ORIGINAL

No. 18-7450

In the Supreme Court of the United States

FILED
JAN 11 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

BRADLEY B. MILLER, PETITIONER

v.

STATE OF TEXAS, AND
VIRGINIA TALLEY DUNN, RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case presents issues related to the failure of the 330th Family District Court, Dallas County, Texas, to observe federal jurisdiction during a removal, and the subsequent failure of the United States District Court for the Northern District of Texas and the United States Court of Appeals for the Fifth Circuit to enforce federal jurisdiction under Title 28, U.S. Code § 1446.

1) Whether jurisdiction remains in federal court during the pendency of a removal.

2) Whether a state court must cease all proceedings in a case during the pendency of a removal.

3) Whether a federal court must enforce federal jurisdiction during the pendency of a removal.

4) Whether federal law applies to the states and state courts.

5) Whether judges have immunity from civil liability and criminal prosecution for rulings and orders issued during the pendency of a federal removal, i.e. without jurisdiction, and thus outside of any judicial capacity.

LIST OF PARTIES

Petitioner (Removal Petitioner / Appellant in prior federal appeal):

Bradley B. Miller

Respondent (Removal Respondent / Appellee in prior federal appeal):

The State of Texas
c/o Attorney General Ken Paxton
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P.O. Box 12548
Austin, TX 78711-2548

Virginia Talley Dunn

Other Parties (Parties in prior federal appeal):

(*United States Attorney General*)
Attorney General Matthew Whitaker
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OPINIONS BELOW

The decision of the court of appeals dismissing case # 18-10897, unpublished, is attached as App. A. (No opinion was issued.) The decision of the court of appeals denying reconsideration is attached as App. B. The district court's decision remanding case # 3:18-CV-1457, unpublished, is attached as App. C. The district court's order accepting the magistrate's recommendation in case # 3:18-CV-1457, unpublished, is attached as App. D. The district court magistrate's recommendation in case # 3:18-CV-1457, unpublished, is attached as App. E. All rulings are also available on PACER.

JURISDICTION

The decision of The Court of Appeals for the Fifth Circuit was entered on November 21, 2018. App. A. The Fifth Circuit denied reconsideration on December 17, 2018. App. B. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I § 1 of the United States Constitution provides:

> "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Article III §§ 1, 2 of the United States Constitution provide, in relevant part:

> "The judicial power of the United States, shall be vested in one Supreme Court.... The judicial power shall extend to all cases, in law and equity, rising under this Constitution, [and] the laws of the United States..."

Article VI § 2 of the United States Constitution provides:

> "This Constitution, and the laws of the United States...shall be the supreme law of the land; and the judges in every state shall be bound thereby...."

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The Fourteenth Amendment to the United States Constitution, § 1, provides, in relevant part:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without

due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Title 18 U.S.C. § 241 provides, in relevant part:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.... They shall be fined under this title or imprisoned not more than ten years, or both..."

Title 18 U.S.C. § 242 provides, in relevant part:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State...to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section... shall be fined under this title or imprisoned not more than ten years, or both..."

Title 18 U.S.C. § 1513 provides, in relevant part:

"(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

(f) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy."

Title 18 U.S.C. § 2381 provides:

"Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than $10,000; and shall be incapable of holding any office under the United States."

Title 28 U.S. Code § 1291 provides, in relevant part:

"The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States..."

Title 28 U.S. Code § 1446(d) provides:

"Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded."

Title 28 U.S. Code § 1447(d) provides:

"An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise."

Title 28 U.S. Code § 1651(a) provides:

> "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

Title 28 U.S. Code § 2283 provides:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

Title 42 U.S.C. § 1983 provides, in relevant part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State...subjects, or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law..."

STATEMENT

On March 8, 2018, Respondent Dunn filed an amended petition for child custody modification in state court. Additionally, since 2013, the state court and Dunn's state attorney have repeatedly violated Miller's constitutional rights with improper actions and assorted mayhem—including the requesting and granting of several gag orders.

The state court signed a temporary restraining order against Miller at an ex parte hearing on May 17, 2018. Just after the state court issued this allegedly-unconstitutional ruling, Miller first learned ("first ascertained") of his statutory right to remove said state case into federal court, and so did then timely file his removal petition with the district court on June 7, 2018. Removal was invoked under 28 U.S.C. § 1443.

