

**UNITED STATES COURT**

**THE ELEVENTH CIRCUIT COURT OF APPEALS**

**OPENING BRIEF ON APPEAL**

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Case 15-11861-CC

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UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT  
OF FLORIDA: Case No. 15-CV-20821-UU

CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA: Case No. 11-21207-FC-04

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MARIO JIMENEZ, Father/Appellant/Plaintiff, Florida Southern District:  
Ursula Ungaro– Judge

v.

KAREN WIZEL/Mother,  
DEPARTMENT OF CHILDREN AND FAMILIES (DCF), and  
THEREZA HERNANDEZ/DCF Investigator, and  
MELYSSA LOPEZ/DCF Case Coordinator, and  
YVETTE B. REYES MILLER, Esq., and  
THE LEGAL DEFENSE FIRM OF SOUTH DADE, P.L., and  
ANA C. MORALES, Esq., and  
MARGARITA ARANGO MOORE, Esq. and  
REYES & ARANGO MOORE, P.L., and  
VANESSA L. ARCHER, and  
ARCHER PSYCHOLOGICAL SERVICES, P.A., and  
ANASTACIA GARCIA/Guardian Ad Litem, and  
LAW OFFICE OF ANASTASIA M GARCIA, P.A., and  
SABRINA SALOMON/Former attorney for Plaintiff, Appellees/Defendants

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH

CIRCUIT COURT CASE 15-11861-CC

**I. Certificate of Interested Persons and Corporate Disclosure Statement:**

1. MARGARITA ARANGO MOORE – OPPOSING ATTORNEY.
2. VANESSA L. ARCHER– PSYCHOLOGIST APPOINTED BY COURT.
3. ARCHER PSYCHOLOGICAL SERVICES – FIRM OWNED BY VANESSA ARCHER.
4. JUDGE SCOTT BERNSTEIN – FOURTH STATE JUDGE FAMILY COURT.
5. DR. GREGORIO BROWN – SON’S THERAPIST UNTIL MOTHER DECIDED TO FIRE HIM WHEN HE RECOMMENDED FOR CHILD TO SEE HIS FATHER AS SOON AS POSSIBLE.
6. MERCEDES CHRISTIAN – CHILDREN AND FAMILY ADVOCATE. PRESIDENT OF LEADERS OF PEACE FOUNDATION.
7. DEPARTMENT OF CHILDREN AND FAMILIES (DCF).
8. DR. MICHAEL J. DITOMASSO –PSYCHOLOGIST APPOINTED BY DCF.
9. DIVORCE CORP – PRODUCER OF FAMILY COURT CORRUPTION FILM.
10. JUDGE PEDRO ECHARTE – THIRD STATE JUDGE FAMILY COURT.

11. JUDGE ARIANA FAJARDO – LATEST STATE JUDGE FAMILY COURT.
12. ANASTACIA GARCIA – GAURDIAN AD LITEM.
13. JUDGE MINDY GLAZER – SECOND STATE JUDGE FAMILY COURT CONDUCTED “EMERGENCY” HEARING.
14. THEREZA HERNANDEZ – DCF INVESTIGATOR.
15. LAW OFFICE OF ANASTASIA M GARCIA, P.A. – LAW OFFICE OF GAURDIAN AD LITEM.
16. LEADERS OF PEACE FOUNDATION – NON PROFIT CHILDREN’S ADVOCATE ORGANIZATION.
17. MELYSSA LOPEZ – DCF CASE COORDINATOR.
18. ANA C. MORALES – OPPOSING ATTORNEY.
19. REYES & ARANGO MOORE, P.L. – LAW FIRM SET THE ORIGINAL EMERGENCY HEARING.
20. YVETTE B. REYES MILLER – OPPOSING ATTORNEY.
21. SABRINA SALOMON – FORMER ATTORNEY FOR PLAINTIFF.
22. JUDGE ROBERT N. SCOLA – FIRST STATE JUDGE FAMILY COURT.
23. THE LEGAL DEFENSE FIRM OF SOUTH DADE, P.L. – NEWLY CREATED LAW FIRM FOR OPPOSING ATTORNEYS.

24. JUDGE URSULA UNGARO – DISTRICT COURT JUDGE.

25. KAREN WIZEL - RESPONDENT FORMER WIFE.

Note: Reference to the parties will be as they stand before the court. The abbreviation Doc.\_\_\_ will be used to designate Docket/Document number referenced in the Appendix. p.\_\_\_ will refer to page and will be followed by corresponding page number(s). Supplemental appendix will be referenced as Supp. App.\_\_\_ in the Supplemental Appendix index, if one is necessary.

**II. Statement Regarding Oral Argument:**

Due to the many issues that were not able to be presented to the District Court when it prematurely and erroneously denied complaint, Appellant believes that it is imperative that he be given the opportunity to make oral arguments.

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## **VI. JURISDICTION:**

A. The District court order was dismissed April 15, 2015, appeal filed April 27, 2015. The basis for the Appellate jurisdiction is U.S. Constitution Bill of Rights, First, Fourth, Fifth, Sixth and 14<sup>th</sup> Amendment, Florida Constitution Article 21, Removal code 28 U.S. Code § 1331, 28 U.S.C. 1441, 1446, 1449, 18 U.S.C. 1512, 18 U.S.C. 1513, 42 U.S.C. 1983, 42 U.S.C. 1985, Florida Constitution Section IV, Article 21, F.S. 61.

