

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JORGE GUEVARA-MARTINEZ

-- PETITIONER

vs.

ALEXANDRIA DEPARTMENT OF COMMUNITY
AND HUMAN SERVICES

-- RESPONDENT.

On Petition for a Writ of Certiorari to
The Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has ruled that the parent-child relationship is a fundamental liberty interest under the Due Process Clause of the Fourteenth Amendment; that until the State proves parental unfitness, child and parent share a vital interest in preventing erroneous termination of the natural relationship; and that this fundamental liberty interest pertains to citizens and aliens alike since Due Process applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent. The question presented is:

Did terminating the parental rights of Guevara, an alien parent, violate his Due Process rights under the Fourteenth Amendment to the Constitution, where no clear and convincing evidence showed he was an unfit parent, and delays caused by the mother's abduction of the child and moving said child illegally to the United States shortly before the onset of a pandemic, by Guevara's refusal to enter the United States until he could do so legally, and by the time taken by appeals in this case were not culpable acts on his part and cannot be used to conclude that the child's need for finality requires termination.

LIST OF PARTIES TO THE PROCEEDING

The Petitioner (the respondent-appellant below) is Jorge Guevara-Martinez.

The Respondent (the defendant-appellee below) is the Alexandria Department of Community and Human Services.

RELATED PROCEEDINGS

Alexandria Department of Community and Human Services v. Jorge Guevara-Martinez, Final Order of Termination of Parental Rights, Circuit Court of the City of Alexandria, Virginia (Nos. CJ22-1017 & 1018) (entered November 14, 2022) (unpublished).

Jorge Guevara-Martinez v. Alexandria Department of Community and Human Services, Court of Appeals of Virginia Rec. No. 1848-22-4 (Order of three-judge panel reversing judgment) (October 1, 2024) (unpublished).

Jorge Guevara-Martinez v. Alexandria Department of Community and Human Services, Court of Appeals of Virginia Rec. No. 1848-22-4 (Order affirming judgment *en banc* in an 11 to 4 vote, with three dissenting opinions) (September 2, 2025) (unpublished).

Jorge Guevara-Martinez v. Alexandria Department of Community and Human Services, Supreme Court of Virginia Rec. No. 250911 (Order Refusing Petition for Appeal) (March 11, 2026) (unpublished).

Jorge Guevara-Martinez v. Alexandria Department of Community and Human Services, Supreme Court of Virginia Rec. No. 250911 (Order Refusing Petition for Rehearing) (April 13, 2026) (unpublished).

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**TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES
OF THE SUPREME COURT OF THE UNITED STATES:**

Petitioner respectfully prays that a writ of certiorari issue to review
the judgment of the Supreme Court of Virginia in this case.

OPINIONS / ORDERS BELOW

The Order of the highest state court to deny discretionary review of
this case, the Supreme Court of Virginia, appears in the Appendix to the
petition at page A1 and is unpublished.

The final Order of the trial court, the Circuit Court of Alexandria,
Virginia appears in the Appendix to the petition at pages A2 through A4 and
is unpublished.

The Order of a panel of the Court of Appeals of Virginia appears in the
Appendix to the petition at pages A5 through A31 and is unpublished.

The *en banc* Order of the Court of Appeals of Virginia appears in the
Appendix to the petition at pages A32 through A90 and is unpublished.

The Order of the Supreme Court of Virginia denying Rehearing appears in the Appendix to the petition at page A91 and is unpublished.

JURISDICTION

The date on which the highest state court decided this case, the Supreme Court of Virginia, was April 13, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment to the Constitution, in Section 1, provides that “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; nor deny to any person within its jurisdiction the equal protection of the laws.”

STATEMENT OF THE CASE

This is an appeal of the decision of the Honorable Lisa B. Kemler of the Circuit Court of the City of Alexandria, Virginia to terminate the parental rights of Jorge Guevara-Martinez (hereinafter “Guevara”) to his minor child (hereinafter “the child”), who was abducted from kindergarten by the child’s mother in their hometown in Honduras and brought illegally to the United States. The mother has severe mental problems (her parental rights to this

child have already been terminated) but the City of Alexandria, Virginia Department of Community and Human Services (hereinafter “the City”) considered her credible enough to brand Guevara as an unfit parent, and thereafter blamed him for failing to attend faraway classes (which he ultimately was able to do virtually) and for refusing to come to the United States until he could do so legally – whilst the City made every effort it could to illegally place the child with undocumented relatives in Texas, and failing that, in foster care with termination of Guevara’s rights.

