that Father's contention that the "juvenile court's termination order denied him due process by failing to find parental unfitness by clear and convincing evidence" under Santosky v. Kramer, 455 U.S. 745 (1982 / U.S. Supreme Court), allegedly "misconstrues the court's ruling" (see paragraph 6 of Memorandum), and that the "arguments are without merit" (see paragraph 1 of the Memorandum). Father vehemently disagrees with the Arizona Court of Appeals - Division one's Memorandum Decision. I did not "misconstrue" the Superior Court's Severance ruling. The ruling is completely void of any finding of parental unfitness that was proven by clear and convincing evidence, or any finding of parental unfitness at all, so the Superior Court Severance ruling should have been vacated. I therefore respectfully contend that my arguments are not without merit, and to the contrary it was improper for the Arizona Court of Appeals - Division one to disregard this Court's clearly established precedent that a state court may not terminate the parental rights of a parent without a finding of parental unfitness that is supported by clear and convincing evidence, and to even disregard the rulings of their own court and from the Arizona Supreme Court which all uphold the requirement of a finding of parental unfitness mandated by this court in Santosky v. Kramer. Below are some examples. In the following case the Arizona Court of Appeals - Division One vacated a Maricopa County Superior Court Order terminating (31)

→ pursuant to
ARS 8-533
(B)(8)(C),
15 months
time-in-
care.

a Father's parental rights over his young daughter. At the time that the AZ Court of Appeals issued the Memorandum Decision affirming the termination of my parental rights (on 2-10-2022) they had issued the ruling in the case below not even 3- three years prior (on 5-21-2019). The case is Donald W. v. Department of Child Safety, 247 Ariz. 9 (2019 Arizona Court of Appeals - Division One). At paragraph 27 it states: "the reason causing out-of-home placement must be one that indicates parental Unfitness". At paragraph 25 they quote Jordan C. v. Arizona Department of Economic Security, 223 Ariz. 86 (2009 / AZ Court of Appeals - Division Two) stating: "When the statutory grounds for termination are challenged, we will affirm a termination order unless we must say as a matter of law that no one could reasonably find the evidence supporting statutory grounds for termination to be clear and convincing". At paragraph 28: "At that time, no evidence showed that Father was an unfit parent...". At paragraph 30: "Moreover, the record is devoid of any evidence supporting the unfitness allegations in the petition, a fact DCS acknowledged at oral argument before this court" (the word "any" is emphasized in *italic*). At paragraph 36: "Father has an 'inalienable right' to parent his child 'without obstruction or interference from this state'", A.R.S. § 1-602 (A), (D); see also Kent K. v. Bobby M., 210 Ariz. 279, 284 paragraph 24, 110 p.3d 1013, 1018 (2005 / Arizona Supreme Court) (Parents possess a fundamental liberty interest in the care, custody, and management of their children." (citing Santosky v. Kramer, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed. 2d 599 (1982))). At paragraph 79: "Finally, the court was required to find by clear and convincing evidence that there [was] a substantial likelihood that [Father would] not be capable of exercising proper and effective parental care and control in the near future". A.R.S. § 8-533 (B)(8)(C). Again, the record lacks evidence that Father has ever been incapable of parenting Melody". At paragraph 82: (32)

