ORIGINAL

22-7611

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

GEORGE CUNNINGHAM — PETITIONER
(Your Name)

vs.

MARIA QUINN, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

George Cunningham
(Your Name)

Oaks C.F., #976678, 1500 Caberfae Highway
(Address)

Manistee, Michigan 49660
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

1. Should the United States Court of Appeals for the Sixth Circuit have accepted a corrected notice of appeal, which involved failure of Nanette Abao to sign a notice of appeal, that was "corrected promptly [See Appx. E, page 14,25,28]| after being called to the attention of [the] party", in the November 7, 2022 Order, See Appx. A, page 5, Under Fed. R. Civ. P. 11(a); The decision in conflict with Becker v. Montgomery, 532 U.S. 757 (S. Ct. 2001) (Which involved failure to sign a notice of appeal, the Supreme Court noted Rule 11 provides "omission of the signature" may be "corrected promptly after being called to the attention of the attorney or party." id. at 764)?

2. Is the continued withholding of material evidence, by the Michigan Court of Appeals Clerk, after request and payment for copies, a violation of 14th Amendment right to due process, under Brady v. Maryland 373 U.S. 83 (S. Ct. 1963) where the evidence "might affect the outcome of the suit under [Hague Conv. Art. 12 "settled environment"] governing law." Anderson v. Liberty Lobby Inc., 477 U.S. 242, at 248 (S. Ct. 1986). Materiality of evidence, Complaint raised to Chief Clerk, [See Appx. F. Page 1 - 5]?

3. Should the petition under ICARA be granted for the return of the Filipino child Z.C. to his mother and brother Z.C.2 in the Philippines, with the Sixth Circuit Court's conclusion " that the District Court erred in sua sponte raising [affirmative defenses] to conclude that Cunningham had failed to state a claim of relief" under 28 USC 1915 (e) (2). Jones v. Bock, 549 U.S. 199,216 (2007); after taking "judicial

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notice of portions of transcripts from [Cunningham's] state criminal trial for forcibly kidnapping his son." See Appx. A, page 1; Transcripts detailing the knowing and intentional removal of birth certificate evidence to be offered in present or future official proceeding, from the Sheriff vault by the Quinns, at the direction of Prosecutor Sadler, used in an illegal international adoption of the child, without notice of pendency of proceedings to mother or father, nor consent; concealed by willfully false testimony under oath concerning a material matter, by Paul Quinn, Det. Mitchell, and Det. Erickson, in denial of due process and equal protection of law, in an "unsettled environment". See Appx. A, page 3, Hague Conv. Art. 12 .

LIST OF PARTIES

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

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

Petitioners: George S. Cunningham; signer's spouse Nanette C. Abao; on behalf of their minor son Z.C.

Respondents: Maria Quinn; Paul Quinn

RELATED CASES

Cunningham v. Quinn, No. 2:21-CV-00158, U.S. District Court for the Western District of Michigan. Judgment entered July 14, 2021.

Cunningham v. Quinn, previous, No. 21-1716, No. 22-1279, U.S. Court of Appeals for the Sixth Circuit. Judgment entered November 07, 2022; February 23, 2023.

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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

[X] For cases from **federal courts:**

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

[X] reported at ~~CUNNINGHAM v. QUINN, U.S. APP. LEXIS~~ 30861; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

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

[ ] For cases from **state courts:**

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

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

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

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

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 7, 2022.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: February 23, 2023, and a copy of the order denying rehearing appears at Appendix C.

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

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

[ ] For cases from **state courts**:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution Fourteenth Amendment : "[n]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

22 USCS 9001, International Child Abduction Remedies Act (ICARA)

(a) (1) The international abduction or wrongful retention of children is harmful to their well-being.

(a) (2) Persons should not be permitted to obtain custody of children by virture of their wrongful removal or retention.

22 USCS 9001 (b) (4) Courts are to determine whether the child has been wrongfully removed from his place of habitual residence and are not to determine custody.

22 USCS 9003 (e) (1), A petitioner in an action brought under subsection (b) shall establish by a preponderence of the evidence -

(A) in the case of an action for the return of a child, that the child has been wrongfully removed or retained within the meaning of the Convention[.]

(f)(2) the terms "wrongful removal or retention" and "wrongfully removed and retained", as used in the Convention, include a removal or retention of a child before the entry of a custody order regarding that child.

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22 USCS 9007 (b)(3), Any Court odering the return of a child pursuant to an action brought under section 4 [22 USCS 9003] shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, [,] and transportation costs related to the return of the child, unless the respondent established that such an order would be clearly inappropriate.

STATEMENT OF THE CASE

Petitioner George Cunningham, a pro se Michigan Prisoner, challenges the District Court's sua sponte dismissal, and the Appeals Court's affirmation under 28 USC 1915 (e)(2)(B), of petition under the International Child Abduction Remedies Act (ICARA), 22 USC 9001 et seq.[1], which implements the Hague Convention on Civil Aspects of International Child Abduction, T.I.A.S. No. 11,670 1343 U.N.T.S. 89 (Oct. 25, 1980), for the return of his minor son Z.C. to his Mother Nanette Abao, and brother Z.C.2 in the Philippines.

FEDERAL JURISDICTION

The courts of the United States, and the United States District Courts shall have concurrent original jurisdiction of actions arising under the convention; 22 USC 9003 (a). Appellate courts review de novo the District Court's dismissal of a complaint pursuant to 1915 (e)(2)(B). See Hill v. Lappin, 630 F.3d 468,470 (6th Cir. 2010). To avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." See id. at 471 (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)).

