

23-5216

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

JUN 27 2023

OFFICE OF THE CLERK
SUPREME COURT U.S.

In Re Kinley MacDonald — PETITIONER
(Your Name)

vs.

Michael Duddy, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court, District of ME
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kinley MacDonald c/o YCS
(Your Name)

1 Layman Way
(Address)

Alfred, ME 04002
(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 distress as result. The Defendants then used that distress to retroactively justify initial removal, refusal to reunify, and create an elaborate web of accusations to terminate a family in absence of all jurisdiction for which the Federal Courts' abstention sanctions such a departure of human rights of the state courts of Maine, that it calls for a desperate plea of a mother to this Court's exercise of supervisory power. 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," then 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 assistance of counsel, deny a Family opportunity of mandated colloquy, reviews, and appeal on issues of abuse of process, jurisdiction, fraud upon the court, abuse of discretion, and judicial misconduct to force a termination of parental rights on a family deprived of the fundamentally fair opportunity to litigate the facts on Court record?
- 4.) Can a state Court of last resort declare a new standard of review of evidence against a class of people with PTSD/depression to "preponderance of evidence" that the diagnosis is in and of itself, "jeopardy to children when the Supreme Court has demanded a State refrain from a presumption that a class of people are unfit parents (Stanley v. Illinois, 405 U.S. 645, 652-58 (1972)) and requires "clear and convincing evidence of abuse/neglect (Stantisky v. Kramer, 455 U.S. 745, 768-71 (1982))?
- 5.) Can a state court of last resort deny appeals/attempts of a mother's redress of the trial court abuses, then echo those abuses to limit and inhibit a Family's right to effective counsel on final appeal; ordering an attorney to only brief what she deems important while also ordering Mother's counsel NOT to file Constitutional/Federal questions on a Mother's behalf?

6.) Can a United States District Court abstain when the State Court is causing irreparable harm to fundamental human rights?

7.) Can a United States District Court and/or United States Court of Appeals objectively deny counsel to a petitioner seeking redress on a matter which requires appointment of counsel prior to appeal?

8.) Can a United States District Court and/or United States Court of Appeals invoke Prison Litigation Reform Act requirements of a petitioner simply because she is being detained in jail?

9.) Can a United States District Court and/or United States Court of Appeals require an indigent Plaintiff to pay filing fees under the Prison Litigation Reform act when she is NOT pursuing action against the jail?

List of Parties

Kinley MacDonald, Petitioner, Mother
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 Rd
Phenix City, AL 36870

Bruce Kile, "father" of W [REDACTED] M [REDACTED]
represented by: Roger Champagne
13 Crescent St
Biddford, ME 04005

"Judges" of York County, ME:
Michael Duddy, Lou Ann Sutton, Robert Mulhern,
Judge John Doe 1
Biddford District Court
28 Adams St
Biddford, ME 04005

Magistrate of St. Joseph County Probate Court.
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 and Assistants
Aaron Frey, AG, Martha Hallisey-Swift AAG,
Maura Keaveney AAG, AAG Jane Does 1-5
6 State House Station
Augusta, ME 04333-0006

Dept of Health + Human Services (DHHS or CPS)
Seanne Lambrew, Kelly JoAnne Deardorff, Tara -
Lynn Picard, Megan Thomas, Jesse Cummings,
DHHS Jane Does 1-15
By Attorney General's Office
6 State House Station
Augusta, ME 04333-0006

"Judges" of Alfred Superior Court, ME
Judge Mulhern, Judge John Does 4-8
45 Kennebunk Rd
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

In Re B [REDACTED] M [REDACTED], St. Joseph County Probate Ct

In Re W [REDACTED] M [REDACTED], St. Joseph County Probate Ct

State of Maine

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

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

Supreme Judicial Court, ME

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

In Re Kinley MacDonald No. Cum 22-327

Kinley MacDonald v. State of ME Cum 23-32

Superior Court, ME

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

United States District Court

MacDonald v. Duddy et al, No. 2:22-cv-00293-JAW, ME

In Re Kinley MacDonald, No. 2:22-cv-00336-JAW, ME

MacDonald v. Duddy, No. 3:22-cv-01002-PRL-MGG, IN

MacDonald v. State, No. 2:22-cv-00329-JAW, ME

United States Court of Appeals

In Re Kinley MacDonald, No. 22-1319, First Circuit

In Re Kinley MacDonald, No. 22-1921, First Circuit

In Re Kinley MacDonald, No. 22-1942, First Circuit

In Re Kinley MacDonald, No. 22-1949, First Circuit

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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 A-B to the petition and is

☒ reported at Unknown; 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 _____ 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

☒ 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).

