No. 23-5831

In The
Supreme Court Of The United States

Roberto Carlos Mendives Sr.; individually and on Behalf of his four minor children, *R.C.M. II; M.A.M.;* G.L.M.; and, E.F.M.;
Petitioner(s),

v.

Bexar County Court ET AL.; State of Texas, et al.; Angela Rose Wooten (in err); Department of Health & Human Services, o/b/o; Department of Justice o/b/o; Attorney Velia Judith Meza,
Respondent(s).

Petition for a Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Respectfully submitted by:
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QUESTIONS PRESENTED

1. Whether this court should overrule the fact that the state court has separated a fit parent from his/her minor children without an adjudication hearing when federal courts have repeatedly found that parent and child share an intimate and expressive relationship that is protected by the First Amendment concept of free association and this court has recognized that there is fundamental right of parents to direct their children's upbringing resolves this case, and concluded that strict scrutiny is the appropriate standard of review to apply to infringements of fundamental rights.

2. Whether it is beyond any doubt that a fit parent's constitutional rights exist, that they are First Amendment rights, and that they apply to the states through the Fourteenth Amendment; and, that where the state infringes upon the rights of parents it also infringes upon the rights of the child. Surely, the state must carry a heavy burden of proof before it can deprive a child of fundamental rights based on nothing more than a state judge's opinion of that child's best interests.

3. Whether there is a presumption that fit parents act in their children's best interests, that there is normally no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children

4. Whether an adjudicated parent who has sired his minor children can be deprive by the state from personally care for his minor children to instead activate the parens patriae doctrine without any type of adjudication hearing to self-ward [Petitioner's] minor children to the state in order to obtain Title IV-D Child Support funding from the federal government.

PARTIES TO THE PROCEEDING

Petitioner(s) were the appellant in the court of appeals. They are Roberto Carlos Mendives Sr.; individually and on Behalf of his four minor children, R.C.M. II; M.A.M.; G.L.M.; and, E.F.M. (the two oldest of the minors in this case are now adults).

Respondents were the appellees in the court of appeals. They are Bexar County Court ET AL.; State of Texas, et al.; Angela Rose Wooten (in err); Department of Health & Human Services, o/b/o; Department of Justice o/b/o; Attorney Velia Judith Meza.

RELATED PROCEEDINGS

United States District Court, W.D. Texas, San Antonio Division filed on Oct 8, 2021

- Case No. SA-21-CV-0356-JKP (W.D. Tex. Oct. 8, 2021)

United States Court of Appeals for The Fifth Circuit

- Mendives v. Bexar County, Case No. 21-51040 (5th Cir. 2023), petition for rehearing denied, May 5th of 2023.

Bexar County Court of San Antonio in the state of Texas.

- Case No. 2015-CI-00877

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No. _____

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Respondent(s).

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, individually and on behalf of his minor children in this case, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

Opinion Below

The opinion of the court of appeals. The order denying rehearing en banc, along with concurring and dissenting opinions. The opinion of the district court as reported and agreed upon by the appeals court.

JURISDICTION

May 5, 2023. A petition for rehearing en banc in the Court of Appeals for the Fifth Circuit. Based on Rule 13 - Review on Certiorari: Time for Petitioning - the Petitioner has 90 days (August 3rd of 2023) to file a writ of certiorari seeking review of a judgment from

the appeals court after the entry of the order denying a judicial and discretionary review.

This Court has subject matter jurisdiction under First Amendment of the United States Constitution, Fourteenth Amendment of the United States Constitution, 42 U.S.C. 51983 [Equal Protection], U.S.C. 241 [Conspiracy against rights], 18 U.S.C. 242 [Deprivation of Rights Under Color of Law]. Also, this Court has jurisdiction over this matter pursuant to the Uniform Declaratory Judgement Act, 28 U.S.C. 2201-2202.

STATUTORY PROVISIONS INVOLVED

Enforcement of Fundamental Rights

Fundamental rights are a group of rights that have been recognized by the Supreme Court as requiring a high degree of protection from government encroachment. These rights are specifically identified in the Constitution [especially in the Bill of Rights] or have been implied through interpretation of clauses, such as under Due Process. These laws are said to be "fundamental" because they were found to be so important for individual liberty that they should be beyond the reach of the political process, and therefore, they are enshrined in the Constitution. Laws encroaching on a fundamental right generally must pass strict scrutiny to be upheld as constitutional.

For almost nine years the Petitioner has been demanding the vindication of his and his minor children fundamental rights. It is fundamental principle of the administration of justice that the courts will aid those who vigilant and who not sleep in their rights. This principle embodied in the equity's maxim "Delay defeats equity" and in the statutes of limitations, is intended to discourage unreasonable delay in presentation of claims and enforcement of rights. The Constitution empowers the United States

Supreme Court to issue direction or order or writs, as such is in this case, a writ of certiorari for the enforcement of fundamental rights. Further, the right to move the Supreme Court for enforcement of fundamental rights has been a guaranteed right.

This case is important to every parent who seeks to assert their right to determine the upbringing of their child as a state, federal, natural, and God-given right.

The Petitioner submits this Petition arising under the Constitution, laws, and treaties of the United States where-in a constitutionally protected interest has been invaded for almost nine [9] years. All which was done in the best interest of the children.

STATEMENT

This case centers upon the very cornerstone of our society: *the family*. Deeper still, this case involves the intersection of the family and the law: parents' fundamental rights in directing the care, custody, and control of their children as a family and the State's power to affect, limit, or even terminate those rights.

