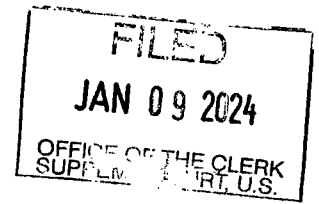


ORIGINAL

23-6762

No.



IN THE

Supreme Court of the United States

In re KINLEY MACDONALD

Petitioner(s)

To The *on* *petition for a writ of mandamus*

STATE OF MAINE
SUPREME JUDICIAL COURT

Petition for Writ of Mandamus

KINLEY MACDONALD
YORK COUNTY JAIL
1 LAYMAN WAY
ALFRED, ME 04002

QUESTION(S) PRESENTED

Before the Court is a matter involving unabused children trafficked into foster care by mere hearsay, creating irreparable harm. The mother suffered emotional distress as result. The defendants weaponized that distress to retroactively justify the removal of the children, refusal to reunify, refusal to intervene on behalf of the children experiencing foster abuse/neglect, and to continue to elaborate imaginary and extrajudicial accusations to terminate a family in absence of all jurisdiction for which abstention sanctions such a cruel deprivation of human rights and departure of settled state, federal, and international law such that this petition is a Mother's desperate plea for this Court to exercise it's supervisory power. Start to finish, this case - THESE CHILDREN deserve your time. Thank you.

- 1.) Can a State trial court open a PFA proceeding against Defendant without the pre-requisite family/dating/household relationship + persistent conduct required for jurisdiction of the court to commence a proceeding?
- 2.) Without the defendant's, can the State trial Court find Mother guilty in the "Criminal Proceeding" with knowledge a second criminal proceeding on the same event has commenced.
- 3.) Can a trial court find a defendant "guilty" without advising her of rights & denying counsel in her absence?

4.) Can a State Trial Court ignore Defendant's Notice & requests for documents/record for appeal?

5.) Can a State Court of last resort deny a defendant's appeal as untimely when she had not been served and prior notice of appeal had been denied?

6.) Can a State Court of last resort convert a "Criminal action" of a state trial Court into a "Civil action" on appeal before denying the appeal without counsel?

List of Parties

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

Petitioner

Kinley MacDonald
c/o York County Jail
1 Layman Way
Alfred, ME 04002

A [REDACTED] J [REDACTED] ("A [REDACTED]" or "AJ"), minor child of Petitioner
B [REDACTED] M [REDACTED] ("B [REDACTED]" or "BM"), minor child of Petitioner
W [REDACTED] M [REDACTED] ("W [REDACTED]" or "WM"), minor child of Petitioner

Respondents

Megan Valente
1156 North Rd
Parsons field, ME

by: Kim E. Pitman, 4 Milk St. Portland ME 04101

John or Jane Doe(s) 1-5, Maine Supreme Court Justices
JJ. Connors, Supreme Judicial Court Justice, Maine
State of Maine
Supreme Judicial Court
205 Newbury St, RM 139
Portland, ME 04101-4125

John + Jane Doe(s) 1-5, Magistrate or Judge,
Springvale District Court, ME

Andre G. Sannelle, Magistrate or Judge,
Springvale District Court, ME

John or Jane Doe(s) 1-5, Clerk(s),
Springvale District Court, ME

Springvale District Court

44 Maine St

Springvale, ME 04083

RELATED CASES (RC('s))

State of Indiana

- I. Mary Angela Johnson (now Kinley Mary Angela MacDonald) v. Daniel Johnson, (involving A [REDACTED] J [REDACTED]), Probate Court, Marion County, IN transferred to St. Joseph County, IN
- II. In Re B [REDACTED] M [REDACTED], Probate Court, St. Joseph County, IN
- III. In Re W [REDACTED] M [REDACTED], Probate Court, St. Joseph County, IN

State of Maine

- IV. In Re A [REDACTED] J [REDACTED], PC 21-01, District Court, Judgement Oct. 3, 2022
- V. In Re B [REDACTED] and W [REDACTED] M [REDACTED], District Court, PC 31-02, Judgement Oct. 3, 2022
- VI. Petition for Declarative Judgement, Supreme Judicial Court, Cum 22-327, Judgement Aug. 6, 2022
 - In Re Children of Kinley M., Supreme Judicial Court, Judgement May 30, 2023
- VII. State v. Kinley MacDonald, Superior Court, YRKCD-CR-20-00522
- VIII. MacDonald v. State of Maine, Supreme Judicial Court, 23-32

United State District Court

- IX. Maine, MacDonald v. Duddy, et al, 2:22-cv-00293-JAW
- X. Maine, In Re Kinley MacDonald, 2:22-cv-00336-JAW
- XI. Indiana, MacDonald v. Duddy, et al, 3:22-cv-01002-PRL-MGG
- XII. Maine, MacDonald v. State of Maine, 2:22-cv-00329-JAW

RELATED CASES (RC('s), Continued)

XIII. Maine, MacDonald v. York County Sheriff, et al, 2:22-cv-00302-JAW

XIV. Maine, MacDonald v. Cumberland County Sheriff, et al 2:22-cv-00304-JAW

United States Court of Appeals

For the First Circuit

XV. In Re Kinley MacDonald, 22-1319, Judgement May 16, 2022

requested. The Dropbox link is <https://www.dropbox.com/scl/fi/6gga5qxl3znq418os7ao7/writ-of-mandamus-and-writ-of-advisory-1.pdf?rlkey=wrdf5947t232qlraie4jad2s&dl=0>.

IX.A MacDonald v. Duddy, et al, 22-1921, Judgement May 25, 2023

IX.B MacDonald v. Duddy, et al, 22-1949, Judgement May 25, 2023

X.A In Re Kinley MacDonald, 23-1042

XII.A MacDonald v. State of Maine, 23-1381

United States Court of Appeals

For the Seventh Circuit

XI.A MacDonald v. Duddy, et al, 23-1181

Supreme Court of the United States

VI.A Kinley MacDonald v. Jeanne Lambrew, et al 23-5186

VIII.A Kinley MacDonald v. Maine, 23-5217

XVI. Kinley MacDonald v. Michael A. Duddy, 23-5216

XVII. Kinley MacDonald v. Lea-Ann Sutton, 23-5184

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

<u>Ackerman v. United States</u> , 346 U.S. 193, 199-200 (1950)	27-28
<u>Beharry v. Reno</u> , 183 F.Supp 2d 584 (E.D.N.Y. 2002)	19-21
<u>Blockburger v. United States</u> , 284 U.S. 299, 304	28
<u>Boddie v. Connecticut</u> , 401 U.S. 371, 379, 382-83 (1971)	30
<u>Christopher v. Harbury</u> , 536 U.S. 403, 413-14, 415 n.12	30
<u>Crosby v. United States</u> , 506 U.S. 255, 259 (1993)	27
<u>Cuyler v. Sullivan</u> , 446 U.S. 335 (1980)	31
<u>Daniels v. Williams</u> , 474 U.S. 327 (1986)	19-21
<u>Diaz v. United States</u> , 223 U.S. 442, 455 (1912)	27
<u>Duchesne v. Sugarman</u> , 566 F.2d 817 (2d Cir 1977)	19-21
<u>Ex parte McCordle</u> , 7 Wall. 506, 514, 19 L. Ed. 264 (1869)	25
<u>Fairey v. Tucker</u> , 132 S. Ct. 2218, 132 (2012)	27
<u>Filartiga v. Pena-Irala</u> , 630 F.2d 876 (2d Cir 1980)	19-21
<u>Franz v. Lythe</u> , 997 F.2d 784 (10th Cir 1993)	24-25
<u>Griswold v. Connecticut</u> , 381 U.S. 479 (1965)	19-21
<u>Hanshaw Enterprises, Inc v. Emerald River Development Inc.</u> , 244 F. 3d 1128, 1140 (9th Cir 2001).	33
<u>Hatch Jr. v. R.I. Dep't for Children + Families</u> , 274 F. 3d 12 (1st Cir. 2001)	23, 22-23, 23, 23-24
<u>Herring v. Estelle</u> , 491 F. 2d 125 (5th Cir 1974)	31
<u>In Re Dep't of Public Welfare</u> , 383 Mass 513 (1981)	22
<u>In Re Nicholson</u> , 181 F. Supp 2d 182 (E.D.N.Y 2002)	23
<u>Kircher v. Hayes</u> , 434 U.S. 357, 363 (1978)	33
<u>Klapprott v. United States</u> , 335 U.S. 601, 613-614	27-28