Guevara is the child’s Father, and is listed on the child’s birth certificate.

The City’s first witness – who testified to the bulk of the case for termination – was Daniella Sanzetenea who was a “family services specialist” at the Department during the time relevant to this case.

The child was six years old upon coming to the attention of the City in October 2019. At that time the child was living with the mother, Ms. Maritza Ulloa Turcios, – who entered the United States illegally that year from Honduras, taking the child in with her – and her new internet husband who also had children – a man she met online, married, and began living with in Alexandria in the summer of 2019. She had unstable moods, was threatening to kill her new husband – by cutting his head off into little pieces – and was verbally aggressive toward the husband and children, plus she put eggs and lye into the reservoir tank of the toilet and drew dolls on the bathroom

mirror. She also accused her teenage daughter of having her raped, went to the hospital falsely claiming to be pregnant several times, and falsely claimed the child had leukemia.

The mother physical medical problems in addition to her mental health problems, and was hospitalized at Northern Virginia Mental Health Institute that same month, October 2019, for acute treatment – as well as at other times.

Throughout the case, the mother was never allowed to have unsupervised visitation with the child. Yet the authorities thought she was credible enough to disqualify the father from resuming care and custody of the child.

Custody of the child was placed with a family friend, Ms. Cita Diaz Gonzales, as the mother's mental health continued to decline. But the mother would show up at this house anyway. Despite the mother's mental decline, the authorities drew up a permanent entrustment agreement regarding the child and had her sign it. Guevara did not sign it, nor was he apparently provided with a copy of it, despite the City's knowledge that he wanted his son returned to him.

Meanwhile Ms. Diaz Gonzales was apparently allowed to go to El Salvador temporarily, but when she returned she refused to resume care of the child, so the child was placed in foster care on February 20, 2020, with a

“formal” foster care entry date of April 30, 2020, where the child remained at the time of the *de novo* termination hearing.

During this time, the City was aware of Guevara, the child’s father, and was consistently in contact with the child. However, he was “not considered a placement option” by the City because the mentally ill mother told them she came to the United States to flee “physical, verbal and emotional abuse” which he had supposedly inflicted upon her.

The allegations were investigated in Honduras, however, whereupon the mother was told by officials there to get mental health assistance.

Guevara consistently told the City that that the child was the victim of an international abduction without his consent as father – but Ms. Sanzetenea admitted that this information was never included in her foster care reports – nor was it apparently communicated by the Department to the Honduran government. She also admitted that she provided no assistance to him to try to come to the United States to see his child – despite the fact that at the time she had no information that Guevara was incapable of caring for the child except from the mother who was receiving acute mental health treatment.

No services were offered to Guevara to prevent removal or return the child to the father. Guevara never consented that the child should go into foster care, and always wanted the child to come home to him.

Guevara also consistently told the City officials that he was unable to come to the United States because he did not have a visa or a passport, and because of the global pandemic – and Ms. Sanzetenea accepted this information as true. Honduras was on a complete COVID lockdown and home studies could not be completed for some time. Guevara was not able to meet in person with officials of the City until he appeared at the *de novo* termination appeal hearing in Alexandria Circuit Court on November 14, 2022.

The mother never had stable housing and moved back and forth between Maryland and Virginia, which was of concern to the City, along with her physical problems and the fact that her “significant mental health challenges” were not being addressed through therapy or medication.

The City officials were concerned, *inter alia*, with Guevara’s initial “failure to participate” in monthly treatment team meetings which were 45 minutes away from his home in Honduras in an area with an unreliable bus system. Even though he was able at some point to participate in a virtual parent coaching class, the City apparently considered this to be “refus[al] to participate”. The treatment team meetings were suspended in February 2022 when “services” ceased for the child.

A home study – based on an unspecified allegation of abuse to the mother – recommended that the child not be placed with the father in Honduras. Virtual visits were arranged once a week on Sundays, but the

child's response to these was deemed to be "inconsistent". However, Ms. Sanzetenea acknowledged on cross-examination that that the child was aware of who the father was during this (at about six years of age) and that the child "mostly" responded well during the virtual visits but sometimes did not want to talk (apparently preferring to do activities such as climbing trees at the time).

Ms. Sanzetenea somehow thought it was a major problem that Guevara would promise to do certain activities with the child when he got back to Honduras – it was her position that Guevara should make no promises during virtual conversations that the child would come home. When asked if she understood that this was difficult for Guevara, she responded that there were "ongoing challenges".