B. Violations of Petitioner's and children's Bill of Rights in the instant case are not limited to First, Fourth, and Fourteenth Amendment due process access to the court, Florida Constitution Article 21 as applied to unalienable Parental Rights established by SCOTUS in Troxel v. Granville, 530 US 57 - Supreme Court.

C. "[E]ven if it is constitutionally permissible to temporarily deprive a parent of the custody of a child in an emergency, the state has the burden to initiate prompt judicial proceedings to ratify its emergency action." Weller v. Dept. of Soc. Serv. for City of Baltimore, 901 F.2d 387 (4th Cir. 1990).

D. "[T]he child and his parents share a vital interest in preventing erroneous [abridgement] of their natural relationship. ... [T]he whole community has an interest that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed citizens." Santosky v. Kramer, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982).

E. "Constitution confers upon no individual the right to demand action by the State which results in the denial of equal protection of the laws to other individuals," Shelley v. Kraemer, 334 U.S. 1, 68 S. Ct. 836, 92 L.Ed. 1161 (1948).

F. "[T]he best interests of the child' is not the legal standard that governs parents' or guardians' exercise of their custody: So long ascertain minimum requirements of child care are met, the interests of the child may be subordinated to

... the interests of the parents or guardians themselves.” Reno v. Flores, 507 U.S. 292, 113 S. Ct. 1439, 123 L.Ed.2d 1 (1993).

G. “The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to ...another ... If both are not accorded the same protection, then it is not equal.” Regents of the University of California v. Bakke, 438U.S. 265, 289 -90, 98 S. Ct. 2733, 57 L.Ed.2d 750 (1978).

H. “State laws defining and regulating marriage... must respect the constitutional rights of persons.” United States v. Windsor, U.S. , 133 S. Ct. 2675, 2691 ( 2013).

I. “[T]he Court declared it a cardinal principle that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. ... [T]he relationship of love and duty in a recognized family unit is an interest in liberty entitled to constitutional protection.” Lehr v. Robertson, 463 U.S. 248, 257 -58, 77 L.Ed.2d614, 103 S. Ct. 2985 (1983).

## **VII. CONSTITUTIONAL, STATUTORY PROVISIONS AND**

### **JURISDICTION INVOLVED:**

A. FIRST AMENDMENT FREEDOM OF RELIGION.

B. FOURTH AMENDMENT, SEARCH AND SEIZURE, DEBTORS PRISON.

C. FOURTEENTH AMENDMENT UNALIENABLE PARENTAL RIGHTS

ESTABLISHED BY SCOTUS TROXEL V. GRANVILLE, 530 US 57 -  
SUPREME COURT.

D. DUE PROCESS REQUIREMENTS ARE VIOLATED IN THE STATE

COURTS VERIFIED BY BARREIRO V. BARREIRO, 377 SO. 2D 999 -  
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- E. FLORIDA CONSITUTION ARTICLE 21 ACCESS TO THE COURT.
- F. OBSTRUCTION OF JUSTICE PURSUANT TO 18 U.S.C. 1512 AND 18 U.S.C. 1513: LIBEL, SLANDER AND FRAUD UPON THE COURT.
- G. 42 U.S.C. 1983 AND 42 U.S.C. 1985 CONSPIRACY TO VIOLATE CONSTITUTIONALLY PROTECTED LIBERTY INTERESTS.
- H. TITLE 18 - CRIMES AND CRIMINAL PROCEDURE, PART I - CRIMES CHAPTER 13 - CIVIL RIGHTS, SEC. 245. FEDERALLY PROTECTED ACTIVITIES.

Jurisdiction also established as per Ibid. Doc. 13, p. 1-5. **This court has jurisdiction.**

## **VIII. STATEMENT OF THE ISSUE:**

1. Whether or not the activity of a Parent praying with his children, according to their inalienable First and Fourteenth Amendment Parental Rights meets the classification of an “emergency”?
2. Whether or not a Family court has the right to deprive a parent and his children of Parental Rights including one on one nurturing, contact, and communication resulting from a telephonic hearing alleged as an “emergency hearing,” without proper Notice of Hearing, nor any Notice, violating Rule 60 (b)?

3. Whether or not the Parent when praying with his children justifies by fact or law the Termination of the Parent's Fourteenth Amendment Rights; therefore, establishing original jurisdiction in this Federal Removal?
  4. Whether or not the hearsay opinion of a psychologist can be used by the Family courts to deprive a parent of their children for even minimal periods?
  5. Plaintiff's equal protection right of association with his children required strict scrutiny, which the state court refused to acknowledge, and removal to federal court was required to ensure equal protection.
- 

## **IX. SUMMARY STATEMENT OF THE CASE:**

1. Parenting time had been occurring as required by Constitution and law for about a year since August 2011 after Plaintiff recovered 50/50 custody of minor children.
2. Respondents set an "emergency telephonic hearing" without proper Notice to Petitioner.
3. The state court failed to provide the proper Notice of Hearing violating due process Rule 60 (b), and all subsequent orders should be vacated as in Orner v. Shalala, 30 F. 3d 1307 - Court of Appeals, 10th Circuit 1994, Barreiro v. Barreiro, 377 So. 2d 999 - Fla: Dist. Court of Appeals, 3rd Dist. 1979.



