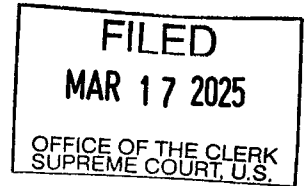


25-5026 ORIGINAL

No.24A732

In The
Supreme Court of the United States

C.M.C.,



Petitioner,

v.

THE TEXAS DEPARTMENT OF FAMILY
AND PROTECTIVE SERVICES
Regulatory Services,

Respondents,

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF TEXAS

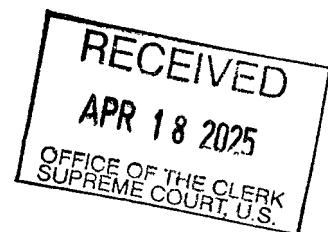
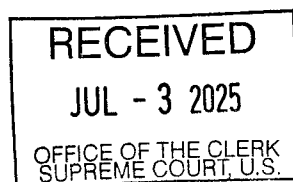
PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did Due Process Clause of the Fourteenth Amendment embody Petitioner with the effective assistance of counsel in initial dependency proceeding where appointment of counsel was not appointed, the appointed counsel was not effective through the entire litigation of the proceedings and the District Court permanently and irrevocably terminated her parental rights, adopted her child over the objections of the mother without demonstrating that Petitioner is unfit to care for her child before parental rights were terminated and the State of Texas presenting clear and convincing evidence to support their claim of parental unfitness?

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PETITION FOR WRIT OF CERTIORARI

C.M.C, a mother who was involved with the Texas Department of Family and Protective Services, hereinafter, the Texas Department of Regulatory Services (DFPS) in Harris County Texas respectfully petition for a writ of certiorari to review the judgment of the Texas Supreme Court in this case.

OPINION BELOW

The decision by the Texas Supreme Court denying C.M.C Petition for Review and upholding the First Court of Appeals decision and vacating the Trial Courts judgment and dismissing the case, as reported as *C.M.C. v. Department of Fam. & Protective Servs.* No 01-22-00965- CV 2024 WL 86411 (Tex.App. Jan 9, 2024. Ms. Cruise did not file a petition for re hearing after the Court denied the petition for review in the above-referenced case.

JURISDICTION

C.M.C petition for review to the Texas Supreme Court was denied on October 18, 2024. C.M.C invokes this court's jurisdiction under 28 U.S.C. 1257 having timely filed this petition for writ of certiorari within ninety days of the supreme court of Texas's judgment.

CONSTITUTIONAL PROVISION INVOLVED**United States Constitution, Amendment IV:**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution Amendment XVI:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

STATEMENT OF THE CASE

This controversy, between Petitioner and Respondents, originated as Parental Rights Termination case initiated by Texas Department of Family and Protective Services, herein abbreviated (TDRS), and Child Protective Services, herein abbreviated CPS. Petitioner alleges that The Texas Department of Family and Protective Services acting under the color of law, did fully and completely rebel against her Constitutional Rights as secured by the United States Constitution, Fourteenth (14th) Amendment Due Process. The petitioner alleges that Department acted under the color of the Law when removing her children, failed to produce evidence of the claims they asserted, but committed fraud to obtain a writ to remove Petitioners children.

The then Social Worker, Sefra Perkins, accompanied by an unidentified, armed peace officer, entered the premises of this Petitioner, at 3030 Hirschfield Rd Apt 23C Spring TX 77373, on or about Friday, December 05, 2014, at approximately 7:00 pm. Sefra Perkins entered into the premises of the Petitioner in an attempt to seize, without a court order, without exigent circumstances, and without permission, the biological children of this Petitioner. Sefra Perkins was not successful in her seizure attempt. However, Ms. Perkins did execute an unreasonable search of the premises of the Petitioner, on or about, December 05, 2014.

Two days later on December 08, 2014, Sefra Perkins, accompanied by an unidentified, armed Peace officer, entered the premises of this Petitioner. At 3030 Hirschfield Rd Apt 23C Spring TX 77373. Sefra Perkins entered into the premises of Petitioner without court order, without permission, and without exigent circumstances. She did, without court order, without permission, and without exigent circumstances, seize the biological children of this Petitioner. The department seized the biological children of this Petitioner and placed said children in the Temporary Conservatorship of The Texas Department of Family and Protective Services. Sefra Perkin was not in possession of a valid court order which would have authorized her entry into the premises of the Petitioner, though

Sefra Perkins had ample time to obtain a court order prior to attempting entry and the seizure.

A Court Order is required, pursuant to the United States Constitution Fourth (4th) Amendment prohibition against unwarranted entry onto the premises, and prohibition against unreasonable seizures. The Department of Family and Protective Services would have been fully aware of the court order requirement of the 4th Amendment to the United States Constitution. A Court order is required prior the Departments by and through Ms. Sefra Perkins entry into the property of this Petitioner and prior to the seizure of the Petitioner's biological Children as clearly established in the "Gates" case as decided in the United States court of Appeals for the Fifth Circuit No. 06-20763.