Relative placement was pursued with Guevara's brother Marvin – an illegal alien – and his wife Melinda who lived in Texas, and an older brother who also lived with them. The child was sent at least three or four times to Texas to visit these relatives, and the relatives have also met with the child in Virginia – even though the Texas relatives were legally disqualified from serving as a placement through illegal status. The child also could not get Medicaid because of having no legal status in the United States, but eventually he apparently got medical insurance with the City.

Guevara never agreed that the child should go to live with these Texas relatives. No other relative placements could be identified. The child had

also been allowed to travel to several other states to meet these relatives – but was never allowed to meet with his father in Honduras. The child has no passport, and the City made no efforts to get one.

Guevara cooperated with the home study and made his home available even during the pandemic. It recommended mental health treatment for the mother and revealed that Guevara had immediately requested help from the Honduran government to repatriate the child.

Guevara had two witnesses but they were never interviewed by the City officials.

Ms. Sanzetenea acknowledged that there is no further information that Guevara is unfit, incompetent or unable to provide adequate care for the child. She apparently never asked Social Services or Child Protective Services for reference or assistance. Nor did she ask the Honduran government for a background check or information on him – despite the fact that she had ongoing communication with them. She also never filed a police report in Honduras.

The City's only other witness was the older brother who was 19 years old at the time of the *de novo* termination hearing and was apparently somehow unofficially adopted and given the legal Guevara name. He lived with Guevara (who is his stepfather) for 14 years in Honduras, and the child in question in the case at bar was there until being about three years old. This witness at first claimed that he “observed physical and verbal

aggression” which was supposedly perpetrated “frequently” by Guevara. When asked what he meant by that, he responded that “he would hit her”, and that the child in question “saw it once” – specifically that he grabbed the mother by the neck and threw her on the sofa. He then changed his testimony to say that this particular incident was the only time he (the older brother) saw any abuse. Later on direct examination he testified that Guevara was never abusive toward him or any of his siblings.¹

Appellant Guevara testified that he lives in Honduras with a “partner” named Leticia Cardona, who has been with him for over two years. The mother apparently took the older brother to Mexico at some point between 2017 and 2019 for seven or more months in order for her to contact a man she later married. Guevara described his relationship with the older brother as being excellent. Sometime in 2019 the mother apparently came back, kidnapped the child in question from kindergarten whilst Guevara was at work, and then took the child in question, the older brother and a third child and “dropped them off in a far away mountain”. Guevara immediately filed a complaint. Guevara brought the birth certificate of the child in question with him to court, which lists him as the father. Meanwhile, at the time of the kidnapping, Guevara’s passport had expired – but he finally got one allowing him to come to court for the *de novo* termination hearing. Some time after

¹ On cross-examination by the guardian *ad litem* the older brother said he was disciplined by his father, apparently with some sort of belt with a rope on it.

the kidnapping, apparently in December 2019, Guevara got a call from the child in question and Ms. Tita Gonzalez (Citas) in the United States. He never signed anything for the child in question to go to the United States. He was told at his first contact with Social Services that they would not support the child returning home because “immigration wouldn’t permit it”. He did not come to the United States without a visa because “[t]hat’s a crime”. He also explained to the trial judge that although the City officials said he needed to come to the United States, they also told him not to come without papers – and that he followed their advice.

Guevara denied under oath that he had ever touched the mother in an aggressive or hostile manner, specifically denied the supposed incident which the older brother had testified to, and stated that he said he always had a good relationship with the older brother.

The classes they wanted him to take are about six hours away from his home one way, and he would have to come back the next day. There was no transportation anyway because of the pandemic and the quarantines. He pointed out the relevant geography in Honduras to the trial judge on a map which became part of the record.

Guevara also described his life with the child in question in the case at bar as being excellent, and himself as an “exemplary father”. He still wants this child to come back and live with him.

Guevara's visa to come to the United States was finally issued on November 9, 2022 – five days before the *de novo* termination hearing, and he arrived the night before this hearing.² He was not able to get one before then due to the pandemic, some floods and hurricanes – and because he was at first pursuing appeals with a trusted child-finding organization in Honduras called DINAF. When he started having discussions with Ms. Sanzetenea, he told her he would come to the United States as soon as he could. She never told him about an entrustment agreement. At her request, he sent her witness letters about the type of father he is, from Sarah Aparicio and Suyapa Majia. No one interviewed him for the home study.

