24-6581

No.

In the Supreme Court of the United States

VELIN YASENOV MEZINEV,
PETITIONER

v.

BERMET TURUZBEKOVNA TASHYBEKOVA

FILED
FEB 10 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION, FIRST DEPARTMENT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS

1. Under what circumstances do parents who use US-born children as cures for asylum fraud endanger their physical or psychological wellbeing? Do state actors incur 42 U.S.C. § 1983 liability when placing US-born children in the sole custody of deportable aliens when there is an alternative?

2. Under what circumstances can New York State compel citizens to incentivize, subsidize, or bear the cost of fraudulent immigration?

   2.a. When can New York disregard concurrent false reporting and representation and concurrent violations of federal immigration laws when making matrimonial determinations? Alternatively, is New York State's sanctuary posture with respect to fraudulent immigration in conflict with federal law?

   2.b. Does the Equal Protection Clause of the Fourteenth Amendment permit New York to create disparate classes of parents and siblings, granting unequal access to justice, familial rights, and immunities? As a corollary, do false asylees and children born to false asylees enjoy superior rights and immunities compared with law-abiding citizens and siblings born to law-abiding citizens?

3. Can New York State condition the exercise of sibling and parental rights on money transfers without inquiring into the ability to pay, maintain a household, support a sibling, or even work and travel in the U.S.?

   3.a. Can child support determinations be based on income and earning capacity so out-of-date as to legitimize primogeniture and jeopardize the siblings?

   3.b. Does the Due Process Clause of the Fourteenth Amendment permit New York to terminate parental and sibling relationships in blended families without any evidence of harm or unfitness?

   3.c. Does the Eighth Amendment's prohibition on cruel and unusual punishments apply to indefinite denials of passport and license privileges imposed in civil proceedings, where such measures function as punitive sanctions and precipitate civil death, including movement restrictions, false exile, and livelihood deprivation?

LIST OF PARTIES

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

RELATED CASES

None yet although the New York courts mandated duplicative proceedings.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Velin Yasenov Mezinev, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The composite opinion of the intermediate appellate court (Pet. App. A.1, A.3, and A.4) is published by the New York Law Reporting Bureau (226 AD3d 570, 209 AD3d 586, and 188 AD3d 537). The intermediate appellate court's October 17, 2023 decision remains unpublished (Pet. App. A.2.).

JURISDICTION

The trial court's final judgment and statement of facts were entered on January 20, 2023 (Pet. App. B.1. and B.2.). The intermediate appellate court's final opinion was entered on April 23, 2024 (Pet. App. A.1.). The highest state court denied an interlocutory appeal for lack of finality on March 16, 2023 (Pet. App. C.2.) and thereafter denied hearing an appeal of the final judgment without a reason on November 21, 2024 (Pet. App. C.1.). Therefore, this petition is timely. The jurisdiction of this

Court is invoked under 28 U.S.C. §1254(1). Pursuant to Rule 14.1(e)(v), 28 U.S.C. §2403(b) may apply. Notifications required by Rules 29.4(a) and (c) have been made.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The essential provisions are reprinted in Appendix I (108a-120a).

INTRODUCTION

The dry legalities of this petition conceal the very human suffering and the reach of the issue driving it.

1. *The issue cannot be shunned.* Illegal immigration has altered the trajectory of our nation profoundly. The immigration surge during the 2021-2024 period was the largest in US history[1]--adding at least eight million to the population of illegal migrants that an MIT-Yale research team estimated at 22.1 million as of 2018.[2] The MIT-Yale team, Federal Reserve Chair Jerome Powell, and multiple immigration experts have cited a variety of reasons suggesting that official estimates, including the Census, underestimate the magnitude of the issue.

2. *The questions will not go away.* Illegal immigration has emerged as perhaps the country's single most divisive issue, likely eclipsing the abortion debate in its capacity to alienate and fray bonds. Communities quarrel and fracture. Leaders agonize, flip-flop, and take conflicting positions even within the same jurisdiction.[3] At the state and local level, this area of the law has been a source of chaos. At least three different legal regimes apply when it comes to the enforcement of immigration

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[1] "Recent Immigration Surge Has Been Largest in U.S. History," Dec 11, 2024, *NYT*
[2] https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0201193
[3] "Assist or Resist: Local Officials Debate Mass Deportation Threat," Dec 25, 2024, *NYT*

laws. Appendix E. Notably, the questions raised in the preamble will not go away whether or not birth-right citizenship remains the law.

3. *The temptation to cut the line using asylum fraud and US-born children can be overwhelming.* To immigrate in the U.S. legally, one must get in a line that stretches for years or even over a decade.[4] The MIT-Yale study and the recent surge suggest that the population of illegal immigrants who would prefer to legalize their status could approach 30 million currently.

The temptation to cut the line exists and committing asylum fraud is the surest way to do that. The problem of asylum fraud, from the perspective of the potential perpetrator contemplating it, is that one risks eventual deportation because there is no statute of limitation on such crimes. Sole-custody of a US-born child then becomes the silver bullet isolating the false asylee from the consequences of their fraud.

4. *The issue is urgent because the incentives to do harm are escalating.* The Record in this matter is a cautionary tale of the devastating consequences to law-abiding citizens and children when false asylees elect to use US-born children as anchors, weapons, and lottery tickets. The New York courts below adopted self-made rules that favored the false asylee unwaveringly and repeatedly rewarded her false claims. The purpose of this petition is to give the US-born children and citizens who unwittingly become tools in such schemes a voice and a day in court and, thus, to change the calculus—for potential perpetrators and for the sanctuary states rewarding them. The unfolding crackdown implemented by the new administration will

[4] This petitioner obtained US citizenship by waiting his turn on the line.

spur many false asylees to try to anchor themselves no matter the costs to children and citizens. The Court's involvement is urgent.

5. *The compounding of irreparable harms outweigh the hypothetical benefits of further percolation.* Letting some legal experiments and conflicts percolate in the lower courts makes sense when the stakes are merely monetary and the harms are reversible or compensable. While a small fortune has changed hands here, this is not a change-of-coin case. Nor is it a perfectly argued case. It cannot be. Adding to the challenges, English is not this petitioner's first language nor does he have legal training and he had to represent himself for most of the pendency of the case. And yet, no matters are more vital for the future of the nation and, thus, worthy of the Court's attention than the welfare of its children—born and yet-to-be born. Assuming that illegal immigrants are celibate or ignorant of the incentives dangled before them in many sanctuary jurisdictions is unwise. US-born children should not be used as anchors or silver bullets to cure crimes or as weapons or tools against law-abiding citizens.

The presented questions implicate conflicting legal regimes on an issue of national importance. Mr. Mezinev preserved his challenges at trial and on appeal below. This is a suitable time and case for the Court's guidance and its review is not only warranted, but also urgently needed.

STATEMENT

I. Facts

After discovering extensive documentation of Ms. Tashybekova's ongoing and concurrent asylum fraud in January of 2015, Mr. Mezinev sought to distance himself from the fraud via separation (March of 2015) and divorce (January 2016).[5] The marriage lasted 19 months.

Ms. Tashybekova's narratives are venue-dependent. In immigration and federal district courts, Ms. Tashybekova presents as a "persecuted lesbian since age four" from Kyrgyzstan. R3580-3589. In New York state court, Ms. Tashybekova presents as a mother protecting "her" child from abuse. On a matrimonial matching website exclusively serving heterosexual couples, Ms. Tashybekova claims to be a heterosexual "virgin."