4. The hearing without proper Notice was contrived by the Respondents as an “emergency,” where the contrived emergency was the Petitioner exercising his First Amendment right to pray with his children.
5. Over Petitioner’s objections, Ibid. Doc. 8, p. 21-26, the hearing took place without notice or warning. Petitioner had no warning, proper Notice of Hearing or indications of concerns by the Respondents before the hearing violating Rule 60 (b) .
6. The Respondents contrived baseless, libelous, slander of Petitioner claiming he was a “fanatic” for merely praying with his children, as is his First and Fourteenth Amendment Right in Troxel v. Granville, 530 US 57 - Supreme Court through conspiracy to obtain the court order.
7. The Respondents obtained a court order resulting from the “emergency telephonic hearing,” void of proper Notice of Hearing, due process or adequate counsel with equal results to a Termination of Parental Rights.
8. The Respondents’ court order cut communication without basis in fact or law, resulting in the equivalent of a termination of parental rights where the Petitioner and children were deprived of all parenting time guaranteed by the Fourteenth Amendment.
9. The consequences of Respondents’ conspiracies to destroy the First and Fourteenth Amendment Parent child relationship, the name and reputation of Petitioner trigger Fourth Amendment violations of seizure of assets and threats of

Debtors prison which are not trivial. The Respondents' acrimony has alienated the children who have decompensated academically and behaviorally causing minor child to be expelled from school in several occasions.

10. In the instant case, due to Defendants' conspiracy, Plaintiff has lost contact with children for almost three years causing as is well-established by law "irreparable injury" not only to him, but most importantly to his minor children, Elrod v. Burns, 96 S Ct 2673; 427 US 347, (1976).

11. Psychiatrist reports show the older child having Post Traumatic Stress Disorder (PTSD) and Major Depression as a consequence of Respondents' acrimony.

12. Respondents committed fraud upon the court violating Petitioner's civil rights in 42 U.S.C. 1983 and 42 U.S.C. 1985.

13. Respondents' modus operandi constitutes racketeering and crimes against humanity.

14. The Removal Proceedings were improperly dismissed in District Court claiming lack of jurisdiction and failing "to allege any rights related to equality." Ibid. Doc. 14, p. 2, Order of Dismissal.

15. Respondents are in contempt for violation of Federal Removal code 28 U.S.C. 1331 and 28 U.S.C. 1446, "all state proceedings are to go no further."

16. Respondents' individual and collective conspiracies of Obstruction of Justice pursuant to 18 U.S.C. 1512, 18 U.S.C. 1513 and Rule 60 (b) trigger jurisdiction of 42 U.S.C. 1983 and 42 U.S.C. 1985.

17. Petitioner has been the target of retaliation from Respondents, who are holding his children hostage for standing for his constitutionally protected liberty interests, not bowing to their racketeering, corruption and tyranny.

---

**X. INTRODUCTION AND IMPORTANCE OF THE CASE:**

1. This brief is submitted on behalf of Appellant, MARIO JIMENEZ, M.D., B.S.E.E, Pro Se. Jurisdiction is a federal question that goes to the fabric of civilization, unalienable Rights regarding First Amendment Freedom of Religion and Fourteenth Amendment Parental Rights, established American values spanning millennia. The First and Fourteenth Amendment Parental Rights nature of the scope of this case affects every American regardless of their faith and affects generations following our legacy.
2. At this time of increasing violence through religious persecution in America and the world with ISIS and other radical groups kidnapping, beheading, burning, crucifying and torturing children before their parents and people for simply living their faith as Christians, it is of critical importance for this honorable appellate court to protect American children, parents and citizens from legal violence to their First and Fourteenth Amendment protections of

Petitioner's family relationships through Respondents violations of religious intolerance and persecution.

3. At stake is our First and Fourteenth Amendment protected Parental Rights of the Petitioner to provide nurturing, instruction and wisdom through prayer with his children, due process and equal protection clauses of the Fourteenth Amendment not limited to others rights SCOTUS established in Troxel v. Granville, 530 U.S. 57, 68-69, 147 L. Ed. 2d 49, 120 S. Ct. 2054 (2000), and many other legal precedents.
4. State actors and Respondents systematically violated Petitioner and his children's First and Fourteenth Amendment constitutionally protected liberty interests in Troxel; due process, First and Fourteenth Amendment Parental rights SCOTUS established in *Troxel*, the required Notice of Hearing, and the required, proper evidentiary hearing, were hijacked under the color of law disguised as a contrived "emergency," resulting in the back door Termination of Parental Rights without due process, not based on fact or law.
5. Inane, Vexatious Litigation under the color of law designed for no other purpose than to disenfranchise, alienate and destroy Petitioner – child First and Fourteenth Amendment SCOTUS based Parental Rights in *Troxel*, have inflicted approximately three years of Parental Alienation, Mental Distress, Tort, plunging academic performance and near suicidal tendency on the part of

Plaintiff's son, holding Petitioner's minor children as hostages to intimidate and silence Petitioner.

6. Respondents' catastrophic failure in the state courts to protect Petitioner and Children's constitutionally protected liberty interests in *Troxel* triggers the necessary jurisdiction for Federal Removal from the state court not limited to 28 U.S.C. 1331 – 28 U.S.C. 1446.
7. Respondents' conspiracies to destroy Petitioner and his children's constitutionally protected Parent – Child relationship show through discovery in the court files, resulting in Parental Alienation, Mental Distress near suicide, disenfranchisement, “irreparable injury,” and psychological damage to Appellant's minor children. Petitioner's minor son shows lifelong high-risk through Respondents' conspiracies and malfeasance through Jim Crow modus operandi<sup>1</sup>, under the color of law, demonstrated in evidence in this case.

