UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **15-CV-20821-Ungaro/Reyes** (_____)

MARIO JIMENEZ, Plaintiff/Petitioner v. KAREN WIZEL, Defendant/Respondent, and, in re: the support and welfare of Mario Simon Jimenez-wizel and Karen Nicole Jimenez-wizel _____/	In a petition for removal from the 11th JUDICIAL CIRCUIT COURT OF MIAMI-DADE COUNTY, FLORIDA State court cause no.: 11-21207-FC-04 Honorable Ariana Fajardo, Judge

Notice of Petition and Verified Petition For Warrant Of Removal

Comes now the Petitioner, MARIO JIMENEZ, and in direct support of this request for removal of the above-encaptioned state court cause into, and through, the various jurisdiction of this United States District Court provided under at least 28 USC § 1331, 28 USC § 1367, 28 USC 1441(b), 28 USC § 1441(c), 28 USC § 1441(e), 28 USC § 1443(1), 28 USC § 1443(2), and/or 28 USC § 1446, and on the federal questions involved, herein alleges, states, and provides the following:

JURISDICTION

1. This District Court of the United States has original, concurrent, and supplementary jurisdiction over this cause of action, pursuant to the authorities cited above, including, but not limited to the following, to-wit: 28 USC § 1331, 28 USC § 1367, 28 USC 1441(b), 28 USC § 1441(c), 28 USC § 1441(e), 28 USC § 1443(1), 28 USC § 1443(2), and/or 28 USC § 1446.

2. The District Court of the United States is an Article III court with authority to hear questions arising under the Constitution, Laws, and Treaties of the United States, including but

not limited to the Bill of Rights, the Ninth Amendment, the Eleventh Amendment, the original Thirteenth Amendment, the Fourteenth Amendment, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights, with Reservations. *See* the Article VI Supremacy Clause of the Constitution of the United States of America, as lawfully amended (*hereinafter* "U.S. Constitution").

RESERVATION OF RIGHTS DUE TO FRAUD

3. Petitioner hereby explicitly reserves his fundamental Right to amend this and all subsequent pleadings, should future events and/or discoveries prove that he has failed adequately to comprehend the full extent of the damages which he has suffered at the hands of the Respondent, the state court, and other involved parties, both named and unnamed, now and at all times in the future. *See* Rules 8, 15, and 18 of the Federal Rules of Civil Procedure.

RECORD OF STATE PROCEEDINGS

4. Petitioner is now proceeding on the basis of the presumption that the FLORIDA state court record will be made available to this Honorable Court upon Notice and Demand for Mandatory Judicial Notice, pursuant to Rules 201 and 902 of the Federal Rules of Evidence, the Full Faith and Credit Clause contained under Article IV of the U.S. Constitution, and 28 U.S.C. § 1449.

INCORPORATION OF PRIOR PLEADINGS

5. Petitioner hereby incorporates by reference all pleadings, papers, and effects heretofore filed or otherwise lodged within the state proceedings the same as if fully set forth herein. (H.I).

ALLEGATIONS

6. Petitioner specifically complains on matters which go to related federal questions, such as federal criminal jurisdiction within the several States of the Union, and the denial or the inability to enforce, in the courts of a State, one or more rights under any law providing for the equal rights of citizens of the United States, or of all persons within the jurisdiction thereof, to-wit:

7. Petitioner complains of various systematic and premeditated deprivations of fundamental Rights guaranteed by the U.S. Constitution, by the Constitution of the State of FLORIDA, as lawfully amended (*hereinafter* "FLORIDA Constitution"), and by federal law, and which deprivations are criminal violations of 18 U.S.C. §§ 241 and 242. *See also* 28 U.S.C. § 1652.

8. The Court violated Petitioner's First Amendment right of free exercise of religion when it ordered that Petitioner was to have only supervised visitation and banned telephonic communications between Petitioner and minor children on the basis of Dr. Archer's Psychological Evaluation Report, which alluded to Petitioner's inability to parent the minor children due to Petitioner's religious practices and beliefs.