Ms. Sefra Perkins, the Department, own internal Memorandum was title "Urgent Legal Advisory for Investigations" and dated August 22, 2008, would have notified the Texas Department Family and Protective Services Personnel of the absolute necessity of obtaining a court order prior to entry into the premises, and prior to seizure of the biological children of this Petitioner. The department, in executing the entry into the premises of the Petitioner, without a court order, violated the United States Constitution Fourth (4th) Amendment and ignored their own internal Memorandum from the Fifth Circuit Court, and ignored the rulings of United States Court of Appeals for the Fifth Circuit which clearly establishes the necessity of obtaining a court order prior to entry and prior to seizure.

Entry into the premises, of the Petitioner, without court order or exigent circumstance, is inconsistent with Due Process as secured by the Fourteenth (14th) Amendment to the United States Constitution. One of the principles of Due Process is the requirement of fair and lawful procedures. The "Due Process", that should have been observed was that Sefra Perkins should have taken affidavits, sworn to by a witness to the alleged abuse or neglect, to a judge and obtained a court order that would have authorized Sefra Perkins to enter into the premises and to seize the biological children of the Petitioner. That court order requirement prevents TDFPS from unreasonably depriving this Petitioner, of right to be free from unreasonable search and seizures as secured by the Fourth (4th) Amendment to the United States Constitution.

No evidence was found to establish that Petitioner was unwilling to provide reasonably necessary food, clothing, shelter, or medical care for her child to support the Departments findings of Termination of Prenatal Rights. Petitioner had a three-bedroom apartment home in the suburban area of Spring Texas, was a College Student at the Houston Community College studying Filmmaking, Video Production and Screenplay writing with aspirations to become a Television writer, no past or current drug or substances abuse history, Petitioner had been able to provide for her child, and provide a stable, drug free and non-violence home. The Court failed to appoint a court appointed lawyer in the adversary hearing to challenge the legalities to the false allegations, where Petitioner was clearly indigent, but no counsel was present, nor was the adversary hearing re setted so the trial court could appoint an attorney to challenge the allegations. The Department alleged abuse and neglect, the burden of proof should shift to the moving party who alleges it. The trial court erroneously granted the Department Temporary custody of Petitioner's child. No evidence was found to establish that Petitioner abused or neglected her child, although they contended that Termination of parental rights was in the best interest of the child.

A. The District Court Granting Child Protective Services Temporary Managing Conservatorship but failed to appoint Petitioner a Court Appointed Lawyer in the initial dependency hearing.

On December 18, 2014, the Harris County District Trial Court granted Temporary Managing Conservatorship of all three of Petitioner's minor children to the Texas Department of Family and Protective Services. Petitioner worked and completed a Court ordered service plan, which was part of the goal towards reunification of her three children. Petitioner completed the entire service plan, which consisted of parenting, individual counseling, and family therapy, and to visit her children twice a month, remained employed while maintaining stable housing. Petitioner complied with the requirements to be reunified with her children. But the department did not reunify Petitioner's children with her. The case went to trial. On the same day, the Court granted the Department Temporary custody of all three of Petitioner's children, without counsel present, and found Petitioner indigent in that hearing, and appointed her a Lawyer afterwards. A Lawyer would have made every difference in that initial dependency hearing, where Petitioner was forced to come to court alone without a Lawyer, no money to afford one on her own, didn't under the aspects of what was going on or what the actual allegations were being used against her. The petitioner did not understand why

the Department had her children, because she knew that she had not abused or neglected her children or allowed anyone else to do so. But ultimately, Petitioner had a Fourteen Amendment right to counsel in the proceeding on December 18, 2014, to challenge the allegations against her, call witnesses, and to present evidence and file a discovery. The 309th Family Court conducted an initial dependency proceeding without appointment of counsel, placing Petitioner's children into Temporary custody of their department infringing upon Petitioner's Constitutional rights to effective assistance of counsel through every aspect of the litigation. Once the Court appointed lawyers were appointed after the initial dependency hearing on December 18 ten days after the children were temporarily removed, the Court Appointed Lawyers refused to challenge the false accusations against Petitioner and force petitioner to go along with the false allegations alleged against her while the Department had no evidence of abuse or neglect, but they were threatening Petitioner with termination of her parental rights which means she was at risk of a deprivation of her children where counsel would have made a difference in the initial dependency hearing on December 18, 2014 ten days after the removal of Petitioner's children. Texas did not appoint a Petitioner an affective counsel on December 18, 2014, at the initial dependency hearing but found Petitioner indigent, the trial court appointed her counsel after further ordering the Department Temporary Managing Conservatorship over the children. The Court appointed lawyers would have made a difference in the matter, and the lawyer would have had the opportunity to challenge the false accusations of abuse, neglect while counsel's presence in that hearing would have provided Petitioner with a meaningful hearing based on what was in the record challenged against Petitioner. The Fourteen Amendment guarantees a fundamental liberty interest, and your lawyer has a fundamental duty to zealously represent their client's interest in court where she may face deprivation of her children, which is what happened because the false allegations were never challenged by Petitioner's Court appointed lawyers which bring us here today.