"Accordingly, because we find a complete absence of evidence in the record to support the juvenile court's findings and conclusions supporting termination of Father and Melody's parent-child relationship, we vacate the order". The Donald W. v. Department of Child Safety case cites Santosky v. Kramer, 455 U.S. 745 (1982/U.S. Supreme Court) on at least 4-four separate occasions, in paragraphs 36, 46, 48 and 67. Also see Jessica P. v. DCS, H.P., 249 Ariz. 461 (2020/Arizona Court of Appeals-Div.1) at paragraph 32 stating: "Both A.R.S. § 8-533... and (B)(8) require a finding of parental unfitness at the time of termination". In my Opening Brief that I filed in the Arizona Court of Appeals - Division 1 on 8-30-2021, case # 1 CA-JV 20-0400, I clearly alleged that the Superior Court severance order failed to make any finding of parental unfitness. See Appendix N attached. On page 11 of my Opening Brief I stated: "I respectfully contend that Judge Jo Lynn Gentry's "order Terminating Parental Rights of Father AS To M_____ and V_____" that was filed in Maricopa County Superior Court case # JS18922 on December 2nd 2020, is constitutionally infirm because it fails to make any finding of "parental unfitness" by "clear and convincing evidence", as required by clearly established U.S. Supreme Court precedent and the 14th Amendment to the U.S. Constitution". In my Opening Brief I also cited case law from the Arizona Supreme Court which reflects that the highest court in Arizona has upheld this Court's requirement under Santosky v. Kramer that a state may not terminate parental rights absent a finding of parental unfitness that is supported by clear and convincing evidence. On page 11 of my opening Brief I cited Alma S. v. Department of Child Safety, 245 Ariz. 146 (2018/AZ Supreme Court) at paragraph 9, stating: "We now explicitly reiterate that conclusion, which ensures compliance with the due process requirement that a court find, by clear and convincing evidence, parental unfitness when a severance is contested". (33)

Opening
Brief,
pages
243 to
263

See Santosky v. Kramer, 455 U.S. 745, 769, 102 S.Ct. 1388, 71 L. Ed. 2d 599 (1982). "If a statutory ground were not synonymous with unfitness, a contested severance based on such ground would be constitutionally infirm". I also cited Sandra R. v. Department of Child Safety, 248 Ariz. 224 (2020 / Arizona Supreme Court) at paragraph 22, stating: "In doing so, the Court's analysis effectively allows the juvenile court to terminate parental rights in significant part by establishing unfitness by a preponderance standard in the best-interests inquiry, thus violating Santosky's due process requirement that parental rights may be terminated only by establishing parental unfitness by clear and convincing evidence". And at paragraph 24: "Any extrapolation of unfitness must pass constitutional muster under Santosky. In other words, as with any parental rights termination, Santosky requires a finding of parental unfitness as to a child by at least clear and convincing evidence". "Inherent in this requirement is a demonstrable connection between the ground for termination and the harm or risk of harm to a child". "No application of the statute may circumvent this fundamental constitutional requirement". It is my contention that this Arizona case law is evidentiary of the fact that when the Arizona Court of Appeals - Division One affirmed the termination of my parental rights (on 2-10-2022), that Court was aware of its duty to screen and ensure that the Maricopa County Superior Court's Severance Order was in compliance with this Court's constitutional requirement that before a state can irrevocably terminate parental rights, there must be a finding of parental unfitness that is supported by clear and convincing evidence. However, the severance order in this matter is completely void of any finding of parental unfitness and is therefore constitutionally infirm. The case law is clear that the Arizona Court of Appeals - Division 1 has (34)

been fully capable of engaging in the proper constitutional analysis with regards to the termination of parental rights of parents represented by counsel, but when my severance case landed in their court [Pro Se] they disregarded the fact that the most fundamental requirement of a termination of parental rights order from the Juvenile Court was completely missing from the order. To Wit: a finding of parental unfitness.

In view of these facts, I respectfully contend that the State of Arizona has deprived me of my liberty interests "without due process of law" and has denied me "the equal protection of the laws" of which I am afforded under the shelter of the 14th Amendment to The U.S. Constitution. I feel like Arizona has discriminated against me, and that my constitutional rights have no value in the State of Arizona.