At the transcribed hearing of the Circuit Court of Alexandria on November 14, 2022, Guevara's trial counsel moved to strike the evidence at the end of the City's case and again at the close of all the evidence, in which she included arguments that the evidence was insufficient in that it did not meet the standard of clear and convincing evidence required for termination of parental rights, and that the requirements of Va. Code § 16.1-283(C) had not been met. Both motions to strike were overruled and the Order for Involuntary Termination was announced and entered by the trial judge the same day. Guevara, also by counsel, argued to the trial court, *inter alia*, that

² Guevara testified in the trial court that his plane ticket back was good for three months, apparently until mid-February 2023, and that the visa lasts a year. Upon information and belief, he subsequently obtained permission to stay longer.

the termination of parental rights violated the Due Process Clause of the Fourteenth Amendment in a document (which is in the record) entitled Appellant's List of Objections filed on December 2, 2022.

A notice of appeal to the Court of Appeals of Virginia was timely filed on December 15, 2022. The case was argued in person before a panel of the Court of Appeals of Virginia in Winchester on February 20, 2024. On October 1, 2024 a panel of the Court of Appeals of Virginia reversed and remanded the trial court's judgment herein in an opinion written by the Honorable Doris Henderson Causey, J., who was joined by the concurring opinion of the Honorable Clifford L. Athey, Jr., J., with the Honorable Dominique A. Callins, J., concurring in part and dissenting in part.

On October 15, 2024 the City of Alexandria Department of Community and Human Services filed a Petition for Rehearing *En Banc*. On November 6, 2024 this Court granted the Petition for Rehearing *En Banc* as to the assignment of error herein. The *en banc* Court of Appeals of Virginia (15 judges) held oral argument on April 29, 2025, and in an 11 to 4 vote reinstated and affirmed the trial court decision in an unpublished opinion issued on September 2, 2025 and written by the Honorable Dominique A. Callins, with three dissenting opinions: 1) the dissent of the Honorable

Clifford L. Athey, Jr.³ ; 2) the dissent of the Honorable Doris Henderson Causey⁴ and 3) the dissent of the Honorable David Bernhard.⁵

Further appeal by Guevara was had to the Supreme Court of Virginia, which refused discretionary review of the case on March 11, 2026 and again on rehearing in a final rehearing decision on April 13, 2026. *See* Appendix.

REASONS FOR GRANTING THE PETITION

This case involves the maternal kidnapping of a child from the father – where neither the child nor either of the parents was a citizen of the United States. But “[t]he Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: ‘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.’” *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

“These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of

³ Judge Athey’s dissent in the Court of Appeals of Virginia *en banc* opinion was joined by Judges Causey, Chaney and Bernhard (A51-70).

⁴ Judge Causey’s dissent in the Court of Appeals of Virginia *en banc* opinion was joined by Judges Athey, Chaney and Bernhard (A71-85).

⁵ Judge Bernhard’s dissent in the Court of Appeals of Virginia *en banc* opinion was joined by Judges Athey, Causey and Chaney (A86-90).

color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws.” *Id.*

Among the rights protected by the Due Process Clause of the Fourteenth Amendment are fundamental parental rights. *See Troxel v. Granville*, 530 U.S. 57, 66 (2000).

The fundamental liberty interest of natural parents in the care, custody, and management of their children, which does not evaporate even if they have not been model parents, means that when the State moves to destroy these bonds, it must provide the parent with fundamentally fair procedures, and proof by at least a clear and convincing standard. *See Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982). “[U]ntil the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship.” *Santosky* at 760. “This fundamental liberty interest pertains to citizens and aliens alike because ‘the Due Process Clause applies to all “persons” within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.’” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Virginia case law also strongly supports the federal Due Process requirement and the clear and convincing standard of proof ⁶, with rulings

⁶ “The term ‘clear and convincing evidence’ has been defined by Virginia courts as ‘that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established.’” *Judicial Inquiry & Review Comm’n of Va. v. Pomrenke*, 294 Va. 401, 409 (2017) (quoting *Judicial Inquiry & Review*

that “[t]he parent-child relationship ‘is a constitutionally protected liberty interest under the Due Process Clause of the Fourteenth Amendment’”, *Lively v. Smith*, 72 Va. App. 429, 441 (2020) (quoting *L.F. v. Breit*, 285 Va. 163, 182 (2013)); that “[t]he preservation of the family, and in particular the parent-child relationship, is an important goal for not only the parents but also the government itself”, *Weaver v. Roanoke Dep’t of Human Res.*, 220 Va. 921, 926 (1980); that “[w]hile it may be occasionally necessary to sever the legal relationship between parent and child, those circumstances are rare” *Id.*; that “[t]he termination of parental rights is a grave, drastic, and irreversible action. Virginia has even codified the fundamental parental right to their children. See *Williams v. Panter*, 83 Va. App. 520, 533 (2025) (quoting Va. Code § 1-240.1). When a court orders termination of parental rights, the ties between the parent and child are severed forever and the parent becomes a ‘legal stranger to the child’, *Martin v. Pittsylvania Cnty. Dep’t of Soc. Servs.*, 3 Va. App. 15, 20 (1986) (quoting *Lowe v. Richmond Dep’t of Pub. Welfare*, 231 Va. 277, 280 (1986)), and Due Process requires a clear and convincing