BACKGROUND

In January 2012, Cunningham left his home in Delaware, Ohio, and moved to Taiwan to start a baked goods business. In March 2013, Cunningham traveled to the Philippines, where he married Nanette Abao, who is a Filipino citizen. Cunningham and Abao then moved to Malaysia, where their son, Z.C., was born in December 2013. Z.C.'s Malaysian birth certificate identifies his nationality as "Filipino"[2]. In June 2014, Abao returned

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1. ICARA prev. at 42 U.S.C. 11601et seq.

2. Birth Certificate at Appx. E, pg. 32.

to the Philippines with Z.C.. In November 2014, Cunningham, over Abao's disapproval, traveled with Z.C. to Port Columbus International Airport in Columbus, Ohio for the child's first time to the U.S. for a visit. At the airport, Ohio Law Enforcement agents arrested Mr. Cunningham on an outstanding attempted-gsi warrant involving a 16 year old girl. Z.C. was separated from Cunningham's family at that point and placed in foster care. Abao retained Attorney Michael Hoague requesting the Ohio Court allow the return of Z.C. by family, which was denied.

In March 2017, an Ohio court awarded legal custody of Z.C. to Cunningham's sister and brother -in-law, respondents Maria and Paul Quinn. The Quinns returned with Z.C. to their home in Michigan, with Maria Quinn's stated intention to give Z.C. back. Cunningham retained the birth documents. In March 2019, Cunningham was charged in Michigan with Kidnapping Z.C. from the Quinns. A Michigan jury subsequently convicted Cunningham of First-Degree Child Abuse (Mental), Armed Robbery, First-Degree Home Invasion, Unlawful Imprisonment, and Kidnapping, and the trial court sentenced Cunningham to a maximum of 49 years in prison.

In July 2021, Cunningham, while detained at the Chippewa County Jail and proceeding pro se in forma pauperis, filed a petition against the Quinn's in the District Court under the Hague Convention for the return of Z.C. to his Mother Abao in the Philippines. Cunningham argued that Z.C.'s "habitual residence" was the Philippines and that Ohio authorities had "wrongfully removed or retained" Z.C. before the entry of a custody order regarding that child. See Appx. E, page 20 of 33. He sought an

order compelling Z.C's return to the Philippines and for the Quinns to pay Z.C.'s travel expenses and legal costs and fees[3]. Cunningham signed the petition but Abao did not. After the District Court's judgment Abao filed a signature page; A defect which was brought to her attention in the Appellate Court's November 7, 2022 judgment. Appx. A, pg. 5.

28 U.S.C 1915 (e)(2)

The District Court granted Cunningham leave to proceed in forma pauperis, and then screen his petition to determine whether it should be dismissed pursuant to 1915 (e)(2); The Court concluded that Cunningham failed to state a claim under the Hague Convention and the ICARA for two (2) reasons:

First, the Court found that Z.C. was not wrongfully removed from the Philippines because Cunningham brought him to the United States with Abao's consent, and Cunningham failed to allege that Z.C.'s separation from him was in violation of the custodial-rights laws of the Philippines. Instead, the Court found, Z.C.'s separation was caused by domestic law enforcement in Ohio and therefore was beyond the scope of the Hague Convention.

Second, the District Court concluded that Cunningham's petition was untimely. In support of that conclusion, the Court observed that Article 12 of the Hague Convention provides that if the proceedings are commenced more than one year after the allegedly wrongful removal or retention, a child will not be ordered returned if he has settled in his new environment. And here, the court found that Z.C. "has been here for a lengthy period of time - perhaps eight times the amount of time Z.C. has

3. Revised travel expenses, legal costs and fees, under 22 USCS 9007(3), See Appx. O, pg. 1

lived outside the United States." Consequently, the Court concluded "this is not the kind of case that calls for a Convention proceeding. And certainly not for a "return" to the Philippines to a person (Z.C.'s Mother Abao) who has not actually signed the petition herself." The Court therefore dismissed Cunningham's petition for failure to state a claim on which relief could be granted.

On Appeal, Cunningham argues that the Quinns perpetrated an illegal international adoption of Z.C. and that his petition was timely under the Hague Convention because Z.C. remains in an unsettled environment. Cunningham also contends that Z.C.'s removal and retention is in violation of Philippines Family Code Article 176 custody-rights law, See Appx. D, pg. 32. "A wrongful removal andretention of a child [Z.C.] before the entry of a custody order regarding that child"; 22 USC 9003 (f)(2).

The Sixth Circuit Court reviewed de novo the District Court's dimissal of a Complaint pursuant to 1915 (e)(2)(B). See Hill v. Lappin, 630 F.3d 468, 470 (6th Cir. 2010). To avoid dismissal, " a Complaint mustcontain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." See id. at 471 (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (S. Ct. 2009)).

In administering ICARA, Courts are to determine whether the child has been wrongfully removed from his place of habitual residence and are not to determine custody. Hague Convention, Art. 19; 22 U.S.C. 9001 (b)(4). The Hague Convention prohibits the removal of a child, in breach of the rights of custody, from "the State in which the child was habitually resident immediately before removal." Hague Convention, Art. 3. To obtain relief "[u]nder the ICARA, a petitioner seeking the return of a child under the Hague Convention must prove by a preponderance of the evidence that the child

was wrongfully retained or removed from [his] habitual residence". "Ahmed v. Ahmed, 867 F.3d 682,686 (6th Cir. 2017)".