Questions # 2, 3, and 4 Presented on Page 2 of This Petition

On appeal I argued that ARS 8-533 (B) 8. (a) and (c) are unconstitutional as applied to a pretrial detainee parent, that they are unconstitutionally overbroad and are unconstitutionally vague. In this section I will respectfully reiterate these arguments. In this Petition I am respectfully asking this Honorable Court to issue a brightline precedent that will stop the State of Arizona (and any other state who wishes to follow in their footsteps) from misusing a state statute to maliciously attack and destroy the parental rights of a pretrial detainee parent. The termination of parental rights statutes in Arizona consist of a two part process. First, at the fact-finding stage, the state must prove parental unfitness and one of the statutory grounds for severance under ARS 8-533 by clear and convincing evidence; and second, the state must prove that the severance is in the child's best interest under a "preponderance of the evidence" standard. The statutes in question are ARS 8-533 (B) 8. (a) and (c), and they state in relevant part: (35)

★ Parental rights are being terminated at an alarming rate in AZ. Numerous pretrial detainees Fathers in this jail have had their parental rights terminated. Justice Bolick of the AZ Supreme Ct. has opined about the constitutionality of the AZ severance Statutes. In Alma S. he stated at p. 24 "... our Statutes and rules, as the court has interpreted and applied them here and elsewhere, do not adequately safeguard fundamental parental rights." 28. Termination proceedings in Arizona nearly always result in permanent severance of parental rights. Also see Sandra R. ATP. 34

ARS 8-533

Relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child: "8. That the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, that the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services and that one of the following circumstances exists: "(a) The child has been in an out-of-home placement for a cumulative total period of nine months or longer pursuant to court order or voluntary placement pursuant to § 8-806 and the parent has substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement". "(c) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to § 8-806, the parent has been unable to remedy the circumstances that cause the child to be in an out of home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future". As I previously argued in this petition, the Maricopa County Juvenile Court severance order, Appendix B, fails to make any finding of parental unfitness, as this Court has required in Santosky and its progeny. In that severance order, the Judge was acutely focused on satisfying the statutory requirements pursuant to the language of the above State Statute, rather than ensuring that the order was meeting this Court's constitutional requirements of proof that the parent is an unfit parent that is supported by clear and convincing evidence, before a state may irrevocably terminate the Parent - Child relationship. See M.L.B. v. S.L.J., 519 U.S. 102 (1996/U.S. Supreme Court) at *104: "Mississippi has, consistent with Santosky,

ARS 8-806 is not applicable in this case.

adopted a "clear and convincing proof" standard for parental status termination cases, but the Chancellor's order in this case simply recites statutory language; it describes no evidence, and otherwise details no reasons for finding M. L. B. "clear[ly] and convincing[ly]" unfit to be a parent. I have alleged that the AZ Statutes in question are constitutionally overbroad because the language in them is so sweepingly overbroad that it allows the Arizona courts to literally get creative and make up new reasons to terminate parental rights. Such overbroad language leaves a pretrial detainee parent vulnerable to attack and placed in an untenable position in the county jail. The overbroad language of ARS 8-533 (B) 8. (a) and (c) allows "subjective or discriminatory enforcement" by state officials, which is prohibited under our U.S. Constitution. See Broadrick v. Oklahoma, 413 U.S. 601 (1973 / U.S. Supreme Court)

The Arizona Attorney General's office cited this case at my severance trial in the Juvenile Court in 2020.

(Unconstitutionally overbroad law). For example, the Arizona Court of Appeals - Division One decided a case on 2-28-2019 in which they affirmed the severance of a pretrial detainee Father's parental rights, in part, because of the "severity of his pending criminal charges", which were later dismissed in the criminal court. See Lawrence T. v. Department of Child Safety, 246 Ariz. 260 (AZ Court of Appeals - Division 1 / 2019) at paragraph 3: "and due to the severity of his pending criminal charges, it was unlikely he could properly parent in the near future". It is my contention that the most significant factor as to why ARS 8-

At the time that my parental rights were severed on 12-2-2020, there were 11-eleven substantive grounds for termination.