Comm’n of Va. v. Waymack, 284 Va. 527, 534 (2012)). Accord, *Thompson v. Bacon*, 245 Va. 107, 111 (1993). This is considerably higher than a “mere preponderance”, *id.*, and is a “heavy burden.” *Commonwealth v. Allen*, 269 Va. 262, 275 (2005); *United States v. Watson*, 793 F.3d 416, 420 (4th Cir. 2015). “Such a standard cannot be met with evidence that leaves ‘competing inferences “equally probable”’” *In re Brown*, 295 Va. 202, 227 (2018) (quoting *Edmonds v. Edmonds*, 290 Va. 10, 22 (2015)). Accord, *Madison v. Commonwealth*, 71 Va. App. 678, 692 (2020).

standard to terminate parental rights, *see also Padilla v. Norfolk Div. of Social Servs.*, 22 Va.App. 643 (1996).

Due Process also requires a trial court to strictly comply with the applicable statutory scheme for the disposition of child custody cases. *See Rader v. Montgomery County Dep't of Social Servs.*, 5 Va.App. 523 (1988) (Due Process requirement of strict compliance with the applicable statutory scheme for the disposition of child custody cases). Va. Code § 16.1-283(C) deals with non-neglect cases and also requires clear and convincing evidence that the termination is in the best interests of the child in addition to other factors which could authorize termination: namely failure – without good cause – to maintain contact with the child and/or failure to make substantial progress in remedying unacceptable conditions in the home after reasonable and appropriate efforts of the State to assist in this process.⁷ “[S]ubsection C

⁷ Va. Code § 16.1-283(C) reads:

C. The residual parental rights of a parent ... of a child placed in foster care ... may be terminated if the court finds, based upon CLEAR AND CONVINCING EVIDENCE, that it is in the best interests of the child, and that:

...

1. The parent or parents have, WITHOUT GOOD CAUSE, failed to maintain continuing contact with and to provide or substantially plan for the future of the child for a period of six months after the child's placement in foster care notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to communicate with the parent ... and to strengthen the parent-child relationship. Proof that the parent ... [has] failed WITHOUT GOOD CAUSE to communicate on a continuing and planned basis with the child for a period of six months shall constitute prima facie evidence of this condition;

(emphasis added).

Sub-section 16.1-283(C)(2) reads:

termination cases hinge not so much on the magnitude of the problem that created the original danger to the child, but on the demonstrated failure of the parent to make reasonable changes.” *Yafi v. Stafford Dep’t of Soc. Servs.*, 69 Va. App. 539, 552 (2018) (quoting *Toms v. Hanover Dep’t of Soc. Servs.*, 46 Va. App. 257, 271 (2005)).

Thus under the Virginia statutory scheme, as under Due Process analysis, the compliance in the present case is woefully inadequate. Apparently the City believed there was abuse by the unadjudicated assault allegation, but Va. Code 16.1-283(C) deals with the remedying of conditions.

Social services agencies must make reasonable efforts to assist parents in remedying any problematic conditions in the home. *See Joyce v. Botetourt Cnty. Dep’t of Soc. Servs.*, 75 Va. App. 690 (2022). Their failure to do so affects the Due Process analysis.

2. The parent or parents, WITHOUT GOOD CAUSE, have been unwilling or unable within a reasonable period of time not to exceed 12 months from the date the child was placed in foster care to remedy substantially the conditions which led to or required continuation of the child’s foster care placement, notwithstanding the REASONABLE AND APPROPRIATE EFFORTS of social, medical, mental health or rehabilitative agencies to such end. Proof that the parent or parents, WITHOUT GOOD CAUSE, have failed or been unable to make SUBSTANTIAL PROGRESS towards the elimination of the conditions which led to or required continuation of the child’s foster care placement in accordance with their obligations under and within the time limits or goals set forth in the foster care plan filed with the court or any other plan jointly designed and agreed to by the parent or parents and a public or private social, medical, mental health or other rehabilitative agency shall constitute prima facie evidence of this condition. The court shall take into consideration the prior efforts of such agencies to rehabilitate the parent or parents prior to the placement of the child in foster care.