9. A curtailment upon a parent's right to free exercise of religion constitutes an impermissible infringement on religious freedom. *Rogers v. Rogers, 490 So. 2d 1017, 1019 (Fla. 1st DCA 1986).* Although a trial court may consider religion as a factor in a custody determination, it may not condition award of custody upon the curtailment of the parent's religious activities or beliefs, as such a restriction would interfere with the parent's free exercise rights. *Briskin v. Briskin, 660 So. 2d 1157, 1159 (4th DCA 1995).*

10. Allowing a court to select one parent's religious beliefs and practices over the other's, in the absence of a clear showing of harm to the child, would constitute a violation of the First Amendment. *Mesa v. Mesa, 652 So. 2d 456 (Fla. 4th DCA 1995).* Hence, the trial court's child custody determination must be predicated on evidence of harm, as opposed to mere speculation

of harm to the child. *Mendez v. Mendez, 527 So. 2d 820, 821 (Fla. 3d DCA 1987).* "Harm to the child from conflicting religious instructions or practices...should not be simply assumed or surmised; it must be demonstrated in detail." *Id.* Otherwise, interference with religious matters in child custody cases absent an affirmative showing of compelling reasons for such action is tantamount to a manifest abuse of discretion. *Id.*

11. In the instant case, on December 7, 2012, the Court ruled that Petitioner was to have only supervised visitation and that there was to be no telephonic communications between Petitioner and the minor children. In making its determination, the Court heavily relied on Dr. Archer's Psychological Evaluation Report. In said report, Dr. Archer expressed apprehension as to Petitioner's ability to parent the minor children as a result of Petitioner's religious practices and beliefs. Dr. Archer concludes that Petitioner be allowed only supervised visitation, as she "remains extremely concerned about the emotional safety of the children if left unsupervised in his care" due to what she describes as Petitioner's "fanatical", "excessive", and "intrusive" religious beliefs.

12. Except for mere speculation and "concern" for the children's emotional safety, Dr. Archer's report fails to demonstrate in detail just how Petitioner's religious beliefs are psychologically harming the children. The report is devoid of any compelling evidence to show Petitioner's religious beliefs are harming the children. Therefore, the Court's December 7th Order is tantamount to a manifest abuse of discretion. As such, the Court violated Petitioner's right to free exercise of religion, as established under the First Amendment, when it relied on Dr. Archer's Report in making its determination that Petitioner was to have only supervised visitation and that telephonic communications between Petitioner and children were to be prohibited pending further order.

13. Moreover, the Court's strong reliance on Dr. Archer's Report and her almost exclusive reliance on Petitioner's religious beliefs as a factor for her recommendations contained therein, demonstrates that Petitioner's religious beliefs was not just one of several factors that the Court took into consideration when making its determination, but rather it was the only factor prompting the Court's decision to award Petitioner supervised visitation and prohibiting telephonic communications between Petitioner and children. By adopting and following Dr. Archer's recommendations, the Court espoused Dr. Archer's unsubstantiated concerns regarding Petitioner's religious beliefs and their deleterious effects on his ability to parent the minor children. Therefore, the Court's made its decision to award Petitioner only supervised visitation solely on the basis of Petitioner's religious beliefs. As such, the Court's action constitutes a direct curtailment of Petitioner's religious activities or beliefs.

14. What is more, the Court simply accepted Dr. Archer's reports as truth without affording Petitioner the opportunity to contest the allegations contained therein and the opportunity to provide evidence to the contrary. Unlike in Mendez, where at least the religious parent had an opportunity to cross-examine the testimony of expert witnesses, in this case Petitioner was deprived of the opportunity to cross-examine Dr. Archer and her views as to the detrimental effect of Petitioner's religious beliefs on his ability to parent the minor children. Notably, Petitioner had recently undergone another psychological evaluation by Dr. Michael DiTomasso to whom Petitioner was referred by Department of Children and Families (DCF). In his evaluation, Dr. DiTomasso offered a different opinion and recommendation regarding Petitioner's religious beliefs.

15. The Court violated Petitioner's due process rights when it suspended Petitioner's timesharing and ordered supervised visitation without providing Petitioner with adequate

notice of the hearing and an opportunity to cross-examine the evidence presented against him.