In February 2017, the trial begins. It lasted over four in a half month period until June 2017. The department made legal arguments, submitted evidence, and argued that the Petitioner had not completed the service plan, Petitioner argued and proved that she had. The Trial Court Terminated Petitioner's Parental Rights to child "A" who is the subject of this appeal and granted Sole Managing Conservatorship of the child "B", to her biological father, and the eldest child "C", case was mediated and settled where the paternal grandmother received Primary Custody and Petitioner had first, third, and fifth

weekend, standard possession order. We are not here about the children, B and C, we are only here about child "A", which is the youngest child where Petitioner's rights were terminated. Although Petitioner had complied with the service plan, it did not end in reunification and Petitioner alleged that it was a trap, to ultimately take all three of her children, because she was complaining about bruises on child A, in the foster home. Swiftly, the reunification goal changed when Petitioner was complaining, and the Social Worker, Tara Biggers, stated that it was because Petitioner was combative. Combative, as in, complaining about ongoing bruises on Petitioner's then 1 year old child. The Department retaliated, because the Petitioner spoke up for the safety and wellbeing of her daughter, and for contacting several of her state legislatures, making several complaints on the social workers for the bruises that were on Petitioner's daughter in the foster home. The department had the Court to place a gag order on Petitioner, this is why, Petitioner parental rights were sought to be Terminated, and the department called Petitioner's concerns for her daughter, combative.

Petitioner objected to the Termination of her Parental Rights, and the adoption orders to adopt the minor child. After Petitioner had exhausted all possible remedies appealing the Trial Courts judgments which spanned from June 2017 until February 2017, and on January 19, 2021, Petitioner filed her Petition for Bill of Review to overturn the state courts judgment for illegally terminating her parental rights and adopting her daughter.

B. Petition for Bill of Review filing to the District Court

Petitioner filed her Petition for Bill of Review back to the District Trial Court to challenge the Termination Judgment that was rendered in June 2017. The First Issue was that the Court Appointed Lawyers were ineffective, and their actions lead to the underlining state court judgments rendered against Petitioner in June 2017, where the child made the subject of this suit was ultimately adopted to her foster mother, and Petitioner's parental rights terminated in June 2017, and the child was adopted two years later in September 2019. Petitioner argued and complained about how child protective services used fraudulent instruments, perjured testimony while making false allegations to obtain a court order to seize the biological children in December 2014.

Petitioner complained how the prior trial judges Sheri Y. Dean and Beverly Malazzo appointed Julie Rosemary Brock, and Bobbie Young, an arranged payment for, a succession of court appointed lawyers, to give the appearance of legal representation to this Petitioner, all while, the court appointed lawyers were

selling out the interest of Petitioner to the other side and failing to support and defend the Constitutional rights of Petitioner, per se extrinsic fraud. She raised several issues about the court appointed lawyers did not challenge any of the violations of the constitutional rights of Petitioner committed by Child Protective Services, and their Attorneys from the Harris County Attorneys' Office. The Court appointed lawyers perpetrated extrinsic fraud against Ms. Cruise, as it was part of some conspiracy to give the appearance of putting on a defense for Petitioner, while in actuality, they were selling out the interest of Petitioner to the other side, per se extrinsic fraud. Said, extrinsic fraud shows that Petitioner never had a real contest in the court hearings, or at Trial in the Parental Rights Termination in the so-called child abuse and neglect case. The case was fraud, and sham of a legal proceeding from the very beginning and the prior judgments and orders should be vacated and or set aside and Petitioner should be afforded a new and fair trial on the merits.

The issues raised against the Court appointed lawyers for selling Out the interest of Petitioner, and denied her the opportunity to fully litigate upon the trial all the rights or defenses she was entitled to assert

- a. The Court appointed lawyers failed to challenge the violation of this constitutional right when the Department executed an unreasonable search on December 05, 2014, without a valid warrant which would have authorized her search, is a violation of the fourth (4th) Amendment to the United States Constitution, a fundamental right.
- b. The Court appointed lawyers failed to challenge the violation of this constitutional right when the Department executed an unreasonable search and seizure on December 08, 2014, is a violation of the fourth (4th) Amendment to the United States Constitution, a fundamental right.
- c. The Court appointed lawyers did not challenge the departments false allegations of abuse, neglect and sexual abuse alleged in the writ of attachment prior to searching the home of Petitioner on or about December 08, 2014, a fundamental rights as secured by the Fourteenth (14th) Amendment to the United States Constitution, without any factual basis for the claim, essentially making a deliberate lie to harm Petitioner and her child. The Court Appointed Lawyers did not challenge the court order writ of attachment that had no factual basis for the claim, essentially where the Department made a deliberate lie to seize the biological child of Petitioner.
- d. The Court Appointed Lawyers failed to subpoena he state's main witness, Sefra Perkins, the then Social Worker to ascertain which one of the children was abused

or neglected or sexually abused as alleged in the Court order writ of attachment that the court issued to remove the children.