A temporary orders hearing was scheduled in the state court for 9:00 a.m. on June 7, 2018. Prior to the state-court hearing, Petitioner Miller removed the case to federal court. Miller filed his removal petition in the United States District Court for the Northern District of Texas at 8:13 a.m. on June 7, 2018. Miller then filed a *Notice of Case Removal* in the state court at 8:46 a.m. on that day, i.e. prior to the

state-court hearing. App. H at 5. At 8:57 a.m. on that same day, Miller personally served Respondent Dunn's attorney, David H. Findley (Texas Bar card # 24040901), with the state-court *Notice of Case Removal* and the federal removal petition and informed Findley that the case had been removed to federal court.

Despite the fact that Petitioner Miller had properly removed the case, the state court proceeded with the temporary orders hearing, issued a default judgment against Miller, and signed the temporary orders **without jurisdiction** at 9:37 a.m. on June 7, 2018. App. J. These temporary orders bar Miller from custody of or access to his daughter, prohibit Miller from going within 1000 feet of his daughter's school (i.e. the Hockaday School), and enjoin Miller from attending his daughter's extracurricular activities. *Id.* at 2. The temporary orders also require Miller to undergo a psychological evaluation. *Id.* (The psychologist, Victoria Harvey, was chosen by Respondent Dunn. Both Miller and Dunn were evaluated by a psychologist in the same firm, Benjamin Albritton, in 2014. Despite several requests by Petitioner Miller, Dr. Albritton repeatedly refused to issue a report to the state court. Dunn began taking Miller's daughter to yet another psychologist

in the same firm, Blake Mitchell, in April 2018. Petitioner Miller is aware that Dunn's attorney Patricia Rochelle has had prior professional connections with this psychological practice, Southwest Clinical & Forensics in Dallas, Texas.)

Upon learning that the state court had proceeded without jurisdiction, Miller filed an *Emergency Motion to Compel* in the federal district court on June 8, 2018, asking the federal court to vacate the state-court temporary orders. App. H. The federal district court denied Miller's motion "as moot" and refused to enforce federal jurisdiction during the pendency of the removal. App. D.

On June 12, 2018, Petitioner Miller filed a Special Appearance in the state court, asking that federal jurisdiction be observed and that the temporary orders be vacated. App. K. The state-court Associate Judge, Danielle Diaz, denied Miller's motion on June 18, 2018. App. G at 7. The state-court District Judge, Andrea Plumlee, then affirmed the Associate Judge's ruling at a de novo hearing on June 26, 2018. (At that hearing, Miller asserted that he did not participate in the state-court temporary orders hearing on June 7, 2018 because doing so would contravene federal law. Judge Andrea Plumlee responded, "This is a

state court.") Thus the state court explicitly refused to observe federal jurisdiction during the removal.

The federal district court issued its order remanding the case to state court on June 29, 2018. Miller then filed his *Notice of Appeal* on July 13, 2018, and his appeal ensued in the Fifth Circuit.

Previously, on June 12, 2018, Petitioner Miller had timely filed a request for de novo hearing on temporary orders in the state-court case. Texas Family Code § 201.015 requires that the court grant a de novo hearing upon timely request. However, at a conference on August 21, 2018, District Judge Andrea Plumlee of the state court denied Miller's request for de novo hearing on temporary orders.

Miller timely filed his Appellant's Brief in the Fifth Circuit on September 24, 2018. The Appellee's Brief was due on October 24, 2018. Respondent Dunn failed to submit a brief by that date. Her attorney, Michael R. Rochelle, did not file an appearance form until October 29, 2018. (Mr. Rochelle is the husband of Dunn's state-court counsel, Patricia Rochelle, and they practice in the same firm, so it is implausible that he would not have been immediately aware of the filing deadline in this case.)