(emphasis added).

Moreover, there is a strong presumption in controversies between a parent and third parties that the best interests of children will be served by placing them in the custody of a natural parent. *See Robinette v. Keene*, 2 Va. App. 578 (1986). *Cf. L. G. v. Amherst County Dep't of Soc. Servs.*, 41 Va. App. 51 (2003) (where mother did little or nothing in 12 months following her child's placement in foster care, but made substantial progress between 12-month period and trial, it was reversible error to decline to consider this relevant evidence of improvement).

There has been a modern tendency among some to think that the State knows better how to raise children than parents do.⁸ Thus it becomes easy to conclude that the only option is for the State to take the child away from an imperfect parent.

But before the government may sever completely and irrevocably the right of a parent to his natural child, Due Process requires the government to support its allegations of parental unfitness by clear and convincing evidence that the parent's abuse or neglect threatens the child's life or well-being, that the situation cannot be reasonably corrected after appropriate rehabilitative services, and that termination is in the child's best interest; the evidence

⁸ This has been seen in some socialist views of parenting. *See* H. Berman, *Soviet Family Law in the Light of Russian History and Marxist Theory*, 56 Yale L. J. ____ (1946) (relating failed early Soviet experiment in communal parenting and its abandonment in the 1930's due to a sharp rise in juvenile delinquency, etc.).

must also show that “reasonable and appropriate efforts” were made by social agencies to remedy the conditions but that those efforts failed. *See Wright v. Alexandria Div. of Social Servs.*, 16 Va. App. 821 (1993), *cert. denied*, 513 U.S. 1050 (1994).

The social service agencies of the government are mandated to provide reasonable services to try to save a family, and failure or lack of continued diligence in doing so can be grounds to reject a termination.⁹ *See Cain v. Commonwealth ex rel. Dep’t of Social Servs. ex rel. City of Roanoke*, 12 Va. App. 42 (1991).

Virginia courts have ruled that statutes terminating the legal relationship between parent and child should be interpreted consistently with the objective of preserving the parent-child relationship when possible; and while it may be occasionally necessary sever this relationship, those circumstances are rare. *See Walker v. Dep’t of Public Welfare*, 223 Va. 557 (1982); *Coe v. Coe*, 66 Va. App. 457 (2016); *Edwards v. County of Arlington*, 5 Va. App. 294 (1987); and *Banes v. Pulaski Dept. of Social Servs.*, 1 Va. App. 463 (1986) (on preserving parent-child relationship when possible).

⁹ Often in such cases, agencies seemingly give up on a parent, apparently waiting to test the parent and see if he or she will take a more active role in the case and thus show whether they are really interested in the child. *Cf.* various child-or-domestic-related tests: God *ex rel* Abraham & Isaac (Gen. 22:1-18); King Solomon’s child custody case (1 Kings 3:16-28); and W. A. Mozart, *The Magic Flute* (Sarastro imposes vow of silence to test Tamino, causing a period of suicidal ideation in Tamino’s lover Pamina).

The best interests of the child are NOT the only thing that must be proven under the statute.¹⁰ Abuse, neglect or another reasonable factor such as failure to remedy conditions must also be proven.

The presumption favoring a natural parent was not overcome here by clear and convincing evidence. The state's efforts to rip this child away from the father are misplaced. There is no evidence at all of abuse or neglect of this child or any other child. No fault justifying termination was ever proven here.¹¹ Instead, unspecified and unadjudicated allegations of abuse by the father to the mother were elevated to the status of revealed truth, even though the mother had bizarre mental health problems and zero credibility. The older brother only saw one alleged incident of abuse to the mother, and specifically stated that Guevara never abused him or any of his brothers –

¹⁰ If a billionaire – or trillionaire – wanted to adopt this child, it might be fairly easy to argue that this was in his best interests – but this does not mean a parent's legitimate and fundamental rights must be terminated without just cause.

¹¹ Cf. lower court Virginia rulings: *In re Price*, 52 Va.Cir. 336 (Richmond City June 20, 2000) (court cannot terminate parental rights where parent is unable through no fault of his own, such as mental deficiency, to care for child).; and *In re Neblett*, 50 Va.Cir. 457 (Richmond City November 24, 1999) (where court cannot find by clear and convincing evidence that parents have been unwilling or unable, without good cause, to remedy substantially conditions that led to placement of child in foster care, parental rights cannot be terminated).

although they were disciplined. Further, Guevara denied the one incident under oath.