- e. The Court Appointed Lawyers failed to interview the state's main witness, the then Social Worker, Sefra Perkins, to obtain a report or sworn affidavit regarding who Sefra Perkins alleges is the perpetrator of the alleged abuse, neglect and sexual abuse.
- f. The Court Appointed Lawyers failed to interview the state's main witness, the then Social Worker, Sefra Perkins during the prosecution of the suit, neither of this case nor trial, to determine the location of the alleged perpetrator on December 08, 2014. If the alleged perpetrator was out of the vicinity, there would be no exigency therefore, any need to seize Petitioner's child on December 08, 2014.
- g. The Court Appointed Lawyers did not challenge the constitutionality of the filing a Motion to Dismiss the lawsuit brought against Petitioner. The legal remedy the Court Appointed Lawyers should have taken for Petitioner to have her children returned to her was to file a timely Motion to Dismiss the entire lawsuit within one year by statute, *Tex. Fam. Code Ann.* 263.401, 263.402, a due process violation allowing Petitioner's children to linger languishing in the foster care system. The Court appointed lawyers had the opportunity to file Motion to Dismiss but instead, she allowed the department to extend the case without Petitioner's knowledge or presence, without her in present in the hearing. On February 19th through the 22nd in 2014. The petitioner asked her appointed lawyer to file a Motion to Dismiss the suit because the allotted time by statute only allowed the state to have the suit for no more than a year, and if they wanted to extend it, they had evidence of extraordinary circumstances that would necessitate why the children should remain in care. The department showed no evidence, the case was extended nor on trial. The court appointed lawyers' actions made it impossible for Petitioner to regain custody of her children because she allowed the department to extend the case without valid hearing, without Petitioner present, selling the interest of her own client out to the other side. The petitioner asked her lawyer to then withdraw from her case, counsel withdraw from the case, Petitioner then filed a Motion to Dismiss as a Pro Se litigant to the trial court seeking a dismissal, which the trial court never heard.
- h. The Court Appointed Lawyer failed to complete and follow through with the full discovery process. The Appointed Lawyer was the first lawyer appointed to Petitioner, and she filed a Discovery, Interrogatories, Request for Admissions and Request for Disclosures on the Department of Family and Protective Services March 2015. The then Social Worker, "Answered", the discovery and had it notarized on or about March 15, 2015. The Court Appointed Lawyer did not take any further action after the department answered the discovery. The discovery was buried and forgotten. The discovery would have proven the children had not been victims of abuse or neglect, or sexual abuse; it would have proved that the then

Social Worker had made false accusations therefore perjuring herself to obtain the court order to remove Petitioners children. The Department of Family and Protective Services did not disclose anything requested in the discovery, nor did the Department produce any evidence of abuse and neglect, or sexual abuse, but stated answered the Request for Admissions twenty-five questions that Petitioner was a danger to her children, along with other untrue statements. The Court Appointed Lawyers never filed a Motion to compel the discovery, no Motions were filed to contest or rebuttal for the department's failure to produce documents of abuse and neglect proof, as the department is alleging the abuse and neglect allegations, therefore the burden of proof shifts to them and not to the defendant in a civil or criminal proceeding. The discovery was buried, and it disappeared as the case drugged on for two years without the Lawyers contesting the so-called abuse and neglect case against Petitioner. The Court Appointed Lawyers made it appear that she was putting up a proper defense for the Petitioner, in actuality, she was selling her clients' interest out to the other side.

For the reasons, this honorable court should grant Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

To avoid erroneous deprivations of the right to effective assistance of counsel, this court should clarify the "initiation" standard in *Lassiter* and the cases that follow it that applies when Child Protective Services removes a child and the district court deprives a party the right to effective assistance of counsel in the initial dependency proceedings, and throughout the entire proceeding, the appointed lawyer was ineffective.

There is a conflict between the Ninth Circuit court with no connection to *Lassiter*, *Davis*, *Potvin*, *Mathew* and *Santosky*. The holding from this very court forty-two years ago. The Fifth Circuit in *cited Davis* and follows the *Lassiter* test to Florida dependency proceedings observing that, [d]ue process will require counsel in cases of this kind. *Lassiter* also accepts Florida's approach in 1975, and they adopted the case-by-case approach to the right to effective assistance of counsel for indigent parents in Florida dependency proceedings, and the majority of Fifth Circuit court has now concluded it is required in *Lassiter*. *Potvin v. Keller*, 313 So. 2d 703 (Fla.1975). Moreover, the Fourth circuit in *Mathews* U.S. Supreme Court decision, did not cite *Lassiter*, nor *Santosky* or any case from this Court. This very court in *Davis*, cited *Mathew*, while Fourth Circuit a U.S. Supreme Court says, "fundamental of requirement of due process is opportunity to be heard at a meaningful time and in a meaningful manner. In addition, the Ninth Circuit rejects the precedent cases from this Court mentioned above and concludes that parents do not have a constitutional right to effective assistance of counsel in dependency proceedings involving the termination of their parental rights being terminated, again, rejecting, nor did not cite any of the precedent cases mentioned above.

The Ninth Circuit Court is very nuanced, as they don't cite *Lassiter* and the other cases that follow it, but they agree that parents should have appointed counsel in dependency proceedings in Termination of Parental Rights cases, but they held that parties don't have a constitutional right to effective assistance of counsel in dependency proceedings. The Ninth circuit court holden should be taken and taken carefully with strict scrutiny, this court should clarify the "inaugural" standard in *Lassiter* and the cases that follow it.

A. The Ninth Circuit's Rule Conflicts with This Decision of Every Other Court of Appeals That has addressed The Issue

This Court has recognized that indigent "litigants have a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty. *Lassiter v. Department of Social Svcs.* 452 U.S. at 18.