The Record overflows with evidence that none of these narratives are true. In jarring contrast to the "lesbian" narrative in immigration and federal district courts, Ms. Tashybekova's personal diary reflects her relationships/romantic interest in 16 men—and men only. R1465-1577. Rather than supporting "persecution," Ms. Tashybekova's diary captures the privileged life of a daughter of an elite, chauffeured Soviet bureaucrat who traveled to America because "[she] was bored with [her] life" in Kyrgyzstan. And refuting her claims of child abuse, both the NYPD Special Victims Unit and Child Protective Services independently found that Ms. Tashybekova's

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[5] Timeline, pages 3-8, Appellant's Brief, dated Dec 16, 2023, AD Case No.: 2023-04392

allegations were "divorce-, not child-driven." R781. The allegations were not just unfounded, they were false. R779, 789-791.

Moreover, Ms. Tashybekoava was willing to sacrifice "her" child's wellbeing when, trying to paint Mr. Mezinev as a child abuser, she subjected the vagina of one-year old J.M. to repeated culdoscopies and biopsies in frequent visits to the ER, mobilizing a small army of law-enforcement personnel, social workers, and TROs. R3614-3626 and 3536-3564. In the midst of the divorce proceedings, Ms. Tashybekova's mother and the primary caretaker of J.M.—Alipa Shabdanbekova—was ordered deported by an immigration judge. The basis for Alipa's asylum application were the false allegations of Ms. Tashybkeova's persecution on account of her lesbian lifestyle. R3590-3603.

Concerned about the risks that Ms. Tashybekova's asylum fraud posed to their daughter's wellbeing, Mr. Mezinev sought joint physical custody. R943-947. In response, Ms. Tashybekova demanded sole physical custody, triggered multiple abuse allegations, and demanded "1,000,000 + an apartment in Manhattan + child support + annual inflation adjustments" to settle out of court. R948-951, 3806, p64, ln3-6.

In January 2020--after five years of litigation--Mr. Mezinev was entirely spent and, due to economic necessity, was compelled to move back into his childhood home in Plovdiv, Bulgaria. In 2022, Mr. Mezinev welcomed the birth of his son Y.M.. Mr. Mezinev is blessed to serve as Y.M.'s sole parent of nurture.

II. Errors

When presented with this dispute, the New York courts assumed it away, adopted self-made rules, and sided with Ms. Tashybekova at every turn.

First, the New York courts below shunned their truthing duties and attempted to suppress evidence, subpoenas, and inquiries into Ms. Tashybekova's asylum fraud and the risks posed to J.M.'s wellbeing. R3773-4287.

Second, the trial court repeatedly paused its proceedings and advised Ms. Tashybekova, on- and off-the-record, to not answer questions about her asylum fraud and tax evasion. When Jeremy D. Morley, Esq.—one of the nation's preeminent legal authorities on the Hague Abduction Convention and risks children face when parents commit fraud as a way of life—submitted an expert report, the trial court ignored it in its entirety. R1609-1690.

Third, using *ex parte* communications and collaborations, the trial court strategized with opposing counsel to strip Mr. Mezinev's representation and punish a financially spent, but law-abiding citizen and father midway through the proceedings. R311-341.

Fourth, the New York courts below set in motion a perpetual-harm machine by treating the siblings as severable chattel and mandated duplicative litigation, to deny a voice and a day in court to one of the affected siblings (Y.M.).

Fifth, under the "civil" label, the proceedings below inflicted license, passport, and livelihood deprivations on Mr. Mezinev without process or any material countervailing benefits. App. Brf., Dec 16, 2023, Case No.: 2023-04392

Sixth, the New York trial court falsified the nature of the proceedings. Mr. Mezinev's Motion for the Appointment of a Neutral Referee R958-968 was falsified as "failing to cooperate with pre-trial submissions." R310. Similarly, after depriving Mr. Mezinev of counsel over his objections, the trial court falsely declared that Mr. Mezinev had "opted to self-represent," "moved to Bulgaria voluntarily," and "volunteered to pay maintenance" 7-13 times the statutory mandates.

Seventh, the New York trial court's judgment codified the indefinite *de facto* separation of the siblings, the indefinite *de facto* separation of J.M. from all her paternal relatives, and the indefinite *de facto* termination of parental rights.

Eighth, absurdly, the trial court's final judgment ordered the spent spouse to pay for the legal fees of the moneyed spouse and contravened the Appellate Division's order dated Nov 17, 2020 which ordered the trial court to take into account the fee awards in the determination of the equitable distribution award.

III. Harms

The proceedings below legitimized and rewarded perjury and fraud, endangered the physical and psychological welfare of the affected siblings, and inflicted crushing deprivations, including sibling separation, indefinite termination of familial relations, false exile, and livelihood deprivation.

Concerning J.M. J.M. has never seen her brother Y.M. in person. There is no schedule for sibling unification. J.M. has not seen any of her paternal relatives for 62 months and there is no schedule for reunification even though J.M. used to spend approximately 50% of her time in their care, including during annual summer visits

to Bulgaria. Previously, the CFS Forensic Reports reflected the warm relationships between J.M. and her paternal relatives. Now, J.M. does not know her immediate family. Even J.M.'s teachers at Public School 290 noticed that J.M. did not know her immediate family. R4317-18. J.M. no longer understands or speaks Bulgarian—the language of her paternal relatives. Instead, J.M. is being groomed to fear them. As a result of Ms. Tashybekova's interference, gatekeeping, and brainwashing, J.M. is being irreparably injured. R3414-3431, 3538-3564, 3625, 3652-3659, 3801-3802, 4319-4333.

Throughout January 2015, Ms. Tashybekova unlawfully retained J.M. out of New York state to "teach [Mr. Mezinev] a lesson." To this day, J.M. is being retained unlawfully and effectively held hostage as immigration anchor.

Concerning Y.M. Y.M. has never seen his sister J.M. in person. In contravention of New York law and Article 21 of the Hague Abduction Convention, there is no schedule for sibling unification. The trial court denied Y.M.—a profoundly affected toddler—a voice and a day in court, mandating duplicative litigation. The mandate guarantees conflicting adjudications because no European court would affirm a judgment that deprives Y.M. of a voice and day in court. By denying Mr. Mezinev's travel privileges, the trial court also falsely exiled Y.M. because Mr. Mezinev is his sole parent of nurture.

The financial inequity between the two siblings is 150 to 1 in Y.M.'s disfavor. Mr. Mezinev has transferred more than $550,000 to Ms. Tashybekova. If Mr. Mezinev were able to fulfill all of the extra money transfers ordered, Ms. Tashybekova would become the direct beneficiary of approximately $1,000,000 of transfers with

the naive hope that the money is benefiting J.M. The disparity between the siblings is 150 to 1. Even if Mr. Mezinev were to abandon all care for Y.M., including shelter, food, and clothing, Mr. Mezinev would not be able to fulfill even a fraction of the judgment's extra money transfers.

Concerning Mr. Mezinev. The New York courts erected barriers and heaped punishments. For 62 months, through no fault of his own, Mr. Mezinev has been prevented from seeing J.M. Mr. Mezinev's license and passport privileges have been denied; livelihood deprived. Mr. Mezinev abided by the law and paid his taxes ahead of time. Yet, when Mr. Mezinev attempted to protect his children from clear and present dangers and assert his own rights, the New York courts amplified the dangers for the children and precipitated Mr. Mezinev's civil death.