In the case at bar, what were the conditions that needed to be remedied? In the last permanency planning review report dated April 7, 2021, the last such report before the foster care goal was changed to adoption, it was stated that the father's responsibilities were to:

- Maintain contact with [the child] through phone and video calls – until the case is closed
- Participate in parent coaching services – until the treatment plan is accomplished
- Participate and comply with a home study through International Social Services – completed
- Attend and actively participate in Family Partnership meetings and monthly treatment team meetings to discuss and assess service needs, safety, well-being, and permanency – until the case is closed
- Maintain contact with ADCHS and provide any changes in reference to their contact information, living arrangement, and/or employment changes – until the case is closed.

Again, what did the father fail to do? He maintained contact and participation in services to the extent he was able given the fact that his child had been kidnapped to a foreign country shortly before an international pandemic, even taking virtually the class demanded by the state, but refusing to commit the crime of becoming an illegal alien which unfortunately delayed his entry into the United States until shortly before the *de novo* circuit court termination hearing.

Each of the three dissents to the *en banc* Virginia Court of Appeals ruling emphasized different aspects of the error of that judgment, which are included in the Appendix:

Judge Athey's Dissent (A51-70) cited *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (right to raise one's children is an "essential right" and a "basic right of man") and *accord*, John Locke, *Second Treatise of Government* Ch. 6 § 71 (Hackett ed. 1980) (1690) (parents subject to civil society nevertheless retain power over their children) (other authorities omitted). He also pointed out that the evidence for termination was not clear and convincing, even if the father was not a model parent to his older children; that the case involves a child illegally transported to Alexandria without the father's consent, and put in foster care based solely on a mentally impaired mother's statement – despite the fact that the conditions imposed upon the father could only be fulfilled by personal contact which was illegal and practically impossible because of the pandemic. With regard to the requirement of remedying conditions, he pointed out that this only requires the conditions that led to foster care should be "substantially" remedied, which means "considerabl[y]" or "to a large degree", and compared the cases of *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 196-97 (2002) ("Substantial" remedying of manufacturing conditions allegedly leading to disability of an employee); and *Sutton v. United Air Lines*, 527 U.S. 471, 491 (1999) (similar Americans with Disabilities Act case). He mentioned that although the juvenile and domestic

court allowed more time to see if Guevara was making progress, the City complained about a parenting class and other “home based services” but failed to show child or drug abuse – but the circuit court claimed that Guevara came to the table “very, very late” and his rights were terminated. He further pointed out that the fundamental liberty interest of natural parents in the care, custody and management of their children does not evaporate simply because they are not model parents or have temporarily lost custody to the state, *see Crawley v. Richmond Dep’t of Soc. Servs.*, 47 Va. App. 572, 581 (2006); that more than the best interests of the child is needed to terminate, *see Copeland v. Todd*, 282 Va. 183, 199 (2011); and that there is a unique peculiarity to termination proceedings where undocumented immigrants are concerned, *see Fairfax Cnty. Dep’t of Fam. Servs. v. Ibrahim*, No. 0821-00-4, 2000 Va. App. LEXIS 824 (Dec. 19, 2000) (complex termination case involving Ghana native and apparent drug smuggler who was deported). He stated that Guevara’s case is even more unique and peculiar than *Ibrahim* in that it involves parental kidnapping, and that evidence of the father’s prior aggressive conduct and communication and parenting deficiencies during a pandemic cannot determine the case. (grandparent rights case). He concluded by stating that “[p]aternalism, although well meaning, can only go so far.” Athey’s Dissent at 38 (A69).

Judge Causey’s Dissent (A71-85) mentioned that nothing in the record contradicts Guevara’s statement that the child was kidnapped. She opined

that the circuit court's finding was plainly wrong, and the *en banc* majority misconstrued the role of appellate courts because the question of whether a judgment is plainly wrong is not asked in a vacuum. She pointed out that although the majority considers any constitutional argument to be waived, "the constitutional imperative of strictly enforcing Virginia's termination of rights statute is not an independent argument for reversal that is subject to waiver." Causey's Dissent at 42 (A73). She further pointed out that by terminating Guevara's parental rights in the absence of evidence to support a finding under the statutorily designated criteria, the trial court failed to enforce the United States Constitution's baseline requirements; that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions regarding the care, custody and control of their children, *see Troxel, supra*, and that this liberty is essential to the orderly pursuit of happiness by free men, *see Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 38 (1981) (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)). She further pointed out that the right of a parent to raise his own children are among the basic civil rights of man, *see Stanley, supra* at 651 (quoting *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942)); that the child is not a mere creature of the state, *see Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925)); that a terminated parent becomes a legal stranger to his child, *Shank v. Dep't of Soc. Servs.*, 217 Va. 506, 509 (1976), that few forms of state action are so severe, grave and irreversible, *see Santosky, supra* and *M.L.B. v. S.L.J.*, 519

