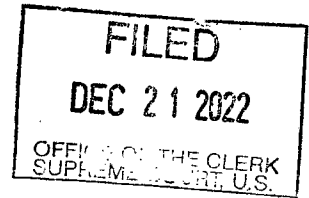


23-5186 ORIGINAL
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

In Re Kinley MacDonald — PETITIONER
(Your Name)

vs.

Deanne Lambrew et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Judicial Court, State of Maine
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kinley MacDonald
(Your Name)
c/o York County Jail, 500
1 Layman Way
(Address)

Alfred, ME 040024
(City, State, Zip Code)

(Phone Number)

Questions Presented

Before the Court is a matter involving unabused children trafficked into foster care by hearsay, causing irreparable harm. The mother suffered expected emotional distress as result. The Defendants then used that distress to retroactively justify initial removal, refusal to reunify, and termination of the family's rights in absence of all jurisdiction. Start to finish this case, these children deserve your time.

Thank you!

- 1.) Can a trial court open and remove children in a "protective custody" case based solely on hearsay accusations prohibited by State statute, in secret, and in absence of jurisdiction?
- 2.) Can a trial court threaten a distressed mother with further decreased contact with her children to coerce an "agreement" before weaponizing that agreement into an admission of guilt to child abuse/neglect without facts or evidence of child abuse/neglect in that agreement or elsewhere?
- 3.) Can Defendants create systemic barriers to effective counsel, deny a Family opportunity of mandated colloquy reviews, and appeal on issues such as abuse of process, jurisdiction, fraud upon the court, abuse of discretion and judicial misconduct to force a final termination of parental rights on a family deprived of the fundamentally fair opportunity to litigate the facts of a

Court record (accuracy of transcripts, orders, evidence, and findings)?

- 4.) Can a state court of last resort declare a new standard of review of evidence against a class of people with PTSD/depression following the removal of her children to "preponderance of evidence" that a diagnosis is, in and of itself, "jeopardy" to children when the Supreme Court of the United States has long demanded a State refrain from presumption that a class of people are unfit parents (Stanley v. Illinois, 405 U.S. 645, 656-58 (1972)) and requires "clear and convincing evidence of abuse/neglect" (Stanton v. Kramer, 455 U.S. 745, 768-71 (1982))?
- 5.) Can a State Court of last resort deny appeals and attempts of a mother's redress of the trial court abuses, then echo these abuses to declare a Mother does not legally have rights to her children and is unfit prior to the termination of her parental rights?

List of Parties

Kinley MacDonald, Petitioner, Mother, Pro Se
c/o York County Jail,

1 Layman Way

Alfred, ME 04002

A [REDACTED] S [REDACTED], Minor child of Kinley MacDonald

B [REDACTED] M [REDACTED], Minor child of Kinley MacDonald

W [REDACTED] M [REDACTED], Minor child of Kinley MacDonald.

Daniel Johnson, "father" of A [REDACTED] S [REDACTED]

908 Pierce Road

Phenix City, AL 36870

Brue Kile, "father" of W [REDACTED] M [REDACTED]

Roger Champagne

13 Crescent St

Biddeford, ME 04005

"Judges" of York County, ME

Michael Duddy, Lou Ann Sutton, Robert Mulhern, Judge
John Doe 1

Biddeford District Court.

28 Adams St

Biddeford, ME 04005

Judge or Magistrate St. Joseph County Probate Ct.
Judge John Doe 2.

1000 S. Michigan St

South Bend, IN 46601

"Judges" of Supreme Judicial Court, ME

Judge John Doe 3, Judge Lawrence

205 Newbury St, Rm 139

Portland, ME 04101-4125

Attorney General, Assistant Attorneys General,

Aaron Frey, AG, Martha Hallisey-Swift AAG, Maura
Keaveney AAG, AAG Sane Does 1-5

6 State House Station

Augusta, ME 04333-0006

Dep't of Health and Human Services (DHHS or CPS)

Seane Lambrew, Kelly SoAnne Deandoff, Tara-

Lynn Picard, Megan Thomas, Jesse Cummings,

DHHS Sane Does 1-15

By Attorney General's Office.

6 State House Station

Augusta, ME 04333-0006

"Judge" of Alfred Superior Court, ME

Judge Mathew, Judge Tom Sane 4-8

16 Main Street

Alfred, ME 04002

"Governor" Janet Mills

210 State St

Augusta, ME 04333

Related Cases

State of Indiana

Johnson v. Johnson, Marriage of Mary Johnson
(Kinley MacDonald) v. Daniel Johnson, Marion County,
IN

B [REDACTED] M [REDACTED], St. Joseph County, IN

W [REDACTED] M [REDACTED], St. Joseph County, IN

State of Maine

In Re A [REDACTED] S [REDACTED], PC-21-01

In Re B [REDACTED] and W [REDACTED] M [REDACTED] PC-21-02

In Re Children of Kinley M. No. Cum 22-329

Petition for Declarative Judgement, No. Cum-22-329
Supreme Judicial Court, ME 8-16-22 Denied

State v. Kinley MacDonald, YRKCD-CR-20-00522

District Court

MacDonald v. Duddy et al, No. 2:22-cv-00293-JAW
U.S. District Court of ME

MacDonald v. Duddy et al, No. 3:22-cv-01002-PRL-MG
U.S. District Court of Northern Indiana (South Bend)

First Circuit Court of Appeal
Writ of Mandamus No. 22-1519? Denied.

In Re MacDonald v. Duddy et al, No. 22-1921,
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SAW,

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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

☐ For cases from **federal courts**:

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

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

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

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

☒ For cases from **state courts**:

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

- ☒ reported at Unknown; 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

☐ For cases from **federal courts**:

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

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

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

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 11/7/22.
A copy of that decision appears at Appendix A.