## **XI. FACTS:**

1. A Foreign Final Order describing 50/50 shared Parenting Time was entered on March 26, 2010 in Nicaragua, Ibid. Doc. 8, p. 9-11.

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<sup>1</sup> Under the color of law rather than the color of skin.

2. The Final Order was recorded in Miami-Dade on July 7, 2011, when Petitioner found out Mother had come back to the states, having absconded with minor children for almost 2 years back in Nicaragua.
3. Petitioner sought the help of the American Embassy, and State Department to recover minor children, and finally obtained the help of state police investigators, and Honorable Judge Robert Scola to reestablish Parenting Time.
4. Honorable Judge Robert N. Scola restored Petitioners' 50/50 shared Parenting Time on Oct. 6, 2011, Doc. 8, p. 153-155, honoring foreign divorce decree under the principle of comity when Plaintiff recorded foreign judgment, Doc. 8, p. 9-11. The children thrived under the shared care of parents for approximately a year, Doc. 8, p. 47-48.

A. Failure of Proper Notice of Hearing

5. Respondents without required written Notice of Hearing per Rule 60b, contacted Petitioner by telephone on July 20, 2012 by filing and obtaining on the same day a purported request for emergency telephonic hearing, Doc. 8, p. 21-26, and an order to suspend Plaintiff's time sharing, Doc. 8, p. 33-34, in violations of Rule 60 (b) , as in Orner v. Shalala, 30 F. 3d 1307 - Court of Appeals, 10th Circuit 1994, p. 3, Barreiro v. Barreiro, 377 So. 2d 999 - Fla: Dist. Court of Appeals, 3rd Dist. 1979, Cortina v. Cortina, 98 So.2d 334 (Fla.

1957); Matthews v. Matthews, 376 So.2d 484 (Fla. 3d DCA 1979) and cases cited; Koken v. Neubauer, 374 So.2d 49 (Fla. 3d DCA 1979).

"Without prior notice, without appropriate pleadings, and over the objection of the husband, the trial judge expanded the scope of an "emergency hearing"...In so doing, the lower court was in palpable error. It was plainly improper, and clearly in violation of the appellant's due process rights..."

6. The telephonic “emergency” hearing was set within hours before the occurrence of the hearing; the Petitioner had no time to prepare, nor was any previous indication of concern given by any of the Respondents to the Petitioner of any concerns, nor any attempt to discuss concerns, nor proper notice given. Simply put, the Respondents ambushed the Petitioner depriving him of due process and his children and their children of their father. The violation of due process is reversible error in Orner v. Shalala; Barreiro v. Barreiro; and Levitt v. Levitt, 454 So. 2d 1070 - Fla: Dist. Court of Appeals, 2nd Dist. 1984.
7. The hearing was contrived as an “emergency hearing” by the Respondents; where the ease of hijacking due process is greater as an “emergency hearing.” Cortina v. Cortina, 98 So.2d 334 (Fla. 1957); Matthews v. Matthews, 376 So.2d 484 (Fla. 3d DCA 1979).
8. The contrived “emergency hearing” alleged the Petitioner prayed with his children, who were thriving up until that time, Doc. 8, p. 47-48; afterwards the children decompensated behaviorally and academically, Doc. 8, p. 68-70, 90.

9. The lack of due process violated Petitioner's 14<sup>th</sup> Amendment Parental Rights.

Additionally, in Sherbert v. Verner (1963) the Court held that states must have a "compelling interest" to refuse accommodation of religiously motivated conduct, which was violated in the instant case. Further, neither guardian ad litem (who was part of the conspiracy, *Ibid.* Doc. 13-2, p. 20-25), nor advocate was needed for the children. No danger to the children was reported or existed, nor basis of fact or law to justify infringing Petitioner's Parental Rights. Baron v. Baron, 941 So. 2d 1233 - Fla: Dist. Court of Appeals, 2nd Dist. 2006. Barreiro v. Barreiro, 377 So. 2d 999 - Fla: Dist. Court of Appeals, 3rd Dist. 1979.

10. The due process violations give appropriate grounds for relief as in the following cases:

A judgment is void if it is not consistent with Due Process of law. Orner v. Shalala, 30 F.3d 1307, 1308 (1994); V.T.A, Inc v. Airco, INC, 597 F.2d 220, 221 (1979). A judgment reached without due process of law is without jurisdiction and thus void. Bass v. Hoagland, 172 F.2d 205, 209 (1949). Any motion for relief from a void judgment is timely regardless of when it is filed. V.T.A, inc. v. Airco, Inc. supra @224 (footnote no. 9). If a judgment is void, it is a nullity from the outset and any Civ. R 60(B) motion is therefore filed within a reasonable amount of time. Orner v. Shalala, supra @1308. If voidness of judgment is found then relief from judgment is also not discretionary and any order based upon that judgment is also void. V.T.A, Inc V. Airco, Inc., 221; Venable v. Haislip, 721 F.2d 297, 298 (1983).

11. The sweeping orders equated to the Termination of Parental Rights; however, absent of proper notice of hearing, proper evidentiary hearing, adequate legal counsel or due process. All this solely based on Petitioner's religious practice



to pray with his children a prayer he had posted in his refrigerator, Ephesians 6: 10-18, Doc. 8, p. 156, The Armor of God.