In *Lassiter*, Abby, was convicted of second-degree murder 452 US 18 (1981). Two years after William was born his mother was convicted, and two years later the Department petitioned the Court to terminate Abby's parental rights. It is alleged that Abby had not contacted William since December 1975, and that she willfully left William in foster care. The discussion opened in Court whether Abby should have more time to find legal counsel; the mother did not claim to be indigent, and the Court did not appoint counsel to her; A social worker from the Department testified that Abby lacked contact with William, the mother's unfitness to care for William, the Court held that Abby willfully failed to maintain concern or responsibility for William's welfare, and terminated Abby's status as Williams parent. Abby argued that North Carolina deprived her of counsel in a proceeding to permanently and irrevocably terminated her parental rights which the Due Process Clause of the Fourteenth Amendment requires as a fundamental right by law.

This Court agreed with Abby. "The Courts due process standard in *Mathews v Eldridge* 424 US 319 (1976) determine that 1) *Lassiter*'s interest was important, 2) the States shared with *Lassiter* a common interest in a correct decision, but also a pecuniary interest and an interest in informal procedure, an 3) the complexity of some proceedings could be great enough to make the risk of an erroneous deprivation of a parent's rights insupportably high. The United States Supreme's Court's precedents on an indigent's right to appropriate counsel is that such a right has been recognized to exist only where the litigant may lose his physical liberty if he loses the litigation. U.S.C.A. Const. Amend. 6, 14. Applying the due process clause is an uncertain enterprise which must discover what fundamental fairness consists of in a particular situation by first considering any relevant precedents and then by assessing the severed interests that are at stake. U.S.C.A. Const. Amend 14. N.C., 452 U.S.

This Court applied the protected right in several circumstances *United States v. Chronic*, Accused's right to be represented by counsel is fundamental Id. 466 U.S. If no actual assistance for the accused's defense is provided, the constitutional guaranteed has been violated 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984). This record establishes presumptive prejudice under the standard set forth in the above decision. In addition, this Court applied effective assistance protected right in *Davis v. Page*, 714 F.2d at 512. That Due process requires only a case-by-case determination whether counsel must be appointed for indigent parents in state dependency proceedings. Furthermore in, this Court applied the effective assistance protected right in *M.L.B. v. S.L.J.*, 519 U.S. at 102. When deprivation of parental status is at stake, counsel is sometimes part of the process that is due.

Every court of appeals that has addressed the question other than the Ninth Circuit has indeed concluded in *Doe v. Mann*, 285 F. Supp. 2d 1229 (N.D. Cal. 2003), aff'd, 415 F.3d 1038 (9th Cir. 2005), that generally there is no constitutional right to effective counsel for indigent parties who are represented by court appointed attorneys in civil cases. But the Ninth circuit do agree under the Indian Child Welfare Act of 1978, that an Indigent Native American mother had a right to effective court appointed counsel in state court proceedings to terminate parental rights.

The Second Circuit ignored precedent law in *Santosky*, a precedent law from 42 years ago, and cited, *Leftridge v. Connecticut State Trooper Officer* No. 1283, 640 F.3d 62 (2d Cir. 2011) A party has no constitutionally guaranteed right to the assistance of counsel in a civil case. The *Leftridge* case is about a Motorist who appeared Pro Se brought a 1983 action against state trooper and state agencies, alleging that he was stopped and charged with traffic violation because of his race which is strikingly a different case from a termination of parental rights case. The second circuit is overruling and refusing to follow a previous decision held in *Santosky* a New York case out of the Second Circuit, a higher court that should be binding on them, unless the second circuit believes that the *Santosky* precedent case out of the same circuit is incorrect, outdated or not applicable to the current case, when they cited *Leftridge* a departure from the established precedent in *Santosky*. When the Second Circuit cited *Leftridge* a distinguished precedent, from this very court, they are saying that *Santosky*, a precedent case facts and legal issues are different enough to warrant a different outcome in the current Precedent landmark case, *Santosky*. *Stare decisis*, doctrine forbids courts from ignoring prior precedent cases. Second Circuit must follow the U.S. Supreme Court ruling in *Santosky* when the same points arise again in litigation, vertically and horizontally. *Leftridge* case has not been challenged in litigation for second circuit to depart from *Santosky*, the only way that this could be possible is if *Leftridge* had overturned *Santosky*, and that has not happened. For instance, in *Dobbs v. Jackson Women's Health Organization* 2022 overturned the landmark 1973 decision in *Roe v. Wade*. The United States Court of Appeals for the Fifth Circuit, Higginbotham, Senior Circuit Judge, 945 F.3d 265, affirmed. Certiorari

was granted. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 142 S. Ct. 2228, 213 L. Ed. 2d 545 (2022). *Roe* was challenged, whereas *Leftridge* hasn't been challenged, it is not a Landmark decision like *Roe* when challenged and overturned, it has not been challenged, therefore, the *Santosky* landmark case applies. This Court should grant Certiorari to resolve this conflict and clarify that *Santosky* applies to parental rights cases and are different from *Leftridge*. This Court should grant Certiorari to resolve this conflict and Second Circuit's departure from *Santosky*.