<u>Littlefield v. Forney</u> , 1 S.D., 268 F. 275 (5 th Cir 2001)	21
<u>Loving v. Virginia</u> , 388 U.S. 1 (1967)	19-21
<u>M.L.B. v. S.L.</u> , 519 U.S. 1 (1996)	19
<u>Mackenna v. Ellis</u> , 280 F. 2d 592 (5 th Cir 1960)	31
<u>Maine Med. Ctr. v. Cote</u> , 577 A.2d 1173, 1176 (Me 1990)	29-30
<u>McDonald v. Smith</u> , 472 U.S. 479, 482, 484-85 (1985)	29
<u>Mid-continent Wood Pools, Inc v. Harris</u> , 936 F. 2d (7 th Cir 1991)	25-26
<u>Mississippi Publishing Corp v. Murphree</u> , 326 U.S. 438, 444-45 (1946)	25-26
<u>Moore v. City of East Cleveland</u> , 431 U.S. at 499 (1977)	28
<u>Moore v. Sims</u> , 442 U.S. 415 (1979)	19
<u>Nader v. Maine Democratic Party</u> , 41 A. 3d 551, 558-59 (Me 2012)	29, 29-30, 30-31
<u>Neustein v. Orbach</u> , 732 F. Supp 333 (E.D.N.Y. 1980)	19
<u>Nicholson v. Williams</u> , 203 F. Supp 2d (E.D.N.Y 2002)	19-21, 21, 21-22, 23-24, 24-25, 28, 31
<u>Omni Capital Int'l Ltd v. Rudolf Wolfe + Co Ltd</u> , 484 U.S. 97, 104 (1987)	25-26
<u>Parham v. J.R.</u> , 442 U.S. 584 (1979)	19-21
<u>Peralta v. Heights Medical Ctr, Inc</u> , 485 U.S. 80, 84 (1988)	26
<u>Pierce v. Society of Sisters</u> , 268 U.S. 510 (1925)	19-21
<u>Quillon v. Walcott</u> , 434 U.S. 246 (1928)	19-21
<u>Santosky v. Kramer</u> , 434, U.S. 246 (1928)	22
<u>Seal v. Morgan</u> , 229 F. 3d 562, 575 (6 th Cir 2000)	21
<u>Smith v. Organization of Foster Families</u> , 431 U.S. 816 (1977)	19-21
<u>Snyder v. Massachusetts</u> , 291 U.S. 97, 105-06 (1934)	27
<u>Stanley v. Illinois</u> , 405 U.S. 645 (1972)	23
<u>State v. Holmes</u> , 2003 ME 42, P11, 818 A. 2d 1054, 1057	30-31
<u>State v. Nisbet</u> , 134 A. 3d 840 (Me 2016)	9

State v. Oullette, 2006 ME 81, P11, 901 A.2d 800, 804 30-31

Strail v. Dept of Children Youth + Families of Rhode Island,
62 F. Supp 2d 519 (D.R.I. 1999) 19-21

Strickland v. Washington, 466 U.S. 668 (1984) 31

Subboh v. District Attorneys Office of Suffolk, 298 F.3d 81 (1st Cir 2001) 22

Tenenbaum v. Williams, 193 F.3d 581 (2d Cir 1999) 19-21, 21, 24-25

The Nereide, 13 U.S. 388 (1815) 19-21

Troxel v. Granville, 580 U.S. 57 (2000) 19-21

U.S. v. Armstrong, 517 U.S. 456 (1996) 33

U.S. v. Batchelder, 442 U.S. 114 (1978) 33

U.S. v. Bonnel - Grullon, 212 F.3d 692 (2d Cir 2000) 33

U.S. v. Cronin, 466 U.S. 648 (1984) 31

United Mine Workers v. Illinois Bar Ass'n,
389 U.S. 217, 222 (1967) 29

United States v. Dixon, 506 U.S. 688 (1993) 28

United States v. Lasser, 520 U.S. 259, 268-69 (1997) 21

Virginia v. Black, 538 U.S. 343, 358, (2003) 29

Washington v. Glucksberg, 521 U.S. 702 (1997) 21

Way v. Mueller Brass Co., 840 F.2d 303, 306 (5th Cir 1988) 26

Webb v. Haas, 1999 ME 74, 910 30

White v. Kautzky, 494 F.3d 677, 679 (8th Cir 2007) 29

Wilkinson v. Russell, 182 F.3d 89 (2d Cir 1999) 21-22

Wisconsin v. Yoder, 406 U.S. 205 (1972) 19-21

STATUTES AND RULES

Maine Revised Statutes (MRS) 2020 Edition Appendix G

19-A MRS § 1745 6-7, 9, 11-12, 13-14

19-A MRS § 1746 9, 11-12, 13-14

19-A MRS § 1747 6-7, 9, 11-12

19-A MRS § 1748	9, 11-12, 13-14
19-A MRS § 1749	9, 11-12
22 MRS § 4002	9
22 MRS § 4003	6-7
22 MRS § 4004-A	8-9
22 MRS § 4005	10-11, 11-12, 14, 15
22 MRS § 4005 (1)(F)	13
22 MRS § 4005 (2)	6, 9
22 MRS § 4006	8, 14
22 MRS § 4031 (1)	12-13
22 MRS § 4033	7
22 MRS § 4033.13-A)	7
22 MRS § 4034	9
22 MRS § 4034 (1)	6
22 MRS § 4034 (4)	7, 7-8
22 MRS § 4034 (6)	7, 7-8, 9
22 MRS § 4034-A	6, 7, 8, 15
22 MRS § 4034 A (1)	7-8
22 MRS § 4035	8-9, 9, 11-12, 14
22 MRS § 4035 (4)	8-9
22 MRS § 4036-B(4)	13-14
22 MRS § 4038	11-12, 12-13, 13-14, 15
22 MRS § 4038 (1)	11
22 MRS § 4038 (2)	10
22 MRS § 4038 (5)	13
22 MRS § 4039	7
22 MRS § 4041	9, 13, 15
22 MRS § 4041 (1-A)(A)	8, 9

Maine Rule Revised Statutes (MRS) Protection From Abuse 2022 Edition Appendix H

19-A MRS § 4001	25
19-A MRS § 4003	25
19-A MRS § 4004	25
19-A MRS § 4005	25
19-A MRS § 4006(1)	26
19-A MRS § 4006(6)	25
19-A MRS § 4007(6)	25
19-A MRS § 4009	25
19-A MRS § 4010	26
19-A MRS § 4010(11)	25
19-A MRS § 4012(11)	25

Maine Rules of United Criminal Procedure (MRUCP) (2022 Edition) / Maine Rules of Appellate Procedure (2022 Edition) Appendix I

Rule 4, (b) (2)	25
Rule 4, (4)	25
Rule 4, (5)	26
Rule 4, (g) (2)	25, 26
Rule 5, (b) (1)	26
Rule 5, (b) (2)	26
Rule 5, (b) (3)	26
Rule 5, (b) (4)	26
Rule 5, (b) (5)	26
Rule 5, (e)	26
Rule 11, (a) (1)	26
Rule 11, (g)	26

Rule 12, (b)(1)	26
Rule 12, (b)(2)	26
Rule 12, (b)(3)(A)	26
Rule 12, (B)	26
Rule 12, (5)(c)	26
Rule 17	26
Rule 17-A	26
Rule 22	26
Rule 23	26
Rule 33	26
Rule 34	26
Rule 35	26
Maine Rules of Appellate Procedure 2A	26
Maine Rules of Appellate Procedure 2B	26