U.S. Supreme Court Rules: 12.4, 20.1, 20.2, 20.3, 20.4

28 USC § 1292, § 1331, § 1343 (a), (1), (2), (3), (4), § 1357, § 1367 (a), § 1369 (c), (1), (c), § 1443 (1), (2), § 2201 (a), § 1651 (a), (b), § 2202, § 2241, § 2243, § 2254, § 2283, 42 USC § 1983, § 1985 (2), (3), § 1986, § 1988, §§ 12101-12213

[] 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

United States Codes Appendix Q

- 28 U.S.C. § 1251, (a), (3)
- 28 U.S.C. § 1253
- 28 U.S.C. § 1254, (1)
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- 28 U.S.C. § 2202
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- 28 U.S.C. § 2251
- 28 U.S.C. § 2254
- 28 U.S.C. § 2283
- 42 U.S.C. § 1983
- 42 U.S.C. § 1985
- 42 U.S.C. § 1986
- 42 U.S.C. § 1988

United States Constitution Appendix P

Maine Constitution Appendix N

Universal Declaration of Human Rights Appendix O

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 other evidence prior to her inmate status, but summarizes from memory below:
- 2.) At all relevant times, Mother and her 3 minor children: A [REDACTED] [REDACTED] (hereafter "Alana"), B [REDACTED] M [REDACTED] (hereafter "Brodie"), and W [REDACTED] M [REDACTED] (hereafter "Wlady"), maintained residency in the state of Indiana (hereafter "IN") with active custody cases within St. Joseph County Probate Court, South Bend, IN.
- 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 separated to ME. Mother reconciled with her husband while cooperating with IN law enforcement and IN CPS.
- 6.) With Mother's consent, IN CPS requested a "Courtesy interview" from ME CPS. ME CPS refused; opening their own investigation against Mother without informing her. (See documents in Writ of Mandamus For the First Circuit, No. 22-1319 [hereafter "Wom 22-1319"]).

- 7.) IN CPS closed their investigation as "Unsubstantiated," but Mother was not informed. (See WOM 22-1319 for documents).
- 8.) ME CPS called Mother to accuse her of Medically neglecting her children in October 2020. Mother brought her children and their medical records to York Beach, ME Police Dep't. CPS never showed. (See WOM 22-1319 for documents/evidence).
- 9.) Mother and children returned to husband in IN
- 10.) January 2021, Mother, children and husband returned to ME. ME CPS filed a fraudulent hearsay petition to remove the 3 children for "medical neglect" and without prior notice to Mother (see WOM 22-1319 for documents).
- 11.) Judge Mulhern erroneously accepted the deficient petition based solely on hearsay (prohibited by 22MRS § 4034-A) as a "sworn statement" is mandated to support other evidence within the petition, which this petition lacked (violating 22 MRS § 4034(1)). See WOM 22-1319 for documents).
- 12.) Counsel was appointed to Mother whom Mother directed to immediately move to close the unlawful case. Counsel refused all requests from Mother. Eventually, Mother directed Counsel to withdraw. Judge Puddy allowed counsel to withdraw without a hearing and denied requests for replacement, violating 22 MRS § 4005(2). (See WOM 22-1319 for Documents)
- 13.) Mother, children, + husband returned to the jurisdiction of IN

14.) Mother obtained Protection from Abuse orders against her husband, filed for divorce, left the marital home, and cooperated with IN law enforcement and CPS. The children were interviewed on video. All allegations of child abuse/neglect called in from ME CPS were closed as "Unsubstantiated." (See WOM 22-1319 for video and documents).

15.) Mother and children returned to ME temporarily. The family was under surveillance while Alana attended internet school and Mother rode bikes with Brodie and Wlady. A secret hearing took place to remove the children, violating 22 MRS § 4003, the 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. 1 §1, 1 §5, 1 §6-A, State Statutes of UCC § 19-A MRS § 1745, 1747. (See WOM 22-1319 for documents)

16.) Mother was pulled over by ME police who threw the court orders in Mother's car, violating service requirement 22 MRS § 4033. (See WOM 22-1319 for video).

17.) Mother returned home where police refused to let her inside. Mother demanded a warrant for entry and was falsely arrested, violating UDHR Art. 1, 3, 9, 12, U.S. Const. Amen. 4, ME Const. Art. 1 §1, 1 §5, 1 §6-A (See WOM 22-1319 for documents and video).

18.) ME police stormed the house in full riot gear without the warrant required by 22 MRS § 4039, terrifying the children. The children were taken to the E.R., received a "wellness exam," were re-vaccinated and separated into foster care without disclosing the locations to Mother as required by 22 MRS § 4033(3-A) (See WOM-221319

for Documents).