The Sixth Circuit found, in dismissing Cunningham's petition for failure to state a claim, "the District Court made findings that arguably implicate affirmative defenses relating to return of a child under the ICARA and the Hague Convention that are available to the party opposing the petition." See Hague Convention, Art. 13; 22 U.S.C. 9003 (e)(2); Baxter v. Baxter, 423 F.3d 363,371 (3rd Cir. 2005) (holding that even if the parent consented to the removal of the child, the respondent's retention of the child would violate the Hague Convention if such retention breached the terms and conditions of the consent) (collecting cases); Freidreich v. Freidrich, 78 F.3d 1060, 1067 (6th Cir. 1996) (Stating that the DEFENDANT has the burden to prove that "the proceeding was commenced more than one (1) year after the removal of the child and the child has become settled in his or her new environment:); see also Walker v. Walker, 701 F.3d 1110,1123 (7th Cir, 2012) (stating that a Court has discretion to order the return of the child "even if it finds that the parent opposing the petition has established that one of the [affirmative defenses] applies").

The Sixth Circuit concluded that, "District Courts should not sua sponte raise affirmative defenses when screening a complaint under 1915 (e)(2), Jones v. Bock, 549 U.S. 199, 216 (2007), and in view of the fact intensive inquiry involved in adjudicating the Hague Convention's affirmative defenses, we conclude that the District Court erred in sua sponte raising them to conclude that Cunningham had failed to state a

claim for relief. Moreover, the Ohio Court's award of custody of Z.C. to the Quinns did not, as the District Court suggested, bar Cunningham's Hague Convention petition. See Hague Convention, Art. 17; Holder v. Holder, 305 F.3d 854, 865 (9th Cir. 2002)." See Appx. A, pg. 4.

The Sixth Circuit affirmed the District Court dismissal on a more fundamental defect, that "Cunningham petitioned for the return of Z.C. to Abao's custody but, as we have stated, Abao did not sign the petition. Laypersons are prohibited from representing the interests of others in federal court." See 28 U.S.C. 1654; Olagues v. Timken, 908 F.3d 200, 203 (6th Cir. 2018) ("[W]e have consistently interpreted § 1654, as prohibiting pro se litigants from trying to assert the rights of others."); Steelmen v. Thomas, No. 87-6260, 1988 WL 54071, at 81 (6th Cir. May 26, 1988) (holding that 1654 prohibited a pro se husband from bringing his spouse's claims before the Court on appeal). Cunningham therefore was not authorized to seek the return of Z.C. to the Philippines on behalf of Abao." See Appx. A, pg. 5.

On petition for rehearing, after the November 7, 2022, Order called the defect to the attention of Abao, the omission of signature was promptly corrected, pursuant to Fed. R. Civ. P. 11(a), and Becker v. Montgomery, 532 U.S. 757, 721 (S. Ct. 1810, 149 L.Ed.2d 983 (2001), which involved the failure to sign a Notice of Appeal, the Supreme Court noted Rule 11, provides "omission of the signature" may be "corrected promptly after being called to the attention of Attorney or party". id. at 764. See Abao signed petition and attendant Motion for Reconsideration and Reversal at Appx. E, pg. 1, signature at pg. 14, 25, 28, 33.

The Sixth Ciruit Court denied the Abao petition for rehearing "because Cunningham has not cited any misapprehension of law or fact that would alter our prior decision. See Fed. R. App. P. 40(a)(2)."; Decision at Appx. C, pg. 1.

28 U.S.C. 1254 (1)

The question presented are brought to the Supreme Court of the United States under 28 U.S.C. 1254 (1), pursuant to 28 U.S.C. 1915 (e)(2)(8), Ashcroft v. Iqbal, 556 U.S. 662, 678 (S. Ct. 2009), to avoid dismissal, "a Complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face."; and U.S.C.S. Supreme Ct. R. 10(a), a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals, on some important matter; and, Rule 10(c), [h]as decided an important federal question in a way that conflicts with relevant decisions of this Court.

QUESTION 1.

Should the United States Court of Appeals for the Sixth Circuit have accepted a corrected Notice of Appeal, which involves failure of Nanette Abao to sign a Notice of Appeal, that was "corrected promptly [See Appx. E, pg. 14, 25, 28] after being called to the attention of [the] party", in the November 7, 2022, Order. See Appx. A, pg. 5. Under Fed. R. Civ. P. 11(a); The decision in conflict with Becker v. Montgomery, 532 U.S. 757 (S. Ct. 2001) (which involved failure to sign a Notice of Appeal, the Supreme Court noted Rule 11 provides "omission of the signature" may be "corrected promptly after being called to the

attention of Attorney or party." id. at 764.)?

The omission of signature defect was first raised by the District Court's dismissal opinion and order on July 14, 2021; See Appx. B, pg. 5. The defect was thought to have been corrected with a signed signature page of Abao, filed July 16, 2021, See Notice of Appeal at Appx. H, pg. 35. The first call to attention, after that, was the November 7, 2022, Sixth Circuit Court Order; See Appx. A, pg. 5. The Order was received by Cunningham on November 14, 2022. On November 15, 2022, a copy of the petition was placed in prison legal mail system, to Abao for signature. Abao received and signed the petition on November 29, 2022, in the Philippines. Expedited petition was received December 13, 2022; by the Sixth Circuit Court. See receipts at Appx. L, pg. 3 - 7.

The Sixth Circuit Court Clerk, on December 14, 2022, returned the petition to Abao, refusing to file it. Abao filed the signed petition in District Court on December 30, 2022, Cunningham mailed a "Motion to Allow Signature Omission Prompt Correction" Rule 11(a); it failed to be docketed. See Appx. L, pg. 1. Leave for Rehearing granted. See Appx. L, pg. 2, Notice of Clerical Error and Affidavit.