12. Subsequent hearings based on the “emergency order” violating due process were held infringing Petitioner’s Fourth Amendment Seizure, and through conspiracy with Plaintiff’s former attorney, Mrs. Salomon, Doc. 8, p. 59-67, Plaintiff was ordered to pay large sums of money for opposite counsel’s fees; additional hearings to try to impose opposite counsel’s attorney fees and costs were pending in state court, where the repeated violations of due process for almost three years now, provide no hope of justice or a fair trial. Petitioner was threatened with debtors prison by the Respondents if he did not pay, violating his Fourth Amendment Seizure due process Protections in the instant case. This court reversed where a constitutionally protected property interest was held Morley's Auto Body, Inc. v. Hunter, 70 F. 3d 1209 - Court of Appeals, 11th Circuit 1995.

B. Due Process Violation of Plaintiff’s Sixth Amendment Right, Psychologist Hearsay and Right to Cross Examine

13. Without the required evidentiary hearing, psychologist’s hearsay evidence, provided by Mrs. Archer, recommended by opposite counsel, was used to defame Petitioner as a “fanatic,” Doc. 8, p. 57-58, depriving Petitioner and his

children of their constitutionally protected rights. The Supreme Court defines hearsay as,

“testimony given by a witness who relates, not what he knows personally, but what others have told him, or what he has heard said by others.” Cross v. Commonwealth, 195 Va. 62, 74, 77 S.E.2d 447, 453 (1953).

The Plaintiff required cross-examination of Mrs. Archer, but instead had his Sixth Amendment right trampled upon, resulting in another violation of due process given in order dated December 7, 2012, Ibid. Doc. D.

14.Despite Petitioner’s strongest objection to change psychologist, Doc. C, p. 2, and request the opinion of a neutral psychologist who was assigned by DCF and had conducted an independent evaluation, Doc. 8, p. 49-55, clearing Plaintiff of the accusations, Petitioner was forced to conduct a second evaluation with Mrs. Archer, who, as is accustomed in racketeering schemes, took the opportunity to ensure continual patronage from Plaintiff, at \$1,800 per session every six months.

15.To ensure this illegal patronage, Mrs. Archer alleged that Plaintiff imagines conspiracies by stating in her report that Plaintiff “presents with schizotypal and/or schizoid features," that his "preserverative thought processes and dogmatic behavior patterns would also explain his religious obsession, and his repeated and continued attempts to convince others that he has been falsely accused," that he has “trouble forming emotional bonds with other people,” and

that he lacked interest that "all four of his children develop a bond with one another," Doc. 13-2, p. 48-49.

16. All these defamatory, cut-and-paste psychiatric-want-to-be statements contradicted fact and evidence, Doc. 8, p. 96-99, 108-110, and were in retaliation for Plaintiff reporting Mrs. Archer to the Health Department, Doc. 8, p. 111-113, where he detailed the catastrophic results of her unprofessional practices in the instant case, and in the well-known murder of Nubia Barahona, and the torture of her three siblings described in the "The Nubia Barahona Report," Doc.8, p.72-88.

17. However, most importantly, nowhere did the state demonstrate a "compelling interest," as required in Sherbert v. Verner (1963), to refuse to accommodate religiously motivated conduct. The United States Constitution recognizes "a presumption that fit parents act in the best interest of their children" and that "there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of [fit parents] to make the best decisions concerning the rearing of [their] children." Troxel, 530 US at 68-69 (opinion by O'Connor, J.). "[The] Court has mandated ... "clear and convincing evidence" — when the individual interests at stake in a state proceeding are ... particularly important." Santosky v. Kramer, 455 US at 756.

18. The lack of due process established, *Id.* at XI.5 – 17, verifies Petitioner properly removed the case from state to the U.S District Court of South Florida. The

District Court properly held jurisdiction; yet, improperly dismissed the Petitioner's removal contrary to fact and law, where ample authority including the Rules of the State and Federal Court, appellate precedent based on the Florida State and U.S constitutionally protected liberty interests in *Troxel v. Granville*.

## **XII. ARGUMENTS AND LOWER COURT ERRORS:**

Petitioner, Pro Se, addresses the following basis of decision in ORDER OF DISMISSAL, Ibid. Doc. 14, in the district court:

### **A. The First and Fourteenth Amendment Parental Rights and Importance of Federal Removal Protections Against Violations in The Instant Case:**

1. As demonstrated by son's academic achievements while in shared custody, and based on Plaintiff's medical expertise as a Family Physician, Ibid. Doc. 8, p. 47-48, p. 108-110, scientific research proves that children do better in all ways when they have equal access to both parents in a shared parenting relationship as Plaintiff had before Defendants' conspiracy.
2. As attested in the instant case, son's behavior and academic performance plummeted after forced separation with Father, Ibid. Doc. 8, p. 68-70, leading to son's expulsion from school in several occasions, while son has been forced to take psychotropic medications to treat the Major Depression and PTSD, Ibid. Doc. 8, p. 90, he developed after his forced separation from Plaintiff.