REASONS FOR GRANTING THE PETITION

> So, the question becomes, what prevents the descent of the judiciary into an abyss of unchanneled discretionary justice that would render law so uncertain and unpredictable that it would no longer be law but instead would be the exercise of raw political power by politicians called judges?
>
> Judge Richard Posner, *How Judges Think*

I. The New York rulings and process below make neither good sense nor good public policy

A. Rewarding false asylees at the expense of devastating law-abiding citizens

New York adopted the following *de facto* rule: If you are an alien seeking asylum under false pretenses, you can falsely report your citizen spouse R4261-4264 one day after he asks you for divorce R3804; you can weaponize a child R3614-3625 to anchor yourself in the country; you can subject the vagina of a one-year old to

repeated culdoscopies to attempt to falsely portray your co-parent as an abuser; you can falsify school applications to prevent teachers from reaching your co-parent R3647; you can instill fear in and retain the child out-of-state over your co-parent's objections, you can threaten to kidnap the child to Kyrgyzstan--a non-Hague Convention country R3806-3807; you can submit fraudulent net worth statements R4377-4378; you can mobilize a small army and wage lawfare. Despite this, your immigration fraud and perjury will not be taken into account in any respect. In fact, your legal fees will be paid—either by your law-abiding co-parent or by the State of New York.

The lay public might miss the legalistic gamesmanship, but the lay public would not miss the ruling's bottom line—for the New York courts, Ms. Tashybekova is above the law--a member of a superior class that enjoys rights and immunities other citizens do not. When citizens weaponize children in New York, they lose primary custody of them and certainly don't gain sole custody.[6] When citizens interfere with visitation in New York, they have child support payments cancelled as a remedy.[7]

This petitioner cannot think of a scheme better calibrated to undermine trust in the judiciary than one that lavishly rewards aliens who commit crimes in plain sight while harshly punishing law-abiding citizens.

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[6] *Stepan K. v. Marina M.*, 132 N.Y.S.3d 763 (N.Y. App. Div. 2020)

[7] *Kershaw v. Kershaw* 701 N.Y.S.2d 739 (App.Div. 2000); also *Tibaldi v. Meehan*, 676 N.Y.S.2d 607 (App.Div. 1998)

B. Endangering US-born children and erasing siblings

The implications of the New York judgment extend far beyond the facts of this case. The judgment below legitimizes reliance-destroying, windfall-seeking, rent-seeking criminal conduct. To obtain asylum in the US--and concurrent with the marriage and this litigation--Ms. Tashybekova assumed a false identity and filed multiple fraudulent affidavits in immigration and federal district courts. R3574-3603, 4441-4447, 1623-1624, 3778, 3798, 3801, 4276, 4386.

Jeremey D. Morley, Esq. has been an undisputed authority on international child custody matters. His affirmation illustrates that his testimony has been accepted throughout the world, listing 34 courts, among others. R1606-1609. Notably, Mr. Morley's testimony "ha[s] never not been so accepted." R1609, ¶12. Inexplicably, the New York courts below totally rejected Mr. Morley's expert report explaining the dangers Ms. Tashybekova's immigration fraud poses to J.M.'s welfare.[8]

In fact, the federal government had already moved to enforce against the immigration fraud perpetrated by Ms. Tashybekova's family by ordering, on August 18, 2018, that Ms. Tashybekova's mother—and the primary caretaker of J.M.--be deported to Kyrgyzstan. Shockingly, Referee Sugarman declared that she had not and would not consider this fact R1179-1180 despite Mr. Mezinev's offer of easily-ascertainable evidence in his Dec 6, 2019 post-trial submission. R1175-1178. The Referee's refusal to digest evidence of clear and present danger to J.M. safety was inexplicable. The Referee had, in the course of the trial, already seen, in her chambers,

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[8] R1602-1690, Affirmation of Jeremey D. Morley, Esq. with Exhibits

documentary evidence that Ms. Tashybekova's original naturalization application was denied. R4441-4446 and R1686.[9]

C. Ensuring duplication and conflicting adjudications; Incentivizing forum-shopping, retentions, and abductions

Contrary to the letter, spirit, and application of the Hague Abduction Convention, the judgment below bifurcated the jurisdiction of the affected siblings and mandated duplicative, cross-country litigation about the same matters. R3733-3762. By erecting multiple barriers to access, the judgment and process below are in clear violation of the Article 21, "Rights of Access."

Perversely, the judgment below injures those that the Convention seeks to protect—the children. The judgment below incentivizes parents to forum-shop instead of relying on judicial authorities in one jurisdiction at a time and ultimately to take the law into their own hands. The purpose of the Convention is to discourage such injurious conduct. The New York rulings turn the Convention on its head.

D. Turning children into tools and marriage into a vector of asylum fraud

The helplessness and innocence of children demands that adults never treat them as mere tools, stepping stones, or anchors or be rewarded for doing so. The *de facto* rules adopted by New York desecrate US-born children and stand in conflict with the country's traditions and core values. They also endanger children by erasing their inherent worth and reducing them to become tools to be used by self-serving adults to achieve permanent immigration status and unwarranted economic benefits.

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[9] R1686, representing PACER docket tabulation in *Tashybekova v. Duke et al.*, Case#: 1:17-cv-08006-VSB, "Review of Denial of Naturalization Application," October 17, 2017

E. Cascading social disutility from easy and erroneous familial destruction

The New York courts made the erroneous destruction of sibling and familial relations easy. There was no *Mathews* test; no independent counsel for the affected siblings; no evidentiary hearing; no completed initial custody determination. And expert testimony about the harm was simply ignored. None of the concerns that animated the *Santosky* Court to act, e.g. skewing the risk of error overwhelmingly against the terminated parents and siblings,[10] were addressed even though, unlike 45 years ago, one in six children live with a half sibling under 18 nowadays.

Before there were states, there were families. No state, however powerful or enlightened it may perceive itself to be, can afford to let fraud permeate the family formation and dissolution process. Polities that erroneously destroy familial relations without care and deliberation sow chaos and, sooner or later, reap it. According the Cornell School of Public Policy's Program on Applied Demographics, New York state's population could shrink by more than 2 million people over the next 25 years – a decline of more than 13%.[11] In 2023, the last year national statistics are available, the United States recorded the lowest total fertility in its history of 1.617 average number of children per woman. The years with the second, third, fourth, and fifth lowest fertility rates were 2020, 2022, 2021, and 2019 with corresponding statistics of 1.641, 1.656, 1.664, 1.706; the modern peak of 3.767 was recorded in 1957 and the

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[10] Oral argument, Nov 10, 1981, No. 80-5889, *Santosky v. Kramer*, 455 U.S. 745 (1982)

[11] "Stark population decline projected for NYS," Nov 13, 2024, *Cornell Chronicle* at https://news.cornell.edu/stories/2024/11/stark-population-decline-projected-nys

antebellum peak was 7 to 8.[12] No single factor drives these trends. Clearly, the COVID pandemic was not the culprit.

II. The compounding of irreparable harm outweighs the hypothetical benefits of further percolation.

The re-election of Mr. Trump is accelerating a looming confrontation between the "enforcement" and "sanctuary" camps. For example, supporters of New York's "sanctuary" stance are gearing up to strengthen protections for immigrants,[13] including by extending "sanctuary" legislation;[14] as do "sanctuary" supporters in California.[15] The administration's "border czar" Tom Homan is no less committed to "enforcement," vowing to arrest even mayors whom he deems impediments to President Trump's enforcement priorities.[16] Other states are moving to restore the integrity of immigration laws as they perceive them.[17] The new administration has moved to block all avenues for illegal immigration.[18] Some of the new administration's policies will likely be challenged in court. Waiting for brand new cases to reach the Court will take considerable time.