In relevant part; Hagen v. United States, 1999, U.S. App. LEXIS 30152 (6th Cir. 1999) at 7, HN4

> Every pleading, written motion, and other paper shall be signed by at least one Attorney or record in the Attorney's individual name, or, if the party is not represented by an Attorney, shall be signed by the party .... An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the Attorney or party. Fed. R. Civ. P. 11(a).
> "Because Rule 11(a) excuses a party's failure to sign a

> pleading or motion if the party promptly remedies the error by signing the pleading or motion after the error has been brought to the party's attention by the Court we see little reason to dismiss .... Simply stated,it makes little sense to dismiss [Petitioner's] action in light of Rule 11(a)'s tolerance of unsigned pleadings and motions. Because [Petitioner] promptly resubmitted [her petition] with an original signature, we REVERSE."

The Sixth Circuit Court, in returning Abao's signed petition state, "[i]t does not appear that you were party to the Appeal; As such; we are unable to accept filings from you." See December 14, 2022, letter at Appx. M, pg. 1; In conflict with Fed. R. App. P. 3(c)(2) stating "A pro se notice of appeal is considered filed on behalf of the signer, and signer's spouse [Abao], and minor children [Z.C.], (if they are parties), unless the notice clearly indicates otherwise." Conflicting with relevant decision of the Supreme Court under Becker v. Montgomery, 532 U.S. 757 (S. Ct. 2001) at 766 (Rule 3(c)(2) [w]as designed "to prevent the loss of a right to appeal through inadvertent omission of a party's name" when "it is objectively clear that [the] party intended to appeal.") Where Cunningham's wife's name, Nanette Abao, is on the original Appeal petition, Doc. 8, May 31, 2022, Appx. D, pg. 10; and Reason for Appeal, Appx. D, pg. 11; also the District Court Notice of Appeal, ECF No. 18, Appx. H, pg. 12 of 36; signed signature page showing intent, Appx. H, pg. 35 of 36. Prompt correction at District Court 2-21-cv-00158, ECF No. 29, December 30, 2022, Appx. E, pg. 14, 25, 28 of 33.

Kalican v. Dzurenda, 583 Fed. Appx. 21 (2nd Cir. 2014) at 23, Fed. R. Civ. P. 5(d)(4) "Acceptance by the Clerk. The Clerk must not

refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice."

Pereira v. Sessions, 866 F.3d 1 (1st Cir., 2017) at 5 "In Becker v. Montgomery the Supreme Court held that an unsigned notice of appeal could qualify as timely filed, even if the missing signature was not provided within the filing period. "Becker v. Montgomery, 532 U.S. 757 at 763; "here just as there, the missing item may be a "curable" defect that does not prevent the notice from serving its purpose."

In De Aza-Paez v. United States, 343 F.3d 552 (1st Cir., 2003) at 553 (omission of co-plaintiffs signature on notice of appeal is curable in light of Becker and the Court's obligation to read pro se complaints generously) "In the instant case, the timely habeas petition was not signed by a pro se plaintiff or his attorney. However, there was no doubt about who was filing, together with the signed petition, demonstrate the assent of [petitioner] to the petition. [As with Abao's signature page, Appx. H, pg. 35] As a result, the signed copy of the same petition, received a month after the deadline for a habeas filing has passed, cured the timely but unsigned petiton." Fed. Rule App. Proc. 3 (c)(7) An appeal must not be dismissed for informality of form or title of the notice of appeal, for failure to name a party whose intent to appeal is otherwise clear from the notice[.]

QUESTION 2

Is the continued withholding of material evidence, by the Michigan Court of Appeals Clerk, after request and payment for copies a violation of 14th Amendment right to due process, under Brady v.

Maryland, 373 U.S. 83 (S. Ct. 1963) where the evidence "might affect the outcome of the suit under [Hague Conv. Art. 12 "settled enviroment"] governing law." Anderson v. Liberty Lobby Inc., 477 U.S. 242 at 248 (S. Ct. 1986), Materiality of evidence.

This evidence is the Complaint for Superintending Control, No. 354654, documents filed by Cunningham against Paul and Maria Quinn and Chippewa County Officials with violations of law, detailed in Question 3. Petitioners original copy was disposed of by Chippewa County Sheriff's office. It has been requested three times from the Michigan Court of Appeals Clerk, (1) on June 6, 2022, without payment "in forma pauperis", See Appx. F, pg. 2; (2) on October 31, 2022, with $21.00 payment, See Appx. F, pg. 3; On December 11, 2022, escalating to the Chief Clerk, with evidence of prior payment, See Appx. F, pg. 4, 5.

Payment was accepted, see Trust Fund Acoount Activity, Daily Transaction Summary at Appx. N, pg. 4, which states "10/31/2022, 11:54:55 AM Filing Fee Disb. - State Clerk of Court 354654, 19-3810-FC ($21.00)."

It's been over 120 days since payment and no documents, nor any response. Sworn Complaint was mailed to the Michigan Attorney General on January 31, 2023, See Appx. K, pg. 3. No response as of April 17, 2023. See also Sworn Complaint to U.S. Attorney, Appx. K, pg. 1 - 4.

Cunningham was blessed to recover a copy from an alternate source, or the evidence would be lost, due to suppression of evidence. Brady v. Maryland, 373 U.S. 83 (S. Ct. 1963) ("the supppession by the [Michigan Court of Appeals Clerk] of evidence favorable to an accused, upon request [and payment for copies] violates due process, where the

evidence is material [to the suit]." Id. at 7. See evidence at Appx. F.