3. Plaintiff , to the day of this filing, has gone without any form of contact with his children since October 26, 2013, never having a required due process evidentiary hearing. Please see correspondence sent to Mother's counsel repeatedly requesting supervised visitations with children as Plaintiff had been ordered by the state court, Doc. B and C. In retaliation to Plaintiff for filing the Federal Removal, opposite counsel has advised Mother to disobey this court order, as attested by evidence, Doc. B.
4. Plaintiff and minor children have suffered grievous loss without due process protections deserved in these cases. In re Cooper, 621 P 2d 437; 5 Kansas App Div 2d 584, (1980).
5. The Federal Removals, which in this case was improperly dismissed by the lower District Court, provide vital relief for American families who have nowhere else to turn to protect theirs and their children's constitutional protected rights, its practice is well-established in Federal Courts, with numerous precedent cases to attest to it and applying to this case:
6. ***"The deprivation of a parent's custodial relationship with a child is among the most drastic actions that a state can take against an individual's liberty interest, with profound ramifications for the integrity of the family unit and for each member of it. From the parent's perspective, there may be little meaningful difference between instances in which the state removes a child and takes her into state custody and those in which the state shifts custody from one parent to another, as occurred here..."*** ("When the state removes a child from her parents, due process guarantees prompt and fair post-deprivation judicial review.")" (**emphasis added**) B.S. v. Somerset County, 704 F.3d 250, 275 (3d Cir. 2013). Violations Id. at XI.5-17.

7. “The rights of parents to the care, custody and nurture of their children is of such character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and such right is a fundamental right protected by this amendment (First) and Amendments 5, 9, and 14.” Doe v. Irwin, 441 F Supp 1247; U.S. D.C. of Michigan, (1985). Violations Id. at XI.5-17.

8. Both parents possess the right of free association with their children.

“[I]ntimate human relationships must be secured against undue intrusion by the State [to assure] individual freedom ... central to our constitutional scheme. In this respect, freedom of association receives protection as a fundamental element of personal liberty. [The Court] recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment”. Roberts v. U.S. Jaycees, 468 U.S. 609, 618 (1984). Violations Id. at XI.5-17.

9. “[T]he child and his parents share a vital interest in preventing erroneous [abridgement] of their natural relationship. ... [T]he whole community has an interest that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed citizens.” Santosky v. Kramer, 455 US 745, 760-790; 102 S Ct 1388; 71 L Ed 2d 599 (1982). Violations Id. at XI.5-17.

10. The United States Supreme Court held that the "old notion" that "generally it is the man's primary responsibility to provide a home and its essentials" can no longer justify a statute that discriminates on the basis of gender. No longer is the female destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas.” Stanton v. Stanton, 421 US 7, 10; 95 S Ct 1373, 1376, (1975). Violations Id. at XI.5-17.

11. “The Constitution protects individuals, men and women alike, from unjustified state interference. ... [Spouses] do not lose their constitutionally protected liberty when they marry.” Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 896 - 98, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992).

Petitioner and Respondent, in the eye of the court, are similarly situated parents and must be afforded equal protection per the Fourteenth Amendment. Given this right of association is a fundamental right, equal

protection demands strict scrutiny which was not employed by neither the state nor district court. Please see state court orders Ibid. Doc. 8 p. 33-34, Doc. C and D.

12. “[Because] such discrimination is unlikely to be soon rectified by legislative means, these laws are subjected to **strict scrutiny** and will be sustained only if they are suitably tailored to serve a compelling state interest. Similar oversight by the courts is due when state laws impinge on personal rights protected by the Constitution.” City of Cleburne, Texas v. Cleburne Living Ctr., 473 U.S. 432, 440; 105 S.Ct. 3249; 87 L.Ed.2d 313 (1985). Violations Id. at XI.5-17.
13. “Loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. Though First Amendment rights are not absolute, they may be curtailed only by interests of vital importance, the burden of proving which rests on their government.” Elrod v. Burns, 96 S Ct 2673; 427 US 347, (1976). Violations Id. at XI.5-17.
14. “The several states have no greater power to restrain individual freedoms protected by the First Amendment than does the Congress of the United States.” Wallace v. Jaffree, 105 S Ct 2479; 472 US 38, (1985).
15. “Law and court procedures that are “fair on their faces” but administered “with an evil eye or a heavy hand” was discriminatory and violates the equal protection clause of the Fourteenth Amendment.” Yick Wo v. Hopkins, 118 US 356, (1886). Violations Id. at XI.5-17.
16. “Even when blood relationships are strained, parents retain vital interest in preventing irretrievable destruction of their family life; if anything, persons faced with forced dissolution of their parental rights have more critical need for procedural protections than do those resisting state intervention into ongoing family affairs.” Santosky v. Kramer, 102 S Ct 1388; 455 US 745, (1982). Violations Id. at XI.5-17.
17. “The liberty interest of the family encompasses an interest in retaining custody of one's children and, thus, a state may not interfere with a parent's custodial rights absent due process protections.” Langton v. Maloney, 527 F Supp 538, D.C. Conn. (1981). Violations Id. at XI.5-17.