16. Florida courts have repeatedly held that it is a violation of a parent's due process rights for a court to temporarily modify child custody without providing the parent notice and opportunity to be heard. See *Ryan v. Ryan, 784 So. 2d 1215, 121 7-18 (Fla. 2d DCA 2001); Wilson v. Roseberry, 669 So. 2d 1152, 1154 (Fla. 5th DCA 1996); Gielchinsky v. Gielchinsky, 662 So. 2d 732, 733 (Fla. 4th DCA 1995).* Only under extraordinary circumstances may a court enter an order granting a motion for temporary custody of a child without providing notice to the opposing party. *Loudermilk v. Loudermilk, 693 So. 2d 666, 667-8 (Fla. 2d DCA 1997).* Such an order requires an emergency situation such as where a child is threatened with harm, or where the opposing party plans to improperly remove the child from the state. *Id.* at 668.

17. In the instant case, the Petitioner was not afforded due process of law. First, Petitioner was not given notice of the July 20th hearing where the court granted Respondent's Emergency Motion to Suspend Timesharing and ordered that he be allowed only supervised visitation with the minor children pending further order of the Court. Respondent had filed the Emergency Motion to Suspend Timesharing and that very same day the Court held a telephonic hearing to address Respondent's Motion without providing Petitioner adequate notice thereof. In fact, Petitioner received actual notice of the July 20th telephonic hearing only after answering the telephone and being addressed by the Judge who was already presiding over the hearing. Furthermore, in making its determination, the Court based its decision on hearsay evidence and did not provide Petitioner with the opportunity to cross-examine the evidence presented against him.

18. Specifically, the Court relied on the University of Miami Child Protection Team Report ("CPT Report"), which was presented at the hearing and attached to Respondent's Motion. Hence, Petitioner did not have the opportunity to cross-examine the expert witness/es responsible for writing the CPT Report. The Court simply accepted and adopted the CPT report and the allegations contained therein as "truth" to the detriment of Petitioner and suspended Petitioner's timesharing schedule without providing him with the opportunity to meaningfully present his case. Moreover, the Court was not advised of the fact that two DCF investigations had been previously investigated and closed with a finding of "no indicator" as to the allegations of abuse by Petitioner. The final DCF investigation, from which the CPT Report was issued and upon which the Court had relied in making its determination, was actually closed on July 20, 2012, the same day the telephonic hearing was held. The Court was not advised of this either. This denial of his due process rights in July, resulted in Petitioner and the minor children having no physical contact for the next five months.

19. Moreover, on December 7, 2012, the Court ordered that Petitioner shall continue supervised timesharing and that there shall be no telephonic communications between him and the minor children. Once again, the Court relied on mere allegations of pleadings and hearsay in making its determination. For instance, the Court's decision was mainly based on Dr. Vanessa Archer's Psychological Evaluation Report which expressed concerns as to Petitioner's ability to parent the minor children due to what the psychologist characterized as Petitioner's "fanatical", "excessive", and "intrusive" religious beliefs. However, Petitioner did not have the opportunity to cross-examine Dr. Archer and provide evidence to contradict her allegations. As such, Petitioner was deprived of his due process rights in both the July 20th telephonic hearing and the December 7th hearing.

20. Additionally, there was no emergency situation which would require the Court to bypass Petitioner's due process rights when ordering the modification of Petitioner's timesharing. Although Respondent raised allegations of abuse by the Petitioner towards the minor children, these allegations were proven time and again to be unfounded. In fact, the Department of Children and Families have twice investigated the abuse allegations and closed out the investigations with a finding of "no indicator". Even Dr. Archer's report acknowledges that Petitioner poses no risk of physical abuse and harm to the minor children.

21. In the instant case, on December **7,** 2012, the Court ordered that Petitioner shall continue supervised visitation with the minor children and stressed that Petitioner was not to have any telephonic communication with the minor children. The Court's determination was primarily based on Dr. Archer's Psychological Evaluation Report wherein she describes Petitioner's religious views as "fanatical", "intrusive", and "excessive". Dr. Archer's report alleges that Petitioner's "repeated religious references are extremely scary for the children-and his inability to recognize this raises significant concerns with respect to his ability to provide an emotionally supportive and nurturing environment for the children." Dr. Archer apparently determines Petitioner's inability to parent the children solely on the basis of Petitioner's religious beliefs without providing a clear, affirmative showing of how Petitioner's religious beliefs are emotionally harming the minor children as alleged in the report.