533 (B) 8. (a) and (c) have even been allowed to serve as a vehicle to erroneously terminate the parental rights of pretrial detainee parents in Arizona is because the Arizona Supreme Court has, in a blanket fashion, deemed all of the substantive grounds for termination of parental rights listed under ARS 8-533 (B) to be "proxies for parental unfitness", and that they all "equat[e]" or are "synonymous with" "parental unfitness", however, they are not. See paragraphs

See Appendix F see pages 78 and 79.

9, 10, and 11 of Alma S. v. DCS, 245 Ariz. 146 (2018 / AZ Supreme Ct.). So rather than focusing on compliance with the clearly established U.S. Supreme Court precedent that the

Parent-child relationship can not be terminated without a finding of parental Unfitness, supported by clear and convincing evidence, the AZ Juvenile Courts, the AZ Attorney General's office (attorneys for AZ DCS) and Attorneys Ad-Litem, are simply striving to satisfy a state "statutory ground for termination". See Alma S. at paragraph 8: "First the juvenile court must find by clear and convincing evidence that a statutory ground for termination exists". So these holdings are misleading the AZ Juvenile Courts to follow AZ Supreme Court precedent, and to fail to comply with U.S. Supreme Court precedent. The result is that the AZ Juvenile Court judge is focusing strictly on satisfying a statutory ground under ARS 8-533, no matter what the circumstances of the parent are, rather than requiring the state (DCS) to provide proof of parental unfitness supported by clear and convincing evidence before the Court irrevocably destroys the Parent-Child relationship. The Juvenile Court judge then feels completely justified in executing this erroneous termination of the Parent-Child relationship, because the AZ Supreme Court has sent them the message that it is OK to do this because they have deemed all of the substantive grounds for termination under 8-533 to be "synonymous with parental unfitness". This is exactly what happened in my case. AZ DCS allegedly satisfied Statutory grounds for severance (and they did not even do that), but they did not satisfy the constitutional requirements for severance. More evidence of my contentions is located in paragraph 6 of the AZ Court of Appeals-Div. 1 Memorandum, attached pg. 45 → as Appendix A, in which that Court stated: "The court specifically found DCS 'had met its burden of proof' on the fifteen-months out-of-home placement ground for termination. See A.R.S. §8-533 (B) (8)(c). The grounds for termination defined in §8-533 equate with parental unfitness, so the court complied with its due-process obligations to Father. See Sandra R. v. Dep't of Child Safety, 248 Ariz. 224, 227, 91 12 (2020)". To the contrary, the Juvenile Court failed to comply with its due-process obligations to Father, because this Court has held that due process under the 14th Amendment requires a hearing on a parent's fitness before a state court may take

★ In re Gladys L., California Court of Appeal, 141 Cal. App. 4th 845 46 Cal. Rptr. 3d 434 (2006) (Father's severance reversed) "Here the requirements of Santosky and the safeguards embedded in the California dependency scheme were ignored. DCS never alleged that Alex was unfit and the trial court never made that finding. Due process therefore prohibits the termination of Alex's parental rights from his or her child from the parent, see Stanley v. Illinois, 405 U.S. 645 (1972); and

the Juvenile Court did not provide me with a hearing on my fitness as a parent because the judge was not looking for parental unfitness, the judge was looking for a way to satisfy the statutory grounds for severance under the AZ statute 8-533; nor did AZ DCS even allege parental unfitness in their petition, such as abuse, neglect, or abandonment. ARS 8-533(B)(a) and (c) do not "equat with parental unfitness" when they are used as the sole grounds to terminate the parental rights of a pretrial detainee parent. A pretrial detainee parent (such as myself) who is merely detained in a county jail or some other pretrial detention facility, against his will, merely accused of criminal offenses that were initiated against him by state government officials, not convicted and not yet been taken to trial to address the criminal accusations, while still clothed with the "presumption of innocence" under the 14th Amendment, is not committing an act of "parental unfitness". These are all circumstances that were created by the State of Arizona. I am being held in this Maricopa County jail by the Sheriff until the final disposition of the criminal charges that have been levied against me by the State. The criminal charges and the Grand Jury indictment are not evidence, they are merely accusations. The criminal allegations made against me are false because I did NOT commit them. Under the Constitutions of The United States and Arizona, I am presumed to be innocent of the criminal charges. I have never abused, neglected, nor abandoned any of my 4-four children whom I love so dearly, nor did AZ DCS even allege abuse, neglect, or abandonment, and they have not produced any evidence to support any such allegation. I am a very dedicated Father to my children. I have not committed any act of parental unfitness. I have done nothing wrong. There is no parental unfitness. The awesome Parent-Child relationship that I once shared with my daughter M.E. and my son V.E. was stolen from us by Arizona's unconstitutional severance order. Now Arizona DCS at this very hour is probably working