- 19.) Mother attended bail/bond hearing with Judge Mulhern (originator of ME CPS case). Mother was muted on zoom hearing while Judge Mulhern released Mother on personal recognizance, but under the conditions Mother not have contact with her children without ME CPS approval, Violating 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.) The Summary Preliminary Hearing (hereafter "SPH"); opportunity to return children to Mother, was postponed by Mother's appointed counsel because of Judge Mulhern's restricted bail/bond conditions between Mother and her children (non parties in the criminal charges). This deprived the family of mandated visitation of 22 MRS § 4034(4), and 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, ME Const. Art. 1 §1, 1 §3, 1 §5, 1 §6, 1 §6-A, 1 §9, 1 §15. (See wom 22-1319 for documents).
- 21.) SPH consisted of testimony solely of social worker Kelly JoAnne Deardonff making false statements against Mother; that Mother was "acting crazy," refusing medical care for her children, and "emotionally disregulated" in IN. The state had exculpatory evidence against medical neglect from 4 states, and Kelly JoAnne Deardonff is restricted by license and law from making diagnoses - particularly when she never witnessed the "behaviors." The state alleged DV exposure to refuse return of the children when Mother resolved the DV 2 months prior. Judge Sutton ordered children stay in

CPS care; error of a jurisdiction: Although "hearsay" is allowed for ONLY SPH (22 MRS § 4034(4), 22 MRS § 4034-A(1)), no "Witness Hearsay" took place. 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 wom 22-1319 for documents).

22.) Mother immediately requested appeal, but counsel stated "There is no appeal unless your rights are terminated for good," 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 wom 22-1319 for documents)

23.) Mother saw her children for the first time 31 days after removal and twice in 2 months; violating 22 MRS § 4041(1-A)(A) + 22 MRS § 4034(6). (See wom 22-1319 for documents)

24.) Prior to mandated "Scopardy" hearing (22 MRS § 4035), a conference took place without Mother's knowledge. Mother's counsel sent a text to Mother stating Judge Duddy threatened Mother to think about an agreement with CPS or his findings would be similar or more harsh than that of SPH Order. Ineffective appointed counsel stated there would be no appeal if Judge Duddy made good on his threats. SPH evidence and Orders are restricted from all other proceedings; mandated by 22 MRS § 4034-A. Ineffective counsel failed to attempt to resolve this error (See wom 22-1319 for text evidence).

25.) May of 2021, Judge Duddy held a Scopardy Hearing (22 MRS § 4035),
8.

but outside of the 120 days after the Jan. 2021 initial petition filing (per 22 MRS §4035(4)). Judge Duddy repeated his threats to Mother; get into an "agreement" with the State or reunification with the children will be more difficult if Mother proceeds to trial. Mother entered into what she thought was a "reunification agreement." Mother agreed she had exposed her children to her husband who abused Mother, but left the relationship a month prior to removal and Mother "would" undergo a neuropsychological evaluation (hereafter "neuro-psych. eval."), Counseling, and DV support.

- 26.) "Agreements" are defined by 22 MRS §4004-A, which Mother only entered into because of her confusion, distress, and threats from Judge Duddy without option to appeal per ineffective appointed counsel. Unbeknownst to Mother, Judge Duddy modified the "agreement" statements, and entered them into a Jeopardy Finding and Order without a hearing required by 22 MRS §4035, or evidence of abuse/neglect defined by 22 MRS §4002. This Finding was made with a "preponderance of evidence" where the "evidence" was prohibited by 22 MRS §4034, and the Order was void any required Family reunification under 22 MRS §4041(1-A)(A). Instead, the "Reunification Plan" was stated as "Adoption;" For which Mother would NOT have agreed to if a gun was placed to her head. These actions violated all jurisdiction including UCCSEA; 19-A MRS §1745, §1746, §1747, §1748, §1749, UDHR Art. 1, 5, 7, 10, 12, 14(3), 19, 20(1), 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 wom 22-1319 for documents).

- 22) After the "Hearing," CPS cancelled the family's visit. Mother's Counsel was reluctant to address the matter with the Court. Mother gave the ultimatum to address visitation with the judge or withdraw. Counsel filed Motion to Withdraw and Replace Counsel. Judge Duddy set the matter for hearing.
- 23) At the hearing, Mother explained she would NOT tolerate any more time lost with her children. Judge Duddy disparaged Mother, refused to address visitation, accepted Counsel's Motion to withdraw, but only appointed "Stand by Counsel;" violating 22 MRS § 4005(2).
- 24) Without Counsel, Mother remained unaware the "Agreement" was turned into a "Jeopardy Finding/Order," and a clock was about to expire on time for appeal, or that Judge Duddy had created 2 orders removing Mother's Counsel citing State v. Nisbet, 134 A. 3d 840 (ME 2016), which describes Duddy's removal of Mother's counsel an error. These orders were not distributed to Mother. (See wom 22-1319 for documents).
- 30) In haste, Mother hired Counsel to appeal Duddy's standby Counsel Order and resolve 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, but recanted this Statement under oath (see wom 22-1319 and Bar Complaint against Stephen Sweatt).
- 31) Mother filed "Motion to Strike" Counsel's slander and "Motion

for appointed counsel" (see wom 22-1319 for Arguments).