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

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

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

28 USC § 1651(a),

28 USC § 1251(a), § 1251(2), § 1251(3)

28 USC § 2201(a), 28 USC § 2202, 28 USC § 2241

28 USC § 2243

US Supreme Court Rule 12.4, 20.1, 20.2, 20.3, 20.4

Constitutional And Statutory Provisions Involved

United States Codes (Appendix H)

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42 USC § 1988

United States Constitution (Appendix G)
Maine Constitution (Appendix E)
UDHR (Appendix F)

Statement of the Case

1) Petitioner/Mother (hereafter "Mother"), restates and realleges facts presented in related cases filed previously with the aid of court records and documents prior to Mother's inmate status, but summarizes from memory below.

2) At all relevant times, Mother and her 3 minor children (A [redacted] hereafter "Alana," B [redacted] M [redacted] hereafter "Brodie," W [redacted] M [redacted] hereafter "Wlady") maintained residency with the state of Indiana (hereafter "IN") with active custody arrangements within St. Joseph County Probate Court, South Bend, IN (see related cases)

3) Mother and children sought temporary Domestic violence (hereafter "DV") resources in the state of Maine (hereafter "ME").

4) Mother remarried in South Bend, IN in August, 2000.

5) Mother suffered DV in her marriage. IN hospital notified IN Child Protective Services (hereafter "CPS"), but Mother and children had already escaped to ME. Mother reconciled with her husband while cooperating with IN law enforcement and IN CPS.

6) IN CPS requested a "courtesy interview" of Alana, Brodie & Wlady from ME CPS with Mother's consent. ME CPS refused; opening their own investigation against Mother without informing her. (see writ of mandamus, 22-1514 1st circuit for Documents)

u 7) IN CPS closed their investigation as "unsubstantiated" without u

Informing Mother. (see writ of Mandamus 22-1519, First Circuit)

- 8.) ME CPS called Mother accusing her of Medically neglecting her children in October 2020. Mother brought the children and their medical records to York, ME Police Dept. CPS never showed. (see writ of Mandamus 22-1519, First Circuit for Exhibits)
- 9.) Mother and children returned to IN.
- 10.) January 2021, Mother, children, and husband returned to ME. ME CPS filed a fraudulent petition without prior notice to Mother, seeking to remove Alana, Brodie, and Wlady for "medical neglect." (See Writ of Mandamus 22-1519, First Circuit for Exhibits)
- 11.) Judge Mulhern erroneously accepted the petition based solely on hearsay evidence (prohibited by 22 MRS §4034-A) when a "sworn statement" is mandated to support other evidence within the petition, which it did not. (violating 22 MRS §4034(1))
- 12.) Counsel was appointed to Mother whom Mother directed to immediately Motion to close the unlawful case. Counsel refused. Eventually, Mother directed counsel to withdraw. Judge Duddy allowed counsel to withdraw without a hearing and denied replacement (in violation of 22 MRS §4005(2)).
- 13.) Mother, children, husband returned to the jurisdiction of IN.
- 14.) Mother obtained Protection from abuse orders for the family against the husband, Petitioned for Divorce, moved from the marital home, Cooperated with law enforcement and CPS.

3

The children were interviewed by IN CPS and all allegations of neglect and abuse (called in from ME CPS) were closed as "unsubstantiated." (see video interviews and documents in Writ of Mandamus, For the First Circuit).

- 15) Mother and children returned to ME temporarily. While Alana attended school via internet, Mother rode bikes with Brodie and Wlady. The family was under surveillance by the State of ME. A secret hearing took place where Judge Duddy ordered the children into State custody, then appointed counsel, in absence of all jurisdiction (violating UDHR Art. 1, 2, 3, 7, 9, 10, 12, 16(1), 16(3), 20(1), 20(2), 23(3), 25(2), 28, 29(2), U.S. Const. Amen. 1, 4, 5, 14 §1, ME Const. Art. 181, 185, 186-A, State Statutes of UCCSEA 19-A MRS §1745, 1747). (See Writ of Mandamus 22-1519, First Circuit for Exhibits).
- 16) Mother was pulled over by police who threw the court order in Mother's car (violating service requirement 22 MRS §4033) (see Writ of Mandamus 22-1519, First Circuit for video)
- 17) Mother returned home where police refused to let her inside. Mother demanded a warrant and Mother was arrested on false charges (violating UDHR Art. 1, 3, 9, 12, U.S. Const. Amen. 4, ME Const. Art. 181, 185, 186-A). (see Writ of Mandamus 22-1519, First Cir. for documents and video)
- 18) ME police stormed the family home in full riot gear without warrant required by 22 MRS §4039, terrifying the children. The children were taken to the local ER, received a "wellness exam," were re-vaccinated and separated into foster homes without disclosing the locations to Mother as required by 22 MRS §4033(3-A). (see Writ of Mandamus 22-1519, First Cir. for Exhibits)

19.) Mother attended bail/bond hearing with Judge Mulhern whom originated the ME CPS case. Mother was muted on the zoom while Judge Mulhern released Mother on personal recognizance, but the conditions Mother not have contact with her children without ME CPS approval. (Violating ME Statutes 22 MRS § 4034(6), 22 MRS § 4034-A, UDHR Art. 1, 2, 3, 5, 7, 9, 10, 12, 16(1), 16(3), 18, 20(1), 23(3), 25(2), 28, 29(2), U.S. Const. Amen. 1, 5, 8, 14 § 1, ME Const. Art. 1 § 1, 1 § 3, 1 § 5, 1 § 6, 1 § 6-A, 1 § 9)