OTHER

Convention on Rights to the Child	19-21
International Covenant on Civil + Political Rights	19-21
Universal Declaration of Human Rights (UDHR) Appendix L	
Article	Location in Statement
1	8, 10-12, 14-30, 31, 32, 35-39, 41, 42, 44-47, 49-51, 54, 55-65
2	6, 10-12, 14-30, 31, 32, 35-39, 41, 42, 44-47, 49-51, 54, 55, 57, 60-65
3	9, 10-12, 14-30, 31, 32, 35-39, 41, 42, 44-47, 49-51, 54, 55, 57, 60-65
5	8, 10-12, 14-30, 31, 32, 35-39, 41, 42, 44-47, 49-51, 54, 55, 57, 60-65
7	8, 10-12, 14-30, 31, 32, 35-39, 41, 42, 43-47, 49-51, 54, 55, 57-60-65
8	12, 14, 18-30, 32, 35-39, 41, 42, 43-47, 49-51, 54, 55, 58, 60-65
9	14-20, 22, 24-27, 36-39, 41, 42, 44-47, 50, 54, 58-60-65
10	11, 12, 14, 18-21, 23-25, 27, 28, 30, 32, 35, 37-39, 44-47, 49, 50, 54, 55, 57, 60-65

12 6, 8, 10-12, 14, 30, 32-33, 35-39, 41, 42, 44-47, 49-51, 54, 55, 58-65

16(1) 6, 8, 10-12, 14, 30, 32-35, 35-39, 41, 42, 44-47, 49-51, 54, 55, 58-65

16(3) 6, 8, 10-12, 14, 30, 32-35, 35-39, 41, 42, 44-47, 49-51, 54, 55, 58-65

18 6, 8, 10-12, 14, 30, 32-35, 35-39, 41, 42, 44-47, 49-51, 54, 55, 58-60, 62-65

19 6, 8, 10-12, 14, 30, 32-35, 35-39, 41, 42, 44-47, 49-51, 54, 55, 58-65

20(1) 6, 8, 10-12, 14, 30, 32-35, 35-39, 41, 42, 44-47, 49-51, 54, 55, 58-65

20(2) 6, 8, 10, 11, 12, 14-30, 32, 33, 35-39, 41, 42, 44-47, 49-51, 54, 55, 58-65

23(3) 6, 8, 10-12, 14, 15-30, 32, 33, 35-39, 41, 42, 44-47, 49-51, 54, 55, 58-65

25(2) 6, 8, 10, 11, 12, 14-30, 32, 33, 35, 36-39, 41, 42, 44-47, 49-51, 54, 55-65

28 6, 8, 10-12, 14-30, 32, 33, 35-39, 41, 42, 44-47, 49-51, 54, 55-65

29(2) 6, 8, 10, 11, 12, 14-30, 32, 33, 35-39, 41, 42, 49-51, 54, 55-65

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3-4
STATEMENT OF THE CASE	5-12
REASONS FOR GRANTING THE WRIT	18-33
CONCLUSION.....	34

INDEX TO APPENDICES

APPENDIX A - Order Dismissing Mother's Appeal, Supreme
Judicial Court, Maine.

APPENDIX B - False Criminal Complaint, Related Case,
Superior Court, Maine

APPENDIX C - Transcripts of Final Protection from abuse
Order, through RC, Springville District Court, Maine

APPENDIX D - Motion to Vacate Final abuse order, "Criminal
Action," denied. Springville District Court, Maine

APPENDIX E - Sample appellate Documents provided by Sup-
reme Judicial Court of Maine, refused by the State Dis. Ct.

APPENDIX F - Supreme Judicial Court, Maine Demanding
Mother try to again file appeal in Springville Dis. Ct.

INDEX TO APPENDICES

APPENDIX G - Maine Revised Statutes (MRS) 2020 Edition

Child Custody / Protection

APPENDIX H - Maine Revised Statutes (MRS) 2022 Edition

Protection from Abuse

APPENDIX I - Maine Rules of Unified Criminal Procedure

(MRUCP) 2022 Edition

APPENDIX J - Maine Rules of Appellate Procedure

APPENDIX K - Maine Constitution

APPENDIX L - Universal Declaration of Human Rights (UDHR)

APPENDIX M - U.S. Constitutional Provisions

APPENDIX N - United States Statutory Provisions Involved

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR Extraordinary Writ

Petitioner respectfully prays that extraordinary writ issue to review the judgment below.

OPINIONS BELOW

☒ For cases from state courts:

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

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

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

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

JURISDICTION

☒ For cases from **state courts**:

The date on which the highest state court decided my case was May 23, 2023.
A copy of that decision appears at Appendix A.

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

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

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

SUPREME COURT RULE.

12.4, 20.1, 20.2, 20.3, 20.4

28 U.S. C. § 1651(a), (b), § 1251(a), § 1251(2), § 1251(3), § 2201(a),
§ 2202, § 2241, § 2243

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Codes Appendix N

<u>Statutes</u>	<u>Location in Petition or Statement</u>	<u>Page</u>
28 U.S.C. § 1251, (a), (3)	Jurisdiction	2
28 U.S.C. § 1253	Jurisdiction	2
28 U.S.C. § 1254, (1)	Jurisdiction	2
28 U.S.C. § 1257 (a)	RC(s)	
28 U.S.C. § 1292	RC(s)	
28 U.S.C. § 1331	RC(s)	
28 U.S.C. § 1343	RC(s)	
28 U.S.C. § 1357	RC(s)	
28 U.S.C. § 1367	RC(s)	
28 U.S.C. § 1369	RC(s)	
28 U.S.C. § 1651, (a), (b)	Jurisdiction	2
28 U.S.C. § 2101, (a)	Jurisdiction	2
28 U.S.C. § 2202	Jurisdiction	2
28 U.S.C. § 2241	Jurisdiction	2
28 U.S.C. § 2243	Jurisdiction	2
28 U.S.C. § 2251	RC(s)	
28 U.S.C. § 2254	RC(s)	
28 U.S.C. § 2283	RC(s)	
42 U.S.C. § 1983	RC(s)	
42 U.S.C. § 1985	RC(s)	
42 U.S.C. § 1986	RC(s)	
42 U.S.C. § 1988	RC(s)	

(Continued)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Appendix M

Amendment Violation Location in Statement

- I. 6, 8, 10-12, 14-30, 32, 33, 35-39, 41, 42, 44-47, 49-51, 54, 55, 58-60, 62-65
- II 59-65
- IV 14, 16-28, 30, 32, 35-38, 40-42, 44-47, 49, 50, 54, 58-60-65
- V 6, 8, 10-12, 14-30, 32, 33, 35-39, 41, 42, 44-47, 49-51, 54, 55, 58-60-65
- VI 6, 8, 10-12, 14-30, 32, 33, 35-39, 41, 42, 44-47, 49-51, 54, 55, 58-65
- VII 11, 12, 14-20, 22, 24, 25-27, 36-38, 41, 42, 44-47, 54, 58-60, 62-65
- XIV§1 6, 8, 10-12, 14-30, 32, 33, 35-39, 41, 42, 44-47, 49-51, 54, 55, 58-65