Meanwhile, the unfolding crackdown will spur many illegal immigrants to try to anchor themselves using US-born children. On the ground, these problems have festered for decades, upending countless lives. The compounding of harms—past,

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[12] https://en.wikipedia.org/wiki/Demographics_of_the_United_States
[13] "Plans Develop to Push Immigrant Protections," Nov 7, 2024, *City and State New York*
[14] New York State Senate Bill S987 at https://www.nysenate.gov/legislation/bills/2023/S987
[15] "California Prepares to Resist Trump Deportations," Nov 25, 2024, *CalMatters*
[16] "He's willing to go to jail. I'm willing to put him in jail." - Tom Homan
[17] *Texas v. DHS*, No. 23-50869 (Fifth Circuit), *Texas v. DHS*, No. 6:24-cv-00306 (E.D. Tex.)
[18] "Trump Starts Immigration Crackdown, Enlisting the Military and Testing the Law," Jan 20, 2025, *New York Times*

ongoing, and imminent--outweigh the hypothetical benefits of further experimentation by the states. The Court's guidance is urgently needed.

A major issue such as this requires the courts' weighing and calibration of factors and the balancing of rights and obligations. States cannot be allowed to create their own immigration regimes or to ignore immigration rulings or proceedings or evidence based thereon. Custodial and matrimonial judgments cannot rely on the unstated assumption that immigration laws will never be enforced in the future. A major issue such as this cannot be delegated for resolution to the State Department, the Support Collection Unit, DHS or any other agency. Resolving a major issue such as this belongs in the courts. The lower state courts shunned this duty.

Finally, fundamental social transformations, such as exempting certain types of crimes from consequences or increasing agency authority at the expense of courts, ought not to be a product of judicial silence, inadvertence, or accident. Social transformations privileging some over others should come about as a result of explicit judicial deliberation or congressional authorization. There was none here.

III. The New York rulings and process defy federal law, this Court, the Appellate Division's own ruling in the matter, and New York's own law and statutory mandates

A. The New York court created its own immigration scheme under the cloak of matrimonial law

The New York court presumed that immigration laws will never be enforced or do not count. It conjured its own immigration regime whose effects are the opposite

of what Congress intended. In the process, the New York court misconstrued and misapplied not only immigration law but also matrimonial law.

New York's sanctuary posture with respect to illegal immigration is not limited to this action and has a long history. The Second Circuit upheld both 8 U.S.C. §1373 and §1644 (2012) against New York's challenges that they violated the Tenth Amendment's anticommandeering doctrine.[19] More recently, New York's *Driver's License Access and Privacy Act* allowed illegal immigrants to obtain standard driver's licenses. The bill was passed by the State Senate on June 17, 2019, signed into law by Governor Andrew Cuomo on the same day, and became effective on December 14, 2019.[20]

At the birth of the United States, sanctuary has been illegal in Britain for about 150 years, and the concept was never part of American law. App. D. Constitutional Article VI, Clause 2 allocates supremacy unambiguously. App. I.

Congress mandated that "the immigration laws of the United States should be enforced vigorously and uniformly."[21] The Court has repeatedly ruled that states cannot enact their own immigration policies, even when such policies are directionally aligned with federal laws.[22] Furthermore, the federal government's power over immigration comes from its "inherent power as sovereign to control and conduct relations with foreign nations." *Arizona*, 567 U.S. at 394. Conversely, "[u]nder the

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[19] *City of New York v. United States*, 179 F.3d 29 (2d Cir. 1999)
[20] NY Bill S.1747-B, a.k.a., the "Green Light Bill" at https://perma.cc/N6VJ-GPDT
[21] The Immigration Reform and Control Act (IRCA) of 1986.
[22] *Arizona v. United States* 567 U.S. 387 (2012) striking most of Arizona's scheme as either field or conflict preempted. Also, *Edgar v. MITE Corp.*, 457 U.S. 624 (1982).

Constitution the states are granted no such powers; they can neither add to nor take from the conditions lawfully imposed by Congress."[23] Under the Immigration and Nationality Act (INA), Congress specifically permits state and local law enforcement officers to assist federal officials in enforcing immigration law.[24] No federal law, however, allows state or local officials to subvert or ignore the requirements of the INA. In fact, federal law imposes significant criminal and civil penalties on those who do so. The Court has explained: "There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision." *Arizona*, 567 U.S. at 399. Congress did exactly that in the INA. Therefore, sanctuary policies promulgating alternative immigration regimes are unlawful.

Federal law is clear: anyone providing a forged identity document or "a false attestation for the purposes of evading, or attempting to evade, immigration laws" or "concealing a material fact" is committing crimes on multiple counts.[25] Further, anyone who "conceals, harbors, or shields from detection" "an alien [who] has come to, entered, or remains in the United States in violation of law," or who attempts to do so, is committing a federal crime if that person knew or acted "in reckless disregard of the" alien's unlawful presence or entrance in the United States. 8 U.S.C. §1324(a)(1)(A)(iii). Similarly, it is a crime if an individual "encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of

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[23] *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 419 (1948)
[24] See, e.g., 8 U.S.C. §1324(c); id. §1252c; id. §1103(a)(10); and id. §1357(g)
[25] 18 U.S.C. §1546, §1001, §1028A and 8 U.S.C. §1325 (a)

law." 8 U.S.C. §1324(a)(1)(A)(iv). Recently, the Court affirmed the statute's constitutionality. *United States v. Hansen*, 599 U.S. 762 (2023). It is also a crime to aid and abet the above violations or to engage in conspiracy to commit them. 8 U.S.C. §1324(a)(1)(A)(v). The penalty for any of the above crimes is at least five years' imprisonment per alien involved. 8 U.S.C. §1324(a)(1)(B)(ii). It is also a crime to prevent federal officials from enforcing immigration law. 18 U.S.C. §372. This crime carries a penalty of up to six years' imprisonment.

Furthermore, because the language "come to, entered, or remains" is phrased in disjunctive form, federal appellate courts have held that the above provisions apply to conduct regardless of whether an alien may be considered lawfully present, so long as the alien had initially "come to" or "entered" the United States unlawfully.[26] Accordingly, if an alien, as is the case here, initially enters the United States illegally and later fraudulently receives parole status or some other quasi-lawful status, that later lawful status fails to insulate perpetrators, such as Ms. Tashybekova, or others implementing sanctuary laws or policies from criminal exposure and prison sentences. Ms. Tashybekova's subsequent "naturalization" did not cure her asylum fraud as her diary and concurrent marriage to a heterosexual man redundantly demonstrate. "An asylum application is frivolous 'if any of its material elements is deliberately fabricated.' 8 C.F.R. §1208.20."[27] It was Ms. Tashybekova's asylum fraud that

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[26] *United States v. Esparza*, 882 F.2d 143, 145–46 (5th Cir. 1989); *United States v. Francisco*, 30 F. App'x 48, 49 (4th Cir. 2002); also *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1138 (9th Cir. 2002), holding that not all three elements must be proved for the statute and Section 1324 to apply.

[27] *Indrawati v. U.S. Attorney Gen.*, 779 F.3d 1284, 1289 n.1 (11th Cir. 2015)

motivated her to induce Mr. Mezinev into marriage. Inducing marriage to evade immigration law is in of itself punishable by imprisonment by up to 5 years. 8 U.S.C. § 1325 (c). According to Acting ICE Director Patrick J. Lechleitner, "'sanctuary' policies can end up shielding dangerous criminals, who often victimize those same [immigrant] communities."[28]

The Court has emphasized the importance of safeguarding the integrity of the asylum process and mandated proper credibility assessments in asylum cases.[29] Similarly, the Second Circuit has affirmed the prison sentence for an attorney who had abetted hundreds of fraudulent asylum applications.[30] Congress has declared the nation has a "compelling interests" in "remov[ing] the incentive for illegal immigration provided by the availability of public benefits." 8 U.S.C. §1601(6).[31]

In contrast, the New York courts below adopted contrary rules, conducted proceedings, and issued rulings oblivious of or calculated to achieve the polar opposite of federal purposes, i.e., incentivizing and rewarding illegal immigration. Thus, the New York courts below frustrated the purposes of federal law, invited fraud, and robed Congress of its legislative power. The courts below failed to apply the Constitution and the Court's rulings faithfully.