This Court has determined that parents have a fundamental right to direct the care, custody, and control of their children. This Court also has determined that the government shall not interfere with this right unless and until a parent is proven unfit. In contradiction to this determination, the Petitioner has been deprived of the fundamental right to upbring his minor children for the last nine years. In fact, the Petitioner does not know the whereabouts of his minor children.

This case presents the opportunity for the Court to vindicate Petitioner and his children fundamental rights and unequivocally articulate the fitness of the parent as that test and strict scrutiny as that level of scrutiny for judicial review. Indeed, this case presents the appropriate vehicle to do so because it involves the rights of two natural parents.

Therefore, this Court should grant the Petition for Writ of Certiorari.

SUMMARY OF ARGUMENT

Firstly, it is [almost] nine [9] years since the very last time the unadjudicated Petitioner, [biological] father of the four minor children in this case, has been deprived from seeing and knowing the whereabouts of his minor children. This has been an unconstitutionally infringement Petitioner's fundamental right to [personally] rear his children.

The Federal Constitution permits a State to interfere with this right ***only*** to prevent harm or potential harm to the child; it does not require a threshold showing of harm and sweeps too broadly by permitting any person to petition at any time with the only requirement being what serves in the best interest of the child.

The Petitioner, knowing that it was beyond impossible to find him unfit because he has been an almost perfect father contested false allegations by filing several motions requesting Adjudication Hearings. These motions were postponed several times by the attorney of record Velia Judith Meza (Ms. Meza) in the state's Case No. 2015-CI-00877 stating that she was not ready. Consequently, the state court is without justification and is still without any justification on records to deny the Petitioner of his rights to personally care for his children.

The Petitioner's fundamental parental rights and his child's fundamental rights cannot depend on the Petitioner's marital status or a change in my marital status. Where divorce statutes create two unequal classes of parent or two unequal classes of children, they violate the Fourteenth Amendment's Equal Protection Clause. Where the divorce court asserts child custody jurisdiction solely on the basis of a divorce between parents, the court fails the constitutional test of showing a "compelling state

interest" that is "necessary" to achieve a permissible state policy.

Moreover, on February 22nd of 2019, the Attorney General of Texas, Mr. Ken Paxton (Mr. Paxton) in his Opinion No. KP. 0241 stated that 1) The Due Process Clause of the Fourteenth Amendment protects fundamental parental rights; 2) As a general matter the Courts apply strict scrutiny to review state statutes that infringe upon fundamental parental rights; 3) Certain contexts regarding child custody determinations may warrant the application of additional standards; and, 4) in his summary explained that the Due Process Clause of the Fourteenth Amendment protects certain fundamental parental rights, including the right of parents to make decisions concerning the care, custody, and control of their children, to direct the upbringing and education of their children, the right to make medical decisions on behalf of their children, and, in conjunction with the First Amendment, to guide the religious future and education of their children.

What Mr. Paxton explains is not anything new into the judicial systems; in fact, in Footnote Four[1] of United States v. Carolene Products Company, 304 U.S. 144 (1938) presages a shift in the Supreme Court from predominately protecting property rights to protecting other individual rights, such as those found in the First Amendment. The Footnote Four is reiterated when federal courts repeatedly found that parent and child

1 This deferential posture toward the legislative branch represents the crux of judicial self-restraint, a judicial philosophy that advocates a narrow role for courts in U.S. constitutional democracy. Because state and federal legislatures are constitutionally authorized to make the law, proponents of judicial self-restraint argue, courts must limit their role to interpreting and applying the law, except in the rare instance where a piece of legislation clearly and unequivocally violates a constitutional provision, in which case they may strike it down.

share an intimate and expressive relationship that is protected by the First Amendment concept of free association. In all cases where the state seeks to infringe upon these rights, *the state must bear the burden of proof to the level of strict scrutiny.*

Secondly, the U.S. District Court for the Western District of Texas allegedly lacks jurisdiction to right the wrongs committed by the court in state of Texas under the Rocker-Feldman Doctrine; In doing so, the U.S. District court err by even not rendering a Declaratory judgement; not aligning with the promises of the U.S. Constitution which is seriously understood, the oath provides a solution to the "dead hand" problem and explains how the people can legitimately hold accountable their government representatives due to fact generally, federal courts have a "*virtually unflagging obligation . . . to exercise the jurisdiction given them*"[2] by Congress. Ryan v. Johnson, 115 F.3d 193, 195 (3d Cir. 1997) (quoting Colorado River, 422 U.S. at 817). Thus, the pendency of a state court action does not ordinarily bar federal court proceedings concerning the same matter. Colorado River, 424 U.S. at 817. In fact, it is a "well recognized" rule that "the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal Court having jurisdiction . . . ." Id. at 817; see also University of Maryland v. Peat Marwick Main & Co., 923 F.2d 265, 275-76 (3d Cir. 1991) ("The general rule regarding simultaneous litigation of similar issues in both state and federal courts is that both actions may proceed until one has

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[2] See, 3rd Cir. Case No. 18-3373 - Surender Malhan, for himself and as parent of E.M. and V.M., Appellant v. SECRETARY UNITED STATES DEPARTMENT OF STATE; ATTORNEY GENERAL NEW JERSEY; STATE OF NEW JERSEY; ELIZABETH CONNOLLY, in her official capacity as acting Commissioner of Office of Child Support Services; NATASHA JOHNSON, in her official capacity as Director Division of Family Development; JOHN DOES 1- 10; OFFICE OF CHILD SUPPORT SERVICES

come to judgment, at which point that judgment may create a res judicata or collateral estoppel effect on the other action.")