18. "Parent's interest in custody of her children is a liberty interest which has received considerable constitutional protection; **a parent who is deprived of custody of his or her child, even though temporarily, suffers thereby grievous loss and such loss deserves extensive due process protection.**" (**Emphasis added**). In re Cooper, 621 P 2d 437; 5 Kansas App Div 2d 584, (1980). Violations Id. at XI.5-17.
19. "The Due Process Clause of the Fourteenth Amendment requires that severance in the parent-child relationship caused by the state occur only with rigorous protections for individual liberty interests at stake." Bell v. City of Milwaukee, 746 F 2d 1205; US Ct App 7th Cir WI, (1984). Violations Id. at XI.5-17.
20. "Father enjoys the right to associate with his children which is guaranteed by this amendment (First) as incorporated in Amendment 14, or which is embodied in the concept of "liberty" as that word is used in the Due Process Clause of the 14th Amendment and Equal Protection Clause of the 14th Amendment." Mabra v. Schmidt, 356 F Supp 620; DC, WI (1973). Violations Id. at XI.5-17.
21. "The United States Supreme Court 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 US 528, 533; 73 S Ct 840,843,(1952). Violations Id. at XI.5-17.
22. "A parent's right to care and companionship of his or her children are so fundamental, as to be guaranteed protection under the First, Ninth, and Fourteenth Amendment of the United States Constitution." In re: J.S. and C., 324 A 2d 90; supra 129 NJ Super, at 489. Violations Id. at XI.5-17.
23. "The Court stressed, "the parent-child relationship is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection." A parent's interest in the companionship, care, custody and management of his or her children rises to a constitutionally secured right, given the centrality of family life as the focus for personal meaning and responsibility." Stanley v. Illinois, 405 US 645, 651; 92 S Ct 1208, (1972). Violations Id. at XI.5-17.
24. Parent's rights have been recognized as being "essential to the orderly pursuit of happiness by free man." Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923).



25. The U.S. Supreme Court implied that "a (once) married father who is separated or divorced from a mother and is no longer living with his child" could not constitutionally be treated differently from a currently married father living with his child. Quilloin v. Walcott, 434 U.S. 246, 98 S. Ct. 549, 54 L. Ed. 2d 511 (1978). Violations Id. at XI.5-17.
26. The U.S. Court of Appeals for the 9th Circuit held that the parent-child relationship is a constitutionally protected liberty interest. (See; Declaration of Independence --life, liberty and the pursuit of happiness and the 14th Amendment of the United States Constitution -- No state can deprive any person of life, liberty or property without due process of law nor deny any person the equal protection of the laws.) Kelson v. Springfield, 767 F 2d 651; US Ct App 9th Cir, (1985). Violations Id. at XI.5-17.
27. "The parent-child relationship is a liberty interest protected by the Due Process Clause of the 14th Amendment." Bell v. City of Milwaukee, 746 f 2d 1205, 1242-45; US Ct App 7th Cir WI, (1985). Violations Id. at XI.5-17.
28. "No bond is more precious and none should be more zealously protected by the law as the bond between parent and child." Carson v. Elrod, 411 F Supp 645, 649; DC E.D. VA (1976). Violations Id. at XI.5-17.
29. "A parent's right to the preservation of his relationship with his child derives from the fact that the parent's achievement of a rich and rewarding life is likely to depend significantly on his ability to participate in the rearing of his children. A child's corresponding right to protection from interference in the relationship derives from the psychic importance to him of being raised by a loving, responsible, reliable adult." Franz v. U.S., 707 F 2d 582, 595-599; US Ct App (1983). Violations Id. at XI.5-17.
30. "A parent's right to the custody of his or her children is an element of "liberty" guaranteed by the 5th Amendment and the 14th Amendment of the United States Constitution." Matter of Gentry, 369 NW 2d 889, MI App Div (1983). Violations Id. at XI.5-17.
31. "Reality of private biases and possible injury they might inflict were impermissible considerations under the Equal Protection Clause of the 14th Amendment." Palmore v. Sidoti, 104 S Ct 1879; 466 US 429.

32. Judges must maintain a high standard of judicial performance with particular emphasis upon conducting litigation with scrupulous fairness and impartiality. 28 USCA § 2411; Pfizer v. Lord, 456 F 2d 532; cert denied 92 S Ct 2411; US Ct App MN, (1972). State Judges, as well as federal, have the responsibility to respect and protect persons from violations of federal constitutional rights. Gross v. State of Illinois, 312 F 2d 257; (1963). Violations to the above are the nature of this appellate brief.
33. "The Constitution also protects "the individual interest in avoiding disclosure of personal matters." Federal Courts (and State Courts), under Griswold can protect, under the "life, liberty and pursuit of happiness" phrase of the Declaration of Independence, the right of a man to enjoy the mutual care, company, love and affection of his children, and this cannot be taken away from him without due process of law. There is a family right to privacy which the state cannot invade or it becomes actionable for civil rights damages." Griswold v. Connecticut, 381 US 479, (1965). Violations Id. at XI.5-17.
34. "The right of a parent not to be deprived of parental rights without a showing of fitness, abandonment or substantial neglect is so fundamental and basic as to rank among the rights contained in this Amendment (Ninth) and Utah's Constitution, Article 1 § 1." In re U.P., 648 P 2d 1364; Utah, (1982).
35. "The rights of parents to parent-child relationships are recognized and upheld." Fantony v. Fantony, 122 A 2d 593, (1956); Brennan v. Brennan, 454 A 2d 901, (1982).
36. **"State's power to legislate, adjudicate and administer all aspects of family law, including determinations of custodial; and visitation rights, is subject to scrutiny by federal judiciary within reach of due process and/or equal protection clauses of 14th Amendment... (Emphasis added). Wise v. Bravo, 666 F 2d 1328, (1981).**
- Violations Id. at XI.5-17 must subject to scrutiny by the federal judiciary.
37. "Section one of the Fourteenth Amendment provides, in relevant part, that "[n]o State shall...deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. The core idea captured by this command, which was prominently expressed in the ["Law of the Land" prohibition of] Magna Carta of King John, See Charles Shattuck, The True

Meaning of the Term "Liberty," 4 HARV. L. REV. 365, 369 (1891), is that governments and public officials should deploy their coercive powers according to rules and reason rather than passion and whim. County of Sacramento v. Lewis, 845, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998) ("[T]he touchstone of due process is protection of the individual against arbitrary action of government...."); Bank of Columbia v. Okely, 17 U.S. 235, 244, 4 Wheat. 235, 4 L.Ed. (1814) ("As to the words from Magna Charta, ... the good sense of mankind has at length settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice").