The recovered uncertified copy of evidence, from an alternate source, was mailed to the Sixth Circuit late in the process, due to suppression; it was "returned unfiled without ruling" on 01/30/2023. See letter at Appx. M, pg. 2. See Also 01/30/23, Notice of Michigan Court of Appeals Clerical error; Recovered Evidence, at Appx. M, pg. 4; "withholding paid for material documents, violates MCL 600.2507, MCL 600.321(2), and (3); MCR 7.219 (a)(2), which continues to this very day. Denial of 14th Amendment , right to Due Process."

Because the evidence was returned unfiled, further argument was not presented in the Sixth Circuit petition for panel rehearing; Only the Abao signed petition, with Motion arguments citing Becker v. Motgomery, 532 U.S. 757 (S. Ct. 2001) and Hagen v. United States, 1999 U.S. App. LEXIS 30152 (6th Cir. 1999). See Appx. E, pg. 1 - 2.

QUESTION 3

Should petition under ICARA be granted, at Appx. E, signed by Abao, for the return of the Filipino child Z.C. to his Mother and brother Z.C.2 in the Philippines, in accord with the Sixth Circuit Court's conclusion "that the District Court erred in sua sponte raising [affirmative defenses] to conclude that Cunningham had failed to state a claim for relief "under 28 USC 1915 (e)(2), Jones v. Bock, 549 U.S. 199, 216 (2017); After taking "judicial notice of portions of transcripts from [Cunningham's] State Criminal trial for Forcibly Kidnapping his son." See Appx. A, pg. 1; Transcripts detailing the knowing and intentional removal of birth certificate evidence to be offered in a present or future offical proceeding, from the Sheriff vault by the

Quinns, at the direction of Prosecutor Sadler, used in an illegal international adoption of the child without notice of pendency of proceedings to Mother or Father, nor consent; concealed by willfully false testimony under oath concerning a material matter, by Paul Quinn, Det. Mitchell, and Det. Erickson, in denial of due process and equal protection of law, in an "unsettled environment". See Hague Conv. Art. 12, Appx. A, pg. 3.

On March 15, 2019, Det. Douglas Mitchell inventoried "birth certificates", plural, from George Cunningham's property bag. See Inventory at Appx. F, pg. 55. Cunningham's Affidavit states, "In 2014, I bought a Malaysia birth certificate and Consular Report of Birth Abroad for my son Z.C.[.] I folded them together and put them in a zip lock bag in my backpack, where they remained until March 14, 2019". See Appx. G, pg. 16.

> At Cunningham's State preliminary exam. Det. Mitchell testified, on April 30, 2019, [Pub. Def. Ms. France] Q. Sir, in these Exhibits you had a photograph of what you claim to be a birth certificate, remember that? [Det. Mitchell] A. That's correct. Q. Did you actually read the document as to what it said? A. It says record of birth Abroad. Q. Okay, You realize that [t]his is not a birth certificate? [Exhibit was the Consular Report of Birth Abroad, mislabeled birth certificate] A. I don't know any different, it says record of birth." [pg. 180. Ms. France]" [B]ut you have yet to produce the child's actual birth certificate." See transcript at Appx. J, VIII, pg. 179, 180.

The actual Malaysia birth certificate failed to be produced at the preliminary exam, it went missing between March 15, 2019, and April 30, 2019. See perjury at Appx. F, pg. 23, Cunningham later learned that Maria and Paul Quinn filed for adoption of Z.C. in the

Ohio Court in April 2019, See OH Ct. Stay of Adoption, at Appx. F, pages 59 - 62; The Malaysia birth certificate was a required document for filing.

On May 23, 2019, Paul Quinn requested Z.C.'s "original birth certificate", actually the "Consular Report of Birth Abroad", allegedly for passport renewal, a cover for the illegal adoption, See Sheriff supp. report #25, at Appx. F, pg. 36. Dep. Michael "Daniel" Kinnear removed the mislabled Consular Report of Birth Abroad from Cunningham's backpack bag in the Sheriff evidence vault, and dropped it off to Maria Quinn, on May 28, 2019. See at Appx. F, pg. 36; Maria Quinn signed property receipt for "Consular Report of Birth Abroad" at Appx. F, pg. 37, scan of document at pg. 38.

Why would Maria and Paul Quinn want a Consular Document that certifies a foreign birth certificate for Z.C., unless they had Z.C.'s Malaysia birth certificate? The Consular document is not valid for "passport renewal" or adoption, without the foreign birth certificate that it is certifying. Fed. R. Evid. 902, "Evidence that is self authenticating (3) Foreign Public Documents. See Appx. G, pg. 10.

Evidently, the Quinn's needed the Consular Document to certify the illegally removed Malaysia birth certificate, evidence, at the Ohio Adoption Court. Quinn's failed to give notice of pendency,[4] of proceedings to Nanette Abao, Mother of Z.C., or Cunningham, Father of Z.C., in both the Ohio and county of residence court adoption

4. M. Quinn signed a certified mail receipt, for Abao's address, in 2020, USPS 7020 7290 0002 1400 2631. See Appx. O, pg. 4 - 8, 15, Proof of Service; Cease and Desist Adoption.

filings. See Appx. F, pg. 59 - 62 (VI(j)). Armstrong v. Manzo, 380 U.S. 545 (S. Ct. 1965) " The failure to give a divorced father notice of the pendency of proceedings for the adoption of his child deprives him of DUE PROCESS of law". "id. at LED HN1" "At a minimum, the Due Process Clause requires that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." id. at HN2.