"A *threshold* issue that must be determined in any Colorado River abstention case is whether the two actions are '***parallel.***'" Ryan, 115 F.3d at 196. The Court of Appeals for the Third Circuit has explained that parallel cases are those that "involve the same parties and substantially identical claims, raising nearly identical allegations and issues." IFC Interconsult v. Safeguard Int'l Partners, 438 F.3d 298, 306 (3d Cir. 2006) (quoting Yang v. Tsui, 416 F.3d 199, 204-05 n.5 (3d Cir. 2005) (internal quotations omitted)). Consequently, if all of the issues to be litigated are not identical or nearly identical, the district court lacks the power to abstain. See University of Maryland, 923 F.2d at 276 ("[W]hile certain issues to be litigated in the . . . federal claim may be identical to issues that have been or will be raised . . . in state court, the lack of identity of all issues necessarily precludes Colorado River abstention.") This is because "a decision to invoke Colorado River, necessarily contemplates that the federal court will have nothing further to do in resolving any substantive part of the [federal] case [after resolution of the state action], whether [the federal court] stays or dismisses." Moses H. Cone, 460 U.S. at 28; see also Michelson v. Citicorp Nat'l Srvcs., 138 F.3d 508, 515 (3d Cir. 1998) ("[T]he Colorado River doctrine applies only if there is parallel state court litigation involving the same parties and issues that will completely and finally resolve the issues between the parties." (quoting Marcus v. Township of Abington, 38 F.3d 1367, 1371 (3d Cir. 1994))).

Considerations of the Petitioner's and his minor children's injuries are parallels argument in this court within the meaning of the parallel term in Colorado River.

Under no exclusion evidence, this court is constitutionally empowered to issue a Federal Declaratory Judgment Act, 28 U.S.C. Section 2201 et. seq., that authorizes any court of the United States to declare the rights and other legal relations of any interested party seeking such declaration. Furthermore, the Petitioner is asserting that a Declaratory Judgment Act, 28 U.S.C. § 2201, provides a method to determine the existence or nonexistence of a right, duty power, liability, privilege, disability, immunity, status, or any fact on which such legal relations depend.[3] Specifically, the Act provides:

In a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.[4]

Thirdly, a dicta of a judge cannot impliedly deprive an Article III courts of their inherent and statutory power to decide ripe constitutional challenges to an agency's structure and procedures when-in fact federal courts have repeatedly found that parent and child share an intimate and expressive relationship that is protected by the First Amendment concept of free association. In all cases where the state seeks to infringe upon these rights, the state must bear the burden of proof to the level of strict scrutiny. In this case, the state is without

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[3] Am. Macaroni Mfg. Co. v. Niagra Fire Ins. Co. of N.Y., 43 F. Supp. 933, 935 (N.D. Ala. 1942) (consolidating three declaratory judgment actions wherein each defendant was a fire insurance company with which plaintiffs had a fire insurance policy at the time of a fire at their factory).

[4] 28 U.S.C. § 2201(a).

justification to favor one constitutionally protected relationship over the other.

For these and many other reasons classifications that impact fundamental rights such as 1st Amendment family association rights must survive strict scrutiny review. Kadrmas v. Dickinson Public Schools, 487 US 450, 457 (Supreme Court 1988), (Unless a statute provokes "strict judicial scrutiny" because it interferes with a "fundamental right"...) Qutb v. Strauss, 11 F. 3d 488, 492 (5th Circuit 1993), (If a classification disadvantages a "suspect class" or impinges upon a "fundamental right," the ordinance is subject to strict scrutiny... Under the strict scrutiny standard, we accord the classification no presumption of constitutionality.) San Antonio Independent School Dist. v. Rodriguez, 411 US 1, 17 (Supreme Court 1973), (We must decide, first, whether the Texas system of financing public education operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny.) Parental rights are also fundamental rights protected by the Fourteenth Amendment, see Troxel v. Granville, 530 US 57, 66 (Supreme Court 2000), (In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.)

Moreover, awarding child support are in fact reclassifications of parents as payor and payee, fundamentally altering the liberty right to directly care for one's child, the privacy right to make decisions regarding the care of one's child, and impacting the protected speech between parent and child by limiting its quality and quantity. The state creates a disadvantaged class by subjecting the payor to potential contempt and criminal penalties for failure

to pay. This invokes criminal and quasi-criminal constitutional protections. The state also creates a disadvantaged class where it orders a parent to pay amounts that exceed the minimum reasonable standard of care applied to all parents.

The state is holding a subset of parents to a higher standard of care than it applies to married parents based solely on marital status. Parents as all people do have a possessory interest in their wages and any money or valuables in their possession. Where the state infringes upon this possessory interest, it implicates the Fourth Amendment. While all parents are subject to a general duty to care for their minor children to minimum reasonable standards of care, where the state converts this general duty to a specific order to pay specific amounts of money or property to a third party it may do so only after applying the proper due process which at a minimum is the process afforded to seizures of property under the Fourth Amendment. Any interference with a possessory interest is a seizure under the Fourth Amendment.

ARGUMENT

I. In absent of an Adjudication Hearing(s) proves that state court lacks jurisdiction over a fit parent's minor children.

The14th Amendment specifically limits actions by the state even where a third party asks the state to take an action such as in a divorce custody proceeding where one parent is asking the state to deprive the other parent and/or child of fundamental rights.