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[28] Letter from Patrick J. Lechleitner, Acting ICE Director, to Hon. Tony Gonzales, U.S. House of Representatives (Sep. 25, 2024), https://perma.cc/A5BV-UUL5

[29] *Garland v. Dai*, 593 U.S. ___ (2021)

[30] *United States v. Dumitru*, 991 F.3d 427 (2d Cir. 2021)

[31] Whether the source of the incentive is public or private is irrelevant with respect to the purposes of federal law or the driver of this litigation. Congress would not have defeated its own purposes by barring public sources but compelling private citizens.

B. State actors cannot evade §1983 liability by blaming the snakes

> If the state puts a man in a position of danger from private persons and then fails to protect him, the state is as much an active tortfeasor as if it had thrown him into a snake pit.[32]

Unlike the *Bowers* matter, the danger and harm here is to children. This ought to heighten both duty and liability. For 17 out of its 21 pages, the New York ruling is exclusively focused on money and includes not a word of mention that New York State has placed Mr. Mezinev's US-born child (J.M.) in the sole custody of a deportable alien (Ms. Tashybekova) and her mother (Ms. Alipa Shabdanbekova) who was already ordered to be deported. The decision also does not mention that the State had suspended and denied Mr. Mezinev's licenses and passport and imposed excessive, arbitrary, and capricious financial obligations on him that effectively deprive him of the ability to travel to--much less sustain a household in--the United States.

Here, New York actors took affirmative actions that caused irreparable harms that were not only foreseeable but also foreseen. Reliant on 42 U.S.C. §1983, federal courts have provided relief in analogous circumstances. The Tenth Circuit determined that public officials cannot endanger children knowingly.[33] The Ninth Circuit determined that the right to be free from state-created dangers was established by the family, and thus, the defendants--high-level officials within the CDCR--were not entitled to qualified immunity.[34] The First Circuit reversed a district court's grant of summary judgment on qualified immunity grounds, allowing the plaintiffs' claims

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[32] *Bowers v. DeVito*, 686 F.2d 616, 618 (7th Cir. 1982)
[33] *Currier v. Doran*, 242 F.3d 905 (10th Cir. 2001).
[34] *Polanco v. Diaz*, 76 F.4th 918 (9th Cir. 2023).

against the detectives to proceed.[35] The Third Circuit affirmed the district court's denial of qualified immunity, allowing the § 1983 claim to proceed on account of the dangers inherent to the illegal pickup and retention of a child.[36]

Much needed is the Court's guidance on the application of the state-crated danger doctrine in the context of harms stemming from "sanctuary" practices. Which actors bear primary §1983 liability here? The attorneys Eliza Grinberg, Michael Piston, and Allen Kaye who abetted the "persecuted lesbian" fraud? Or, the attorneys Chanah Brenenson and Lawrence Braunstein who furthered the fraud by weaponizing J.M., profiteering $210,000 from petitioner alone? Or, Special Referee Sugarman and Judge O'Neill-Levy who suppressed evidence and testimony of Ms. Tashybekova's fraud and levied arbitrary, excessive, and punitive orders lacking process? Or, the New York State Collections Unit that suspended and denied Mr. Mezinev licenses and passport on the basis of orders that lacked legitimacy? Or, do all these actors share the §1983 liability equally?

C. *Ex-parte* communication, collaboration, and strategizing followed by deprivation of licenses, passport, and livelihood for petitioner and a one-sided judgment drafted by respondent's attorneys exclusively.

The hearing on January 28, 2020 was but one example. The court admitted on the record that the determination to strip Mr. Mezinev of counsel was made *before* hearing Mr. Mezinev's objections or digesting Mr. Mezinev's evidence, i.e., a 22-paragraph affidavit, 364 row job-search log, 900 pages of supporting job-search documents, seven years of tax returns, five net worth statements. Mr. Mezinev—for whom

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[35] *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020).

[36] *L.R. v. School District of Philadelphia*, 836 F.3d 235 (3d Cir. 2016).

English is a second language—could barely get in a word. Repeatedly, the court shut him down, first to give the word to Ms. Tashybekova's counsel R326, and then to Mr. Shapiro who was no longer Mr. Mezinev's attorney R327. Judge O'Neill hung up the telephone line with Mr. Mezinev at the first sign of temporary connection difficulties. R332, ln15. The court made no attempt to either re-establish connection with Mr. Mezinev or reschedule the proceedings for a time when the now pro se parent can be re-connected remotely.

Instead, after stripping Mr. Mezinev of counsel and terminating his telephone connection, Judge O'Neill proceeded to collaborate with Ms. Tashybekova's attorney--Ms. Brenenson, *ex-parte*, on- and off-the-record. The record overflows with *ex-parte* collaboration between Ms. Tashybekova's attorney and Judge O'Neill. R337-340. Judge O'Neill lets Ms. Brenenson make defamatory insinuations about Mr. Mezinev--in his absence and stripped of a voice. R336. Repeated pauses in the proceedings for off-the-record collaboration ensue.

The extent and duration of the off-the-record collaboration are unknowable. However, for 9 out of the 30 transcript pages, Judge O'Neill was communicating and collaborating with the opposing attorney *ex-parte*. The *ex-parte* communications and collaborations were contrary to the Judicial Canons and deprived Mr. Mezinev of any process. As a result, it did not matter what evidence Mr. Mezinev presented, what he testified, or whether he testified.

Harms and deprivations quickly followed. Adding insult to injury, Judge O'Neill subsequently alleged that Mezinev had "opted to self-represent." The final

ruling was drafted by Ms. Tashybekova's attorneys exclusively, shortly after Y.M's birth. Pet. App. B.3.[37] Judge O'Neill appears to have added only her signature and two handwritten notes.

D. Termination of sibling and parental relations with no to simulacra of process or safeguards; conditioning their restoration on money

For 17 out of its 21 pages, the New York ruling is exclusively focused on money. In passing, the phrase "reasonable access" is mentioned as if to imply such access. Not a word that:

1. The ruling treated the siblings as severable chattel, codifying indefinite separation and depriving one sibling of a day and a voice in court.

2. J.M. had not seen her paternal relatives for 36 months by then (62 by now) even though she used to be cared approximately 50% by Mr. Mezinev and used to visit her paternal relatives in Europe every summer.

3. The State Department had advised Mr. Mezinev not to travel to the US because his US passport was in "denial" and could not be used for identification or travel purposes. R3766-3768.

4. An initial custody determination was never completed in seven years of litigation. No weighing of the twenty-one custodial factors presented in Motions 9 and 10. R3432-3438.

5. Mr. Mezinev was entirely spent and compelled to move in with this mother out of economic necessity and certainly not voluntarily.

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[37] "Null and void even prior to reversal," Plaintiff's Letter, dated August 8, 2022.

6. J.M.'s virtual contact with her father had been curtailed; she had lost her ability to speak or comprehend the Bulgarian language; even her teachers have noticed that she does not know her immediate family, among other deficits.