Maria and Paul Quinn in the illegal intercountry adoption of Z.C. violated international law in "not ascertaining that the [Filipino] child is adoptable" and did not get "the child's parents [v]olntary consent to the adoption." Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption (May 1, 1995) S. Treaty Doc. No. 105-51 (1998), 1870 U.N.T.S. 182, at Art. 4 and 5. A violation of Mother, Father, and child's 5th and 14th Amendment right to Due Process. Geigow v. Uhl, 239 U.S. 3 (S. Ct. 1915) ("[g]enerally under our treaties with foreign countries. It's denial of Due Process of law."). The U.S. Constitution 5th and 14th Amendment Due Process clause protection applies to "all persons withing the United States, including [Filipino children] whether their presence here is lawful, unlawful, temporary, or permanent". Zadvydas v. Davis, 533 U.S. 678, 693 (S. Ct. 2001)

> Det. Jeffrey Erickson testimony on August 18, 2021, Jury Trial transcript, Appx. J,VIII, vol. III, pg. 139
>
> [Attorney Robinson] "Q: [t]he last exhibit, the Consular Birth Record; [w]as there a court order or anything like that saying you

> should give that to the Quinn's as opposed to, say the Mother in the Philippines? [for ICARA petition] A: [Erickson] No. Q: and that was, basically, your and the Prosecutor's [Sadler] decision to give that to the Quinn's? A: Essentially, Yeah." Appx. J, VIII, vol. III, pg. 139.

Return of evidence requested to Prosecutor Sadler and Sheriff. See Notice of Illegal Taking from Vault, at Appx. F, pg. 45, Jan 2, 2020; Proof of Service at pg. 46. Violation of Michigan R. Evid. 1003(2), and MCL 750.483a(5)(a) "Knowing and intentionally remove evidence to be offered in a present or future official proceeding"; Aiding and Abetting the Quinns. See analysis at Appx. G, pg. 8; Also, Appx. F., pg. 30, 31 (VI, pg. 17, 18) Violation of Due Process, Brady v. Maryland, 373 U.S. 83, (S. Ct. 1963) (Suppression of Evidence).

On October 16, 2019, after Cunningham asked Chief Public Defender Jennifer France for return of the birth certificate, France wrote "Unfortunately because the birth certificate is evidence it can not be returned to anyone right now, Sorry." See letter at Appx. F, pg. 41. This was a misleading communication; the birth certificate was not produced for admittance.

After further request, on November 8, 2019, France wrote "the birth certificate was introduced as evidence at the prelim. It will remain as evidence until all the appeal timelines have run on both cases." See letter at Appx. F, pg. 43; (VI,(b.3, B.5)). These willfully false letters were intended to deceive Cunningham, her own client, Aiding and Abetting the Quinns, and Pros. Sadler, to conceal the removal of the Malaysia birth certificate evidence.

Cunningham filed suit against Chf. Pub. Def. Jennifer France, Det. Douglas Mitchell, Dep. Kinnear, Maria and Paul Quinn, and Pros. Jillian Sadler, in Complaint for Superintending Control, Mich. Ct. App., No. 354654, bringing felony charges of removing and concealing evidence and perjury. See brief at Appx. F, charges summary pg. 31 (VI, 18). Certified copy from Court of Appeals continues to be withheld, after payment, see Section 2; August 23, 2020.

Chief Public Defender J. France was terminated by vote of the Chippewa County Board of Commissioners on November 18, 2020, after an errant authoring of an order, further concealing the removal of evidence, and Complaint of felony Criminal Misconduct, in motion to dismiss counsel by Cunningham, See Appx. I, pg. 1 - 8; Notice Termination pg. 19. Administrative Order, "Public Defender and Assistant Public Defender will cease duties effective December 31, 2020." See Appx. I, pg. 22; Proof of Mailing at pg. 29.

Transcript Statements of Asst. Pros. Sadler

> **"[Ms. Sadler] Thank you, On August 20, 2019, we were a month before the first date that was set for trial [w]e had opposed there being an adjournment. We already had all of the evidence discovered and had the witness and exhibit lists done and had the subpoenas out and were ready to go forward[;] because the People did not want an adjournment, we were ready to go"; August 5, 2021 after two years five month delay trial, See Appx. J, VIII(c) pg. 4, Speedy Trial Hearing transcript.**

Transcript Statement of Pros. Sadler, December 10, 2019

> "[Ms. Sadler] So, I think, at this point we would be ready to go to trial within the next <u>few months</u>. I think the Court had already looked at the possibility of setting this in <u>MAY</u> before based on discussions."

"[THE COURT]: Okay, Well, do you want me to conduct the pretrial today? I mean, this is a different jury trial date." Appx. J, VIII (e) pg. 4, Pretrial Hearing.

Evidently THE COURT was unaware of "discussions" requesting a "May" 2020 trial date; "January" was the planned trial date; see below:

Transcript Statement From August 20, 2019

"THE COURT: Sure we're only in August so by the time we get to January, they [Def's Attrny's] should be able to digest all of that, I assume." Appx. J, VIII(g), pg. 13.

ANALYSIS: Asst. Pros. Sadler requested a delay of trial to "May" 2020, after "discussions" with others; What "discussions" would induce Ms. Sadler to make a false claim on December 10, 2019 of needing a "few months" to be ready for trial, When she was "ready to go", "Supoenas out" four months earlier on "August 20, 2019"; and to ask for a "May" 2020 trial date still five months away?

An adoption filing takes one year to complete, Quinns filed in April 2019, and anticipated completion by May 2020, but the adoption was stayed and defeated by Attrny. Thomas Charlesworth; Quinns refiled in their "county of residence." Coincidentally Sadler delayed for another year to August 2021. This would change the child's non-citizen status, and gain a tactical advantage, in the "lack of jurisdiction" argument. See Appx. G, pg. 4 - 5, (3, 4 of 14) for further analysis.