20.) Summary Preliminary Hearing (opportunity for the return of Mother's children) had to be postponed because of Mulhern bail/bond conditions to restrict contact between Mother & children; non parties of the false accusations. This deprived the family of State obligations 22 MRS § 4034(4), rights under UDHR Art. 1, 2, 3, 5, 7, 9, 10, 12, 16(3), 20(1), 20(2), 23(3), 25(2), 28, 29(2) U.S. Const. Amen. 1, 4, 5, 8, 14 § 1, Maine Const. Art. 1 § 1, 1 § 3, 1 § 5, 1 § 6, 1 § 6-A, 1 § 9, 1 § 15. (See trial Court records or Writ of Mandamus 22-1519 for the First Circuit for exhibits)

21.) Summary Preliminary hearing consisted only of testimony of social worker Kelli Soanne Deardorff making false statements against Mother; that mother was "acting crazy," refusing medical care for her children, and acting "emotionally dysregulated" in IN. The state had exculpatory evidence against the medical neglect from 2 states, and Kelly SoAnne Deardorff is restricted by license and law from making mental health assessments - particularly when she never saw the "behavior." The state also alleged DV exposure that Mother had resolved 2 months prior. Judge Sutton ordered children stay in CPS care, error of all jurisdictions. Although "hearsay" is allowed

(5)

for only this hearing (per 22 MRS § 1034(4), 22 MRS § 4034-A(1)), no "witness hearsay" took place. Then Judge Sutton refused to invoke visitation mandated by 22 MRS § 4034-(4)(6), (Denying rights under UDHR Art 1, 2, 3, 5, 7, 9, 10, 12, 16(1), 16(3), 20(1), 20(2), 23(3), 25(2), 28, 29(2), U.S. Const. Amen. 1, 4, 5, 6, 8, 14 §1, ME Const. Art. 1 §1, 1 §3, 1 §4, 1 §5, 1 §6, 1 §6-A, 1 §9.) (See Writ of Mandamus 22-1519 For the First Circuit for documents).

- 22.) Mother immediately requested an appeal, but counsel advised "There is no appeal unless your rights are terminated for good." This statement was based off of 22 MRS § 4006, denying family rights under UDHR Art. 1, 8, 9, 29(2), U.S. Const. Amen. 1, 14 §1, ME Const. Art. 1 §1, 1 §2, 1 §5. (See Writ of Mandamus 22-1519 for the First Circuit for documents).
- 23.) Mother saw her children for the first time 31 days after removal and only twice in 2 months, violating 22 MRS § 4041(1-A)(A) and 22 MRS § 4034(6).
- 24.) Prior to mandated "Scopardy" hearing (22 MRS § 4035), a conference took place without Mother's knowledge, consent, or participation. Mother's Counsel sent Mother a text stating Judge Duddy ordered Mother to think about an agreement with the state or his findings would be similar or more harsh than that of the Summary Preliminary Order. Ineffective appointed counsel stated there would be no appeal if Judge Duddy made good on his threats. Summary Preliminary Hearing evidence and orders are restricted from all other proceedings according to 22 MRS § 4034-A. Ineffective counsel failed to attempt to resolve this error. (see Writ of Mandamus 22-1519 for the First Circuit Court Text for message evidence)

25.) May of 2021, Duddy held a Scorpary Hearing under 22 MRS § 4035, but outside of the required 120 days after the Jan. 2021 initial petition filing (according to 22 MRS § 4035(4)). Judge Duddy repeated his threats to Mother; get into an "agreement" with the State or reunification with her children would be more difficult if Mother proceeded to trial. Mother entered into what she was told was; a "reunification agreement" where Mother could not/would not/did not admit or agree to any abuse or neglect as defined in 22 MRS § 4002. Mother agreed she had exposed her children to her husband whom abused Mother, but she left the relationship and "Would" undergo a neuropsychological evaluation, counseling, and DV involvement.

26.) "Agreements" are defined by 22 MRS § 4004-A which Mother only entered into because of her distress, confusion, and threats by the "Judge" and ineffective counsel. Unbeknownst to Mother, Judge Duddy then allowed the "agreement" language to be modified and erroneously, maliciously turned the "agreement" into a "Scorpary Order/Finding" without the required hearing (22 MRS § 4035) or required evidence of abuse/neglect (22 MRS § 4002). This finding was made on "proponent's evidence" with only evidence prohibited under 22 MRS § 4034, and the Order was void any required "Reunification" mandated under 22 MRS § 4041 (1-A)(A). Instead the reunification plan was "Adoption," For which Mother would not have agreed to if a gun was placed to her head. The action was in absence of all jurisdiction (violations of UCCSEA; 19-A MRS § 1745, 1746, 1747, 1748, 1749,

②

UDHR Art. 1, 5, 7, 10, 12, 16(3), 19, 20, 20(2), 25(2), 28, 29, (2),
U.S. Const. Amen. 1, 5, 14 §1, ME Const. Art. 1 §1, 1 §6, 1 §6-A.
(see documents in Writ of Mandamus 22-1519 for the First Circuit).

- 29.) After the "Hearing" DHS cancelled the family's next visit. Mother's counsel was reluctant to address the matter with the Court. Mother demanded review with the Court or Counsel to withdraw. Counsel filed motion to withdraw and replace counsel. Judge Duddy set the matter for a hearing.
- 28.) At the hearing, Mother explained she would not tolerate or negotiate any more time away from her children. Judge Duddy disparaged Mother, refused to address visitation, accepted Counsel's Motion to withdraw, but only appointed "Standby counsel"; violating 22 MRS §4005(2).
- 29.) Without counsel, Mother was unaware the prior "Agreement" was turned into a "Jeopardy Order/Finding", or that Duddy had created 2 orders to remove Mother's counsel citing State v Nisbet, 134 A. 3d 840 (ME 2016), which describes Duddy's removal of Mother's counsel an error rather than supporting it. These orders were not distributed to Mother, (see Writ of Mandamus 22-1519 for the First Circuit for Documents).
- 30.) In haste, Mother hired counsel to Appeal Duddy's Order and refusal to address visitation. Counsel negligently failed to acquire the Court record or appeal as agreed. Mother fired counsel. Counsel retaliated by stating Mother was "hostile" in his Motion to Withdraw. (This statement was recanted under oath, See Bar Complaint against Stephen Swartz).