22. The Court erred by improperly modifying the terms of the foreign divorce decree and relitigating the issues that have already been litigated with full notice and opportunity to be heard in the foreign court, a court of competent jurisdiction.

23. Florida courts are willing to recognize judgments of dissolution rendered in foreign countries under principles of comity or voluntary cooperation. See *Pawley v. Pawley, 46So. 2d*

464 (Fla. 1950). In order to be entitled to comity, the foreign judgment must incorporate the elements which would support it if it had been rendered in Florida. See *Gonzalez v. Rivero, Melero, and Option One Mortgage Corp, 51 So. 3d 534 (Fla. App. 2010)*. For instance, the grounds relied upon for divorce must be sufficient under Florida law. Jurisdictional requirements pertaining to residency or domicile and basic due process and notice requirements must also be met. *Id.* at 535.

24. Moreover, in *Gonzalez v. Rivero, et al*., the Court found that to allow the relitigation of issues that have been fully litigated in a foreign court of competent jurisdiction where full notice and opportunity to be heard has been provided to both parties, would be to violate the principles of comity. In that case, one of the parties to the divorce attempted to invalidate the sale of jointly owned property located in Miami that had been authorized and approved by a Spanish court after proper notice and opportunity to be heard had been provided to both parties to the proceeding. The Court indicated that the party was now collaterally estopped from pursuing further litigation. Id. See also *Al-fassi v. Al-fassi, 433 So. 2d 664 (3d DCA 1983)* (foreign country court decree relating to child custody).

25. In *Popper v. Popper, 595 So. 2d 100 (Flu. 5'h DCA 1992)*, the Court held that a party was barred from collaterally attacking a foreign divorce decree. In that case, one of the parties was attacking a Mexican decree which had incorporated a separation agreement that provided for the support and custody of the parties' children. In making its determination, the Court reasoned that the party seeking to attack the foreign judgment had personally appeared before the Mexican court and acquiesced to the court's jurisdiction. *Id.* at 103. As such, he was barred from attacking the validity of the foreign decree.

26. Similarly, in *Pawley v. Puwley, 46 So. 2d 464(Fla.)*, *cert denied, 340 US. 866, 95 L. Ed, 632, 71 S. Ct 90 (1950)*, which involved a post-dissolution action for alimony, where the final judgment of dissolution was based on constructive service, the Court held that the party seeking to attack the foreign judgment was barred by laches and equitable estoppel from questioning the validity of the foreign divorce decree. *Id*. at 474. The Court reasoned that the party had chosen to ignore the foreign proceedings and to "sit by idly, silently and in an attitude of acquiescense..." and therefore was estopped from questioning the validity of the foreign divorce decree. *Id.* at 473-474.

27. The Court has also stressed the importance of finality of judgments in dissolution of marriage proceedings. For instance, in *Davis v. Dieujuste, 496 So. 2d 806 (Fla. 1986),* the Court held that "where a trial court has acquired jurisdiction to adjudicate the respective rights and obligations of the parties, a final judgment of dissolution settles all such matters as between the spouses evolving during the marriage, whether or not these matters were introduced in the dissolution proceeding, and acts as a bar to any action thereafter to determine such rights and obligations." Id. at 5 12. Moreover, even if a Court were authorized to revisit issues that have been settled by a final judgment of dissolution of marriage, such as a custody determination, a modification of timesharing or parental responsibility in Florida requires a showing of a "substantial, material, and unanticipated change of circumstances." See Fla. Stat. § 61.13 (3). See *Crittenden v Davis, 89 So. 3d 1098 (4th DCA 2012).*

28. In the instant case, there was a final judgment of dissolution of marriage granted by a Nicaraguan court, a court of competent jurisdiction. After a full hearing, where proper notice and opportunity to be heard was provided to both parties, the Nicaraguan court granted the divorce of the parties and ordered that they were to have equal timesharing of their minor children. As such,

the Mother is estopped from questioning the validity of a foreign decree, where she was present at the hearing, and submitted herself to the foreign court's jurisdiction. Mother should have made her allegations at the original proceedings in Nicaragua, of which she had full notice and opportunity to be heard. As a result, Mother is barred by laches and estoppel from attacking the validity of the foreign decree and modifying the timesharing arrangements duly entered by the Nicaraguan court.