Please see the case law cited at the top of this page. Other States have complied with Santosky v. Kramer.

* I respectfully contend that pursuant to the 3 factors under Mathews v. Eldridge, 424 U.S. 319 (1976), the private interests of pretrial detainee parents and their children in this scenario, to be protected from erroneous severance of the parent-child relationship, heavily outweighs the interests of the state. No legitimate state interest is served by Arizona's wrongful termination of the parent-child relationship. The risk of error is extremely high. With officials in Mexico to adopt my two U.S. citizen children out to their maternal aunt

in that country, before I have even had an opportunity to be exonerated of these false criminal accusations at trial in a criminal court of law. Under ARS 8-533 (B) 8. (a) and (c) it is impossible for a pretrial detainee parent who is in the county jail waiting to go to trial in the criminal court, to "substantially neglect or willfully refuse to remedy the circumstances that cause the child to be in an out-of-home placement". That's because a pretrial detainee parent has no power to remedy the circumstances that were caused by the state. To wit: The parent's detention in the Maricopa County jail with an oppressive one million dollar cash only bail-bond, which ensures that the bond is so high that the parent will not be able to pay it, and will therefore have to sit in jail (likely for several years) until that parent is taken to trial in the criminal court. These oppressive conditions make it very simple for Arizona to accomplish the 9 and 15 months time-in-care elements of the statutes. Even the Juvenile Court judge on page 9 of her severance order acknowledged that as a pretrial detainee parent, I am unable to remedy these state created circumstances, stating: "The circumstance of his incarceration cannot be remedied by any service offered by the Department". This is another point of fatal error which I respectfully contend should result in the severance order being vacated. Paragraph 10 of the AZ Court of Appeals-
Division 1 ^{Appendix A} Memorandum: Claims that "... even if Father were to be acquitted, he would not be in a position to safely and appropriately parent his children." because the damage to the parent-child bond "would take time and effort to overcome". This claim is unsupported by any credible evidence and is based purely on speculation and conjecture. There is no credible indication that these statutes apply to a pretrial detainee parent, but they could apply to a parent who has abused, neglected, or abandoned their child. I respectfully wish to incorporate the

Unconstitutionally vague argument that I made on pages 17 and 18 of my opening brief into this petition. ^{Appendix N attached, pgs 259 and 260} If I were to be convicted of the criminal charges, DCs could pursue severance under ARS 8-533 (B) 4. At this very hour I am not a convict, I am not serving a sentence, I am not in a penitentiary. I declined the psychological evaluation because I have the "right to remain silent". See Miranda v. Arizona, 384 U.S. 436 (1966). Reasons For Granting The Writ

To fill this void in termination of parental rights jurisprudence. A brightline precedent from this Honorable U.S. Supreme Court, prohibiting a state from using time-in-care as the sole substantive grounds for severance of a pretrial detainee parent's parental rights, is needed to protect pretrial detainee parents and their children all across The United States from this malicious destruction of the most beautiful relationship to ever exist under GOD'S canopy of Heaven. Conclusion Petitioner respectfully prays that this Writ is granted, the severance vacated, and relief requested granted. With The Utmost of Respect, Pro Se Petitioner, 1-17-2023 (40)

Appendix A
11 pages