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25(2), 28, 29(2), U.S. Const. Amen. 1, 4, 5, 6, 8, 14 §1, ME Const. Art. 1§1, 1§2, 1§3, 1§4, 1§5, 1§6, 1§6-A, 1§9, 1§10, 1§16).

- 63) Judge Duddy appointed "standby counsel" for the termination of parental rights hearing. Mother motioned for full appointment continuance, removal of Judge Duddy, and dismissal. Duddy denied all motions.
- 64) Mother notarized statements authorizing temporary guardianship to relatives in the correct jurisdiction of IN while held in jail. Mother mailed the documents to ME trial court and IN court.
- 65) "standby counsel" provided a partial document to Mother from former counsel objecting to a UCCSEA hearing that took place regarding jurisdiction without notice to Mother. Judge Duddy provided the order to former counsel after expiration of time for Mother's objections. (sent to District Ct as exhibit). The courts violated UCCSEA (19-A MRS § 1745, 1746, 1747, 1748) and UDHR Art 1, 2, 3, 5, 7, 8, 9, 10, 12, 16(1), 16(3), 20(1), 20(2), 25(2), 28, 29(2), U.S. Const. Amen. 1, 4, 6, 14 §1, ME Const. Art. 1§1, 1§3, 1§5, 1§6-A, 1§10).
- 66) Mother mailed "Emergency Motion to Reconsider" to IN Court.
- 67) Judge Duddy provided Mother with a copy of the Order dismissing Mother's Petition for Declarative Judgement, No. Cum-22-327, based mostly off of the "spliced" hearing transcripts and setting the standard of review that, by "preponderance of evidence," Mother was considered "mentally ill, which is, in and of itself, "jeopardy" to children (Order

Sent to District Court as (Exhibit) Mother filed notice of appeal (see Exhibit B)

- 68.) Mother petitioned the U.S. District Ct. of ME for an injunction/restrainer to stay termination proceedings scheduled for 9/27/22. The petition was filed on 9/23/22 and docketed 2:22-cv-00293-JAW. Mother assumed a stay was granted.
- 69.) The termination hearing took place in spite of Mother's inability to attend and in spite of a lack of subject matter of abuse/neglect to Mother's children.
- 70.) After hospitalization and recovery, Mother filed blind motions to reconsider any Orders/Findings and notice of appeal of the termination hearing.
- 71.) Mother was unexpectedly transferred to a different jail where mail was not forwarded, then illegally censored (see Case No. 2:22-cv-00304-JAW). Mother never received any court documents of the termination hearing.
- 72.) Concerned she would be denied appeal on parental rights, Mother filed Writ of Mandamus under ancillary jurisdiction to Case No. 2:22-cv-00293-JAW
- 73.) Supreme Judicial Court of ME denied Mother's appeal as Untimely for Pet. for Declarative Judgement (Appendix A)

- 74) Mother Motioned to reconsider Denial of Per. For Dec. Judgement because Mother appealed as soon as it was received.
- 75) Mother received Order from Supreme Judicial Ct of ME in regards to her termination of parental rights appeal. The order sets procedure with bias from the trial court record, refusing to address Mother's issues prior to appellate review, and limits Mother's representation similarly to trial court (Case No. Y01-22-399, [Appendix C]). Mother filed Motion to Correct errors / notice of Appeal.
- 76) U.S. District Court of ME repeatedly denied Mother's motions for appointment of counsel in case No 2:22-cv-00293-SAW. Mother filed Motion for reconsideration / Notice of Appeal.
- 77) U.S. District Ct of ME docketed Order: "Deferring Ruling on Motion For Reconsideration" to First Circuit Court of Appeals Case No. 22-1921
- 78) While issue was pending (Supra #77), Magistrate of U.S. District Ct of ME created "Recommended Decision for Writ of Mandamus" stating U.S. District Ct of ME does not have "authority" to intervene. Mother filed Objection to Order, Motion to Correct Error, notice of Appeal
- 79) Mother filed Petition in U.S. District of IN (No. 3:22-cv-01002-DAL-MGG)

Reasons for Granting Writ.

- 1.) While the Family's Constitutional Rights have been violated¹ and remain at stake, the most emergent and compelling reason to immediately intervene is to prevent these amazing children and others similarly situated from the abuses of foster care² as well as the Defendants' false narratives that the children are unloved, unwanted, neglected and abused; that their mother didn't protect them, fight for them, and see to their prompt return.³
- 2.) Abstention prior to final appeal to State Court of last resort where children have been denied Counsel, Mother's counsel is ordered to be limited, only serves to ratify a State's Unconstitutional "preponderance" of evidence⁴ statutes and standards of review⁴ as well as the systemic barriers of effective counsel.⁵ The ~~wager~~ is a termination of a family prior to their first opportunity at addressing the error of separation and denied reunification.
- 3.) Abstention allows hearsay to disembody jurisdiction against a class of people, and presume them to be unfit parents⁷ until proven otherwise; allowing even a Criminal Court to assert bail/bond conditions with non parties such as Defendant's own children to prevent the "mere possibility" of harm to a child while guaranteeing harm to the family as a whole.⁸

(Footnotes)

1. a) "First, a parent, a mother has rights to uninterrupted custody of her child and her child has rights to remain

with parents; within wide limits, adults and children in a household are immune from state prying and intrusion. Second, domestic abuse - particularly if physical - of a mother or a child [including foster care] will not be tolerated. Third, the state has an obligation to protect children from abuse including, where clearly necessary to protect a child, the power to separate mother and child. It is the third element that the defendants are misusing in unjustified reliance on the second and in violation of the first." Nicholson v. Williams, 203 F. Supp 2d 153, 164 (E.D.N.Y. 2002).