Maine Constitution Appendix K

Article Violation Location in Statement

- 1§1 11, 14, 16-22, 24-27, 36, 38, 39, 41, 42, 44, 45-47, 54, 58-60-65
- 1§2 6, 8, 10-12, 14-20, 22-28, 30, 32, 33, 35-47, 49-51, 54, 55, 57-65
- 1§3 14, 16-21, 24-27, 36-38, 41, 42, 44-47, 49, 54, 58-65
- 1§4 10-12, 14, 16, 18, 19, 21, 25, 26, 29, 30, 32, 37, 38, 41, 42, 44-46, 49, 50, 54, 55, 58-65
- 1§5 11, 12, 14-20, 22, 24-27, 36, 37, 38, 41, 42, 44-46, 49, 50, 54, 55, 58-65
- 1§6 8, 10-12, 14, 18-21, 23-32, 35, 37-39, 41, 42, 44-47, 49-51, 54, 55, 58-65
- 1§6A 6, 8, 10-12, 14-28, 30, 32, 35-39, 41, 42, 44-47, 49, 50, 54, 55, 58-65
- 1§9 14, 16-28, 30, 32, 35-38, 40-42, 44-47, 49, 50, 54, 58-65
- 1§10 60-65
- 1§15 12, 21, 23, 26-29, 35-37, 39, 49-51, 55-65
- 1§16 59-65

STATEMENT OF THE CASE

- 1.) Petitioner/Appellant/Mother (hereafter "Mother") restates + recollects facts presented in related cases filed with the aid of Court records and other evidence prior to pretrial inmate status, but summarizes from memory below:
- 2.) At all relevant times, Mother and her 3 children; A [redacted] J [redacted] (hereafter "A [redacted]"), B [redacted] M [redacted] (hereafter "B [redacted]"), and W [redacted] M [redacted] (hereafter "W [redacted]"), maintained residency in the state of Indiana (hereafter "IN") with active custody cases within St. Joseph County Probate Court. See Related Cases (hereafter "RC(s)") I, II, III.
- 3.) Mother and children received temporary domestic violence (hereafter "DV") resources in the state of Maine (hereafter "ME").
- 4.) Mother remarried in South Bend, IN, Aug. 2000.
- 5.) Mother suffered DV in her new marriage. IN hospital notified IN child protective Services (hereafter "CPS") because the children were home, but unaware of D.V. Mother and children had separated back to ME, but Mother reconciled with her husband while cooperating with IN police + CPS.
- 6.) With Mother's consent, IN CPS requested a "Courtesy interview" from ME CPS. ME CPS, however, refused; opening their own investigation against Mother without informing her. See RC's VI, XV for documents
- 7.) IN CPS closed their investigation as "unsubstantiated". Mother was not informed. See RC's VI, XV for documents (hereafter "docs").

- 8.) ME CPS called Mother accusing her of "Medically neglecting" her children in Oct. 2020. Mother brought her children + their medical records to York Beach, ME Police Department (hereafter "ME PD"). CPS never showed. See RC's VI, XV for docs + photos.
- 9.) Mother and children returned to husband in IN
- 10.) Jan. 2021, Mother, children, and husband returned to ME. ME CPS filed a fraudulent petition with only hearsay to remove the children for "medical neglect" and without prior notice to Mother. See RC's VI, XV for docs.
- 11.) Judge Mulhern erroneously accepted the deficient petition based solely on a hearsay affidavit (prohibited by 22 MRS § 4034-A) as a "sworn statement is mandated to support other evidence within the petition, violating 22 MRS § 4034(1). See RC's VI, XV for docs
- 12.) Counsel was appointed to Mother when Mother directed to Move to dismiss the case. Counsel refused all of Mother's requests. Eventually, Mother directed her to withdraw. Without hearing, Judge Duddy granted the withdrawal, but denied replacement Counsel; violating 22 MRS § 4005(2). See RC's VI, XV for docs.
- 13.) Mother, children, + husband returned to IN. Mother obtained Protection from abuse orders against her husband for herself + her children, filed for divorce, moved out of the marital home, and cooperated with IN police and IN CPS. A [REDACTED] and B [REDACTED] were interviewed on video. All allegations of child abuse/neglect (called in from ME CPS) were closed as "unsubstantiated." See RC's VI, XV for video links + docs.
- 14.) Mother and children temporarily returned to ME. The family was under

Surveillance while A ~~was~~ attended internet school and Mother rode bikes with B ~~and~~ and W ~~and~~. A secret hearing took place to remove the children; violating 22 MRS § 4003, in absence of all jurisdiction required within UCC 3EA (19-A MRS § 1745, § 1747). See RC's VI, XV for docs.

15.) Mother was pulled over by ME police. They threw the Court Orders to take the children in Mother's car, violating 22 MRS § 4033. See RC's VI, XV for video.

16.) Mother returned home. ME PD refused to allow her inside. Mother demanded a warrant for entry + was falsely arrested. See RC's VI, XV for docs+video.

17.) ME PD stormed the home in full riot gear without warrants required by 22 MRS § 4039; terrifying the children who were taken to the ER, received a "wellness exam," re-vaccinated, and separated into foster care. CPS refused to disclose the locations to Mother mandated under 22 MRS § 4033(3-A). See RC's VI, XV for docs.

18.) Mother attended a bail/bond hearing with the same judge that originated the malicious CPS case; Mulhern. Mother was muted on the zoom hearing while the state alleged abuse/neglect. Judge Mulhern released Mother on personal recognizance, but supervised with NO contact with her non-party children without CPS approval; violating 22 MRS § 4034(6), § 4034-A. See RC's VI, XV for docs.

19.) Opportunity for immediate return of the children was through Summary Preliminary Hearing (hereafter "SPH"), but Mother's newly appointed counsel postpored to resolve Judge Mulhern's bail/bond restrictions; further depriving the family of mandated visitation. (22 MRS § 4034(4)) See RC's VI, XV

20.) SPH commenced with CPS worker Deardorff as State's only witness, stating

Mother was "emotionally disregulated" in IN and with the children's medical providers. This worker was/is restricted by license + law from making mental health assessments - particularly without having witnessed alleged "behaviors." CPS alleged DV exposure to the children when Mother had resolved the DV 2 months prior. Although "hearsay" is allowed for SPH (only) per 22 MRS § 4034-A(1), no admissible hearsay took place. Still, Judge Sutton refused return of the children nor did she invoke visitation mandated by 22 MRS § 4034 (4), § 4034 (6). See RC's VI, XV for docs.

21) Mother immediately requested appeal, but was counseled; "There is no appeal unless your rights are terminated," incorrect interpretation of 22 MRS § 4006. See RC's VI, XV for docs

22) After 31 days, Mother saw her children for 3 hours, and twice in 2 months; violations of 22 MRS § 4034(6), § 4041(1-A)(A). See RC's VI, XV.

23) Mother's counsel attended a pre-hearing conference + sent Mother a text stating Judge Duddy threatened Mother to think about an "agreement" with CPS or his findings would be "similar" or "more harsh" than that of the SPH Order. Mother's Counsel (incorrectly) re-advised there would be "no appeal" if Judge Duddy made good on his threats. By 22 MRS § 4034-A, SPH evidence and Orders are restricted from all other proceedings. See RC's VI, XV for texts + docs.

24) May 2021; Judge Duddy (Judge of removal Order), held a hearing mandated by 22 MRS § 4035, but after the required 120 days of 22 MRS § 4035 (4) where he repeated his threats; get into an "agreement" with CPS or trial will result in more difficult reunification with the children. Duressed; Mother agreed to reunification" (under 22 MRS § 4004-A); she agreed to continued DV involvement because she had exposed the children to a man that abused (only) Mother,

and left him 3 months ago, and Mother would undergo a neuropsychological evaluation (hereafter "neuropsych eval"), and undergo counseling-

- 25.) Mother immediately engaged with providers per "agreement" without State Supports mandated by 22 MRS § 4041. Unbeknownst to Mother, the "agreement" was converted into a "Jeopardy" Finding + Order without the required hearing (22 MRS § 4035), jurisdiction (UCCSEA; 19-A MRS § 1745, § 1746, § 1747, § 1748, § 1749), or evidence of "Jeopardy" defined by 22 MRS § 4002. The standard was "preponderance of evidence" where the only "evidence" was the SPH order restricted by 22 MRS § 4034. The "Jeopardy" order was void required reunification (22 MRS § 4041(1-A)(A)). Instead, the "Reunification plan" stated: "adoption;" a plan Mother wouldn't have agreed to with a gun to her head. See RC's VI, XV for docs.
- 26.) After the "agreement," CPS cancelled the family's next visit. Mother demanded Counsel resolve the matter with the Judge, but Counsel was reluctant. Mother gave the ultimatum; resolve visitation or withdraw. Counsel filed Motion to Withdraw + Replace Counsel + was set for hearing (RC's VI, XV).
- 27.) At the hearing, Mother explained she would not allow any more time lost with her children. Judge Duddy disparaged Mother, refused to address visitation, and ordered Mother to have only "standby Counsel" in violation of 22 MRS § 4005(2).
- 28.) Without counsel, Mother remained unaware the "agreement" turned into a "Jeopardy Finding/Order," and time for appeal was expiring. Judge Duddy also created 2 orders on removing Mother's Counsel citing forfeiture from State v. Nisbet, 134 A. 3d 840 (ME 2016), which actually described the removal of Mother's Counsel an error. The orders were not distributed to Mother. See RC's VI, XV for docs.