Transcript of Paul Quinn Testimony, August 19, 2021

"Q. [S]o there was some testimony today that the record of Consular Document [A]nd you had requested that, is that correct?" "[Quinn] A. Yes, in order to obtain a new passport. Q. For Z.[C.]? A. Yes. Q. Were you able to use that to get a new passport? A. Oh yes, Yep. We renewed his passport. I believe it's good for -- I can't remember if it's five or 10 years [b]ecause he did not have a U.S. birth certificate nor a U.S. Social Security Number. Q. Okay, So you still have that document? A. We do."

See Appx. J, VIII vol. IV, pg. 239; Analysis at Appx. G, pg. 10 (9 of 14).

ANALYSIS: How was Paul Quinn able to "use that" Consular Document, to "get a new passport" without the Malaysia birth certificate? Both Det. Erickson and Det. Mitchell testified under oath, that the Malaysia birth certificate was still in the vault; See below. The Consular Report of Birth Abroad is not a birth certificate, it is a certifying document for a foreign birth certificate, it is not valid without the Malaysia birth certificate. See analysis at Appx. G, pg. 10, 11. This was "willfully false testimony under oath concerning a material matter." Definition of 18 U.S.C.S. 1521 Perjury. See also MCL 750.422.

Transcript of Det. Jeffrey Erickson testimony, August 18, 2021

"Q. That -- which we're generally referring to as Cunningham's backpack? A. [Det. Erickson] Yes, sir. Q. So, was that backpack inventoried again more recently? A. So, yes. When [w]e brought all those items in for counsel to review. Q. So, when you inventoried it the second time, was additional evidence found? A. An additional item [a]nother birth certificate [f]rom another country." See Appx. J, VIII vol. III, pg. 125, 126, 127; See also Appx. G, pg. 7 analysis; and pg. 8 for further false testimony.

Transcript of Det. Douglas Mitchell testimony, August 19, 2021

"Q. [a] birth certificate for the child was dicovered [i]n those items? A. [i]t was actually the Malaysian birth certificate that we discovered on July 30, when we were going through the backpack with the attorneys. Q. July 30, of 2021? A. of 2021, that's correct."
[Ref. Det. Mitchell transcript at Appx. J, VIII vol. IV, pg. 187. See also Appx. G, pg. 13, analysis]

ANALYSIS: Det. Mitchell alleges "The first I saw it was July 30th of 2021", but he inventories "birth certificates" plural on March

15, 2019 in Cunningham's black backpack bag; See Appx. F, pg. 55. The two documents were folded together in a zip lock bag. It's not reasonable to believe that Det. Mitchell did not check the evidence vault for the Malaysia birth certificate, during or after the Preliminary Exam on April 30, 2019, where it was testified "but, you have yet to produce the child's actual birth certificate." See Appx. J, VIII pg. 180.

It's even more unreasonable to believe that Det. Mitchell did not check after "Notice of Illegal Taking of Property from Vault". Appx. F, pg. 45.

Moreover, It's impossible to believe that Det. Mitchell would not check for the Malaysia birth certificate in the vault, when Chief Public Defender France received a Complaint of Felony Criminal Misconduct for concealing the removal of the birth certificate evidence, MCL 750. 483a(5)(a), and was terminated November 18, 2020. See Appx. I, pg. 1, Termination at pg. 19,22.

Cunningham filed Motion to Subpoena Duces Tecum on January 7, 2020, and several other filings for the birth certificate. See Appx. G, pg. 14; See Motion at Appx. I, pg. 12.

This testimony was "willfully false testimony under oath concerning a material matter"; "Perjury committed in Courts MCL 750.422; 18 U.S.C.S. 1621. and with Paul Quinn, Maria Quinn, Det. Erickson, and "discussions" with Asst. Pros. Sadler, we have "Conspiracy against rights" 18 U.S.C.S. 241. See analysis at Appx. G, pg. 14. See Motion to Admit Evidence of Conspiracy; Falsifying Transcripts, at Appx. G, pg. 17 - 21; also Sworn Complant

to U.S. Attorney, Appx. K, pg. 1. response, pg. 4.

The conspirator's violations of law deprived the Mother Nanette Abao of her son's Malaysia birth certificate for the ICARA petition for over two years; and deprived DEFENDANT Cunningham of evidence for the Motion to Dismiss for "lack of jurisdiction" over the non-citizen Filipino child. Transcript hearing excerpt below:

> "THE COURT: Are you continuing with your motion then, Mr. Cunningham?
> DEFENDANT: The motion for dismissal. I'd like to withdraw, your Honor. [Y]ou haven't had an opportunity to see and hear the evidence. In fact, the evidence has been taken from the vault illegally"; See Appx. J, VIII(d), pg. 3.

How can an environment be considered"settled" for the child Z.C., where the very persons charged with his protection and care, are the ones denying him and his Mother their Constitutional 14th Amendment right to Due Process of law; An environment without Due Process of law is by definition "unsettled." "The Sixth Circuit Court took Judicial notice of [the] portions of transcripts" and "upon examination unanimously agreed that oral argument is not needed. See Fed. R. App. P, 34(a)", which states "the dispositive issue or issues have been authoritatively decided, or the facts and legal arguments are adequately presented in the brief and record, and the decisional process would not be significantly aided by oral argument. See November 7, 2022, Order, Case No. 22-1279, Cunningham v. Quinn, ECF 23, Appx. A, pg. 1.

The Sixth Circuit concluding the District Court erred in sua sponte, see Appx. A, pg. 4, but going on to affirm the dismissal for lack of a signature by Abao even after prompt correction under Fed. R. Civ. P. 11(a). See Appx. A, pg. 5, and Appx. C, pg. 1.