U.S. 102, 119 (1996); and that termination amounts to a “civil death penalty.” See *Drury v. Long*, 776 P.2d 843, 845 (Nev. 1989). She opined that the evidence here was insufficient to meet basic constitutional and statutory requirements, and that the arguments of the City on six points that supposedly show he is unable or unwilling to remedy past aggression or domestic violence do not in fact prove this, to-wit: a) Guevara’s taking of a virtual rather than an in-person parenting class; b) Inconsistencies in Guevara’s internet or phone service and the presence of animal sounds in the background; c) Inconsistencies in his July 2020 and August 2020 virtual calls and treatment team meetings indicate this; d) The fact that Guevara allowed his child to take the lead in phone conversations and assured the child that they would be reunited in Honduras – which were not shown to be detrimental and even if not ideal would be the natural reaction of a parent; e) The fact that the child sometimes did not want to participate in calls – which is unsurprising in that such a child would be bound to have mixed feelings; and f) Guevara’s inability to obtain a visa until shortly before the *de novo* circuit court hearing. In fact the record indicates Guevara’s visits were progressing well. Crucially, Guevara did not have the burden of proof. Finally, she stated that the *en banc* majority’s use of the fact that Guevara disputed the allegations against him to show he has not remedied his conditions is misplaced, that the City did not prove substantial noncompliance in remedying the conditions, that they should have re-

assessed the situation when Guevara arrived rather than violate the Constitution by terminating his parental rights.

Judge Bernhard's Dissent (A86-90) emphasized that the panel opinion did not warrant revisiting when the established principals and relevant considerations regarding discretionary *en banc* review are considered, and specifically that the principals that the Virginia Court of Appeals usually relies on in such matters, to-wit: a) significant error correction; b) issues of public importance; and c) precedential consistency actually weighed against an *en banc* rehearing.

Thus, for all these reasons, the Due Process violation here is clear. There was no clear and convincing evidence that Guevara's parental rights should be terminated, nor even that any goal other than return home should be in place. There is no "demonstrated failure of [the father] to make reasonable changes." *Yafi*, 69 Va. App. at 552 (quoting *Toms*, 46 Va. App. at 271). The requirements that the City came up with were all complied with: a home study, parent coaching services, virtual family partnership meetings, several treatment team meetings, and staying in contact with the child as best he could – despite the serious barriers thereto in the form of the pandemic and his lack of legal authorization to enter the United States at the time. Further, he clearly indicated his desire to reunite with the child by filing a DINAF complaint after his child was kidnapped and whisked off to the United States by the mother. He also did nothing to cause the City to

take custody of his child – on the contrary, the abducting mother’s mental health problems were what put the child in foster care! Once able to travel here, the father even showed up five days before the termination hearing in circuit court. The City’s weak evidence of prior abuse was not severe enough to cause a parent to lose a child permanently, and had no bearing on whether the conditions that led to foster care had been remedied.

The City’s efforts to place this child with an illegal alien reveals their failure to follow what they know the law to be. The case must be considered in this light, especially the apparent blaming of Guevara for not illegally entering the United States earlier without a visa!

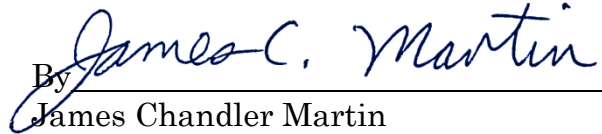
For a law-abiding alien to lose his child because of a parental kidnapping by a mentally ill mother shortly before a pandemic is fundamentally unfair for a man who refused to violate the law by becoming an illegal alien himself, and was not culpable of any failure to remedy conditions or refusal to keep in contact – especially where any such contact or services was physically and legally impossible. Thus the Virginia Court of Appeals panel was correct to rule that the trial court erred in terminating Guevara’s parental rights. The lower court and *en banc* decisions and the refusals of the Virginia Supreme Court to review the case were offensive to the fundamental parental rights of the parent who is losing his child without any valid legal or factual grounds, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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