32.) Judge Duddy denied the Motions and informed Mother of "Standby" Counsel's name as well as a "pathway" for Mother to earn back her right to appointed counsel from his undistributed Orders. (see wom 22-1319 for documents).

33.) "Standby" Counsel could not commit to full representation of Mother and "Judicial Review" (22 MRS § 4038(2)) was scheduled same day as Mother's "Agreement" neuro psych. eval. Mother filed "Emergency Motion to Continue," and "Emergency Motion to Appoint Counsel." (see wom 22-1319)

34.) "Judicial Review" commenced in Mother's absence. Judge Duddy stated he refused to read Mother's motions prior to the hearing; accusing Mother of Misconduct. No matters of "Judicial Review" took place as required by 22 MRS § 4038(2). The hearing addressed custody matters with Daniel Johnson. Judge Duddy was made aware Mother was not served on this matter. Then, hired Counsel was allowed to withdraw. "Standby" Counsel was ordered to submit Motion to Withdraw in writing. (see wom 22-1319 for transcripts of 7/30/21 hearing).

35.) Mother was notified "Judicial Review" took place in spite of her motions when she was emailed a "proposed jeopardy Order" from the state for which Mother objected and requested oral arguments.

36.) Judge Duddy granted Mother's objection and scheduled "Judicial

Review" for the end of Sept. 2021 (see wom 22-1519 for documents).

- 38.) Unbeknownst to Mother, "Standby" Counsel submitted a written motion to withdraw as directed. Judge Duddy scheduled a second hearing on the matter for Oct 2021; leaving Mother without Counsel for "Judicial Review" and any appealable matters arising from it, violating 22 MRS § 4005 (see wom 22-1519 for documents).
- 38.) The children suffered emotional abuse/neglect in foster care, but the abuse turned physical. Mother took photos of 2 year old Wladys black eye and 5 year old Brodies scratched and infected foot. CPS refused to intervene. Mother called the police. CPS told police Mother suffered "Undiagnosed mental health disorders and refused to get help for herself." Police refused to take children to the doctor. In haste, Mother hired the next lawyer to answer the phone. Counsel accepted a retainer, then went on vacation and remained unreachable and ineffective. Mother fired her. Pro Se, Mother filed Motion for Sanctions against CPS which included the evidence of child abuse/neglect and Mother's neuropsych. eval. with a diagnosis of PTSD/Depression, but NO personality pathology and an intelligence in the range of "Superior." (see wom 22-1314).
- 39.) At "Judicial Review," Judge Duddy refused to hear the foster abuse; demanding Mother's neuropsych. eval. Mother explained it was an exhibit in her Motion. Judge Duddy continued the hearing, violating 22 MRS § 4038 (i) (again). (See wom 22-1314 for documents).

40.) On 9/30/21, "Judicial Review" commenced with surprise hearing on matters Mother was not given notice for; including a case of abuse/neglect against Daniel Johnson for "failure to protect" Alana from "Mother's jeopardy." Mother objected on grounds of jurisdiction and lack of notice. Judge Duddy disregarded Mother. Although Mother had completed her "Reunification agreement," Judge Duddy refused to hold "Judicial Review" mandated by 22 MRS § 4038, humiliating Mother instead - calling her irrational and mentally ill before threatening Mother (again) to accept the State's proposed "Jeopardy Order" or "reunification" would "slow way down" and Judge Duddy would hold a "Contested Judicial Review" to allow the state to probe for new evidence of jeopardy and warned Mother he would find Mother's disability to be jeopardy because she "could not provide for the children." Mother refused any more threats from this Judge and demanded a hearing. Judge Duddy concluded the hearing with violations to UCCJEA; 19-A MRS § 1745, § 1746, § 1747, § 1748, § 1749, 22 MRS § 4005, UDHR Art. 1, 2, 3, 5, 7, 8, 9, 10, 12, 16(1), 16(3), 19, 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 § 5, 1 § 6, 1 § 6-A, 1 § 9, 1 § 10 (see transcripts of 9/30/21 Hearing in WOM 22-1319).

41.) Mother repeatedly requested all prior transcripts, but was only allowed 2; 7/30/21 and 9/30/21. The 9/30/21 Transcripts were suspiciously missing important statements such as Judge Duddy's comments that Mother's disability was "Jeopardy," but mother still submitted to the committee on Judicial Responsibility + Disability - hoping they would investigate

42.) Judge Duddy appointed counsel whom identified and explained Mother's "reunification agreement" was charged into a Jeopardy Order/ Finding." New counsel was not admitted to the U.S. District Court, but planned on addressing the issue at upcoming "Contested Judicial Review."