29. Moreover, it is our position that the foreign judgment of divorce was implicitly recognized and granted comity by the Court, as evidenced by the Court issuing a Pick-Up Order in favor of Petitioner on August 23, 2011. Said Order stated that the minor children were to be placed in the physical custody of Petitioner in accordance with the stipulations of the Nicaraguan divorce decree.

30. Thereafter, on July 20, 2012, the Court granted Mother's Motion to Suspend Timesharing and suspends Petitioner's timesharing without there being a showing of a substantial change of circumstances that would warrant a modification of the timesharing schedule ordered by the Nicaraguan divorce decree. Instead of modifying the timesharing on the basis of the series of "emergency" motions that have been filed, a Supplemental Petition for modification of timesharing should have been filed in order for the Court to order a modification of timesharing in accordance with Fla. Stat. 61.13 where the parties would have also had an opportunity to present evidence.

31. Upon information and belief, the evidence would have shown that the majority of Mother's allegations originate from a time prior to the Nicaraguan divorce and as such she is estopped from relitigating the already decided custody issues from the foreign forum.

<u>Federal question as regarding equal rights to care, custody, and control of minor children:</u>

A) A parent's right to raise a child is a constitutionally protected liberty interest. This is well-established constitutional law. The U.S. Supreme Court long ago noted that a parent's right to "the companionship, care, custody, and management of his or her children" is an interest "far more precious" than any property right. May v. Anderson, 345 U.S. 528, 533, 97 L. Ed. 1221, 73 S.Ct. 840, 843 (1952). In Lassiter v. Department of Social Services, 452 U.S. 18, 27, 68 L. Ed. 2d 640, 120 S.Ct. 2153, 2159-60 (1981), the Court stressed that the parent-child relationship "is an important interest that 'undeniably warrants deference and absent a powerful countervailing interest protection.'" quoting Stanley v. Illinois, 405 U.S. 645, 651, 31 L. Ed 2d 551, 92 S.Ct. 1208 (1972).

B) A parent whose time with a child has been limited to only supervised visitations clearly has had his or her rights to raise that child severely restricted. In Troxel v. Granville, 527 U.S. 1069 (1999), Justice O'Conner, speaking for the Court stated, "The Fourteenth Amendment provides that no State shall 'deprive any person of life, liberty, or property, without due process of the law.' We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, 'guarantees more than fair process.' The Clause includes a substantive component that 'provides heightened protection against governmental interference with certain fundamental rights and liberty interest" and "the liberty interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interest recognized by this Court." Logically, these forms of fundamental violations are inherently a federal question.

C) The compelling state interest in the best interest of the child can be achieved by less restrictive means than supervised visitations or sole custody for that matter. A quarter-century of research has demonstrated that joint physical custody is as good if not better than sole custody in

assuring the best interest of the child. As the Supreme Court found in *Reno v. Flores*, 507 U.S. 292, 301 (1993): "'The best interest of the child,' a venerable phrase familiar from divorce proceedings, is a proper and feasible criterion for making the decision as to which of two parents will be accorded custody. But it is not traditionally the sole criterion -- much less the sole constitutional criterion -- for other, less narrowly channeled judgments involving children, where their interest conflicts in varying degrees with the interest of others. Even if it were shown, for example, that a particular couple desirous of adopting a child would best provide for the child's welfare, the child would nonetheless not be removed from the custody of its parents so long as they were providing for the child adequately." Narrow tailoring is required when fundamental rights are involved. Thus, the state must show adverse impact upon the child before restricting a parent from the family dynamic or physical custody. It is apparent that the parent-child relationship of a married parent is protected by the equal protection and due process clauses of the Constitution. In 1978, the Supreme Court clearly indicated that only the relationships of those parents who from the time of conception of the child, never establish custody and who fail to support or visit their children are unprotected by the equal protection and due process clauses of the Constitution. *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978). Clearly, divorced parents enjoy the same rights and obligations to their children as if still married. The state through its family law courts, can impair a parent-child relationship through issuance of a limited visitation order, however, it must make a determination that it has a compelling interest in doing so. Trial courts must, as a matter of constitutional law, fashion orders which will maximize the time children spend with each parent unless the court determines that there are compelling justifications for not maximizing time with each parent. Throughout this century, the Supreme Court also has held that the fundamental right to privacy protects citizens against unwarranted governmental