- 29.) In haste, Mother hired counsel to appeal Judge Duddy's actions, who negligently failed to acquire the court record or appeal as agreed. When Mother fired him, he retaliated by stating Mother was "hostile" in his Motion to withdraw (Statement recanted under oath; See bar complaint against Stephen Sweatt).
- 30.) Mother filed "Motion to Strike" Counsel's slander + Motion for appointed Counsel. Judge Duddy denied both, but stated Motion for Counsel was "premature;" providing the "Standby Counsel's" information from his undistributed Orders proscribing Mother to earn back her right to counsel from his undistributed orders See RC's VI, XV.
- 31.) "Judicial Review" (22 MRS § 4038(a)) was scheduled the same day as Mother's "agreement" neuropsych eval. "Standby" Counsel could not commit to representing Mother prior to the hearing. Mother filed "Emergency Motions" to Continue the hearing + replace Counsel See RC's VI, XV.
- 32.) "Judicial Review" commenced without Mother; Judge Duddy refused to read Mother's Motions prior to the hearing; accusing her of misconduct. Matters unrelated to Judicial Review (22 MRS § 4038(a)) were heard; custody matters with Daniel Johnson when Judge was informed Mother was not served. Afterward, hired Counsel was granted withdrawal, but "standby counsel" was ordered to submit motion to withdraw in writing. See Transcripts of Jul 30, 2021 in RC's VI, XV.
- 33.) Mother was notified "Judicial Review" took place in spite of her motions by an email from the state with a "proposed jeopardy order." Mother denied abuse/neglect or statements CPS was providing "adequate effort." Mother objected requesting oral arguments. See RC's VI, XV.
- 34.) Judge Duddy granted Mother's motion + rescheduled Judicial Review for Sep. 2021, See RC's VI, XV.
- 35.) Unbeknownst to Mother, "standby" counsel filed the written motion to withdraw. Judge Duddy scheduled another hearing on the matter for Oct, 2021; leaving Mother without

counsel for "Judicial Review" and appealable matters; violating 22 MRS § 4005, see RC VI, XV.

36.) The children suffered physical + emotional abuse/neglect in foster care. Mother took photos of W's black eye (2 yrs) and B's injured and infected foot (5 yrs). CPS refused to intervene. Mother called police. CPS discredited Mother's report by stating Mother suffers "undiagnosed mental illness." Police then, refused to take the children to the hospital. Desperate, Mother hired the next lawyer to pick up the phone whom accepted a retainer, then went on vacation + remained unreachable + ineffective. Mother fired her + filed a Pro Se Motion for sanctions against CPS including evidence of foster abuse, and Mother's neuropsych eval stating, although Mother has PTSD/depression, no issues with reality/personality pathology. Mother's "agreement" requirements were complete for the children to come home. See RC VI, XV for all documents/photos + evidence.

37.) At "Judicial Review," Judge Duddy refused to hear of foster abuse; demanding Mother's neuropsych eval. Mother explained it was in her motion he hadn't read. Review was continued violating 22 MRS § 4038(1). See RC VI, XV for documents.

38.) Sept. 2021, "Judicial Review" commenced with matters Mother hadn't been served for including a case of neglect/abuse against Daniel Johnson for "failure to protect" A from "Mother's jeopardy." Mother objected on jurisdiction + lack of Notice. Judge Duddy disregarded. Judge Duddy refused to hold Judicial Review (22 MRS § 4038), humiliated Mother publicly as "irrational" and "mentally ill" before threatening Mother 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 + warning he would find Mother's disability to be "Jeopardy" because she "could not provide" for her children (basically a Jeopardy hearing (22 MRS § 4035). Mother refused to admit to jeopardy. Judge Duddy concluded violating UCCSEA (19-A MRS § 1745, § 1746, § 1747, § 1748, § 1749, 22 MRS § 4005).

See RC's VI, XV for ("spliced") transcripts of Sept. 30, 2021 hearing + documents.

- 39.) Mother made repeated requests for all prior transcripts, but Judge Puddly allowed 2; July 30, 2021 ("Judicial Review") and Sept. 30, 2021 ("Judicial Review"). The Sept transcripts were suspiciously missing important statements, but Mother submitted to the Committee on Judicial Responsibility + Disability for investigation. They declined.
- 40.) Maine Council of Indigent Legal Services (hereafter "MCILS") provided Mother with Counsel whom identified + clarified the issue; Mother's "agreement" was converted to a "jeopardy order/finding". New Counsel planned to resolve in next "Judicial Review".
- 41.) As threatened, Mother saw her children less and less as they saw each other less + less. Foster abuse/neglect continued; causing Mother to suffer a panic attack at home. Although Mother recovered, CPS ceased family visitation in opposition to requests of Mother's counselor + children's GAL. The state demanded a "family team meeting" prior to re-engaging family visits; taking weeks to schedule. See RC's VI, XV for documents.
- 42.) "Family Team Meeting" commenced with no intended purpose; the state refused to define or describe "jeopardy" mother posed to the children or why the state was refusing reunification efforts/supports/adequate visitation. Visitation resumed but remained limited. See RC VI, XV for video of Family Team Meeting + docs.
- 43.) CPS attempted to serve Mother with a petition to terminate her parental rights; notarized by a CPS worker that "Mother agrees." Mother never received this document from CPS + Moved to Massachusetts (hereafter "MA") to transfer the case while still visiting the children. See RC VI, XV.
- 44.) Judicial Review is mandated every 6 months (Sept. 2021) per 22 MRS § 4031 (1), but continued until Dec. 2021. "Contested Judicial Review" does not exist.

in Statute; Mother proceeded with Counsel as if "Judicial Review." Mother's experts/providers testified to their documents + findings which were submitted into evidence. After cross examination, Mother's providers were asked if they stood by their findings. They affirmed. Mother testified/clarified she never "agreed" to "jeopardy;" she agreed under Judge's threats to "revivification" and never has/would neglect abuse her children. Mother explained the move to MA + requested transfer of the case. On cross examination, over objection, the State questioned Mother to see if she is a "good person." Mother was questioned to determine paternity of Brodie + Wlady. Mother declined to recall + Judge Duddy refused to continue until Mother produced paternity info + rescheduled "Review" in violation of 22 MRS § 4038. See RC VI, XV for documents.

45.) A███ testified on behalf of herself and her siblings stating she had a "great childhood," gave examples, stated the children were not abused/neglected in Mother's care, but were in foster care. A███ stated the children should not have been removed. A███ requested appointed counsel so she could help the children to "get home." She also requested more visitation. Judge Duddy gave only A███ 30 more minutes/week with Mother on zoom + denied her request for counsel in violation of 22 MRS § 4005(1)(F).

46.) "Contested Judicial Review" reconvened with the demand Mother disclose paternity for B███ + W███. Mother declined to recall. As sanctions, Judge Duddy denied Mother the Mandated "Judicial Review" and all associated obligations under 22 MRS § 4038(5), § 4041.