- b.) "The welfare of children is an important state interest. See Moore v. Sims, 442 U.S. 415 (1979); Newstein v. Orbach, 732 F. Supp, 333 (E.D.N.Y.). It cannot be vindicated by violating the Federal Constitution. Local issues do not predominate." Nicholson, 203 F. Supp 2d at 231.
- c.) "Choices about marriage, family life, and upbringing of children are among... basic importance in our society, ... sheltered by the [4th] Amendment against the State's unwarranted usurpation, disregard, or disrespect." M.L.B. v. S.L.J. 519 U.S. 102, 116 (1996)
- d.) "This [family] interest is protected by International law instruments of which the [U.S.] is a party and signatory provide that a state must use extreme care when making decisions which could threaten family integrity. One of these instruments is the Universal Declaration of Human Rights (UDHR) (Appendix F) ... (see Filartiga v. Pena Irala, 630 F. 2d 876, 883 (2d Cir. 1980), Beharry v. Reno, 183 F. Supp 2d. 585 (E.D.N.Y. 2002)). Similar provisions are found in the International Covenant on Civil and Political Rights (ICCPR)

which has been signed and ratified by the [U.S.]... and in the Convention on the rights of the child (CRC) which the [U.S.] has signed and which... Courts have found to be evidence of customary international law binding on [U.S.] courts...; Beharry, Supra (these provisions of CRC have the force of customary international law); The Nereide, 13 U.S. (9 Cranch) 388 (1815) (customary international law is enforceable in [U.S.] courts)... The right under the Constitution... that families retain against state interference... is buttressed by a number of factors... See, e.g., Loving v. Virginia, 388 U.S. 1, 12 (1967); Griswold v. Connecticut, 381 U.S. 479, 485 (1965) parents have a constitutionally protected interest in the care and control and raising their children without state interference. See, e.g., Parham v. S.R. 442 U.S. 584 (1979)...; Pierce v. Society of Sisters, 268 U.S. 510 (1925)...; Meyer v. Nebraska 266 U.S. 390 (1923)... Quillan v. Walcott 434 U.S. 246, 255 (1978)... (quoting Smith v. Organization of Foster Families 431 U.S. 816, 862-63 (1977))... Duchessne v. Sugarman 566 F.2d 817, 825 (2d Cir 1977)... Even a [temp] separation... triggers constitutional protections. See Tenenbaum v. Williams 193 F.3d 581, 584 (2d Cir 1999)...; Strail v. Dept of Children, Youth and Families of Rhode Island, 62 F. Supp 2d 519, 526 (D.R.I. 1999) ("[T]he Supreme Court has afforded protection against [temp] deprivations in the parent-child relationship as part of the right to family integrity.")... See, e.g., Wisconsin v. Yoder, 406 U.S. 205, 232 (1972)... Parham 442 U.S. at 602... "the Due Process Clause of the [14th] Amendment protects the fundamental rights of parents to make decisions concerning the care, custody, and control of their children." Troxel v. Granville, 530 U.S. 57 (2000)... "Substantive due

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process comes into play where, regardless of the procedures followed, a [gov't] decision or action is so contrary to a fundamental right that it cannot be countenanced... See Daniels v. Williams, 474 U.S. 327, 331 (1976)... "[I]f an agency removed or unnecessarily delays the return of a child to a Mother against whom it has no evidence of abuse or neglect - the mother's rights have been infringed." Nicholson 203 F. Supp at 234-238

e) "...without any reasonable justification in the service of a legitimate [gov't] objective," [conduct] violated substantive due process. See Tenenbaum 193 F. 3d at 600."

Nicholson 203 F. Supp. at 241.

f) "'the [4th] Amendment forbids the [gov't] to infringe...[on] fundamental liberty interests at all... Unless the infringement is narrowly tailored to serve a compelling state interest.' Washington v. Glucksberg, 521 U.S. 702, 721 (1997)

...; See also Littlefield v. Forney Independent School District, 268 F. 3d 275, 288 n.18 (5th Cir 2001)...; See 1 v. Morgan 229 F. 3d 567, 575 (6th Cir. 2000)... " Nicholson 203 F. Supp at 244

g) "[T]he removal of a child by [CPS] constituted a seizure, [Tenenbaum 193 F. 3d at 602], and therefore... analyzed under... the [4th] Amendment 'Id at 600 (quoting United States v. Lanier, 520 U.S. 259, 272 n.7, (1997))." Nicholson 203 F. Supp at 247

h) "...[T]he Supreme Court recognized...[T]he integrity of the family unit has found protection in the [9th] Amendment." Wilkinson v. Russell, 182 F. 3d 89, 104 (2d Cir. 1999)... The [13th] Amendment... attempts to protect the right mothers and children not to be forcefully separated without being 'convicted' ... could. construed to cover children forcibly and.

unnecessarily removed without due process and then consigned to the control of foster caretakers... disciplined by those not their parents. This is a form of enthrallment that bears due process rights under the [14th] Amendment... the pervasive practice of [CPS] has been to treat mothers unfairly... mothers are entitled to a particularly scrupulous protection of their rights to custody of their children in construing the [14th] Amendment in light of the [4th, 9th, 13th, and 14th]." Nicholson 203 F. Supp. at 247-48.