Dunn never filed an Appellee's Brief; rather, she filed a Motion to Dismiss for lack of subject matter jurisdiction on October 31, 2018. The Fifth Circuit clerk issued a notice that Dunn's motion was insufficient due to a lack of a certificate of conference. Miller never received any communication from Dunn's counsel prior to the filing of her Motion to Dismiss, or at any point thereafter. He also never received service of any certificate of conference with regard to this motion; the electronic copy of this motion on the Court's PACER page for this case contains no certificate of conference. However, on November 6, 2018, the Fifth Circuit clerk placed an entry on the case docket stating that Dunn's motion to Dismiss "has been made sufficient." Exactly how this motion was made sufficient was not explained. Miller telephoned Fifth Circuit clerk Melissa Courseault on November 15, 2018 and informed her that he never received any attempt at conference on Dunn's motion, and that he had never been served with a copy of Dunn's motion that contained a certificate of conference; and therefore Dunn's motion could not possibly have been sufficient. Petitioner Miller then filed a response to Dunn's motion on November 16, 2018.

On November 21, 2018, the Fifth Circuit issued a one-paragraph Order (by Judges Smith, Higginson, and Duncan) granting Dunn's motion to dismiss Miller's appeal, deeming it "frivolous and without arguable merit." The Fifth Circuit offered no explanation for its ruling, other than to cite another of its 2018 rulings that is published only in the Federal Appendix. Miller then filed a Petition for Rehearing En Banc on December 3, 2018, which was taken by the court as a Motion for Reconsideration. The Fifth Circuit denied reconsideration on December 17, 2018.

Miller has proceeded pro se in this litigation since mid-2015, after having been forced to spend more than $320,000 in legal fees since the state court case began in 2013, bankrupting him and causing severe financial harm to his elderly parents. He also spends the majority of his time on his legal work—a direct result of the conduct of the state court, and also the federal district and appellate courts.

Miller recently appeared in the state court for a child support enforcement hearing on October 22, 2018. (He was around $15,000 in arrears due to Dunn's constant lawsuits; Miller was and is heavily in debt due to his divorce and Dunn's subsequent civil suit—in which she

requested and was granted yet another gag order—and he has been representing himself in court since 2015 after running out of money.) At that hearing, Dallas County Domestic Relations Office prosecutor Matthew Garcia, Texas Bar card # 07639380, presented a falsified United States tax return that showed a phantom $2.9 million property that supposedly belonged to Miller. Miller, an indigent party, has no such property; yet Judge Andrea Plumlee used this fabricated, so-called "evidence" as the basis for her ruling that Miller had the ability to pay. Miller had previously produced his true tax returns to Mr. Garcia, to Judge Plumlee, and to his own court-appointed defense attorney, Mr. Kelvin Malone, so everyone involved in the hearing was aware that Mr. Garcia's tax return was fake. This hearing was typical of Miller's experiences in the state court since 2013.

Miller has not seen or spoken to his daughter since May 18, 2018.

REASONS FOR GRANTING THE PETITION

Will any court in America observe federal law?

Thus far in this case—shockingly—the answer is "no." Though the language of 28 U.S.C. § 1446(d) is clear, and numerous federal cases have reaffirmed the letter and force of the statute, every court involved in this case has intentionally flouted federal jurisdiction during a pending removal. The issue of federal jurisdiction during removals has not been revisited by the Supreme Court since 1882 (*National Steam-Ship Co. v. Tugman*, 106 U.S. 118), so this case presents an opportunity for the contemporary Court to patch what appears to be a gaping crack in the authority of Article VI of the United States Constitution—and to bolster the Constitution itself.

The greater problem, of course, is that America's Family Court system—and the judiciary at large—is quite literally functioning as an organized crime syndicate. This Court has shown little inclination to address that more serious issue. But if it lacks the courage for bolder actions, perhaps it can begin by correcting this obvious and fundamental failure by the lower courts to follow simple, clearly-defined statutory procedure.