47.) Judge Duddy produced a malicious order; refusing to transfer the case mandated under UCCSEA (19-A MRS § 1745, § 1746, § 1748). The order makes false + extrajudicial findings re-accuses Mother of undiagnosed mental illness, falsely stated Mother's providers made comments about

"parenting safety" (outside of their "scope"). Judge Duddy makes bizarre demands on Mother's MA providers & all prospective providers on how to diagnose & treat Mother & to make his order part of Mother's permanent medical record for which was legally unenforceable and no way Mother could enforce compliance. Judge Duddy refused to Order mandated reunification (22 MRS § 4038, 4038-B(4)), threatened Mother's counsel (forcing Mother's counsel to Motion to Withdraw), but does not define/describe child abuse/neglect for authority of the case to continue. See docs in RC's VI, XV.

46.) Mother's Counsel filed Notice of Appeal, Motion for transcripts & Withdrawal per Bar Counsel. See docs in RV VI, XV.

49.) Judge Duddy refused transcripts of "Contested Judicial Review," accusing Mother of filing a "frivolous" appeal but allowed Counsel to stay. See docs RC's VI, XV.

50.) Mother's Appeals were denied by the Supreme Judicial Court of ME (hereafter "SJCME"); calling "Contested Judicial Review" an "interlocutory" appeal prohibited by 22 MRS § 4006. However, the trial was anything but "Review" (22 MRS § 4038)," & was, in fact, a "Jeopardy hearing" (22 MRS § 4035) & appealable. See RC's VI, XV for docs.

51.) To reunify, Mother needed injunction from higher court where counsel was not admitted and MCILS refused to assist Mother & children. Mother & Counsel cordially parted ways for Mother to make petitions Pro Se for Declarative Judgement/Writ of Mandamus, which was a deprivation of adequate Counsel under 22 MRS § 4005.

52.) Mother petitioned for Declarative Judgement to SJCME, RC VI, requested a stay & served the trial court & all parties also requesting a stay. See RC VI for docs.

- 53.) Mother electronically submitted a petition for Writ of Mandamus to the U.S. Court of Appeals for the First Circuit (hereafter "USCAFC"), Creating RC XV, requested a stay + served all parties + trial court. See RC ~~XV~~.
- 54.) Next "Judicial Review" was not stayed as Mother motioned. In haste, Mother hired Counsel who phoned in, but Judge Duddy threatened + refused his participation/request for continuance. At the hearing, Judge Duddy notified Mother he had quashed her pro se witness subpoenas. "Review" did not commence as required (22 MRS § 4038). Instead, Judge Duddy heard whether or not Mother was served with a Termination of Parental Rights (Hereafter "TPR") petition 6 months prior. Judge Duddy found, since Mother had access to the court record, she had been served 6 months prior; prohibiting any objections to the Order retroactively. GAL requested more visitation on behalf of the children, but Judge Duddy refused based on more prohibited hearsay accusations under 22 MRS § ⁴⁰³⁴~~4043~~_{kin}-A and, because Judge Duddy didn't like the language in Mother's Pro Se Motions, re-accuses her of being mentally ill + denied reunification obligations under 22 MRS § 4041.
- 55.) After "Review", Mother's "standby counsel" moved to fully represent Mother, but Judge Duddy ordered him NOT to file matters on Mother's behalf, violating 22 MRS § 4005. Mother's strategy with counsel included immediate appeal. Counsel filed "Notice of Appeal" and requested transcripts. Judge Duddy disparaged the effort as "frivolous." Without informing Mother, counsel abandoned the appeal; causing breakdown of communication.
- 56.) Counsel filed Motion to withdraw. At the hearing, Judge Duddy pledged to appoint counsel for the TPR hearing.
- 57.) Former counsel emailed Mother transcripts from the initial "Agree-

ment / "Jeopardy" hearing, May 2021. They were, again, suspiciously missing important dialogue & contained a lengthy speech from Judge Duddy at the end; different than the hearing Mother attended. Mother contacted the Court Reporter who sent Mother the audio files of the Sept 30, 2021 and May 2021 hearings. Mother sent the audio files to a forensic audio specialist that determined the audio files were both "spliced."

58.) The children continued to report foster abuse/neglect, stated they were being cared for in strange homes, left alone, and foster mom was going on dates. The home was squalor; attracting bears. ~~At the time~~ was reporting new mental health issues & CPS remained indifferent; limiting Mother's contact with her children for making reports.

59.) Mother legally investigated foster care conditions, but Maine maliciously accused Mother of "burglary" and "threatening" when the (inconsistent) witness statements and video surveillance are exculpatory. Creating RC VII. Appendix B

60.) Mother was arrested at her home in Brighton, Massachusetts & extradited to Maine.

61.) Mother heard "rumors" of a PFA against her from the "alleged victim," but never received any paperwork on the matter.

62.) Mother asked defense counsel to acquire records / transcripts of any PFA against her whom provided transcripts of only the final hearing, in "Criminal action" PFA. Appendix C.

63.) Mother repeatedly wrote the clerk of the PFA Court to

acquire forms to appeal the PFA judgement, but was ignored. Mother filed a pro se Motion to Vacate Final PFA order based on 1) lack of jurisdiction, 2) lack of notice, and 3), lack of representation for a "Criminal Action." The Motion was Denied. Appendix D

- 64) Mother had to write to the Supreme Judicial Court of Maine to acquire appellate forms (Appendix E) that the District Court of Springvale Maine were denying to Mother. Once Mother submitted Appellate forms, the Clerk of the District Court of Springvale, Maine, returned them to Mother. Mother submitted them to the Supreme Judicial Court of Maine, whom also returned them requiring Mother to submit to Springvale District Court. Appendix F

- 65) Mother re-submitted appellate documents to Springvale District Court, which were again, ignored without response. Mother filed Notice of Appeal in both Springvale District Court, Maine as well the Supreme Judicial Court. The Supreme Judicial Court of Maine Dismissed the appeal as untimely. Appendix A.

REASONS FOR GRANTING THE PETITION

1.) While the Family's Constitutional Rights have been repeatedly 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 false narratives that these children are unloved, unwanted, neglected and abused by their own mother, that their mother's false accusations are credible in any way, and that their mother concedes to any of the unlawful outcomes produced by the State of Maine.

2.) Abstention following denied appeal to the State Court of last resort³ allows Maine to, once again, disembody all jurisdiction against a Mother's rights + therefore, the rights against the family as a whole: denying Rules of both Criminal, Civil, and appellate procedure⁴ to adjudicate a criminal matter (twice) in both a criminal and civil proceeding, but calling them both criminal actions, denying Mother an opportunity to appear, defend her self, or appeal.⁵

3.) Abstention allows double jeopardy in the trial courts⁶ by refusing appeal; calling the "Criminal action" "Civil" in the appellate Court while denying appeal. Abstention allows the State of Maine to disregard Federal and State Constitutions and Statutes⁷, create danger to the children they kidnap + maliciously prosecute arbitrarily.⁸

p.18

Footnotes

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

b.) "The welfare of children is an important state interest. See Moore v. Sims, 442 U.S. 415 (1979), Newstein v. Orbach, 732 F. Supp, 333 (E.D. N.Y.). It cannot be vindicated by violating the Federal Constitution. Local issues do not predominate." Nicholson, 203 F. Supp 2d at 231.

c.) "Choices about marriage, family life, and upbringing of children are among... 'basic importance in our society,' sheltered by the [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 L)... (see Flantiga v. Pena Irala,