i.) "One of [a parent's] rights as a mother was the right to choose a proxy custodian... following her arrest. See In Re Dep't of Pub Welfare, 383 Mass 513, 421 N.E 2d 28, 34 (1981) (noting, in case of incarcerated mother, that mother's presumptive right to custody of the child includ[es] the right to choose a caretaker proxy.)" Suboh v. District Attorney's Office of Suffolk, 288 F. 3d 81, 92 (1st Cir. 2002)

j) "In the spring of 2000, an objectionably reasonable caseworker would have believed that taking [temp] custody of a child... would violate a parent's interest in the... child's care, custody, and control if he acted without reasonable suspicion of child abuse (actual or imminent)." Hatch Jr. v. R.I. Dep't for Children and Families, 274 F. 3d 12 24 (1st Cir. 2001).

k) "When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedure" Santosky v. Kramer, 455 U.S. 745, 754 (1982).

l) "Evidence of even a single instance of abuse [lacking here] may... warrant immediate state action on child's behalf... if there existed reasonable suspicion that abuse occurred

or that a threat of abuse was imminent at the time of removal
 ... Once a state takes [Cmp.] custody it must follow procedure
 adequate to justify that detention." Hatch, 274 F.3d at 24.

m.) "... parents are constitutionally entitled to a hearing on
 their fitness before their children are removed from their
 custody. It follows that denying such a hearing, while
 granting it to other... parents is inescapably contrary to
 the equal protection clause." Stanley v. Illinois, 405 U.S. 645,
 658 (1972).

2. a.) "The evidence demonstrated that the city's policies in this
 field harm children much more than protect against harm. The
 children suffer the trauma of being separated from both...
 parents, blame themselves for the abuse of their mother, confront
 an unfamiliar and often dangerous foster care system, while
 all the time their mother could likely be giving them care
 and comfort if only [CPS]... would carry the [govt]'s own
 burden of protecting [the family] from violence. Nicholson
 203. F. Supp at 253.

b.) "Children and parent-child relationships are particularly
 vulnerable to delays in repairing custodial rifts; even
 relatively short separations may hinder parent-child
 bonding, interfere with a child's ability to relate to
 others, and deprive the child of essential love and
 affection critical to emotional maturity." In Re
Nicholson, 181 F. Supp 2d, 185 (E.D.N.Y. 2002).

c.) "...Even relatively short separations may hinder
 parent-child bonding, interfere substantially with
 schooling and necessary friendships." Nicholson 203
 F. Supp at 252.

d.) "[Mother's] interest in family integrity and care of

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the children is strong. It is especially potent because most mothers are justifiably extremely concerned about the well being of their children, who are at increased risk psychologically and physically while in foster care. Relationships between Mothers and children from homes with [DV] may already be adversely affected. Abused mothers have a strong interest in avoiding further trauma to the familial bonds that would result from months of separation. The [gov't]'s interests are particularly weak; its actions are motivated by bureaucratic pusillanimity and ignorance that harm rather than help the interests of the child."
Nicholson, 203 F. Supp at 255.

- e) "The total length of separation of mothers and children [CPS] has caused is measured in years. The suffering and trauma it has inflicted is so great it cannot be measured. The evidence proves that the challenged policies of [CPS] work against state interests in protecting the safety of children, not for it. Whatever the level of scrutiny; substantive due process rights are being violated, since the policy harms the children Cf Tenenbaum 193 F. 3d at 595 ("Society's interest in the protection of children is, indeed, multifaceted, composed not only of concerns about the safety and welfare of children from the community's point of view, but also with the child's psychological well-being autonomy and relationships to the family." (quoting Franz v. Lytle, 997 F. 2d 284, 792-93 (10th Cir. 1993)) (quotations omitted).") All experts agree that unnecessary removals harm children, and the children from homes with [DV] are particularly

sensitive to being separated from the non-abusive parent. Unnecessary removals work against the state interest in protecting children. The adverse effect has been widely recognized by child welfare advocates and [CPS] experts and informs the best policies in the field of child protection (see *supra* Part III a.2.b.). [CPS] policies result in routine removals that are unnecessary and ignore alternatives that would be far better for the children involved. These policies and practices cannot be justified by recourse to any state interest in the child's welfare." Nicholson 203 F. Supp at 249-251.

- f) "Separation of Mother and child may place the child in dangerous conditions - or at least give justifiable rise to such fear in a Mother." Nicholson 203 F. Supp at 228.
- g) "Even a [temp] separation can be destructive; it triggers Constitutional protections." Nicholson 203 F. Supp at 235
- 3. a) See Court Record, Writ of Mandamus 22-1519 For the 1st Cir.
- b) See Related Cases, Writ of Mandamus 22-1519 For the 1st Cir
- 4. a) "Propoundance of evidence Statutes of Maine (ratified by Supreme Judicial Court, ME decision to Dismiss Mother's Petition for Declarative Judgement): 22 MRS §4034(2), 4034(4) (Appendix A)
- b) "In Troxel, the Court struck down a... Statute which allowed state courts to rule... 'best interests of the child' without necessarily considering the parent's position Troxel v. Granville, 530 U.S. 57, 67 (2000)... 'the Due Process Clause does not permit a state to infringe on the fundamental right of the parents to

make child rearing decisions simply because a better decision could be made.' Id. at 72-73, See Tenenbaum, 193 F.3d at 599; Kia P. v. McIntyre, 2 F. Supp.2d 281, 290 (E.D.N.Y. 1998) aff'd 235 F.3d 749 (2d Cir. 2000), Id. at 759, Mathews v. Eldridge, 424 U.S. 319, 344 (1976).