43.) As threatened, Mother saw her children less and less. The children saw each other less and less. Foster abuse/neglect continued. Because of this, Mother suffered a panic attack at home. Although Mother recovered, CPS ceased visitation in opposition to requests of Mother's Counselor and the children's GAL. The state demanded a family team meeting before re-engaging in mandated visitation; taking weeks to schedule. (See wom 22-1319 for documents)

44.) "Family Team Meeting" commenced. The state refused to discuss, define or describe the "Jeopardy concerns" of Mother - as to why the state was refusing adequate visitation, supports, and reunification. The meeting was unproductive; an excuse to keep the family from visiting. The state then filed a petition to terminate Mother's parental rights stating Mother "agreed." Visitation was resumed, but remained limited in violation of 22 MRS § 4041(1-A). (See wom 22-1319 for video of "Family Team meeting" and documents.

45.) Mother moved to Massachusetts to transfer the case while still visiting her children.

46.) Mother's "Judicial Review" occurred many months after the mandated 6 months in violation of 22 MRS § 4031(1). "Con-

tested "Judicial Review" does not exist in State Statute, but commenced in Dec. 2021. Mother proceeded as if it were "Judicial Review," Mother's experts testified to their documents and findings. These documents were admitted into evidence. After cross exam., Mother's witnesses were asked if they stood by their findings. They affirmed. Mother testified that she NEVER agreed to the "Jeopardy Order;" that she agreed to reunification under threats and NEVER neglected or abused her children and had nothing to admit. Mother discussed her move to Massachusetts. Mother's counsel requested a transfer of the case. On cross examination, as Judge Duddy threatened and over Objection, the state began questioning Mother to see if she was a "good person." Mother was then questioned on the paternity of Brodie and Wlady. Mother declined to recall. Judge Duddy continued the hearing with orders to Mother to produce the information; violating 22 MRS § 403B, UDHR Art. 1, 2, 5, 7, 10, 12, 16(1), 16(3), 18, 19, 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 §6-A.

49.) Alana testified on behalf of herself and her siblings. Mother was not allowed to attend, but her counsel was. Alana testified she had a "great childhood," the children were not abused in Mother's care but were in foster care. Alana stated the children should not have been removed. Alana asked for more visitation and counsel appointed to her so that she could "help to get home." Judge Duddy denied her requests violating 22 MRS § 4005 (1)(F), UDHR Art. 1, 2, 3, 5, 7, 8, 9, 10, 12, 16(3), 18, 20(1), 20(2), 25(2), 28, 29(2), U.S. Const. Amend. 1, 4,

5, 6, 8, 14 §1, ME Const. Art. 181, 183, 185, 186, 186-A, 189, 1910

48.) Mother's "Contested Judicial Review" reconverted with the demand Mother disclose the identity of the fathers of Brodie and Wlady. Mother refused to recall. Judge Duddy refused to continue the trial and other obligations required by statutes 22 MRS §4038(S), 22 MRS §4041.

49.) Judge Duddy created a fraudulent/malicious order Re-fusing transfer of the case, mandated by 19-A MRS §1745, §1746, §1747, 1748 from the UCCSEA. The order makes false, extra-judicial findings, re-accuses Mother of undiagnosed mental illness, states Mother's experts made comments about "parenting safely" which was outside of their scope of practice. Judge Duddy makes bizarre demands of Mother's doctors on how to diagnose and treat Mother and to make Judge Duddy's Order a part of Mother's permanent medical record for which neither Mother nor Judge Duddy had legal authority to enforce. Judge Duddy refused to order reunification of 22 MRS §4038, §4036-B(4). Judge Duddy also threatens Mother's counsel. (Mother's counsel was directed by ME Bar Assoc. to withdraw because of the threats). Judge Duddy's Order did not describe any child abuse/neglect or reasons for the case to continue or detain the children; violations of 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, 5, 6, 8, 14 §1, ME Const. Art. 181, 185, 186, 186-A, 189, 1910 (see wom 22-1319 for doc's)

50.) Mother's counsel filed Notice of appeal and Motion to withdraw as Mandated by Bar Counsel. (See wom 22-1319 for documents)

51.) For appeal, Judge Dudley refused to provide transcripts of "Contested Judicial Review," accusing Mother of filing a "frivolous" appeal but allowed counsel to stay on Mother's case (see Wom 22-1319)