630 F.2d 876, 883 (2d Cir. 1980), Beharry v. Reno, 183 F. Supp 2d 585 (E.D.N.Y. 2002)). Similar provisions are found in the International Covenant on Civil and Political Rights (ICCPR) which has been signed and ratified by the [U.S.]... and in the Convention on the rights of the child (CRC) which the [U.S.] has signed and which... courts have found to be evidence of customary international law binding on [U.S.] courts...; Beharry, Supra (these provisions of CRC have the force of customary international law); The Nereide, 13 U.S. (9 Cranch) 388 (1815) (Customary international law is enforceable in [U.S.] courts)... The right under the Constitution... that families retain against state interference... is buttressed by a number of factors... See, e.g. Loving v. Virginia, 388 U.S. 1, 12 (1967); Griswold v. Connecticut, 381, U.S. 479, 485 (1965) parents have a constitutionally protected interest in the care and control and raising their children without state interference. See, e.g., Parham v. S.R., 442 U.S. 584 (1979)...; Pierce v. Society of Sisters, 268 U.S. 510 (1925)... Meyer v. Nebraska, 266 U.S. 390 (1923)... 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 procedures followed, a [gov't] decision or action is so contrary to a fundamental right that it cannot be countenanced... see Daniels v. Williams, 474 U.S. 327, 331 (1976)... "[I]f an agency removed or unnecessarily delays the return of a child to a Mother against whom it has no evidence of abuse or neglect - the mother's rights have been infringed." Nicholson 203 F. Supp at 234-238. e.)... "Without any reasonable justification in the service of a legitimate [gov't] objective," [conduct] violated Substantive due process. See Tenenbaum, 193 F.3d at 600. "Nicholson, 203 F. Supp at 241.

f) "the [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. Lanier, 520 U.S. 259, 272 n.7, (1997)). "Nicholson, 203 F. Supp at 247

h) "[T]he Supreme Court recognized... [t]he integrity of the family unit has found protection in the [9th] Amendment." Wilkinson v. Russell, 182 F.3d 89, 104 (2d Cir 1999)... The [13th] Amendment... attempts to protect the right mothers and children not to be forcefully separated without being 'Convicted' could 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 enthalation 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 19th]."

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 includ[es] the right to choose a caretaker proxy.1)" 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 [by foster care] 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 P. 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 [govt]'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 Frenze v. Lytle, 997 F.2d 984, 992-93 (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 [DV] experts and informs the best policies in the field of child protection (see supra Part III c.2.b.); [EPS] policies result in routine removals that are unnecessary and ignore alternatives that would be far better for children involved. These policies cannot be justified by recourse to any state interest in the child's welfare." Nicholson, 203 F. Supp at 249-251.

3. a) The "Criminal Action" (Appendix C) had unmet jurisdictional requirements to commence; probable cause (4(b)(2) MRUCP), jurisdiction over Mother (19-A MRS § 4001, § 4003, § 4004, § 4005), notice to Mother (Rule 4(f)(4), (g)(2), 19-A MRS § 4006(6), § 4007(6), § 4009, § 4010(1), § 4012(1)).
- b) Protection from Abuse proceedings had unmet jurisdictional requirements to commence; Domestic Violence with a familial/household/romantic history; 19-A MRS § 4001, § 4003, § 4004, § 4005.
- c) "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle." Ex parte McCordle, 7 Wall. 506, 514, 19 L. Ed. 264 (1869).
- d) "Before a court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied. '[S]ervice of summons is the procedure by which a court having venue and jurisdiction over subject matter of the suit asserts jurisdiction over the person of the party served.'" Omni Capital Int'l, Ltd v. Rudolf Wolff & Co., Ltd 484 U.S. 97, 104 (1987) (quoting Mississippi Pub- p. 25.

Isling Corp v. Murphree, 326 U.S. 438, 444-45 (1946);
Mid-Continent Wood Prods, Inc v. Harris, 936 F.2d
(7th Cir. 1991) ("This court has long held that valid ser-
vice of process is necessary in order to assert per-
sonal jurisdiction over a defendant.")

- e) "A responsive pleading is the defendant's opportunity to
state his objections to jurisdiction or to state his sub-
stantive position. Before these matters are properly before
a court, there must be an appropriate notification of
the assertion of jurisdiction. A defendant must be
apprised of the pendency of the action." [An elementary
and fundamental requirement of due process"]

Way v. Mueller Brass Co., 840 F.2d 303, 306 (5th
Cir 1988) (quoting Peralta v. Heights Medical Ctr, Inc.,
485 U.S. 80, 84 (1988))

4. a.) Considering the matter as a "Criminal action," the trial court
deprived Mother of participation according to MRUCP; Rule 4 (f)(5),
(g)(2), Rule 5 (b) (1), (2), (3), (4), (5), (e), Rule 11 (a)(1), (g), Rule 12 (b) (1),
(2), (3) (A), (B) (4), (5), (C), Rule 17, Rule 17A, Rule 22, Rule 23,
Rule 33, Rule 34, Rule 35, Rules of Appellate Procedure 2A + 2B

1.) Maine Constitutional violations: 1§1, §2, §3, §4, §5, §6, §6-A, §9, §10, §15, §16

2.) U.S. Const. Violations, I, II, IV, V, VI, VIII, XIV §1

3.) UDAR Violations; 1, 2, 3, 5, 7, 8, 9, 10, 11, 16 (3), 20 (1), 20 (2), 23 (3), 25 (2), 28, 29 (2)

- b.) Considering the matter as Civil (as the appellate court has),
the trial court deprived Mother of participation according
to 19-A MRS §4006 (1), §4010, Rules of Appellate Procedure 2A + 2B

1.) Maine Constitution violations: 1§1, §2, §3, §4, §5, §6, §6-A, §9, §10, §15, §16

2.) U.S. Const. Violations I, II, IV, V, VI, VIII, XIV, §1

3.) UDAR violations: 1, 2, 3, 5, 7, 8, 9, 10, 11, 16 (3), 20 (1), 20 (2), 23 (3), 25 (2), 28, 29 (2)

5.a) "It is a basic premise of our justice system that 'the defendant has the privilege under the Fourteenth amendment to be present in his own person whenever his presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge.' Snyder v. Massachusetts, 291 U.S. 97, 105-106 (1934)" Fairey v. Tucker, 132 S.Ct. 2218, 132 (2012)

b.) "This longstanding right reflects the 'notion that a fair trial [can] take place only if the jurors meet the defendant face to face and only if those testifying against the defendant [do] so in his presence.' Crosby v. United States, 506 U.S. 255, 259 (1993); see also ibid ('it is well settled that... at common law the personal presence of the defendant is essential to a valid trial and conviction...' (quoting W. Mikell Clark's Criminal Procedure 492 (2d ed. 1918) (hereafter Mikell)); Diaz v. United States, 223 U.S. 442, 455 (1912) (right to be present is 'scarcely less important to the accused than the right of trial itself'). Thus in general, 'if [the defendant] is absent [from trial], ... a conviction will be set aside.' Crosby, 506 U.S., at 259 (quoting Mikell 492)." Fairey, 132 U.S. at 132

c.) "Thus petitioner's prayer to set aside the default judgment did not rest on mere allegations of 'excusable neglect.' The foregoing allegations and others in the petition tend to support petitioner's argument that he was deprived of any reasonable opportunity to make a defense to the criminal charges instigated by officers of the very United States agency which supplied the second hand information upon which his citizenship was taken (p.200) away from him in his absence. The basis of his

petition was not that he had neglected to act in his own defense, but that in jail as he was, weakened from illness, without a lawyer in the denaturalization proceedings or funds to hire one, disturbed & fully occupied in efforts to protect himself against the gravest criminal charges, he was no more able to defend himself in the New Jersey court than he would have been had he never received notice in the charges!

Klapprott v. United States, 335 U.S. 601, 613-614, "

Ackermann v. United States, 340 U.S. 193, 199-200 (1950).

- d) "Whatever the standard..., it is apparent that when potentially unconstitutional policies of [gov't] entity impinge on ... family integrity, courts have a duty to review... closely, see Moore v.