c) "[CPS] occupies the role of prosecutor when it initiates [a] ... petition for neglect... the decision to prosecute is... 'subject to Constitutional Constraints' U.S. v. Armstrong, 517 U.S. 456, 467 (1996) (quoting U.S. v. Batchelder, 442 U.S. 114, 125 (1978), "Discretion extends only so far as 'the prosecution has probable cause to believe that the accused committed an offense defined by statute [here: 22 MRS §4002]" U.S. v. Bonnet Grullan, 212 F.3d 692, 701 (2d Cir 2000) (quoting Armstrong 517 U.S. at 464)." Nicholson, 203 F. Supp at 246

d) "[S]ister circuits... share a common denominator: at an irreducible minimum... [state] must have no less than a reasonable suspicion of child abuse (or imminent danger of abuse) before taking a child into custody... See Blakow v. Mercer County, 235 F.3d 1000, 1019 (7th Cir 2000); Croft v. Westmoreland County Children and Youth Serv's, 103 F.3d 1123, 1126 (3rd Cir. 1997); Thomson v. SCAN Volunteer Servs. Inc., 85 F.3d 1368, 1373 (8th Cir. 1996); See also Mabe v. San Bernardino County, 237 F.3d 1101, 1106-09 (9th Cir 2001) (elevating suspicion needed to a level akin to probable cause), Wells v. Spencer, F.3d 1126, 1138 (9th Cir 2000)... Reasonable [suspicion] basis for suspecting child abuse... two responsible faculty members (principal and the school nurse) took John's claim of abuse seriously; that John had repeated claims to police; that he bore marks consistent with his claim; that the boy expressed fear for his safety...; that he complained of head-

aches and dizziness; and that a neutral physician, after examining Sohn, had reported that his injuries were consistent with abuse." Hatch 274 F.3d at 23-24

- e) "The 'fair preponderance of evidence standard... violates the Due Process Clause of the [14th] Amendment. Santosky 455 U.S. at 746
- f) "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." Santosky, 455 U.S. at 747-48.
- g) "... a reasonable suspicion that abuse occurred or that a threat of abuse was imminent at the time of removal. Hatch 274 F. 3d at 22
- 5. a) "... '[t]he State's ability to assemble its case dwarfs the parent's ability to mount a defense.' Santosky, 455 U.S. at 763 n.13, See also Id at 763 n.13 (disparity greater where no appointed counsel). '[Mother]'s assertions implicate fundamental Constitutional rights and allege serious substantive and procedural due process violations. It would be inappropriate to abstain... The child removal process is long, potentially taking months before the family court will determine whether a child should be returned to her Mother. A parent's desire to have her child returned quickly often leads to the Mother being forced to follow instructions of [CPS] workers in order to avoid arduous proceedings. Even assuming that a state... would eventually... interpret the statutes, the likely harm to the [family] from the delays and lack of effective representation is 'so serious as to tip the balance in favor of speedier resolution in the [higher] court.' Demp

Psey v. McQueeney, 387 F. Supp 339 (D.R.I. 1975) "Nicholson
203 F. Supp at 229-30.

b) "The right to appointed counsel for due process is a right to effective counsel." See Herring v. Estelle, 441 F.2d 125, 127 (5th Cir 1974) (quoting McKenna v. Ellis, 280 F. 592, 599 (5th Cir 1960), See Cuyler v. Sullivan, 401 U.S. 335 (1980) (States may not conduct trials in a way that unconstitutionally impairs a defendant's right to effective counsel). But where the State imposes systemic barriers to effective representation, prospective injunctive relief without individualized proof of injury is necessary + appropriate. See Benjamin v. Fraser, 264 F.3d 175 (2d Cir 2001), Strickland v. Washington, 466 U.S. 668, 692 (1984) ("In... [6th] Amendment contexts, prejudice is presumed. Actual or constructive denial of assistance of counsel... is presumed to prejudice. So are various kinds of state interference with counsel's assistance."); U.S. v. Cronk, 466 U.S. 648, 659-60 (1984) (Circumstances... such that "although counsel is available to assist... during trial, the likelihood that any lawyer, even fully competent..., could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial.") "... the State itself undermines that procedural due process; requires counsel for the indigent - as... does in... neglect and abuse proceedings - then ad hoc trial judge denials of counsel cannot be permitted under the Constitution." "Nicholson, 203 F. Supp at 239-41

c) "Even where courts approve separation, the cases

brought by [CPS] are so procedurally skewed against the mother as to prevent the courts from effectively protecting due process and substantive rights including in-court and out-of court decisions to remove are unconstitutionally denigrated by provisions of inadequate...counsel for most mothers." Nicholson 203 F. Supp at 251

d.) "... the State...has chosen to grant a state right to counsel... shutting off any case by case analysis of federal right anticipated by Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 32-33 (1981)... individuals who have a federal right to counsel have a right to effective counsel, see *infra* v.c. 1." Nicholson, 203 F. Supp at 254.

e.) "Where the state chooses to intervene in an area with Constitutional dimensions, it may not do so in a way that undermines Constitutional rights... offering counsel to a mother [and children]... and then hamstringing that counsel... to... inadequate representation... Creating a system... that the entire court system becomes plagued with... delays, so that urgent claims of violations of Constitutional rights go unaddressed for months, impairs mother's [and child's] due process as guaranteed by the [14th] Amendment." Nicholson, 203 F. Supp at 257