Labels notwithstanding, family matters remained in a worse shape following the final ruling in 2023 than they were on January 26, 2016 when Mr. Mezinev commenced the action to distance himself from Ms. Tashybekova's immigration fraud and attempted to protect J.M.'s safety. Without process or finding of unfitness or harm, the ruling codified the indefinite separation of the siblings and the termination of sibling and familial relations and legitimized Mr. Mezinev's false exile. This was inconsistent with this Court's decisions and with that of other federal and state high courts' rulings.

First. The *Santosky* Court's recurring concern was the asymmetric burden between a New York State bent on terminating parental and sibling rights and parents trying to assert those same most fundamental of rights. The *Santosky* Court asked the same question from 12 different angles.[38] The Court was bothered by the ease with which New York could sever children from their parents inappropriately and irreversibly:

> When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures. [at 752-754]
>
> Thus, in New York, the factual certainty required to extinguish the parent-child relationship is no greater than that necessary to award money damages in an ordinary civil action. [at 747-748]
>
> Today we hold that the Due Process Clause of the Fourteenth Amendment demands more than this. Before a State may sever completely and irrevocably

[38] Oral argument transcript, Nov 10, 1981, No. 80-5889, pages 9, 17, 18, 19, 23, 24, 26, 27

> the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence. [at 747-748]
>
> The minimum standard is a question of federal law which this Court may resolve. Retrospective case-by-case review cannot preserve fundamental fairness when a class of proceedings is governed by a constitutionally defective evidentiary standard. [at 746]
>
> Most notably, natural parents [in New York] have a statutory right to the assistance of counsel and of court-appointed counsel if they are indigent. Fam. Ct. Act § 262.(a)(iii). [at 751 n.2]
>
> [T]the norm in the States is the showing of unfitness under a high "clear and convincing evidence" standard. [at 767-768]

Second. The *M.L.B.* Court held that deprivation-of-parental-status cases can proceed without counsel if the court has ensured, and the record reflects, that the affected party "competently, voluntarily, knowingly, and intelligently" waived his right to counsel.[39] *In re Ella B.*, 30 N.Y.2d 352 (1972), the New York Court of Appeals held and, in 1975, the New York Legislature codified the right to assigned counsel in a range of family law proceedings involving "the infringements of fundamental interests and rights, including the loss of a child's society and the possibility of criminal charges." N.Y. Family Court Act §261. Not only did Mr. Mezinev not waive his right to counsel, Mr. Mezinev petitioned for it, on behalf of himself and the affected sibling Y.M. repeatedly, laboring to assert their rights in the midst of the COVID pandemic and from the other side of the Atlantic. The deck was stacked high.

Third. The upside-down morality of the New York ruling shocks because it prioritizes money over fundamental rights in defiance of the *Stanley*, *Troxel*, *Turner*, *Elrod*, and *Mississippi Band of Choctaw Indians* courts:

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[39] *M.L.B. v. S.L.J.*, 519 U.S. 102, 125 (1996)

> It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children "come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive *merely from shifting economic arrangements*." [emphasis added] [40]
>
> [P]arents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody. [*Stanley* at 658]
>
> [Liberty interest] of parents in the care, custody, and control of their children[,] which is perhaps the oldest of the fundamental liberty interests recognized by the Court. [41]
>
> A state must demonstrate that an individual has the ability to pay child support before imprisoning him for contempt for failure to pay.[42]
>
> [T]he deprivation of fundamental rights, for even minimal periods of time, unquestionably constitutes irreparable injury.[43]
>
> [T]he law cannot be applied so as automatically to reward those who obtain custody, whether lawfully or otherwise, and maintain it during any ensuing (and protracted) litigation.[44]

Fourth. The New York proceeding foreclosed on travel to and back from the US and thus on the possibility of rebuilding a livelihood in the US. However, borders do not dissolve families. *Ms. L.* Court's analysis is apposite:[45]

> This is a startling reality. . . children are not accounted for with the same efficiency and accuracy as *property*. Certainly, that cannot satisfy the requirements of due process. [at 1144]
>
> "[T]he parent has committed no crime, and absent a finding the parent is unfit or presents a danger to the child, it is unclear why separation of Ms. L. or similarly situated class members would be necessary... [T]he right to family integrity still applies here. The context of the family separation practice at issue here, namely an international border, does not render the practice constitutional. [at 1143]

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[40] *Stanley v. Illinois*, 405 U.S. 645, 651, 658 (1972)
[41] *Troxel v. Granville*, 530 U.S. 57, 65, 68, 120 (2000)
[42] *Turner v. Rogers*, 564 U.S. 431 (2011)
[43] *Elrod v. Burns*, 427 U.S. 347, 373 (1976)
[44] *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U. S. 30, 33, 53-54 (1989)
[45] *Ms. L. v. U.S Immigration & Customs Enfrc't*, 310 F. Supp. 3d 1133 (S.D. Cal. 2018)

> This practice of separating class members from their minor children, and failing to reunify class members with those children, without any showing the parent is unfit or presents a danger to the child is sufficient to find Plaintiffs have a likelihood of success on their due process claim. [at 1145-46]
>
> [I]t is clear that it would not be equitable or in the public's interest to allow the state ... to violate the requirements of federal law. [at 1149]

The reality of *Mezinev* is starker than that of *Ms. L* because the separated siblings are US citizens—J.M. by way of birth and Y.M. by way of a US parent. Citizens or not, the law plainly prioritizes the fundamental liberties of children, siblings, and parents over the government's or the courts' convenience, and most certainly over a false asylee's pursuit of an immigration anchor. The trial court's ruling and process do not pass constitutional muster.

Fifth. Take notice of the law as articulated by other New York courts:

> Primary among these circumstances to be considered is the quality of the home environment and parental guidance the custodial parent provides for the child. . . . the court is to consider the totality of circumstances. . . The record indicates that although the mother is not an unfit parent for Laura, she is, under all the circumstances present here, the less fit parent.[46]
>
> The rebuttable presumption in favor of visitation applies when the parent seeking visitation is incarcerated. A parent who is in prison does not forfeit his or her visitation rights by being incarcerated...This language is intended to convey to lower courts and practitioners that visitation will be denied only upon a demonstration—that visitation would be harmful to the child—that proceeds by means of sworn testimony or documentary evidence.[47]
>
> It is presumed that parental visitation is in the best interest of the child in the absence of proof that it will be harmful.[48]

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[46] *Eschbach v. Eschbach*, 56 N.Y.2d 167 (N.Y. 1982)
[47] *Granger v. Misercola*, 21 N.Y.3d 86, 91 (N.Y. 2013)
[48] *Matter of Nathaniel*, 97 A.D.2d 973, 974 (N.Y. App. Div. 1983)

> Furthermore, the sweeping denial of the right of the father to visit or see the child is a drastic decision that should be based upon substantial evidence.[49]

Entirely missing from the process below is an attempt to follow the factors outlined in *Eschbach*—e.g., consideration of the totality of circumstances, comparison of the quality of home environments and parental guidance, the relative fitness of Ms. Tashybekova and Mr. Mezinev. Entirely ignored was Mr. Mezinev's presentation of a 20-factor, side-by-side comparison of the home environment, parental guidance, relative fitness, etc. in Mot. Seq. 09 and a 21st factor—a sibling in Mot. Seq. 10. R3432-3438. There was no visitation schedule and no testimony or documentary evidence showing that denying J.M. visitation with her sibling Y.M., her father, and all her other paternal relatives would be harmful to her.

E. Excessive windfalls at multiples of statutory mandates

Falsely, the ruling claims compliance with NY GOL § 5-311:

1. Not a word or a calculation of the windfalls Ms. Tashybekova had already received despite a duty "to prevent windfalls as between the spouses."[50]

2. No sense of the total payments ordered, i.e., approximately $1,000,000.

3. Not a word that Ms. Tashybkeova was awarded a maintenance windfall of 7-13 times the statutory mandate. Mr. Mezinev was compelled to pay it even when he was terminated from employment without cause while Ms. Tashybekova was employed.