52.) Mother's appeals were denied by the Supreme Judicial Ct of ME; calling the "Contested Judicial Review" an "interlocutory" appeal prohibited by 22 MRS §4006. However, the trial was anything BUT Judicial Review "(22 MRS § 4038), was, in fact, a "Jeopardy" hearing (if anything), defined by 22 MRS § 4035 and appealable. (see Wom 22-1319 for documents)

53.) Mother needed to petition the higher courts for help. Mother's counsel was not admitted to U.S. District Ct. This led to a cordial disengagement; Counsel withdrew so Mother could petition pro se for Declarative Judgement + Writ of Mandamus. The fact that Mother was denied help with Federal/Constitutional questions violates 22 MRS § 4005, UDHR Art. 1, 2, 3, 5, 7, 8, 9, 10, 12, 16(3), 20(1), 20(2), 23(3), 25(2), 28, 29(2), U.S. Const. Amen. 1, 4, 6, 14 §1, ME Const. Art 1 §1, 1 §2, 1 §4, 1 §5, 1 §6, 1 §6-A, 1 §9, 1 §10, 1 §15

54.) Mother petitioned for Declarative Judgement to Supreme Judicial Court, ME No. Cum 22-327

55.) Mother filed Writ of Mandamus to U.S. Court of Appeals. No 22-1319. Dismissed shortly after.

56.) Next "Judicial Review" was April 2022. It was not stayed as Mother requested in petitions or Motions. Mother hired counsel whom phoned in, but Judge Dudley refused to allow to par-

participate. Judge Duddy quashed Mother's Pro Se witness subpoenas. "Judicial Review" did not take place as required by 22 MRS § 4038. Instead, hearing commenced on whether or not Mother had been served with a termination of parental rights petition. Judge Duddy found, since Mother accessed the petition in court records, she had been served 6 months prior. The termination hearing was set. GAL requested more visitation, but Judge Duddy refused based on hearsay evidence by the State prohibited under 22 MRS § 4034-A and because Duddy didn't like the Motions Mother filed Pro Se. Judge Duddy re-accused Mother of being mentally ill and refused reunification obligations required under 22 MRS § 4041, violating UDHR Art. 1, 2, 3, 5, 7, 8, 9, 10, 12, 16(1), 16(3), 18, 19, 20(1), 20(2), 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-A, 1 §9, 1 §10, 1 §15 (see wom 22-1319 for documents).

52.) AFTER the "hearing", Mother's "Standby Counsel" moved to represent Mother, but was ordered NOT to raise Constitutional/Federal Questions or anything else on Mother's behalf. Violating 22 MRS § 4005. Mother and Counsel's strategy included immediate appeal. Counsel filed "Notice of Appeal" and requested transcripts. Judge Duddy disparaged the effort as "frivolous." Counsel did not complete the appeal without discussing the decision with Mother; leading to a breakdown of communication. (See wom 22-1319 for documents).

53.) Counsel filed Motion to withdraw. Duddy stated he would appoint a lawyer for Mother's Termination hearing.

54.) Former counsel emailed Mother transcripts from the contested "Agreement/Scopardy" Hearing from May 2021. The transcripts

were (again), suspiciously missing important dialogue. Mother contacted the Court reporter whom sent Mother the audio files sent to her (in Arizona) from the Court. Mother emailed the audio files to an audio specialist whom determined the audio was "spliced" on 9/30/21 and May of 2021.

- 60.) The children continued to report neglect/abuse in foster care and stated they were being cared for in different homes, left alone, and the foster mom was going on "dates." The house was squalor; attracting bears. Alana reported new mental health issues. CPS remained unresponsive to the concerns and limited Mother's contact when Mother reported concerns.
- 61.) Mother legally investigated the foster home conditions, but ME falsely accused Mother of "burglary" and "threatening" when the foster mother's statements and surveillance are exculpatory. (State v. Kinley MacDonald YRKCD-CR-20-00822)
- 62.) Mother was arrested Aug 2022 and held on \$100,000.00 bail/bond with conditions Mother cannot contact a long list of non-parties including her own children - even though Brodie and Wlady were not even in the foster home at the time (whereabouts still unknown). These conditions set by Judge John Doe I of Biddford District Court (Court where Mother's case with children pends) instead of the Superior Ct. of ME where the criminal charges pend. Mother was appointed ineffective counsel, refusing to address bail/bond etc. Judge Mulhern (of case with children) refused appointed criminal