Fifth Circuit explicitly rejected the eleventh circuits approach although the states urge them to accept the case-by-case method used in Florida's courts to determine when to provide counsel. [1] the potential length of parent child separation. [2] the extent of restrictions on parental visitations [3] the presence of absence of parental consent. [4] the presence or absence of disputed facts [5] the complexity of proceeding in terms of witnesses and documents. *In Potvin v. Keller*, 313 So. 2d 703, 706 (Fla.1975).

The Fifth Circuit case involved a deprivation of parental custody hearing implementing indigent parent be offered counsel and that Counsel be provided unless a knowing and intelligent waiver is made. The Fifth Circuit concluded that, [W]e note also that the great majority of courts that have considered the have found a right to counsel in proceedings where prolonged or permanent separation of parent and child is threatened and that majority of states have recognized the essential role of counsel in these hearings by enacting statutes which provide a right to counsel for indigent parents. *Mass. Gen. Laws Ann. Ch. 119, 29* (west).

Fifth Circuit now in *Davis* follows the *Lassiter* test to Florida dependency proceedings observing that, [d]ue process will require counsel in cases of this kind. *Lassiter*, 452 U.S. at 33. Fifth Circuit also accepts Florida's approach in 1975, and they adopted the case-by-case approach to the right to effective assistance of counsel for indigent parents in Florida dependency proceedings, and the majority of Fifth Circuit court has now concluded it is required in *Lassiter*. *Potvin v. Keller*, 313 So. 2d 703 (Fla.1975).

Indeed, the Fourth circuit in *Mathews* U.S. Supreme Court decision, did not cite *Lassiter*, nor *Santosky* or any case from this Court. This very court in *Davis*, cited *Mathew*, while Fourth Circuit a U.S. Supreme Court says, "fundamental of requirement of due process is opportunity to be heard at a meaningful time and in a meaningful manner," thus the court further says, "Essence of due process is requirement that a person in jeopardy of serious loss be given notice of case against him and opportunity to meet it; all that is necessary is that procedure be tailored, in light of decision to be made, to capacities and circumstances of those who are to be heard, to insure that they are given meaningful opportunity to present their case. U.S.C.A. Const.Amends. Amends. 5, 1". *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

A year prior, in 1975, in *Potvin v. Keller*, 313 So. 2d 703, 706 (Fla. 1975) this Court concluded that, when a child is permanently removed, a child from a parent's custody the right to counsel exists in 'delinquency' proceedings where permanent removal from the parents' custody for the balance of minority is the consequence of the juvenile's adjudication. *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). Under these circumstances the United States Supreme Court held that neither the arresting state official nor the judge could be relied upon to be responsible for the child's welfare, and that the child's potential loss of liberty required counsel to assist the parents to the same extent as in an adult criminal proceeding. The dictates of due process under those circumstances do not suggest the need for counsel in cases where the parents themselves initiate and later publicly consent to temporary state custody in a non-criminal setting. See *In re T.W.P.*, 184 So.2d 507 (3d Dist.Ct.App.Fla.1966), (pre-Gault), and *In re Joseph T. Jr.*, 25 Cal.App.3d 120, 101 Cal.Rptr. 606 (1st Dist.1972) (post-Gault). *Potvin v. Keller*, 313 So. 2d 703, 706 (Fla. 1975)

The conflict among the Courts of appeals is further confirmed by the numerous district courts decisions when depriving indigent parents of Court Appointed Lawyers in the initial dependency proceeding which is the first most crucial hearing. Thus, trial courts in the fifth, eleventh circuits have all appointed counsel to indigent parents who can't afford their own lawyers, in Initial dependency proceedings, but fifth circuit has not appointed indigent parents' lawyers in the initial proceedings when CPS removes a child, when the indigent parent has not objected or waived her right to appointed lawyer.

B. The Decision Below Will Have Severe Adverse Consequences Throughout the Federal Judicial System.

The current conflict in state law does not protect parents. This case is an ideal vehicle for resolving the due process effective assistance of counsel which embodies effective assistance of counsel, where counsel is not being appointed in all proceedings, more importantly, in Initial Dependency Proceedings which is the first crucial hearing within the prosecution of the case. Not in dependency hearings or adjudication hearings. It leaves the question of national importance – if affects more than one in ten Americans – and requires a uniform national answer.

Without a uniform national answer, parents could lose their children at an alarming rate if counsel is not appointed in dependency hearings and adjudication hearings. Parents must be represented in all aspects of dependency proceedings. A Social Worker should not be able to go to court and make accusations, provide evidence, call witnesses, file sworn affidavits, and give testimony to a trial court, without an indigent parents' counsel being present to challenge the accusations brought against parents. The Fourteenth Amendment due process requires effective assistance of counsel in every proceeding and to challenge the claims

brought against a parent in a Termination of parental rights proceeding where parents could ultimately lose their parental rights and their children to adoptions and their liberty, while parents have a fundamental liberty interest to their children under the Fourteenth Amendment U.S. Constitution.