The state's court lacks jurisdiction without an adjudication hearing; and, in essence the "*In The Best Interest Of The Children*"[5] doctrine has been only

[5] As the term suggests, the "best interest of the child" standard prioritizes an affected child's interests in the context of adjudication or other decision-making processes. The standard

scheme used by the states' court actors to fraudulently obtain jurisdiction over a minor child on the basis that the trespassing acts of the state court's actors are based on the Best Interest of the Child. Subsequently, in this case the state' court purposely avoided an adjudication hearing (Phase I) and moved into to the dispositional phase (phase II) with respect to the Petitioner. In doing so, the doctrine therefore eliminated the state's obligation to prove that the unadjudicated parent, the Petitioner, is unfit before the Petitioner is and/or was subject to the dispositional authority of the court; conveniently.

There has never been an adjudication hearing against the Petitioner in this case; thus, the state court has never had justification(s) to separate the Petitioner from his minor children. Consequently, it has been almost nine [9] years since the last time the Petitioner was able to see, hugs and more importantly personally care his minor children [R.C.M. II; M.A.M.;[6] G.L.M.; and, E.F.M.;]. Moreover, the state's trespass against the Petitioner's and his four minor children's, led to breaking that natural bond of affection that grows and is led by the upbringing of children [by parents.]

Furthermore, the problem here is that almost nine years later a perfectly fit parent is an estranger to his minor and vice-versa the minor children are

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is typically employed by courts or administrative bodies considering issues implicating a child's welfare, including child custody and placement decisions. See generally Dept. of Health & Human Services, Children's Bureau, Determining the Best Interests of the Child (updated November 2012) [hereinafter "HHS Overview of State Statutes"], Available at https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf (providing overview of standard, its application, and various state statutes implementing the standard); Lynne Marie Kohm, Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence, 10 J.L. & FAM. STUD. 376 (2008) (discussing origins and development of standard).

[6] As of the day of filing this particular document, R.C.M. II and M.A.M are above the age of eighteen [18] years old.

estranger to this fit parent. In this case, the state court's intervention without an adjudication hearing against a fit parent, the Petitioner, and his children resulted to be "*in the worst interest of the children*". This proves that the state's court gave no special weight at all to the Petitioner's determination(s) of his minor children' best interests. More importantly, it appears that the state's court applied exactly the opposite presumption.

In addition, the state's court pretenses of "In the Best Interest of Children was to self-ward the minor children to the state of Texas in order to obtain Title IV-D Child Support's funding [appropriation(s)] from the United States federal government. In doing so, Petitioner's wages have been unlawfully and illegally garnished

At issue, in this case is that the Title IV-D Child Support's Purpose Law[7], without an adjudication hearing in records proving that the state's legal nexus is neither without justification, nor a bona fide need leading to deprive the Petitioner to personally care for his minor children, to impoverish the Petitioner and for the state's court to obtain the Title IV-D Child Support funding from the federal government.

This case has been a tremendous miscarriage of justice that caused the Petitioner to become homeless due to the unlawful and illegal garnishment of his wages. Further, Petitioner's homestead property was theft away and sold causing an enormous pecuniary lost to the Petitioner.

Both, the state and the appellate courts failed its constitutional mission to promote an engaged judiciary capable of securing Americans' essential constitutional rights. The state's Court failed to

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7 The Purpose Law, 31 USC 1301, states: Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

protect the police power,[8] in U.S. constitutional law, the permissible scope of federal and/or state legislation so far as it may affect the rights of an individual when those rights conflict with the promotion and maintenance of the health, safety, morals, and general welfare of the public.

The state's court violated Petitioner's U.S. Constitutional guarantees of 1) procedural and 2) substantive due process which is a substantive component that provides heightened protection against governmental interference with fundamental rights and liberty interests, including the right of parents to make decisions concerning the care, custody, and control of their children.

Notwithstanding, the United States Constitution, recognizes a presumption that fit parents act in the best interests of their children and that there will normally be no reason for the state to insert itself into the private realm of the family to further question the ability of fit parents to make the best decisions concerning the rearing of their children. Due process demands that an individual be afforded minimal procedural protections before the state can burden a fundamental right, and the three-part balancing test of Mathews v Eldridge, 424 US 319 (1976), is applied to determine what process is due when the state seeks to curtail or infringe an individual right. The test requires consideration of three factors: (1) the private interest that the official action will affect, (2) the risk of an erroneous

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8 Police powers are the fundamental ability of a government to enact laws to coerce its citizenry for the public good, although the term eludes an exact definition. The term does not directly relate to the common connotation of police as officers charged with maintaining public order, but rather to broad governmental regulatory power. Berman v. Parker, a 1954 U.S. Supreme Court case, stated that "[p]ublic safety, public health, morality, peace and quiet, law and order. . . are some of the more conspicuous examples of the traditional application of the police power"; while recognizing that "[a]n attempt to define [police power's] reach or trace its outer limits is fruitless."

deprivation of the interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards, and (3) the state's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. In essence, the test balances the costs of certain procedural safeguards (in this case, an adjudication) against the risks of not adopting those procedures.

It is simple, without an adjudication hearing, the state's court cannot deprive the Petitioner from his minor children; not even for a minute. Thus, it is beyond any doubt that every single action(s) from the Defendants and the state's court actors has been unlawful and illegal from the case's inception." This was just a divorce; but the state officials trespassed against Petitioner's and his minor children rights in order to wardship the minor children to the state of Texas. (See, James Monroe vs. Pape (1961) Quoting .... Officials' actions were illegal from inception). The mere purpose of warding Petitioner's four [4] minor children to the state of Texas was to obtain Title IV-D Child Support Benefits from the federal government on "four" minor children. Thus, depriving the Petitioner of his rights to "personally' care for his minor children.