I. Federal law dictates that removed cases may not proceed in state court until remanded.

Federal removals are governed by 28 U.S.C. § 1446. 28 U.S.C. § 1446(d) dictates that, once a case is removed, the state court case can "proceed no further unless and until the case is remanded." Petitioner Miller filed his removal petition in the NDTX district court on June 7, 2018 and subsequently filed his notice of removal in the state court. Both of these filings occurred **prior** to the temporary orders hearing in the state court case. Extensive federal and state precedent has determined and affirmed that these two filings establish federal jurisdiction, and remove state-court jurisdiction: "Since the adoption of § 1446, it has been uniformly held that the state court loses all jurisdiction to proceed immediately upon the filing of the petition in the federal court and a copy in the state court." *South Carolina v. Moore*, 447 F.2d 1067, 1073 (4th Cir. 1971), citing *Hopson v. North American Insurance Co.*, 71 Idaho 461, 233 P.2d 799; *State ex rel. Gremillion v. NAACP*, La.App., 90 So.2d 884; *Bean v. Clark*, 226 Miss. 892, 85 So.2d 588; *State v. Francis*, 261 N.C. 358, 134 S.E.2d 681; *Schuchman v. State*, Ind., 236 N.E.2d 830; *Adair Pipeline Co. v. Pipeliners Local Union No. 798*, 5 Cir., 325 F.2d 206.

Miller also served Dunn's counsel with the removal documents prior to the state-court temporary orders hearing, but according to the ruling in *Moore*, that action was not required to perfect removal. Only the filing of the removal petition in the federal district court and the filing of the notice of removal in the state court are required to remove the case. Miller did both, which "immediately" removed the case. *Moore* at 1073. At that point, the state court lost all jurisdiction; yet the state court then proceeded as if federal law and federal jurisdiction did not apply. The actions of the state court in conducting a temporary orders hearing after Petitioner Miller's removal were entirely improper and in violation of federal law.

II. Even if a case is adjudged not removable, any state-court proceedings between removal and remand are void.

As described above, Petitioner Miller filed his federal removal before the state-court temporary orders hearing was held. When Miller learned that the hearing had proceeded, he filed his *Emergency Motion to Compel* in the federal district court, asking the district court to declare the temporary orders void and to stay the state-court case during the pendency of the removal. App. H. On June 13, 2018, Magistrate Judge Irma Carrillo Ramirez issued a recommendation that

the case be remanded for lack of jurisdiction and that Miller's motion be denied as moot. App. E. Miller objected to this recommendation on June 29, 2018. App. H. But on the same day, federal district Judge Jane J. Boyle issued her Order accepting the Magistrate Judge's recommendation and her Judgment remanding the case "for lack of subject matter jurisdiction" and denying Miller's *Emergency Motion to Compel* as moot. App. C.

The reasoning of the district court is that it had no authority to act on Miller's motion to compel—i.e. to void the state-court proceedings during the removal—because it ruled that it lacked subject matter jurisdiction in the removal itself. **The circuit court flatly erred.** The Fourth Circuit has previously held that, even if a case is eventually ruled to be not removable, **"the proceedings in the state court in the interval between the filing and service of the removal petition and the remand order [are] void."** *South Carolina v. Moore* at 1069. In the same ruling, The Fourth Circuit elaborated that **"any proceedings in the state court after the filing of the petition and prior to a federal remand order are absolutely void, despite subsequent determination that the removal**

petition was ineffective." *Id.* at 1073. The scenario described in *Moore* exactly mirrors the situation in the instant case. Even if a federal district court eventually rules that a removal is invalid—as occurred in this case—**any** interim proceedings state-court are void, period. There is no valid argument to the contrary.

Further, the Fourth Circuit's ruling in *Moore* is on solid constitutional footing. Allowing a state court to keep conducting its own case after a removal would make a mockery of both federal law and any reasonable concept of Due Process under the Fourteenth Amendment. A party must be assured that federal law will protect his rights during a removal. If the state–court case proceeds without his participation—as happened in this case—his Due Process rights (at the very least) will undoubtedly be violated. The state court case must therefore cease during the pendency of a removal, as stipulated by 28 U.S.C. § 1446; and if it does not cease, any actions taken by the state court are void. Thus the proceedings in the instant state-court case between removal and remand are void.

The Fourth Circuit has reconfirmed its prior decision on this issue in a recent case. In *Ackerman v. ExxonMobil*, the Fourth Circuit ruled:

> "Because § 1446(d) explicitly states that 'the State court shall proceed no further' once removal is effected, 28 U.S.C. §1446(d), we agree with the Defendants that the statute deprives the state court of further jurisdiction over the removed case and that **any post-removal actions taken by the state court in the removed case action are void ab initio. See *South Carolina v. Moore*, 447 F.2d 1067, 1072-73 (4th Cir. 1971)**; accord *Polyplastics, Inc. v. Transconex, Inc.*, 713 F.2d 875, 880 (1st Cir. 1983)." *Kenneth Ackerman v. ExxonMobil Corporation*, 12-1103 at 16 (4th Cir. 2013). (Emphasis added.)