Effective Assistance of Counsel appointed to represent indigent parents in initial dependency proceedings. *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). More than twenty-two million children have separated parents. Grall, Timothy, "CUSTODIAL MOTHERS AND FATHERS AND THEIR CHILD SUPPORT: 2015," Current Population Reports, P60-262, U.S. Census Bureau, Washington, DC, 2018. And nearly fourteen million parents are separated. *Id.* Between 2008- 2021, 65,000 parental rights were terminated in the United States. In the fiscal year of 2021, parental rights were terminated 65,000 times in the United States. This was an increase from the previous year, when 63,800 parental rights were terminated. This case implicates the rights of every separate parent, every parent's whose parental rights were terminated and the best interests of every child with separated parents and terminated parents. The interests of thirty-six million parents and children—more than one in ten Americans—are at stake. This Court should grant certiorari to vindicate those parents and protect those children.

The Department of Health & Human Services Children Bureau, Office of the Administration for Children & Families reported trends in foster care and adoption FY 2013-2022 years. On March 20, 2024, that report was released – and in 2013, 102, 000 children awaited adoption, 58,900 Parental Rights were Terminated, while 50, 800 children were adopted. In 2014, 106,000 children awaited to be adopted, 61,200 Parents parental rights were terminated, while 50,700 children were adopted. In 2015, 110,000 children awaited adoption, 162,200 Parents Parental Rights were Terminated, and 53,500 children were adopted. In 2016, 117,000 children awaited adoption, 65,500 Parents Parental Rights were Terminated, and 57,200 children were adopted. In 2017, 124,000 children awaited adoption, 69,900 Parental Rights were Terminated, and 59,500 children were adopted. In 2018, 126,000 children awaited adoption, 71,800 Parents Parental Rights were Terminated, 63,100 children were adopted. In 2019, 24,000 children awaited adoption, 71,900 Parental Rights were Terminated, while 66,200 children were adopted. In 2020, 117,000 children awaited adoption, 63,800 Parents Parental Rights were Terminated and 57,000 were adopted. In 2021, 114,000 children awaited adoption, 65,000 Parents Parental Rights were Terminated, 54,200 children were adopted. Last but not least, in 2022, one hundred and nine thousand children awaited adoption, sixty-four thousand and six hundred Parents Parental Rights were Terminated, and fifty-three thousand seven hundred children were adopted in one single decade. To sum this up, the number of children awaiting adoption, parents' parental rights being terminated and the number of adoptions comes to a total of two million one hundred seventeen thousand, seven hundred children and parents. A large significant number of children and parents in one decade. According to this chart, all of the years

shown, some of the data may differ from the shown in earlier versions chart. Because some states have resubmitted their AFCARS data after addressing data quality issues. *Children's Bureau An Office of the Administration for Children & Families Trends in Foster Care and Adoption: FY 2013 – 2022*.

Assuming in arguendo, between 2013-2022, in a single decade, the number of children that awaited to become adopted, parents' parental rights being terminated and the number of adoptions comes to a total of two million one hundred seventeen thousand, seven hundred children and parents did not have effective counsel in the initial dependency hearing. Again, these are assumptions in arguendo, when the District Court granted the Department Temporary Custody in the initial Dependency proceeding, these parents prior to finding them indigent, were without an Appointed Effective Counsel unable to represent the parent in the initial dependency proceeding, unable to challenge the accusations brought against them, unable to call witnesses and present evidence, and or file a Motion for a counter claim, and denial of due process rights, the District court, would be negligent, and the Department was also negligent because the district court failed to find the parent indigent and then appoint them effective counsel to challenge the allegations against the parents in violation of parents due process rights taking the children into Temporary Custody while the District Court as it is failing to uphold the parent's fundamental rights to effective counsel prior to the initial dependency proceeding¹. This Court should grant Certiorari resolve this Issue among the lower courts.

Moreover, at least a hundred or more District courts in Texas may soon have emergency orders filed to the District Court seeking an emergency removal of a child without providing a parent with effective assistance of counsel in the initial dependency proceedings. Cases are currently pending right now with Children being removed and taking into Temporary Custody of the Department. *See Child Protection Court Docket*. Harris County Child Protection Court Docket currently has sixty five (65) cases pending. Out of the 65 cases, eight (7) pending cases making up March 17, 2025, Child Protection Court Docket. On March 21st, 2025, there are five (5) pending Child Protection. March 26th, 2025, Child Protection Court docket make up, three pending cases. March 28, 2025, the docket has five (5) pending Child Protection cases on the Child Protection Court docket.

In Dallas County, the Child Protection Court Docket currently has forty-one (41) pending cases making up April 3, 2025, court docket. Out of the forty-one cases pending, eight (8) pending cases making up the April 3, 2025, Dallas docket.

¹ *Scott v. City of Houston*, 613 F. Supp. 34 (S.D. Tex. 1985) (Race discrimination plaintiffs failed to give proper notice of "disparate impact" theory of liability to either the municipal defendants or the court, but even assuming arguendo that there was proper notice of intent to seek relief under such model of recovery, alleged practice of manipulating promotions from known, existing eligibility lists was not within category of facially neutral procedures to which that model can be applied.)

There are no future hearing dates, or dismissal dates. On April 8, 2025, there are five (5) pending cases on the Child Protection Court Docket, with no future hearing dates, or dismissal dates. On April 9, 2015, there were twelve (12) pending cases on the Child Protection Court Docket, with two extended foster care reviews, and no future hearings hearing dates, or dismissal dates for the other ten cases pending.