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[49] *Herb v. Herb*, 8 A.D.2d 419, 422 (N.Y. App. Div. 1959)
[50] *Hartog v. Hartog*, 85 N.Y.2d 36 (1995).

4. Not a word that the ruling was ordering the fully spent to pay for the legal fees of the moneyed.

Ms. Tashybekova testified, and it is easily ascertainable, that she received the bulk of her compensation in cash R4191, p83, ln6-8, underreported her income, and evaded her tax obligations. R3604-3613. The trial court erred in basing its award determinations on net worth statements that were unreliable at best and likely fraudulent. Despite the 17 pages focused on money, money matters remained unresolved and in a worse shape following the final 2023 ruling than they were on January 26, 2016 when Mr. Mezinev commenced the action to distance himself from Ms. Tashybekova's fraud.

Windfall fee awards of $210,000 to the moneyed spouse. The trial court erred in awarding three separate fee awards--$30,000 in 2017, $100,000 in 2018, and $80,000 in 2020. As late as 2024, Ms. Tashybekova was still represented by her team of out-of-town attorneys who charge $500 per hour just to travel to Manhattan. p26-27, Appellant's Reply Brief, dated March 7, 2024.

a. The fee awards lacked merit because Ms. Tashybekova weaponized J.M. in service of her immigration interests. Crimes militate against awards of custody and custody-driven fees. *Esposito v. Shannon*, 32 A.D.3d 471 (N.Y. App. Div. 2006).

b. Ms. Tashybekova failed to respond to at least six reasonable settlement offers. R4087-4089, 3446,¶72. When Ms. Tashybekova responded, she unreasonably asked for "$1,000,000 + an apartment + child support + annual inflation adjustments" to dissolve a 19-month marriage based on fraud out of court. R3806, p63, ln3-6. The

trial court should have considered Ms. Tashybekova's unreasonable positions that resulted in unnecessary litigation.[51]

c. Courts severely limit awards when a litigant "has no skin in the game."[52]

Windfall maintenance of 7-13 times the statutory guidelines, 2 times the length of the marriage, and between $142,155 and $153,862:

a. The trial court violated DRL 236 Part B (5-A) (F) which obligates courts to consider the correct length of the marriage, which the court found to be 20 months.[53]

b. The trial court violated DRL 236 Part B (5-A) (H) (1) (g) which obligates courts to consider any acts that harm a spouse's earing capacity or employability.

c. The trial court abused DRL 236 Part B (6) (F) which specifies the duration of payable maintenance of between 15% to 30% of the length of the marriage.

d. Instead of the statutory 3 to 6 months of maintenance, Mr. Mezinev was compelled to pay 39 months, or $167,241. Mr. Mezinev was entitled to the return of the $142,155-to-$153,862 windfall Ms. Tashybekova received inappropriately.[54]

Windfall equitable distribution awards. In contravention of Appellate Division's November 17, 2020 order (App. A.4.), the equitable distribution award did not consider any of the fee awards or their debilitating impact. The judgment also failed to take into account the $30,000 advance on equitable distribution Mr. Mezinev paid pursuant to the separation agreement, dated April 2, 2015. R75. Moreover, the judgment compounded windfalls by failing to perform a spousal contribution test. It was

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[51] *Prichep v. Prichep*, 52 AD3d 61, 66 (2nd Dept 2008)
[52] *Sykes v. Sykes*, 41 Misc. 3d 1061 (NY Sup. Ct. 2013)
[53] R3272, ¶2, page 5, September 6, 2017 Decision and Order re: Mot Seq 01
[54] *Johnson v. Chapin*, 12 N.Y.3d 461, 881 N.Y.S.2d 373, 909 N.E.2d 66 (2009)

absurd to reward a spouse who, as part of a campaign to anchor herself in the country, weaponized a US-born child and impaired the reputation and livelihood of a co-parent. Posner's *Economic Analysis of Law,* 9th ed, §5.3, p172, ¶1.

F. Child support based on flagrantly out-of-date income, capacity, and country

a. The trial court's refusal to modify its child support determination in accordance with changed circumstances, including the birth of Y.M., and Ms. Tashybekova's conduct is contrary to law and good sense. It is common rule, when setting child-support obligations, to consider the welfare of all affected siblings. Posner's *Economic Analysis of Law*, §5.6, p180, ¶2. To minimize the risk of erroneous deprivations of liberty and livelihoods and ricocheting harms to children, courts have ruled that child support determinations cannot be set in stone for decades.[55] The ruling imputes income in a country (the U.S) Mr. Mezinev cannot travel to and in a line of work he cannot practice in Bulgaria. The ruling is willfully blind to the subsistence needs of the sibling Y.M., let alone Mr. Mezinev's.

b. Not only was the refusal to update the child support determination erroneous, the initial determination from 2020 was contrary to the statute. DRL 240 [1-b][b][5][v]. The Referee's imputation using income from 2016 lacked basis because there was no finding of "purposeful income or resource reduction." *J.F. v. D.F.*, No. 2021-51231 (N.Y. Sup. Ct. Dec. 21, 2021). People who seek to nefariously minimize their obligations do not file for divorce a month after their lifetime compensation peak

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[55] *Smith v. Smith*, 626 P.2d 342 (Or. 1981); *In re Shvetsova*, 84 A.D.3d 1095, 1096 (N.Y. App. Div. 2011); *Ambrose v. Felice*, 45 A.D.3d 581, 583 (N.Y. App. Div. 2007); *In the Matter of Paul Marchese v. Marchese*, 11 A.D.3d 546, (N.Y. App. Div. 2004).

and they do not pay maintenance for a period that is 7-13 times the statutory mandates. Here, there were no "pre-filing income swoons." Mr. Mezinev filed for divorce from Ms. Tashybekova on January 26, 2016—a month after receiving the largest bonus of his life.

c. Compounding the error, the 2020 determination was baseless also because it failed to fulfill the statutory obligation to account for any *barriers to employment*, i.e., Mr. Mezinev's ongoing employment-discrimination litigation with his former employer, passport and license denial, and tarnished reputation.

d. Similarly, the 2020 determination was baseless also because it failed to fulfill the statutory obligation to account for the *prevailing income levels of the parent's community*. According to the World Bank, the prevailing earnings level in Bulgaria was approximately $10,079.[56]

e. The controlling authorities are *Kershaw v. Kershaw* 701 N.Y.S.2d 739 (App.Div. 2000) and *Tibaldi v. Meehan*, 676 N.Y.S.2d 607 (App.Div. 1998) which explicitly provide for modification of child support as a remedy for visitation denial, let alone keeping a US-born child hostage as an immigration anchor.