Counsel's Motion to Withdraw, the Clerk of the Superior Court has been refusing Mother's Pro Se Motions. Mother filed Habeas Corpus petitions Pro Se. Supreme Judicial Court, Cum 23-32. The criminal proceedings violate UDHR 1, 2, 3, 5, 7, 9, 10, 12, 16(3), 18, 20(1), 20(2), 23(3), 25(2), 28, 29(2), U.S. Const. Amen 1, 2, 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 trial. Mother motioned for full appointment of counsel, continuance, removal of Judge Duddy, and dismissal of case. Judge Duddy denied all motions, providing a copy of the Order Dismissing Mother's Petition for Declarative Judgement No. Cum - 22-327 based mostly off of the "spliced" May 2021 hearing transcripts, stating Mother did not have rights to her children prior to trial, and setting 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 U.S. District Ct as Exhibit). Mother filed Notice of Appeal in Case Cum-22-327.
- 64.) Mother notarized statements authorizing temporary guardianship to relatives in the correct jurisdiction of IN. Mother mailed the documents to ME and IN trial courts.
- 65.) "Standby Counsel" provided Mother a partial document from former counsel objecting to a recent UCCJEA hearing that took place regarding Jurisdiction of the children without notice to Mother and only provided to former counsel after time expired for Mother to make objections (mailed to U.S. Dist. Ct as exhibit). The Courts violated UCCJEA (19-A MRS §1745, §1746

§ 1747, § 1748, UDHR Art. (), 3, 5, 7, 8, 9, 10, 12, 16(1), 16(), 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" Jurisdiction to IN Court

67.) Mother petitioned the U.S. District Ct. of ME for an injunction/restrainer to stay parental termination proceedings scheduled for 9/27/22. The petition was filed 9/23/22 and docketed 2:22-cv-00293-JAW. U.S. District Ct erroneously classified Mother's petition as "prisoner's rights and delayed action per Prison litigation reform act, but Mother assumed a stay in trial Court was granted on automatic.

68.) The Termination of Parental rights trial 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.

69.) After hospitalization and recovery, Mother filed blind Motions to reconsider any Orders/Findings, + Notice of Appeal of the Termination of Parental rights trial.

70.) Mother was transferred to another jail. Mail was not forwarded, then illegally censored (MacDonald v. Cumberland County Jail 2:22-cv-00304-JAW). Mother never received Termination documents.

71.) Concerned she would be denied appeal of termination of rights,

Mother filed Writ of Habeas under ancillary Jurisdiction to U.S. District Ct of ME Case No. 2:22-cv-00293-JAW, Case No. 2:22-cv-00336-JAW was created.

- 72) Mother received Order from Supreme Judicial Court of ME denying her appeal on Petition for Declarative Judgment Case No. Cum-22-327 because her Notice of appeal was filed "untimely."
- 73) Mother Motioned to reconsider Appeal denial to Supreme Judicial Ct of ME, No. Cum-22-327; because Mother appealed as soon as she was aware of decision. The Motion was Denied. The appeal dismissed.
- 74) Mother received Order from Supreme Judicial Ct. of ME in regards to Appeal from Term. of Parental Rights Case No. For-22-399; Setting procedure with bias from the uncorrected trial court record (after refusing to address errors of trial ct. record on appeal), and similarly to trial court - limited Mother's representation on appeal. Mother filed Motion to correct errors / Notice of appeal. The Court denied Mother's Motions.
75. U.S. District Ct of ME Case No. 2:22-cv-00293-JAW repeatedly refused / denied Mother's requests for appointment of counsel, denied Mother's requests to proceed in forma pauperis by invoking Prison Litigation Reform Act requirements. Mother filed Notice of Appeal with legal questions. U.S. District Ct of ME deferred Ruling on Motion for Reconsideration, Transferring the Mother

Case on Appeal to the U.S. Court of Appeals for the First Circuit, Case No. 22-1921 and 22-1949

26.) For Writ of Mandamus, U.S. District Ct of ME, Case No. 2:22-cv-00336-JAW, A recommended decision to dismiss was entered, claiming a lack of "Authority" to intervene in the parental rights case. That decision was affirmed and Judgement to dismiss entered. Mother filed Notice of Appeal.

27.) Mother filed petition for Writ of Mandamus in U.S. Dist. Ct on jurisdictional issues regarding the children and UCCSIA Case No. 3:22-cv-01002-DRL-MGG

X 28.) Mother's initial appointed counsel (appointed Aug 2022) was obligated to pursue a de novo bail/bond hearing which would have been expedited by the Maine Superior Ct to be scheduled in 48 hours. Mother's ineffective Counsel waited until Sept. 19th, 2022 to file that Re-Determination of Bail Motion. (Appendix)
No Hearing as ever taken place to amend bail/bond conditions. Mother filed Habeas Corpus Petition in U.S. District Court, District of ME, Case No. 2:22-cv-00329.