The Fourth Circuit went even further regarding the lack of legal standing of continuing state-court proceedings, stating that "Section 1446(d) may be self-acting, in that improper post-removal actions are void whether or not a court has so declared, see *Polyplastics*, 713 F.2d at 880...". *Ackerman* at 17. But of course the state court believes—however improperly—that its orders are legitimate, and unfortunately it has the power to direct armed sheriff's deputies and police officers to enforce them.

Even the Fifth Circuit previously reaffirmed—and even cited—the Fourth Circuit's ruling in *Moore*:

> "In *National Steam-Ship Co. v. Tugman*, 106 U.S. 118, 1 S. Ct. 58, 27 L. Ed. 87 (1882), the Supreme Court held that the removal of a case from state court to federal court ends the power of the state court to act.

> Upon the filing, therefore, of the petition (for removal) and bond ... the jurisdiction of the state court absolutely ceased, and that of the circuit court immediately attached. The duty of the state court was to proceed no further in the case. **Every order thereafter made in that court was coram non judice, unless its jurisdiction was actually restored.**
>
> 106 U.S. at 122, 1 S.Ct. at 60. See *Johnson v. Estelle*, 625 F.2d 75, 77 (5th Cir. 1980) (per curiam); ***South Carolina v. Moore*, 447 F.2d 1067, 1073 (4th Cir. 1971)**; *Allman v. Hanley*, 302 F.2d 559, 562 (5th Cir. 1962). The jurisdiction of the state court is not restored unless and until the federal court remands the case. *Lowe v. Jacobs*, 243 F.2d 432, 433 (5th Cir. 1957), cert. denied, 355 U.S. 842, 78 S. Ct. 65, 2 L. Ed. 2d 52 (1957). A state court judgment in a case that has been removed may not foreclose further federal proceedings in the removed case and the federal court may enjoin a party from enforcing the state court judgment. *Adair Pipeline Co. v. Pipeliners Local Union No. 798*, 325 F.2d 206 (5th Cir. 1963); *Roach v. First National Bank of Memphis*, 84 F.2d 969 (5th Cir. 1936)." *E. D. Systems Corporation v. Southwestern Bell Telephone Company*, 674 F.2d 453 at §§ 19-21 **(5th Cir. 1982)**. (Emphasis added.)

The Fifth Circuit's Order in the instant case, then, curiously conflicts even with its own precedent. How is that possible—or defensible by any reasonable legal standard? Miller is aware of at least 27 federal and state cases that cite *Moore*, all of which rely on the *Moore* ruling that state-court jurisdiction ends between removal and remand. Miller's appeal raises this exact same issue—an abusive state-court

order issued without jurisdiction. How, then, can several federal and state courts rule that this issue is indeed legally crucial, and rule in favor of appellants, while the Fifth Circuit deemed Miller's identical appeal "frivolous"? The simple answer is that the Fifth Circuit flatly erred in issuing its Order—as did the district court. There is nothing frivolous about Miller's appeal, and it now fully deserves this Court's attention.

III. The Supremacy Clause of the United States Constitution mandates that state court judges are bound by federal law.

Article VI, § 2 of the United States Constitution commands:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

The language of Article VI, § 2 is unequivocal: state-court judges are subject to and "bound" by both the Constitution *and* federal law. They do not have the discretion to ignore either. Unsurprisingly, the United States Supreme Court has reaffirmed the primacy of federal law:

> "Federal law is enforceable in state courts not because Congress has determined that federal courts would otherwise be burdened or that state courts might provide a more convenient forum -- although both might well be true -- but because the Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature. The Supremacy Clause makes those laws 'the supreme Law of the Land,' and charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure." *Howlett v. Rose*, 496 U.S. 356 at 367 (1990).

State courts are thus required to observe and enforce federal law. State court judges are likewise required by the Constitution to observe and enforce federal law. **State court judges thus lack the discretion to violate federal law.** But in the instant case, they have done so—and lamentably without correction by the federal district and appellate judges to whom this responsibility fell. This Court must therefore reassert the supremacy of federal law in state courts.