In Galveston County, the Child Protection Docket currently has fifty-three (53) pending cases making up the entire court docket. Out of the fifty-three cases pending, six (6) pending cases making up March 18, 2025, Galveston court docket. On March 20, 2025, there are currently six (6) pending cases with bench trials, and permanency hearings review hearings before final hearings and bench trials. On March 27, 2025, the Child Protection Docket has twelve (12) pending cases with bench trials setting, permanency hearings before final hearing with only one case set for an extension to extend the dismissal date to keep the children in care.

In Fort Bend County, the Child Protection Docket currently has thirty (30) pending cases making up the entire court docket. Out of the thirty cases pending, four (4) pending cases making up March 18, 2025, Galveston court docket. On March 19, 2025, there are four (4) pending cases on the Child Protection Court docket. There are three (3) cases pending on March 2, 2025, Child Protection Court Docket. On March 28, 2025, Child Protection Court docket there is one (1) case pending. On April 1, 2025, Child Protection Court Docket, there are three (3) pending cases.

As forgoing trends in the number of parents, children report indicates, and the amount of parents parental rights terminated the number of children awaiting adoptions and the number of children that have been adopted confirmed, to avoid erroneous deprivations of the right to counsel, this court should consider and clarify and “compel” the standard under *Lassiter*, *Santosky*, *Mathews*, *Potvin*, and *Davis* that applies when Child Protective Services is removing children from their homes and Terminating Parental Rights ultimately leading to adoption of the said children, because the above precedent cases guaranteed Parents have a due process right to effective assistance of counsel in every proceeding. Assuming in arguendo that at least a hundred (100) or more parents did not have effective assistance of counsel in the initial dependency hearing and court appointed lawyer was appointed afterward the initial proceeding failing, and unable to challenge the accusations against you and force you to go along with the accusations being used against you.

The Ninth Circuit’s interpretation would essentially deflect parents from having effective assistance of counsel in all court proceedings, while the district court is appointing counsel to indigent parents after the Department is ordered Temporary Managing Conservatorship of someone’s children. The majority of courts have

hearings by enacting statutes which provide a right to counsel for indigent parents. *Mass. Gen. Laws Ann.ch.* 119, at 29 (west).

Because of the general importance of the issue presented, and the specific importance of effective assistance of counsel in Termination of Parental Rights cases in all dependency proceedings at issue in this case, certiorari should be granted.

C. The Ninth Circuit's Decision Distorts Section 1912

Given the inconsistency of the holding below with the uniform decisions of the other courts of appeals, it comes as no surprise that the Ninth Circuit's analysis of the merits is insupportable. Under the Ninth Circuit's reasoning, "there is no constitutional right to effective assistance of counsel for indigent parties who are represented by court appointed attorney in civil cases." The federal district court approach makes a warrant turn on completely sham interrogation whether requirements of the Section 1912 would satisfy in a hypothetical scenario that the case were litigating is completely ignored and actual set of circumstances presented to the district courts by the effective assistance of counsel claim. It authorizes a court to ignore important precedent law that is squarely in front of this court when deciding whether to appoint an effective lawyer in a civil case. *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). See also, *Potvin v. Keller*, 313 So. 2d 703 (Fla.1975). *Lassiter v. Department of Social Svcs.* 452 U.S. at 18. See, *Davis v. Page*, 714 F.2d at 512.

1. The federal district court holding finds support in the language of the section which states that, "In any cases in which the court determines indigency, the parent or Indian custodian shall have their right to court appointed counsel in any removal, placement, or termination proceeding, thus further stating, " that appointed of counsel for child upon a finding that such appointment is in the best interest of the child, generally, there is no constitutional right to effective assistance of counsel for indigent parties who are represented who are represented by court appointed attorneys in civil cases. *Nicholson v. Rushen*, 767 F. 2d 1426, 1427 (9th Cir, 1985).
2. The federal District Court insistence on apply applying section 1912 factors "without considering *Mathews*, *Potvin*, *Davis* or *Lassiter* holdings that this very court addressed forty-two (42) years ago about the protected right to effective assistance of counsel in dependency proceedings, seeking to terminate parental rights and in Termination of Parental rights embodies effective assistance so secured by the Fourteenth Amendment to the U.S. Constitution.

CONCLUSION

For the foregoing reasons C.M.C. respectfully request that this Court issue a writ of certiorari to review the judgment of the Supreme Court of Texas.

Respectfully submitted,

CHRIS, C.M.C., PRO SE LITIGANT

By: /s/ Chris, C.M.C. Pro Se
Chris, C.M.C. Pro Se

CERTIFICATE OF SERVICE

I certify that on March 17, 2025, a true and correct copy of this document was served on the Texas Department of Family and Protective Services, Harris County Attorneys Office of Christian Menefee.

/s/ Chris, C.M.C. Pro Se
Chris, C.M.C. Pro Se

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 33. Supreme Court of the United States, this certifies this document compliance with booklet Format; 8 ½- by 11 – Inch Paper Format.

/s/ Chris, C.M.C. Pro Se

Chris, C.M.C. Pro Se

ⁱ The fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the fourteenth amendment and does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. A parental rights termination proceeding interferes with the fundamental liberty interest. When the state moves to destroy weakened familial bonds, it must provide the parents with fundamental fair procedures.