Incongruently, the U.S. Court of Appeals for the Fifth Circuit has made clear that the Petitioner's attempts for the vindication of his and his children rights are 1) frivolous; and, 2) malicious. Thus, concurring with the U.S. District Court for the Western District of Texas. Petitioner asserts that the Appellate court err to point out Defendants vicious violations of 1) procedural due process; and, 2) the violations of substantive due process against the Petitioner and his minor children.

II. Procedures by Presumption is colossally damaging the American families and implied jurisdiction is unconstitutional.

The 14th Amendment specifically limits actions by the state even where a third party asks the state to take an action such as in a divorce custody proceeding where one parent is asking the state to deprive the other parent and/or child of fundamental rights.

Nearly one hundred years ago, this Court acknowledged that "the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." Pierce v. Society of Sisters, 268 U.S. 510 (1925). Thereafter, in Stanley v. Illinois, 405 U.S. 645 (1972), this Court affirmed the fundamental rights of parents "in the companionship, care, custody, and management" of their children. Id. at 651. That same year, in Wisconsin v. Yoder, 406 U.S. 205 (1972), the Court declared that "[t]his primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." Wisconsin v. Yoder, 406 U.S. 232 (1972).

More recently, this Court declared in Washington v. Glucksberg, 521 U.S. 702 (1997), that the Constitution, and specifically the Due Process Clause of the Fourteenth Amendment, protects the fundamental right of parents to direct the care, upbringing, and education of their children. Washington v. Glucksberg, 521 U.S. 720 (1997). And in Troxel v. Granville, 530 U.S. 57 (2000), this Court again unequivocally affirmed the fundamental right of parents to direct the care, custody, and control of their children.

In absent of an adjudication hearing, the state's court's expertise is at issue in this case for violating Petitioner's and his children rights since the adjudication hearing is the ***"only"*** fact-finding phase regarding Petitioner's parental fitness, and the

procedures which afforded to parents are tied to the allegations of unfitness in the state's court allegations, protecting parents from the risk of erroneous deprivation of their parental rights.

Facts are facts, and can be proven with evidence under no exclusion but presumptions are not facts and can be dismantled for lack of evidences.

Essentially, the fact that state's court actors trespassed against the Petitioner's and his minor children's rights then impermissibly delegates control over to the federal courts' jurisdiction. recognizes "a presumption that fit parents act in the best interest of their children" and that "there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of [fit parents] to make the best decisions concerning the rearing of [their] children." Troxel, 530 US at 68-69 (opinion by O'Connor, J.). Further, the right is so deeply rooted that "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents . . . ." Santosky v. Kramer, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982).

III. The Duty of Courts to Instruct Unconstitutional Acts by Governmental Officials

The fact that after almost nine years the Petitioner does not know the whereabouts his minor children make this case the ideal vehicle for this Court to clearly articulate the fitness of the parent's test as the appropriate test for all State courts because this case involves a lower court's review of the rights of the Petitioner as natural parent. Troxel, while providing cogent precedent, involved the rights of a natural parent and the rights of grandparents after the children's father died. Stanley, likewise, is analytically different because it involved the natural

but unwed father of the children who had been declared wards of the state after their mother died. As demonstrated in Petitioner's Petition of Certiorari tot in the Appellate Court, this case involves a natural biological father [of four minor children], who has fundamental rights protected from unwarranted government interference by the Fourteenth Amendment and who seek care, custody, and control of his minor children. Only the fitness test protects the constitutional rights of natural parents in a custody case such as that presented in this Petition.

Moreover, Article III imposes on courts a "*duty* . . . to declare all acts contrary to the manifest tenor of the Constitution void." The Federalist No. 78 (Alexander Hamilton) (emphasis added). The doctrine of implied jurisdiction stripping is at odds with that judicial duty.

The judicial duty imposed by Article III compels [all] courts to enjoin federal officials from carrying out statutory and administrative schemes that violate the U.S. Constitution. *Bell* v. *Hood*, 327 U.S. 678, 684 ("[I]t is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution."); see also *Corr. Servs. Corp.* v. *Malesko*, 534 U.S. 61, 74 (2001) ("[I]njunctive relief has long been recognized as the proper means for preventing entities from acting unconstitutionally."). The courts' authority to stop unlawful conduct by governmental officials is an equitable power that "reflects a long history of judicial review of illegal executive action, tracing back to England." *Armstrong* v. *Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326-37 (2015) (citation omitted). When executive action violates the Constitution, equity requires that courts remain open to vindicate a plaintiff's rights. See Lucia v. SEC, 138 S. Ct. 2044, 2055 (2018) ("'[O]ne who makes a timely challenge to the constitutional validity of the appointment of an officer who

adjudicates his case' is entitled to relief.") (citation omitted). "Otherwise, the individual is left to the absolutely uncontrolled and arbitrary action of a public and administrative officer[.]" Am. *Sch. of Magnetic Healing* v. *McAnnulty*, 187 U.S. 94, 110 (1902).