intrusion into such intimate family matters as procreation, child-rearing, marriage, and contraceptive choice. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 926-927 (1992).

D) Contrary to the state court's consistent disregard for the equal right of this Petitioner to care, custody, control, and management of his natural minor children, and its corresponding continuum of supervised visitations in favor of the Respondent, the federal Due Process and Equal Protection rights extend to both parents equally. In Caban v. Mohammed, 441 U.S. 380, (1979) the Supreme Court found that a biological father who had for two years, but no longer, lived with his children and their mother was denied equal protection of the law under a New York statute which permitted the mother, but not the father, to veto an adoption. In Lehr v. Robinson, 463 U.S. 248 (1983), the Supreme Court held that "[w]hen an unwed father demonstrates a full commitment to the responsibilities of parenthood by 'com[ing] forward to participate in the rearing of his child,' Caban, [citations omitted], his interest in personal contact with his child acquires substantial protection under the Due Process Clause." (Id. at 261-262). To further underscore the need for courts to consider the constitutional protections which attach in family law matters, one need only look to recent civil rights decisions. In Smith v. City of Fontana, 818 f. 2d 1411 (9th Cir. 1987), the court of appeals held that in a civil rights action under 42 U.S.C. section 1983 where police had killed a detainee, the children had a cognizable liberty interest under the due process clause. The analysis of the court included a finding that "a parent has a constitutionally protected liberty interest in the companionship and society of his or her child." Id. at 1418, citing Kelson v. City of Springfield, 767 F. 2d 651 (9th Cir. 1985). In Smith the court stated "We now hold that this constitutional interest in familial companionship and society logically extends to protect children from unwarranted state interference with their

relationships with their parents." Id. In essence, the Supreme Court has held that a fit parent may not be denied equal legal and physical custody of a minor child without a finding by clear and convincing evidence of parental unfitness and substantial harm to the child, when it ruled in Santosky v. Kramer, 455 U.S. 745, 753 (1982), that "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment."

32. In the instant state proceedings, Petitioner has been continually deprived of the full right to equal care, custody, control, and management of the minor children, and the same approaching **three years**, without any requisite showing of past or potential harm – of any kind – upon the minor children, while, instead and contrarily, Respondent has been consistently documented in acts of minor to medium psychological abuse towards the children, long-ranging neglect of several important matters regarding the children, such as academic performance, and, a general haphazard disdain for the minor children's welfare, needs, and emotional stability… yet, the state court essentially coddles her behavior *against* the best interests of the children, and *even* has gone to certain extraordinary lengths to shelter and assist some of these egregious manifestations.

33. This petition for removal is strictly *not* about a typical domestic relations action versus what would be the expected reluctance of a federal court to exercise jurisdiction over the same; this cause inures to the very *essence* of the enactment and purpose of 28 USC §§ 1441 and 1443: to provide for a federal remedy when a person "is denied or cannot enforce in the courts of such State a right under any law providing for the equal rights of citizens of the United States, or of all persons within the jurisdiction thereof"

NOTICE OF SPECIAL PRO SE RIGHTS

34. Pro se pleadings are always to be construed liberally and expansively, affording them all opportunity in obtaining substance of justice, over technicality of form. Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938); Picking v. Pennsylvania Railroad Co., 151 F.2d 240 (3rd Cir. 1945); Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Haines v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972); Cruz v. Beto, 405 U.S. 319, 322, 92 S.Ct. 1079, 1081, 31 L.Ed.2d 263 (1972); Puckett v. Cox, 456 F. 2d 233 (6th Cir. 1972).