IV. Exceptions to the Anti-Injunction Act (28 U.S.C. § 2283) authorize the federal courts to correct the state court in this case.

Miller asserts that a federal court is authorized to issue an injunction to the state court in this case by two exceptions to the Anti-Injunction Act (28 U.S.C. § 2283). First, a federal injunction against a state proceeding is appropriate when "expressly authorized by Act of

Congress" (i.e. the Expressly Authorized Exception). 28 U.S.C. § 2283. In that exception, "[t]he test...is whether an Act of Congress, clearly creating a federal right or remedy enforceable in a federal court of equity, could be given its intended scope only by the stay of a state court proceeding." *Mitchum v. Foster*, 407 U.S. 225, 238 (1972). In this case, the 'Act of Congress' is both 28 U.S.C. § 1443 and 28 U.S.C. §1446. (As well as 42 U.S.C. § 1983, as Miller is alleging that his civil rights are being violated in state court. See *Mitchum*, 407 U.S. at 242-43.) If the state court is allowed to continue its proceedings after removal under Section 1446—as occurred in this case—the intended scope of that statute would be nullified. As previously discussed, 28 U.S.C. § 1446(d) explicitly states that after removal and service, "...the State court shall proceed no further unless and until the case is remanded."

Second, a federal court is authorized enjoin a state proceeding "where necessary in aid of its jurisdiction" (i.e. the Necessary In Aid Exception). 28 U.S.C. § 2283. As stated above, the central issue of 28 U.S.C. § 1446 is one of federal versus state jurisdiction. The entire removal process is designed to transfer state court jurisdiction into federal court. If state courts can ignore federal jurisdiction in removals

under Section 1446, federal jurisdiction will be fatally crippled. Where a state court is violating that statutorily-mandated federal jurisdiction, a federal court must act to protect its domain. Thus the federal district court, the Fifth Circuit Court of Appeals, and this Court all have the power to vacate the state-court Temporary Orders under 28 U.S.C. § 2283, and it must be done in order to prevent irreparable and ongoing harm to Miller and his rights—especially his relationship with his daughter.

V. The state court and federal courts, in failing to observe and enforce federal jurisdiction, are violating Petitioner's Fourteenth Amendment rights.

A parent's right to raise a child is a constitutionally protected liberty interest. This is well-established constitutional law. The United States Supreme Court long ago noted that every parent's right to "the companionship, care, custody, and management of his or her children" is an interest "far more precious" than any property right. *May v. Anderson*, 345 U.S. 528, 533, 97 L. Ed. 1221, 73 S.Ct. 840, 843 (1952). In *Lassiter v. Department of Social Services*, 452 U.S. 18, 27, 68 L. Ed. 2d 640, 120 S.Ct. 2153, 2159-60 (1981), the Court stressed that the parent-child relationship "is an important interest that 'undeniably

warrants deference and, absent a powerful countervailing interest, protection.'" (quoting *Stanley v. Illinois*, 405 U.S. 645, 651, 31 L. Ed 2d 551, 92 S.Ct. 1208 (1972)).

A parent whose time with a child has been limited—or completely eliminated, as in Petitioner Miller's case—clearly has had his or her rights to raise that child severely restricted. The state has no constitutional authority to do so without following Due Process. In *Troxel v. Granville*, Justice O'Connor, speaking for the Court stated,

> "The Fourteenth Amendment provides that no State shall 'deprive any person of life, liberty, or property, without due process of the law.' We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, 'guarantees more than fair process.' The Clause includes a substantive component that 'provides heightened protection against governmental interference with certain fundamental rights and liberty interest.'" *Troxel v. Granville*, 530 U.S. 57 at 65 (1999) (citations omitted).

Justice O'Connor further stated, "The liberty interest at issue in this case-the interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Id.* Her opinion continues:

> "...it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right

> of parents to make decisions concerning the care, custody, and control of their children." *Troxel* at 66.

The Supreme Court's ruling in *Troxel* follows a long line of precedent affirming and reaffirming the constitutional right to parent one's own children. This line includes *Meyer v. Nebraska*, in which the Supreme Court held that the Fourteenth Amendment guarantees...