The Judiciary Act of 1789, which established the lower courts and vested them with jurisdiction over federal questions and diversity suits, "carries out the constitutional right" to a federal forum. *Suydam* v. *Broadnax*, 39 U.S. (14 Pet.) 67, 75 (1840). And with that statutory grant of jurisdiction, *all* federal courts—not just the Supreme Court—are duty-bound to exercise their jurisdiction in such cases. See *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821) (Courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given."). The judiciary's obligation to "'decide' cases within its jurisdiction" is "***virtually unflagging.***" *Lexmark Int'l, Inc.* v. *Static Ctrl. Components*, 572 U.S. 118, 126 (2014) (citation omitted). That's why this Court has reiterated, time and again, that federal courts must not "abdicate their authority or duty" and must "proceed to judgment and [] afford redress to suitors before them in every case to which their jurisdiction extends." *New Orleans Pub. Serv., Inc.* v. *Council of City of New Orleans*, 491 U.S. 350, 358-59 (1989) (quoting *Chicot County* v. *Sherwood*, 148 U.S. 529, 534 (1893)); *Elgin*, 567 U.S. at 35 (Alito, J., joined by Ginsburg and Kagan, JJ., dissenting) ("The presumptive power of the federal courts to hear

This case shows how court actors have refused to uphold the U.S. Constitutional protection against the damages, from a long and unfounded campaign perpetuated by Defendants utilizing the Courts of the State of Texas improperly to: 1) Violation of Due Process; 2) Falsely Allegation that were material in the underlying case against the Petitioner and his

children; 3) Illegally and immorally garnishment of the Petitioner's wages under the pretenses of Title IV-D Child Support impoverishing the Petitioner causing him to end homeless and malnourished; 4) Denial of due the equal protection of the law under the color of law; 5) to create court orders causing invidious classifications that denied Petitioner and his children the equal protection; 6) forced Petitioner to contract with the Title IV-D Child Support Agency in violation of Petitioner's economic freedom as this court held in Lochner v New York, 198 U.S. (1905), and forcedly reclassifying the Petitioner as an "obligor" in a Title IV-D Child Support Agency contract; 7) unlawfully and illegally placing the Petitioner into a disadvantaged class by subjecting him as the payor to potential contempt and criminal penalties for failure to pay; 8) Violating Petitioner's possessory property interest in his wages, by the state infringing and trespassing on his wages violating the Fourth Amendment of the United States Constitution; 9) Garnishment of Petitioner's wages and impeding him to personally care for his children; 10) for theft of Petitioner's homestead property; 11) Miscarriage of justice forcing Petitioner's to pay for Title IV-D Child Support agency knowing that there is plenty of cases in which the U.S. Supreme Court ruled that: 12) Title IV-D does not constitute a federal right;[9] 13) It is not for the need of a particular person to be satisfied such as in the case of mother and child;[10] 14) it is a contract just like a student loan or a car note[11] and it is violation of Freedom from Contract;[12] 15) Demands "payments" from those labeled obligor - not from

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9 Blessing v. Freestone, 520 U.S 329 (1977).

10 Blessing v. Freestone (1977)

11 United States v. Sage, 92 F. 3d 101 (2nd Circuit 1996)

12 Freedom of contract is the ability of parties to bargain and create the terms of their agreement as they desire without outside interference from the government. It is the opposite of government regulation.

father[13] to get away from the fact that adjudication hearing is a constitutional requirement under due process before the state intrudes into the private realm of an unadjudicated father and his minor children; and, 16) There is no Title IV-D child support agency court - and the so called "judges" violate the Separation of Power Doctrine.[14, 15]

Yet, the U.S. District Court and the Fifth Circuit judges err against the Petitioner with strawman and ad hominem arguments. Nevertheless, the U.S. Federal Appellate Courts has been in unanimous agreement with the U.S. Supreme Court that parents and children share a First Amendment right to free association that is strongly protected.

IV. This Court should grant the Petition to clarify the level of scrutiny court must use in adjudication parent's fundamental rights of care, custody and control of their children; and, why Adjudication hearings are required to avoid miscarriage of justice.

In the concurring opinion in Troxel, Justice Thomas summarized an important aspect of this Court's precedential opinion in Pierce v. Society of Sisters, 268 U.S. 510 (1925), writing that "parents have a fundamental constitutional right to rear their children, including the right to determine who shall educate and socialize them." Troxel at 80 (Thomas, J., concurring). This fundamental right is just as critical and sacred today as when Justice Thomas wrote those words twenty years ago and when this Court cemented that truth in 1925. Justice Thomas proceeded to the next step in the analysis by concluding: the Petitioner would apply strict scrutiny to infringements of fundamental rights."

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13 United States v. Sage, 92 F. 3d 101 (2nd Circuit 1996)
14 Holmberg v. Holmberg, 588, 2d, 720 (1999)
15 Marbury v. Madison (1803)

To avoid any judicial incongruencies, wrong presumptions and/or to avoid the mishandling of justice and/or to avoid the trespassing of a perfectly fit father's and/or mishandling of a child's rights, as it happened in this case to the Petitioner and his minor children. Thus, the Petitioner agrees that strict scrutiny is the only and appropriate level of review and submits that this issue alone, as presented in this case, supports this Court granting the Petition. Petitioner Roberto Carlos Mendives, Sr., now providing this Court with the ideal opportunity to declare the appropriate level of scrutiny for the courts of this nation to apply.

V. Footnote Four

First, The Footnote four of United States v. Carolene Products Company, 304 U.S. 144 (1938) presages a shift in the Supreme Court from predominately protecting property rights to protecting other individual rights, such as those found in the First Amendment.

The Footnote Four clearly explains an unjustly treatment of a certain group. Furthermore, it suggested that "prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry." The importance of this principle cannot be overstated. It pervaded the work of the Court and has played a prominent role in constitutional discourse ever since.

Strictly scrutinizing these proceedings would protect Americans instead of having to be learned in law to assert that any state statute that authorizes the court to make such an invidious reclassification is void; on its face.