35. If the court can reasonably read the submissions, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax or sentence construction, or a litigant's unfamiliarity with particular rule requirements. Boag v. MacDougall, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 (1982); Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)); Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); McDowell v. Delaware State Police, 88 F.3d 188, 189 (3rd Cir. 1996); United States v. Day, 969 F.2d 39, 42 (3rd Cir. 1992); Then v. I.N.S., 58 F.Supp.2d 422, 429 (D.N.J. 1999); and, etc., along with numerous similar rulings.

36. When interpreting pro se papers, this Court is required to use its own common sense to determine what relief that party either desires, or is otherwise entitled to. S.E.C. v. Elliott, 953 F.2d 1560, 1582 (11th Cir. 1992). See also, United States v. Miller, 197 F.3d 644, 648 (3rd Cir. 1999) (court has a special obligation to construe pro se litigants' pleadings liberally); Poling v. K. Hovnanian Enterprises, 99 F.Supp.2d 502, 506-07 (D.N.J. 2000); and, etc.

37. Indeed, the courts will even go to particular pains to protect pro se litigants against consequences of technical errors if injustice would otherwise result. U.S. v. Sanchez, 88 F.3d 1243 (D.C.Cir. 1996). Moreover, "the court is under a duty to examine the complaint to

determine if the allegations provide for relief on ANY possible theory." (emphasis added) See, e.g., Bonner v. Circuit Court of St. Louis, 526 F.2d 1331, 1334 (8th Cir. 1975), Bramlet v. Wilson, 495 F.2d 714, 716 (8th Cir. 1974), Thomas W. Garland, Inc. v. City of St. Louis, 596 F.2d 784, 787 (8th Cir. 1979), Bowers v. Hardwick, 478 U.S. 186, 201-02, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986), Brooks v. Blue Cross & Blue Shield of Fla., Inc., 116 F.3d 1364, 1369 (11th Cir. 1997), O'Boyle v. Jiffy Lube International Inc., 866 F.2d 88 (3rd Cir. 1989), and etc., etc., etc.

NOTICE OF RELATED CASES

38. Petitioner also wishes respectfully to demand mandatory judicial notice, pursuant to Rule 201(d) of the Federal Rules of Evidence, and pursuant to the Full Faith and Credit Clause, of the following related cases supporting and documenting some of the above allegations, to wit:

a) JUVENILE DIVISION Case No.: D13-15193A-B (D003) (closed); DOMESTIC VIOLENCE DIVISION: Case No.: 12-17840-FC-04 (closed), Case No.: 12-17838-FC-04 (closed), Case No.: 11-10881-FC-04 (closed).

39. There is a sufficient pattern of judicial abuse to substantiate that Judge Ariana Fajardo's jurisdiction over the instant state action was most likely *void ab initio*, and even if not, that any attempt at continuing exercise over the state proceedings *is* void.

40. Petitioner has a federal question right, under the guarantees of 42 USC § 2000a, to full and equal lawful treatment in a state court of law, and according to the various protections under not only the Florida Constitution, but more importantly under those of the U.S. Constitution.

41. Petitioner has a federal question right, under the protections of the Civil Rights Act of 1964, 42 USC § 2000d, et seq., and as interpreted by the U.S. Supreme Court to *include* prohibitions against discrimination based on sex or gender, to now remove the instant state

proceedings, under 28 USC §§ 1441 and 1443, in order to be free from the denial of such equal civil rights and treatment established by the above allegations. *See also* 42 USC § 2000d-7.

42. Petitioner has a federal question right, under the protections of 42 USC §§ 3617 and 3631, which include prohibitions against discrimination based on sex or gender, to remove the instant state proceedings, under 28 USC §§ 1441 and 1443, in order to be free from the denial of such equal civil rights and treatment established by the above allegations. *See also* 42 USC § 2000d-7.