6. a.) "... the state scheme governing child removals is not sufficiently complex to require abstention"; People United for Children Inc 108 F. Supp 2d 298. The rules and procedures governing various stages of proceedings to remove a child... contain no broad terms requiring interpretations by state agency or experts in the field 'Id at 284 (quoting Planned Parenthood of Duchess - Ulster, Inc v. Steinhouse, 60 F. 3d, 122, 127 (2d Cir. 1995)." Nicholson, 203 F. Supp at 231

b.) "Granting a stay... permits time for expedited appeal, avoiding the need for
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changes in procedures that may need further revision should the Court of appeals have a view different from... trial court. Most importantly, the court assumes the bona fides of [CPS]'s leadership in seeking promptly to eliminate its ~~own~~ constitutional practices and policies." Nicholson, 203 F.Supp., 258

c) "A violation of [the family's] right[s] have been established... the [higher court] has a duty to fashion appropriate injunctive relief, using its broad equitable powers." (Barnet v. Bowen, 749 F. 2d 17, 23 (2d Cir 1986), See Swan v. Charlotte-Mecklenburg Bd. of Ed., 402 U.S. 1, 15 (1971))." Nicholson, 203 F.Supp 258

d) "The denial of Constitutional rights of [the family] cannot go unchecked." Nicholson, 203 F. Supp at 164

e) "Any [CPS] policy or practice that violates a Mother's [and child's] rights is unlikely to be the focus of a Family Court... See also La Shawn A.V. Kelley, 990 F.2d 1319 (D.C. Cir 1993)... The ordinary avenue of appeal... is not a viable method of protecting these [family's] rights. See McTeague v. Sennowski, 617 F.2d 1016, 1021 (3d Cir 1980) ("If deference to the state proceedings means that she will be unable to raise her concerns, abstention may be inappropriate.")" Nicholson 203 F. Supp at 232.

f) "A permanent termination of the parent-child relationship represents the radical destruction of the family integrity interest. See Santosky, 455 U.S. at 746... See Tenenbaum 193 F. 3d at 594, Sousterland v. Giuliani, 4 Fed Appx 33, 36 (2d Cir 2001) (... "We have never required - as the district Court apparently did - that parental rights be completely or permanently terminated in order for Constitutional protections to apply") (unpublished opinion). Cf Santosky, 455 U.S. at 759 n.15; Strail v. Dep't of Children Youth and Families of Rhode Island, 62 F.Supp. 2d 519 (D.R.I. 1999.)." Nicholson 203 F. Supp at 235-236

- g.) "Whatever the standard... it is apparent that when potentially unconstitutional policies of [gov't] entity impinge on... family integrity, courts have a duty to review... closely, See Moore v. City of East Cleveland, 431 U.S. at 499 (1977), Griswold, 381 U.S. at 502 ("[T]here is a 'realm of family life which the state cannot enter' - without substantial justification.") (White, J. Concurring in judgement) (Citation omitted)" Nicholson, 203 F. Supp at 246.
- h.) "A Plaintiff's Constitutional rights are violated... if the 'innacuracies in the transcript adversely affected the outcome of the proceedings.'" Louber v. Thacker, 440 F. 3d 439 (7th Cir 2006), (quoting Tedford v. Hepting, 990 F. 2d 745, 747 (3d Cir 1993) See also Coyler v. Ryles, 827 F. 2d 315, 316 (8th Cir 1987).
- i.) "The Judge relies... upon the order of court made by him. The Plaintiff in reply alleges that the judge himself fabricated the statement of facts... in that order - made it falsely and fraudulently - and by such fabrication, and out of a false and fraudulent statement that certain things which never took place at all, did take place, corruptly sought to give himself jurisdiction in the case where he has acted. Now, the evidence which the Plaintiff has offered and which the Court refused, tended directly to prove that the whole statement ordered by the judge to be put on record was false and fabricated; and that it was made to give color to a usurped jurisdiction; in other words, that the statement was fraudulently made. Certainly the Plaintiff had a right to show such facts, for the judge had no power or jurisdiction to make the order complained of, if the matters recited never occurred. Under such circumstances, a

judge knowing the facts is liable, even though he did not act corruptly, and a fortiori is liable in a case where he did so act." Bradley v. Fisher, 80 U.S. 355 (1871).

7. a.) See (supra) 4. b.)

b.) "[e]mergency circumstances mean circumstances in which a child is immediately threatened with harm. The mere possibility of danger is not enough. Tenenbaum 193 F.3d at 594." Nicholson 203 F. Supp at 237

c.) "Whether a presumption be deemed procedural or substantive, in Stanley, the Supreme Court rejected the notion that a state can rely on a presumption that a class of people are unfit Id at 656-58." Nicholson, 203 F. Supp at 241

d.) See (Supra) 4. c.)

e.) "To punish a person because he had done something the law plainly allows him to do is a due process violation of the most basic sort." Borden Kircher v. Hayes, 434 U.S. 357, 363 (1978).

f.) "Prosecutors... have an ethical duty to ensure that the innocent do not suffer." F.S. Harshaw Enterprises Inc v. Emerald River Development, Inc, 244 F.3d 1128, 1140 (9th Cir 2001) (quotations and citations omitted).

g.) "Often, [CPS]'s vague allegations... mask the fact that she has only done what the law plainly allows [her] to do. Borden-Kircher, 434 U.S. at 363 [CPS] routinely fails to specify... "failure to cooperate" allegations that would permit adequate review of whether any probable cause justified them... [Judges have... complained that the lack of specificity ... makes it difficult... to exercise meaningful review over [CPS] ... weeks or months have passed before it becomes clear that

[CPS] never had a case in the first place. The delay... irreparably harms mothers... adds to the... patterns of routine violations of Mother's procedural due process rights... defendants attempts to justify its policies are Constitutionally wanting! Nicholson 203 F. Supp at 253

8.a.) "Since [these] parent-child relationships are constantly being harmed by unnecessary removals, there is a special urgency that weighs against abstention. See Stanley, 405 U.S. at 645 (quotations omitted)." Nicholson 203 F. Supp at 231-32.

b.) See (supra) 6.2)

c.) See (supra) 9. b.)

d.) See (supra) 2. c.!).)

Conclusion

The irreparable harm mounts exponentially every day, every holiday, every birthday and special occasion. The State and district courts slowly turn a blind eye instead of intervening immediately and appropriately. If any of these proceedings or results were truly in the children's best interests, Mother would also abstain. Please join me in the correction and reunification of my family. Respectfully Submitted,

Kinley MacDonald, Mother, Pro Se

12/21/22

Kinley
MacDonald
6/20/23