VI. Constitutional Parental Rights

The Fourteenth Amendment of the United States Constitution provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." US Const, Am XIV, § 1. Included in the Fourteenth Amendment's promise of due process is a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." Washington v Glucksberg, 521 US 702, 720; 117 S Ct 2258; 138 L Ed 2d 772 (1997). Among these fundamental rights is the right of parents to make decisions concerning the care, custody, and control of their children. See Meyer v Nebraska, 262 US 390, 399-400; 43 S Ct 625; 67 L Ed 1042 (1923). In the words of this Court, "[p]arents have a significant interest in the companionship, care, custody, and management of their children, and the interest is an element of liberty protected by due process. The right to parent one's children is "essential to the orderly pursuit of happiness by free men," Meyer, 262 US at 399, and "is perhaps the oldest of the fundamental liberty interests," Troxel v Granville, 530 US 57, 65; 120 S Ct 2054; 147 L Ed 2d 49 (2000) (opinion by O'Connor, J.). The right is an expression of the importance of the familial relationship and "stems from the emotional attachments that derive from the intimacy of daily association" between child and parent. Smith v Org of Foster Families for Equality & Reform, 431 US 816, 844; 97 S Ct 2094; 53 L Ed 2d 14 (1977).

This court has clearly established that Parents have constitutional protections. Notwithstanding, it has been almost nine years since the last time the Petitioner had any contact with his minor children, not knowing the whereabouts of his minor children.

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A parent's right to control the custody and care of her children is not absolute, as the state has a legitimate interest in protecting "the moral, emotional, mental, and physical welfare of the minor" and in some circumstances "neglectful parents may be separated from their children." Stanley v Illinois, 405 US 645, 652; 92 S Ct 1208; 31 L Ed 2d 551 (1972) (quotation marks and citation omitted).

The United States Constitution, however, recognizes "a presumption that fit parents act in the best interest of their children" and that "there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of [fit parents] to make the best decisions concerning the rearing of [their] children." Troxel, 530 US at 68-69 (opinion by O'Connor, J.). Further, the right is so deeply rooted that "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents . . . ." Santosky v Kramer, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982).

This Court has also recognized that due process demands that minimal procedural protections be afforded an individual before the state can burden a fundamental right. In Mathews v Eldridge, the Supreme Court famously articulated a three-part

balancing test to determine "what process is due" when the state seeks to curtail or infringe an individual right:

[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. [Mathews v Eldridge, 424 US 319, 333, 335; 96 S Ct 893; 47 L Ed 2d 18 (1976).]

In essence, the Eldridge test balances the costs of certain procedural safeguards—here, an adjudication—against the risks of not adopting such procedures. The Supreme Court has regularly employed the Eldridge test to determine the nature of the process due in child protective proceedings in related contexts. See Santosky, 455 US at 758 ("Evaluation of the three Eldridge factors compels the conclusion that use of a 'fair preponderance of the evidence' standard in [parental rights termination] proceedings is inconsistent with due process."); Smith, 431 US at 848-852 (addressing New York City's procedures for removing a minor from a foster home).

Even with the U.S. Suprme Court cases been established and regurgitated, the state's county courts are overlooking this court's precedents.

The importance of the private interest at stake here—a fit father, the Petitioner, fundamental right to direct the care, custody, and control of his children free from governmental interference—cannot be understated.[16] For almost nine years, the Petitioner's

16 If a parent is unfit, the child's interest aligns with the state's parens patriae interest. On the other hand, the child also has

and his children's fundamental rights, substantive rights, have been blatantly violated. A family bond is a core liberty interest recognized by the Fourteenth Amendment. "Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life." *Santosky,* 455 US at 753.

VII. First Amendment Free Association Right

Where the state intervenes in any form, it must pass the Least Restrictive Means Test. Additionally, the state is without justification to favor one constitutionally protected relationship over the other just to obtain Title IV-D Child Support funding from the federal government.

The state is without justification to presume that where the parents are not married and/or do not live together that equal shared time with each parent would not be in the child's best interests. The child shares a right equally to benefit from companionship with both parents. It is the reciprocal sharing that occurs through routine daily interaction and the fundamental importance of this exchange that sets the foundation for protection of this right. This foundation strongly implicates any and all argument of the state to suggest that depriving equal access and/or equal possession of a child is a permissible infringement of rights for it is the intimate companionship itself that creates that foundation. Remove that intimate companionship and you

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an interest in remaining in his or her natural family environment. In which direction the child's interest preponderates cannot be known without first a specific adjudication of a parent's unfitness, as "the State cannot presume that a child and his parents are adversaries." Santosky, 455 US at 760. Rather, only "[a]fter the State has established parental unfitness . . . [may] the court . . . assume at the dispositional stage that the interests of the child and the natural parents do diverge." Id.

necessarily harm the bond and the protected relationship.

It has been established in this Court in Roberts v. United States Jaycees, 468 US 609 - Supreme Court 1984, (The Court has long recognized that, because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the State... Without precisely identifying every consideration that may underlie this type of constitutional protection, we have noted that certain kinds of personal bonds have played a critical role in the culture and traditions of the Nation by cultivating and transmitting shared ideals and beliefs; they thereby foster diversity and act as critical buffers between the individual and the power of the State... Moreover, the constitutional shelter afforded such relationships reflects the realization that individuals draw much of their emotional enrichment from close ties with others. Protecting these relationships from unwarranted state interference therefore safeguards the ability independently to define one's identity that is central to any concept of liberty... The personal affiliations that exemplify these considerations, and that therefore suggest some relevant limitations on the relationships that might be entitled to this sort of constitutional protection, are those that attend the creation and sustenance of a family — marriage, ...; childbirth, ...; the raising and education of children, ...; and cohabitation with one's relatives, ... Family relationships, by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life.)

And, in the Fifth Circuit it has been establish in Wallace v. Texas Tech Univ., 80 F. 3d 1042 - Court of Appeals, 5th Circuit 1996, (The specific types of

intimate associations which have found protection in the First Amendment have been more intimate than our image of typical coach-player relationships. ... (listing cases affording constitutional protection to marriage, begetting and bearing children, child rearing and education, and living with relatives) (citations omitted).)