43. Petitioner has a further federal question right, under the protections of 42 USC § 5891, which include prohibitions against discrimination based on sex or gender regarding other matters and allegations expressed *supra*, to remove the instant state proceedings, under 28 USC §§ 1441 and 1443, in order to be free from the denial of such equal civil rights and treatment established by the above allegations. *See also* 42 USC §§ 5106a, 5106c, 10406, 10420, 10701, and etc.

44. Petitioner has a further federal question right not to be discriminated as articulated according to the above allegations, under the expressed public policy of the United States of America, by and through certain Acts of Congress strictly specifying the critical value of protecting children, youth, and family bonds, and the joint responsibilities of federal courts therein. *See* 42 USC §§ 12301, 12351, 12352, 12371, 12635, and etc.

45. Petitioner has a further federal question right to ensure that his minor children are free from experiencing abuse and/or neglect, due to unlawful sex or gender discrimination in awards of child custody, and to ensure that any involved state judicial systems meet or exceed their required corresponding duties under 42 USC §§ 13001, 13003, 13021, 13031, and etc.

46. Petitioner has a further federal question right, under 42 USC §14141, to be free from unlawful violations of civil rights committed by the parties involved in the state proceedings.

47. The above numerous and various rights will, in fact, be consistently violated if these proceedings were ever to be remanded back to said state court, and manifest injury would accrue upon not only this Petitioner, but also against the obvious best interests of his minor children.

NOTICE TO PARTIES

48. Petitioner now and hereby provides his formal Notice of the above to all interested parties, of record or otherwise, within and surrounding the above-encaptioned state court proceedings.

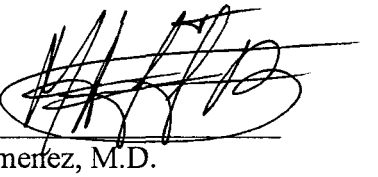
SUMMARY AND PRAYER

49. Petitioner reiterates that his request for removal to this Court is not just about a supported and reasonable *expectation* of the future manifest deprivation of his various civil rights within said state court, but also that such a deliberately unlawful pattern of the same is well established.

50. Without the immediate intervention, and the exercise of full jurisdiction and authority by this Honorable Court in removing said lower state proceedings, the Petitioner will be otherwise subjected to egregious denial and inability to enforce in said state court one or more rights under the laws providing for the equal rights of citizens of the United States, and will be likewise unlawfully forced to suffer manifest and irreparable injuries therein, without reasonable remedy.

WHEREFORE, the undersigned Petitioner, MARIO JIMENEZ, now prays for removal of the above-encaptioned state court proceedings into, and under, the jurisdiction of this United States District Court, with all speed, and for all other relief deemed just and proper in the premises.

Respectfully submitted,



Mario Jimenez, M.D.
Pro Se Petitioner

VERIFICATION

I hereby declare, verify, certify and state, pursuant to the penalties of perjury under the laws of the United States, and by the provisions of 28 USC § 1746, that all of the above and foregoing representations are true and correct to the best of my knowledge, information, and belief.

Executed at MIAMI, FLORIDA, this 27th day of February, 2015.

Mario Jimenez, M.D.
Pro Se Petitioner

SWORN TO and subscribed before me this 27th day of February 2015.

Notary Public

Notary Public State of Florida
Marta Pulido
My Commission EE 174161
Expires 05/22/2016

CERTIFICATE OF SERVICE

I hereby certify that, on this 27th day of MONTH, 2015, a true and complete copy of the foregoing petition for removal, by depositing the same in the United States mail, postage prepaid, has been duly served upon all parties of record in the lower state proceedings, to-wit:

Attorney for Former Wife:
Ana C. Morales, Esq.,
Reyes Miller, P.L.
901 Ponce de Leon Blvd., 10th Floor
Coral Gables, Fl 33134

Guardian Ad Litem:
Anastasia Garcia
770 Ponce de Leon Blvd.
Coral Gables, Fl 33134

and, that the same is being also filed this same date within the lower state trial court proceedings.

Mario Jimenez, M.D.
Pro Se Petitioner

Mario Jimenez, M.D.
12901 SW 66 Terrace Drive. Miami, Fl 33183
(305) 386-9988, Marioaj01@yahoo.com