G. Adopting a false theory and gross misrepresentation of legal authorities

Mr. Mezinev's move was compelled by economic necessity. Ignoring the overwhelming evidence to the contrary, the lower courts adopted Ms. Tashybekova's clearly false and self-serving theory that Mr. Mezinev had moved back with his mother in his childhood home in Plovdiv, Bulgaria in 2020 not due to economic

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[56] https://data.worldbank.org/indicator/NY.GDP.PCAP.CD

necessity, but voluntarily. The theory was false because it could not explain why Mr. Mezinev did not move "voluntarily" in 2019, or 2018, or 2017, or 2016, or 2015. The Record overflows with evidence of Mr. Mezinev diligent, extensive, and multi-year job search effort.[57] By the end of 2019--after 5 years of litigation in three different courts, Mr. Mezinev was spent and his job as adjunct faculty at New York Institute of Technology could not sustain a household, let alone pay for the litigation triggered by Ms. Tashybekova's fraud.[58]

The New York courts grossly misrepresented legal authorities and reduced the proceedings to exercises in futility. The courts below pretended that their decisions were in the law and applied "the law" to a fact pattern that was not before them. Not a single authority cited by the New York courts involve the use of children as immigration anchors, indefinite separation of siblings, mandate for duplicating litigation, the failure to complete an initial custody determination. A few non-exhaustive examples:

At the Appellate Division.

a. The 2024 decision implied that a proper petition for modification of child support should have been filed below. Inexplicably, the AD ignored the record of 18 petitions for child-support modification made at the trial-court level, not including Motion Sequence 10 which also petitioned for modification to reflect the newborn sibling's welfare.

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[57] R. 2323-2333 and R. 2333-3231—respectively 364-row job search log and 900 pages of backup documentation.

[58] Pages 8-14, Factual Background, Appellant's Brief, dated Dec 16, 2023

b. The 2022 interlocutory opinion criticized the record as incomplete. In the adjudication of the final judgment when the record was indisputably complete, the AD then finds a legalistic pretext to still ignore it.

c. The first authority cited in the April 23, 2024 decision was *Amley*[59] which fails as a fig leaf, let alone an authority. *Amley* does not involve a false asylee who weaponizes a US-born child to anchor herself in the US. Instead, it involves a Yale-trained law partner who can afford to hire a separate law firm to represent him in the divorce matter. In contrast to Mr. Edward A. Amley who had admitted to hiding income and could afford to maintain a household, Mr. Mezinev was compelled to move in with his mother to mitigate his expenses.

At the trial court. Perversely, the trial court denied a minor sibling child a voice and day in court and erected barriers to the peaceful exercise of family rights in the 21st century using an authority aiming to remove barriers to commerce and profit-making in the 19th century. *Crouter v. Crouter* concerns the sale of two parcels of land.[60] The *Crouter* Court did not want to impede the flow of commerce—i.e., market- and profit-making. Conflating the adjudication of Motion Sequences 9 and 10—which dealt with custody, access, and a voice and a day in court for a child--in the 21st century with 19th-century commercialism was plain error.

At the special-referee level. Referee Sugarman grounded her recommendation in an inapposite authority from the Eisenhower Administration.[61] *Novick* is not

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[59] *Amley v. Amley,* 198 AD3d 559 (1st Dept 2021)
[60] *Crouter v. Crouter*, 133 NY 55, 62 (1892). See R3357, Order, dated July 5, 2022.
[61] *Novick v. Novick*, 17 Misc. 2nd 350 (Sup Ct. N.Y. Co. 1959); See R1307.

controlling law and is irrelevant because there was no child involved and no Anchor Baby de-prioritization, among other distinguishers. The Referee wrote that she suppressed inquiry into the major issue driving this litigation. R1307.

Instead of a case from 1959, the Referee could have cited one from 2019. In *United States v. Yetisen*,[62] the immigration authorities rescinded the naturalization of a refugee who had obtained asylum and citizenship through fraud. Or the Referee could have noted that the Justice Department was taking steps to safeguard the integrity of U.S. citizenship by establishing a Section to expedite denaturalizations. R1691-1692. The Justice Department has both civil and criminal remedies to rescind fraudulent naturalizations. While the Referee mentioned 18 U.S.C. §1546, the Referee failed to mention 18 U.S.C. §1425. A conviction under 18 U.S.C. §1425 not only carries with it the potential for jail time, but also mandates automatic revocation of the unlawfully procured citizenship.

The intersection of matrimonial laws with the Anchor Baby de-prioritization in effect during the Obama administration presented the lower courts with a novel issue. When the lower courts shunned their duties, fraud and predation filled the void.

H. Delegating court duties to federal and state agencies

In contravention of its January 28, 2020 order, the trial court's February 7, 2020 order outsourced the matter to a federally subsidized administrative and enforcement agency, the SCU of OCSE. When Mr. Mezinev again petitioned that the

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[62] *United States v. Yetisen* No. 3:18-cv-00570-HZ (2019)

lower court modify his child support payments to an appropriate level with motion sequences 7, 8, 9, and 10, Judge O'Neill again delegated the task to an agency--the State Department.

The trial court's tendency to delegate is at odds with both the *Loper* Court[63] and with the Administrative Procedure Act, which directs courts, not agencies, to interpret statues. 5 U.S.C. § 706. Modifying child support to an appropriate level was the trial court's task, not the State Department's task and not the SCO of OCSE's task. Further, since a major question was also at stake, Judge O'Neill could not properly delegate matters to the State Department, SCU of OCSE, or other agencies.[64]

IV. The proliferation of legal regimes undermines the uniformity and rule of law.

Illegal immigration has had devastating consequences not just for the Mezinev siblings, but for tens of millions across the nation. The rulings below incentivize alien parents to use US-born children as tools to shield themselves from accountability and to collect windfalls under false flags—literally and figuratively. The consequences cannot be cabined as New York City Mayor Eric Adams's problem, or Texas's problem, or even the federal government's problem; they transcend all jurisdictions.

The chaos is harmful—to families, to the nation, and to the uniformity of the law. At least three different regimes apply nationally when it comes to enforcement of immigration laws. App. E. At least three different regimes apply nationally when

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[63] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024)
[64] *King v. Burwell*, 576 U.S. 473, 485-86 (2015)

it comes to terminating parental rights. App. F. Contrary to the New York courts' rulings here, courts in other jurisdictions have struck down policies that separate families indefinitely.[65] In actual adjudications, these and other factors intersect leading to exponential regime variability. App. G.

Social disutility is compounded by arbitrary and out-of-date child support determinations. The defects have festered for decades and the rot has been amply documented. According to the 14 attorneys and scholars contributing to the *Law and Economics of Child Support Payments* compendium--a chapter of which is annexed as App. H:

> [T]he current child support guideline system is not just broken. Instead, it suffers irreparable structural design flaws and, as such, cannot be fixed in anything resembling its current form:
>
> a. none of the 1984 legislation's[66] eight guiding principles are being implemented in practice, including considering subsistence needs, avoiding barriers to employment, and guarding against medieval practices such as primogeniture,
>
> b. destruction of families by creating financial incentives to divorce,
>
> c. prevention of families by creating financial incentives not to marry,
>
> d. same facts leading to drastically different determinations,
>
> e. conjuring different classes of children and different classes of parents by creating entitlements *only* for children of unmarried parents and creating obligations *only* for non-custodial unmarried parents that other children do not enjoy and other parents are not burdened with respectively,
>
> f. the creation of a child-support-as-entitlement lottery, whereby custodial parents buy into the assumption that they are entitled to child support based on a percentage of income, without any relationship between the support and the child's reasonable, or even subsistence-level, needs,
>
> g. [t]he entitlement assumption is social engineering devoid of any substantial, legitimate, or even rational state interest and, as such, should be stricken down and abandoned.

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[65] *Ms. L. v. U.S Immigration & Customs Enf't*, 310 F. Supp. 3d 1133 (S.D. Cal. 2018)

[66] 1984 Child Support Enforcement Amendments amending 42 U.S.C. §§657-662.

When false asylees use the structurally defective child-support system as a vector of fraud, irreparable harm and chaos will surely result.

CONCLUSION

The New Your rulings and process stand as obstacles to the accomplishment and execution of the full purposes and objectives of Congress and the Constitution. The Court should grant certiorari.

Respectfully submitted,

February 9, 2025 Velin Mezinev