REASONS FOR GRANTING THE PETITION

- 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 these children unloved, unwanted, neglected and abused by their own mother, and that their mother didn't protect them, fight for them and do everything in her power to see to their prompt return.³
- 2.) Abstention prior to final appeal to State Court of last resort where children have been denied counsel, and Mother's counsel is ordered to be limited, only serves to ratify a State's Unconstitutional "preponderance of evidence" 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 family, presume a class of people to be unfit parents⁶ until proven otherwise, allowing even a criminal court to assert bail/bond conditions with nonparties such as Defendant's own children to prevent "mere possibility" of harm to a child while guaranteeing harm to the family as a whole.⁸

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, 932 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 [14th] Amendment against the State's unwarranted usurpation, disregard, or disrespect." MLB 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)... (see Filartiga v. Pena Irala,

630 F.2d 876, 883 (2d Cir. 1980), Beharry, 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)... Quillon v. Walcott, 434 U.S. 246, 255 (1978)... (quoting Smith v. Organization of Foster Families, 431 U.S. 816, 862-63 (1977))... Duchessre 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. Dep't 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 process comes into play where, regardless of the procedure 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 [14th] 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)...; Seal 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. Janier, 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 be 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]."

Nicolson, 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 include[s] the right to choose a caretaker proxy.)" Suboh v. District Attorney's Office of Suffolk, 298 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 [temp]

custody it must follow procedures 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 [state'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 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 [gov't]'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 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 784, 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 LDV experts and informs the best policies in the field of child p. action (see supra Part III c. 2. b.); [CPS] policies result in routine removals that are unnecessary and ignore alternatives that would be far better for children involved. These policies and 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, Wom 22-1319

b.) See Related cases; Wom 22-1319

4. a.) "Propoundance of evidence statutes of ME (ratified by Supreme Judicial Court of ME's decision to Dismiss Mother's Petition for Declarative Judgment): 22 MRS § 4034(2), § 4034(4).

b.) "In Troxel, the Court struck down a... Statute which allowed state courts to rule... 'best interests of the child' without necessarily considering the parents 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 594; 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, Matthews v. Eldridge, 424 U.S. 319, 344 (1976).

c.) "[CPS] occupies the role of prosecutor when it initiates

- 2a) ... petition for neglect... the decision to prosecute is subject to constitutional constraints.' U.S. v. Armstrong, 512 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)."
- 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 Brakow v. Mercer County, 235 F. 3d 1000, 1019 (7th Cir 2000); Craft v. Westmoreland County Children and Youth Servs., 103 F. 3d 1123, 1126 (3rd Cir 1997); Thomason v. SCAN Vol-Unters. Servs. Inc., 85 F. 3d 1368, 1373 (8th Cir. 1996); See also Mabe v. San Bernadino 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 headaches and dizziness; and that a neutral physician, after examining John, had repeated that his injuries were consistent with abuse." Hatch 214 F. 3d at 23-24
- e.) "The 'fair preponderance of evidence standard... violates the Due Process Clause of the [14th] Amendment. Stantosky

- 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 was imminent at the time of removal. Hatch, 224 F. 3d at 22
5. a) "... '[T]he State's ability to assemble its case dwarfs the parents' ability to mount a defense.' Santosky, 455 U.S. at 263 n.13. See also Id at 263 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 speedy resolution in the [higher] court' Dempsey 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, 491 F. 2d 125, 127 (5th Cir 1974) (quoting McKenna v. Ellis, 280 F.

592, 599 (5th Cir 1960), See Coyler v. Sullivan, 446 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 and 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. Cronin, 466 U.S. 648, 659-60 (1984) (circumstances... such that 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 [CRS] 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 () case by case analysis () 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 W.C. I." Nicholson, 203 F. Supp at 257

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 [4th] 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 Dutchess-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 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 unconstitutional practices and policies." Nicholson, 203 F. Supp. 256

- 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.'" (Barnett v. Bown, 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] right is unlikely to be the focus of a family Court ... See also LaShawn 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] rights. See McTeague v. Sesnowski, 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 nadir in destruction of the family integrity interest. See Santosky, 455 U.S. at 746.. See Tenenbaum, 193 F. 3d at 594, Southerland 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 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 on constitutional 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, S. Concurring in judgement) (Citation omitted)."

Nicholson, 203 F. Supp at 246

h.) "A Plaintiff's Constitutional rights are violated. if the inaccuracies in the transcript adversely affected the outcome of the proceeding." Lowbser 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 tortfeasor 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." Bordenkircher v. Hayes, 434 U.S. 357, 363 (1978).

f.) "Prosecutors... have an ethical duty to ensure that the innocent do not suffer." F.S. Hanshaw 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. Bordenkircher, 434 U.S. at 363 [CPS] routinely fails to specify... "failure to cooperate" allegations that would permit adequate review of whether any probable cause justifies them... [J]udges 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 told a case in the first place. The delay... irreparably harms mothers... adds to the... patterns of routine violation 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) 7. b.)
- d.) See (supra) 7. 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

12/21/20

Kinley
MacDonald
6/20/23