REASONS FOR GRANTING THE PETITION

The Sixth Circuit Court issued a decision concerning the prompt correction of signature omission, under Fed. R. Civ. P. 11(a), that conflicts with another United States Court of Appeals, under U.S.C.S. Supreme Ct. R. 10(a), in the First Circuit Pereira v. Sessions, 866 F.3d 1 (1st Cir., 2017) at 5, that "the missing item may be a "curable" defect that does not prevent the notice from serving its purpose."; and De Aza-Paez v. United States, 343 F.3d 552 (1st Cir., 2003) at 553 (omission of co-plaintiffs signature on notice of appeal is curable in light of Becker and the Court's obligation to read pro se complaints generously). Also, in conflict with the Sixth Circuits own Hagen v. United States, 1999 U.S. App. LEXIS 30152 (6th Cir., 1999) at 7, HN4, [i]t makes little sense to dismiss [Petitioners] action in light of Rule 11(a)'s tolerance of unsigned pleadings and motions. Because [Petitioner] promptly resubmitted [her petition] with an original signature".

The Sixth Circuit Court has decided an important Federal question in away that conflicts with relevant decisions of this Court, under U.S.C.S. Supreme Ct. R. 10(c), in Becker v. Montgomery, 532 U.S. 757 (S. Ct., 2001) (As plainly as Civil Rule 11(a) requires a signature on filed papers, however, so the rule goes on to provide in its final sentence that "omission of signature" may be "corrected promptly after being called to the attention of the attorney or party. " " Correction can be made", the Rules Advisory Committe noted, "by signing the paper on file or by submitting a duplicate that contains the signature".

Advisory Committee Notes on Fed. Rule Civ. Proc. 11, 28 U.S.C., pg. 666.") id. at 764,HN7.

"The signature requirement and the cure for an initial failure to meet requirement go hand in hand. The remedy for a signature omission, in other words, is part and parcel of the requirement itself.", Abao "proffered a correction of the defect in her notice in the manner Rule 11(a) permits -- [She] attempted to submit a duplicate containing [her] signature, [See Appx. E, pg. 12, 25, 28] and therfore should not have suffered dismissal of [her] appeal for nonobservance of that rule." Becker, Id. at 765.

This judgment has national and international implications for those filing petitions under Hague Convention, and not solely for this Filipino Mother and her Filipino son's return, after wrongful removal and retention. Moreover, this case may bring light to the Clerk's role in the related "ameliorative rule, Appellate Rule 3(c)(4) which provides "An Appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is othewise clear from the notice." **cf.** this Court's Rule 14.5 ("If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule [t]he Clerk will return it with a letter indicating the deficiency. A corrected petition received no more than 60 days after the date of the Clerk's letter will be deemed timely." Becker, id. at 764, HN12).

Abao having promptly submitted a duplicate that contains the signature, within 60 days, from the November 7, 2022 Order, on December 14, 2022, at Sixth Circuit Court which was refused, and

on December 30, 2022, at U.S. District Court, No. 2:21-cv-00158, ECF 29, Appx. E, pg. 14, 25, 28. We therefore request that this Court reverse the Sixth Circuit Court's decision, at Appx. A, pg. 5, and grant the ICARA petition based on the Appeals Court conclusions, and judgment of November 7, 2022, that the "District Court erred in sua sponte raising [affirmative defenses] to conclude that Cunningham had failed to state a claim for relief. Moreover, the Ohio Court's award of custody of Z.C. to the Quinn's did not, as the District Court suggest, bar Cunningham's Hague Convention petition, See Hague Convention, Art. 17; Holder v. Holder, 305 F.3d 854, 865 (9th Cir. 2002)." See Appx. A, pg. 4. Request return of Z.C. to his Mother Nanette Abao and brother in the Philippines, and "restore the pre-abduction status quo." Friedrich v. Friedrich, 78 F.3d 1060, 1064 (6th Cir. 1996). "[T]he failure of a party to sign a Notice of Appeal does not require a Court of Appeals to dismiss the appeal -- the Court of Appeals for the Sixth Circuit should have accepted a corrected Notice of Appeal"; Becker v. Montgomery, 532 U.S. 757 (S. Ct. 2001) at summary, In an opinion by Ginsburg, J., expressing the unanimous view of the court.

Concerning question 2, and the withholding of evidence by the Michigan Court of Appeals Clerk, a question of whether State Court Clerks, as with State Prosecutors, are under the same Constitutional 14th Amendment Due Process law, which involves extraordinary systemic integrity failure, by a Clerk's Office, suppressing evidence of wrong doing by officials. The importance of which is enormous, to

all people in Michigan, and the United States, to a fair system of Justice.

The impact of the Supreme Court oversight, will be felt in more than this ICARA petition, but also for those seeking an impartial State Court appellate process, particularly when State Officials are implicated in violation of law. The importance may be as profound as Brady v. Maryland, 373 U.S. 83 (S. Ct. 1963). ("The Suppression by the [Michigan Court of Appeals Clerk] of evidence favorable to an accused, upon request [and payment for copies] violates Due Process, where evidence is material [to the suit].")

The Sworn Complaint to the Michigan Attorney General on January 31, 2023, has gone unanswered. See Appx. K, pg. 3. Sworn Complaint also to the U.S. Attorney, at Appx. K, pg. 1, 4.

The evidence continues to be withheld by the Michigan Court of Appeals Clerk, and a favorable decision by this Court, will compell the Clerk to produce the evidence.

Conclusion

Please grant writ of certiorari.

George S Cunningham May 16, 2023

George S. Cunningham, Date