> "...the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and **bring up children**, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." *Meyer v. Nebraska*, 262 U.S. 390 at 399 (1923) (emphasis added).

It is obviously impossible for a parent to bring up a child when he is barred from access to or custody of his child.

Throughout the last century, the Supreme Court has repeatedly and solidly held that the fundamental right to privacy protects citizens against unwarranted governmental intrusion into such intimate family matters as procreation, child rearing, marriage, and contraceptive choice. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 926-927 (1992).

In no uncertain terms, the Supreme Court held that a fit parent may not be denied equal legal and physical custody of a minor child, without a finding by clear and convincing evidence of parental unfitness and substantial harm to the child, when it ruled in *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), that "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment."

In other precedent, the Tenth Circuit has also ruled that a parent's custody of a child was "a constitutionally protected liberty interest which could not be deprived without due process." *Hollingsworth v. Hill*, 110 F.3d 733 at 739 (10th Cir. 1997).

In Petitioner Miller's case, his parental rights were stripped with a complete absence of Due Process. Not only did the state court lack adequate (or indeed any) grounds for barring him from access to or custody of his own daughter, but it also **completely lacked jurisdiction** to hold the proceedings in question. The state court then intentionally refused to acknowledge federal jurisdiction; the federal district court intentionally refused to enforce its own jurisdiction; and the Fifth Circuit also failed to uphold federal jurisdiction. Petitioner

Miller's Fourteenth Amendment rights were thus violated many times over, and will continue to be violated as long as the fraudulent state-court temporary orders remain in effect.

It also goes without saying that the courts' actions in this travesty of a case have resulted in a blatant violation of Miller's First Amendment right "to petition the government for a redress of grievances." The Fifth circuit effectively barred Miller from appealing, in direct contravention of federal law. 28 U.S.C. § 1291. If a court will not allow a valid appeal to proceed, there is certainly no hope of redress; thus it is clear that the Fifth Circuit has violated its mandate under both the First Amendment and Article VI of the United States Constitution.

VI. The state-court judge lacks immunity from civil liability and criminal prosecution for rulings and orders issued during the pendency of a federal removal, i.e. without jurisdiction.

Further, since the state-court temporary orders hearing on June 7, 2018 took place entirely without jurisdiction, the signing of the temporary orders by 330th Family Court Associate Judge Danielle Diaz on that day was **not** a judicial act. Judges are deemed to be "liable to civil actions" for "acts done by them in the clear absence of all

jurisdiction over the subject matter." *Bradley v. Fisher*, 80 U.S. 335 at 351 (1871). See also *Stump v. Sparkman*, 435 U.S. 349 at 356-357. (1978). Therefore, Judge Diaz issued her Temporary Orders outside of any judicial capacity; she has no immunity regarding her signing of the temporary orders; and she is thus answerable to civil damages under 42 U.S.C. § 1983 for violating Petitioner Miller's rights.

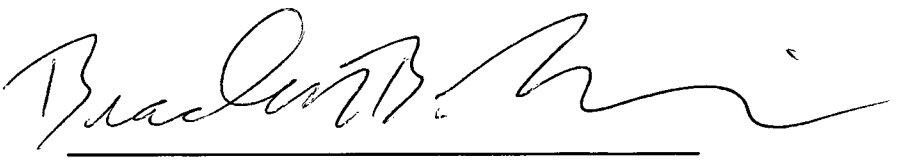
Further, Miller had previously complained of the abusive actions of the 330th Family District Court in two prior cases before this Court. (See SCOTUS case numbers 16-9012 and 17-6836, and below.) Miller had also aired his concerns to law-enforcement authorities including the Dallas Police Citizens Review Board (on 4/11/2017), the FBI, and the DOJ. The actions of Associate Judge Diaz in this case are thus a clear example of retaliation against Miller, in violation of 18 U.S.C. §§ 1513, 241 and 242. The fact that such behavior by a government official—especially a judge—has gone uncorrected is an unmitigated atrocity.

This Court cannot allow a state court to violate federal jurisdiction and thereby violate the constitutional rights of a citizen; nor can it allow lower federal courts to do so. It must act to ensure the primacy of federal law and to protect the integrity of the Constitution.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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