Familias Unidas v. Briscoe, 619 F. 2d 391 - Court of Appeals, 5th Circuit 1980, (It is beyond question that "freedom of association for the purpose of advancing ideas and airing grievances" is a fundamental liberty protected from governmental intrusion by the First and Fourteenth Amendments... Moreover, privacy in that association — particularly with respect to groups championing unpopular causes — is a vital incident of the primary right. Indeed, "[i]nviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.")

Kipps v. Caillier, 205 F. 3d 203 - Court of Appeals, 5th Circuit 2000, (According to Supreme Court precedent, the Constitution accords special protection to two different types of association, "intimate association" and "expressive association." ... In Roberts, the Court noted that the right to intimate association, the freedom to choose "to enter into and maintain certain intimate human relationships," is a "fundamental element of personal liberty." 468 U.S. at 617-18, 104 S.Ct. 3244... Supreme Court

There should be no reason in the United States that a father is not allowed to care of his own minor children because the state court decides that it wants Title IV-D Child Support funding from the federal government.

The fact that Petitioner's children were wards of the state and used by the state's court to obtain Title IV-D Child Support from the federal government is, in

general, a human/child trafficking business feeding on conditions of vulnerability, such ignorance, social exclusion, and ongoing demand.

The State's actors engaged in human trafficking under the sophisticated "in the Best Interest of the Children Doctrine."

Petitioner ask this court to put a stop on the state's scheme. This is destroying the American family. It is beyond any doubt that Parental constitutional rights exist, that they are First Amendment rights, and that they apply to the states through the Fourteenth Amendment.

In none of these cases [mentioned in this section] nor in any case it has been found that any federal appellate court stated that these rights do not apply to single parents and/or that they may be waived, ignored, or obviated by the filing of divorce proceedings and/or any other type of custody proceeding. Due Process simply demands much more than the filing of a suit and holding a hearing where the state judge presumes authority to deny fundamental liberties.

VIII. Conclusion

It is almost nine years since the last time the Petitioner had a chance to see and hugs his minor children. Additionally, the Petitioner has been left homeless by the unlawful and illegal action(s) of the state to fraudulently ward Petitioner's minor children to the state in order to obtain Title Iv-D Children Support benefits form the federal government. The state purpose to obtain Title IV-D was intentionally avaricious and hidden under the "in the best interest of the child."

The Petitioner ask this court to vindicate his rights and the rights of his minor children as well as to compel these bad actors who wrongfully and negligently injured the Petitioner and his minor children to pay money to the Petitioner; thus, the tort

system serves at least two functions: (1) deterring people from harming others and (2) compensating those who are injured.

The decision of the United States Court of Appeals for the Fifth Circuit (No. 21-51040) on May 5th of 2023 is inconsistent with Supreme Court and even its own Fifth Circuit precedent in Davis v. Turner, and "ventures down a slippery slope that erodes individuals' constitutional rights to go about their lives free from arbitrary interference. [17]

The Defendants' trespass against Petitioner is "rough treatment, illegal handling, personal indignities, and incivilities" starting with Defendants extrinsically committing perjury in court by Defendants' false accusations of domestic violence and false accusations of rape and the state court officers colluding intrinsically to self-ward Petitioner's minor children to the state of Texas to obtain Title IV-D Child Support funding from the federal government; though, this is tyrannical and perverse, it is also frivolous and malicious violating procedural due process and substantive due process.

Furthermore, the Department of Justice (DOJ) has reiterated in at least two issued letters 1) on April 20th of 2023, when the DOJ Civil Rights Division and Office of Access to Justice issued a "Dear Colleague" Letter signed by the Associate Attorney General Ms. Vanita Gupta to outline that circumstances where unjust imposition and enforcement of fines and fees violate the civil rights of adults and youth "accused" of felonies, misdemeanors, juvenile offenses, quasi-

17 In Davis vs. Turner, the Fifth Circuit heard allegations that a sheriff in Tyler, Texas had searched a store, found nothing illegal, but arrested the store owner Helen Davis, then refusing to tell her what she was being charged with subjecting her to quote "rough treatment, illegal handling, personal indignities, and incivilities." The Fifth Circuit said Helen Davis's suit could proceed to trial.

criminal ordinance violations, and civil infractions, as well as circumstances that raise significant public policy concerns. In particular, the letter outlined seven constitutional principles; and, 2) on March 14th of 2016 the DOJ's Civil Rights Division and Office for Access to Justice sent a "Dear Colleague" letter to State Court Administrators and Chief Justices in each state clarifying the legal framework that governs the enforcement of fines and fees, including the importance of procedural protections and, in appropriate cases, the right to counsel.

The gravamen of this case is that "fundamentally miscarriage of justice" has occurred when the state encroached on the fundamental rights of the Petitioner and his minor children for over nine years. Fundamental rights are personal rights protected by the U.S. Constitution

The Petitioner has been left with no other option but filing in the U.S. Supreme Court to ask this court to vindicate his rights and the rights of his children.

This Court should affirm the Fifth Circuit as it did in in Michelle Cochran v Securities & Exchange Commission, ET. AL., (2022) as the Petitioner fell prey of the system when administrative agencies deprived him and his children of their fundamental rights – rights protected by the United States Constitution.

Respectfully Submitted,
Roberto Carlos Mendives

BY: /s/ Roberto Carlos Mendives Sr.,
Roberto Carlos Mendives Sr., Sui Juris