City of East Cleveland, 431 U.S. at 499 (1977)," Nicholson 203

F. Supp at 246

6. a) "The Double Jeopardy Clause's protection attaches in non-summary criminal contempt prosecutions just as it does in other criminal prosecutions. In the context of both multiple punishments and successive prosecution, the double jeopardy bar applies if the two offenses for which the defendant is punished or tried cannot survive the "same elements" or "Blockburger" test. See e.g. Blockburger v. United States, 284 U.S. 299, 304. That test inquires whether each offense contains an element not contained in the other; if not, they are the same offense" within the Clause's meaning, and double jeopardy bars subsequent punishment or prosecution." United States v. Dixon 509, U.S. 688 (1993)

b). MURCP Rule 8(a) required a joinder of criminal actions.

2.a) U.S. Constitution violations:

b) U.S. Statutes in violation; 42 U.S.C. §1985, §1986, §§ 12132

c) Maine Constitution violations;

d) " Constitution guarantees prisoners a right to access the courts." White v. Kautzky, 494 F.3d 677, 679 (8th Cir 2007).

e.) "[921] The right to petition the government, including the right to file complaints in courts, is a fundamental right protected by the First Amendment. See U.S. Const. amend 1; Borough of Duryea v. Guarnieri, 564 U.S. ---, (2011) ("Among other rights essential to freedom, the First Amendment protects 'the right of the people... to petition the Government for a redress of grievances.'"); McDonald v. Smith, 472 U.S. 479, 482, 484-85 (1985). The right to petition is one of "the most precious of the liberties safeguarded by the Bill of Rights" and is made applicable to the states by the Fourteenth Amendment. United Mine Workers v. Illinois Bar Ass'n, 389 U.S. 217, 222 (1967); Virginia v. Black, 538 U.S. 343, 358, 123 S. Ct. 1536 (2003). "Nader v. Maine Democratic Party, 41 A.3d 551, 558-559 2012 ME 57 (Me 2012)

f.) "The right of access to the courts is a right protected in the Maine Constitution and recognized under the United States Constitution. The Maine Constitution provides a right of redress through the courts for injuries, stating 'Every person, for an injury inflicted on the person or the person's reputation, property or

immunities, shall have remedy by due course of law; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay.' Me Const. art 1 §19. This 'open courts' provision 'means the courts must be accessible to all persons alike without discrimination, at times and places designated for their sitting, and afford a speedy remedy for every wrong recognized by law as remediable in a court.'

Maine Med. Ctr. v. Cote, 577 A.2d 1173, 1176 (Me 1990)

[924] The substantive right of access to the courts is also 'one of the fundamental rights protected by the [United States] Constitution.' Webb v. Haas, 1999 ME 74, ¶10." Id., ¶559

g) "The right of access to the courts has also been recognized as a substantive right applicable to plaintiffs in civil actions Under the Due Process Clause of the Fourteenth Amendment. Boddie v. Connecticut, 401 U.S. 371, 379, 382-83 (1971)." Id. at 560

h) "The United States Supreme Court has recognized that the basis of the right of access to courts.... decisions have grounded that right in the Article IV Privileges and Immunities Clause, the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection and Due process clauses. Christopher v. Harbury, 536 U.S. 403, 413-14, 415 n.12." Id. at 567 n.10

i) "The right to counsel in criminal prosecutions is likewise a fundamental constitutional right. State v. Ouellette, 2006

ME 81, P11, 901 A.2d 800, 804; State v. Holmes, 2003 ME 42, P11, 818 A.2d 1054, 1057." Id at 2.

j.) "...the state... has chosen to grant a state right to counsel ... shutting off any case by case analysis of federal right anticipated by Lassiter v. Dep't of Soc Servs, 452 U.S. 18, 32-38 (1981)" Nicholson, 203 F.Supp at 257

k.) "The right to appointed counsel when necessary for due process is a right to effective counsel. See Herring v. Estelle, 491 F.2d 125, 127 (5th Cir 1974) ('We interpret the right to counsel as the right to effective counsel.') (quoting MacKenna v. Ellis, 280 F.2d 592, 599 (5th Cir 1960) see e.g. Cuyler 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))." Nicholson, at 239

l.) "In certain Sixth Amendment contexts, prejudice is presumed. Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice. So are various kinds of state interference with counsel's assistance" Strickland v. Washington, 466 U.S. 668 (1984)

m.) "Circumstances may exist such that 'although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial.' U.S. v. Cronin, 466 U.S. 648, 659-60 (1984)." Nicholson at 240

n.) See supra l.a)

- o). see supra 1. c.)
- p). see supra 1. d.)
- q). see supra 1. e.)
- r). see supra 1. f.)
- s). see supra 1. h.)
- t). see supra 2. a.)
- u). see supra 2. d.)
- v). see supra 3. a.)
- w). see supra 3. d.)
- x). see supra 3. e.)
- y). see supra 4. a.)
- z). see supra 4. b.)
- a.a.) see supra 5. a.)
- b.b.) see supra 5. b.)
- c.c.) see supra 5. d.)
- d.d.) see supra 6. a.)
- 8.a.) see supra 1. b.)
- b) see supra 1. c.)
- c) see supra 1. d.)
- d) see supra 1. e.)
- e) see supra 1. f.)
- f) see supra 1. h.)
- g) see supra 1. i.)
- h) see supra 1. l.)
- i) see supra 2. a.)
- j) see supra 2. d.)
- k) see supra 2. e.)
- l) see supra 3. c.)

- m). See *Supra* 3 d.)
- n.) See *Supra* 3 e.)
- o.) "The decision to prosecute is not absolute; it is subject to Constitutional constraints." U.S. v. Armstrong, 517 U.S. 456, 467 (1996). (quoting U.S. v. Batchelder, 442 U.S. 114, 125 (1978)). Discretion extends only so far as 'the prosecution has probable cause to believe that the accused committed an offense defined by statute.' U.S. v. Bonnet-Grullon, 212 F.3d 692, 701 (2d Cir 2000) (quoting U.S. v. Armstrong, 517 U.S. 456, 464 (1996)). 'To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort.' Borden Kircher v. Hayes, 434 U.S. 357, 363 (1978) 'Prosecutors, both governmental & specially appointed, have an ethical duty to ensure that justice is done, and, while responsible for prosecuting the guilty, they must also make sure that the innocent do not suffer.' F.S. Henshaw Enterprises, Inc v. Emerald River Development, Inc., 244 F.3d 1128, 1140 (9th Cir 2001) (quotations & citations omitted)." Nicholson, at 246

CONCLUSION:

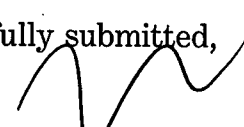
The State of Maine deprives the indigent of effective assistance of counsel (Robbins, et al v. Maine Counsel on Indigent Legal Services, et al, KENSC-cv-22-54). With other tools such as 22 MRS § 4006, a Court in Maine, without personal or subject matter jurisdiction, Unlawfully removed unabused children from their mother simply because the family was poor on Maine's soil. The trial Court alleged Mother "mentally ill" to justify the deprivation of all and any fundamental human rights of

this family while allowing foster care neglect and abuse.

A Mother's attempt to investigate and report the Foster abuse and neglect lead to a false arrest and malicious prosecution twice for the same events where the Court usurped jurisdiction for a Mother to be denied contact with locations prohibiting contact with her children. With the state, federal, and international law on her side, Mother sought assistance / injunction with the higher courts where, as evidenced by the related cases, she was again denied counsel, and her right to appeal. Therefore, with generations and generations of irreparable harm at stake, and practices of the State of Maine against everything just and American, Mother has no other option than to seek her first opportunity of review for the interests of her beloved children, which will also prevent such abuses of the trial and appellate court to recur. The exceptionally circumstances of children being kidnapped, and neglected/abused, in the State of Maine warrant the exercise of the Courts discretionary powers in light of recent concern for reproductive rights. Adequate relief, appeal as a right has been refused. In all previous attempts a Mother has desperately sought. These children will not spoil the Courts time and resources, but refusing to intervene on their behalf will.

The **Writ of Mandamus** should be granted.

Respectfully submitted,


Kinley MacDonald p. 34