38. The United States Court of Appeals for the Ninth Circuit said it well, "The government's interest in the welfare of children embraces not only protecting children from physical abuse, but also protecting children's interest in the privacy and dignity of their homes and in the lawfully exercised authority of their parents." Calabretta v. Floyd, 189 F.3d 808 (9th Cir. 1999).

## **B. Early and Inappropriate Dismissal of Federal Removal By Claiming**

### **The Court Did Not Have Jurisdiction of Family Matters:**

1. The court erred in denying removal of state court action claiming: 1) that it did not have jurisdiction of family matters and 2) that Appellant failed "to allege any rights related to equality" prohibiting this case from being removed to federal court:
2. The district court acquired subject matter jurisdiction and should have removed case to federal court. The Supreme Court has clarified that all federal courts have subject matter jurisdiction over the constitutionality of state child custody actions and that such loss deserves extensive due process protection.

***"Parents have a fundamental right to the custody of their children, and the deprivation of that right effects a cognizable injury."*** See Santosky v. Kramer, 455 U.S. 745, 758-59, 102 S. Ct. 1388, 1397, 71 L. Ed. 2d 599 (1982), Troxel v. Granville, 530 U.S. 57, 68-69, 147 L. Ed. 2d 49, 120 S. Ct. 2054 (2000).

***"a parent who is deprived of custody of his or her child, even though temporarily, suffers thereby grievous loss and such loss deserves extensive due process protection."*** In re Cooper, 621 P 2d 437; 5 Kansas App Div 2d 584, (1980).

3. There is also a plethora of examples where federal courts have jurisdiction of family law cases, and based on the preponderance of evidence of malfeasance and fraud on the part of Defendants apply in this case. For instance, the constitutional validity of child custody decisions are quite often litigated within federal courts:

Wallis v. Spencer, 202 F.3d 1126, 1136 (9th Cir. 2000) ("Parents and children have a well-elaborated constitutional right to live together without governmental interference."); J.B. v. Washington County, 127 F.3d 919, 925 (10th Cir. 1997), ("We recognize that the forced separation of parent from child, even for a short time, represents a serious infringement upon both the parents' and child's rights."); Wooley v. City of Baton Rouge, 211 F.3d 913, 923 (5th Cir. 2000) ("a child's right to family integrity is concomitant to that of a parent"); Morris v. Dearborne, 181 F.3d 657, 672 (5th Cir. 1999), (making knowingly false statements of child neglect violates clearly established constitutional right to familial relations); Smith v. City of Fontana, 818 F.2d 1411, 1418 (9th Cir. 1987), ("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." – citing the same in Kelson v. City of Springfield, 767 F.2d 651 (9th Cir. 1985)); Croft v. Westmoreland County Children and Youth Services, 103 F.3d 1123, 1125 (3rd Cir. 1997), ("We recognize the constitutionally protected liberty interests that parents have in the custody, care and management of their children"). Please see also *Id.* at XII.A.6-38.

4. In the instance case, state actors under the color of law conspired to deprive Petitioner as a parent, from his equal shared custody, violating Fourteenth Amendment constitutionally protected rights in Troxel v. Granville, implicit with the right to raise his children in his First Amendment protected faith, Christianity.
5. Respondents contrived an “emergency” by conspiring with Mother who called police and DCF in the middle of the night on June 6, 2012, Doc. 8, p. 157, falsely accusing Father of scaring children when praying with them, in violation of Petitioner’s First and Fourteenth Amendment Rights to provide Parental instruction to his children pertaining to scripture, Ephesians 6: 10-18, Doc 8, p. 156-157.
6. Subsequently, Mrs. Archer, without basis in fact or law but solely on personal opinion, without a proper evidentiary hearing or Petitioner opportunity for presumption of rebuttal, considered Appellant’s “religious beliefs...excessive and intrusive, and likely do approach a fanatic level.” Doc. 8, p. 57-58.
7. A previous evaluation conducted by DFC appointed psychologist, Dr. Michael J. DiTomasso, Doc. 8, p. 49-56, cleared Father of these false and defamatory accusations, but the lower court, in further violation of due process, refused to admit it as evidence alleging that DCF had conducted the interview one day before Honorable Judge Pedro Echarte had given the order to do so, but

violating Petitioner's Fourth Amendment Seizure, ordered to not only pay for Plaintiff's re-evaluation but Mother's as well.

8. Respondent's contrived hearsay testimony based on personal opinion, not on fact or law resulted in Appellant's lost of shared equal custody of minor children inflicting grave and "irreparable injury." Elrod v. Burns, 96 S Ct 2673; 427 US 347, (1976), Cross v. Commonwealth, 195 Va. 62, 74, 77 S.E.2d 447, 453 (1953).
9. Respondent's conspiracies to contrive these "emergencies" without basis in fact or law, under the color of law as a phony "emergency" resulted in continuing mental distress and "irreparable injury" to children and Appellant.
10. The minor son decompensated from one of the best students in his class, earning him the honor of student of the month, one of the proudest moments in son's and Appellant's life, Doc. 8, p. 47-48, to one of the worst, causing great concern to his teachers, and leading to son's diagnosis of PTSD, and Major Depression approaching suicide, Doc. 8, p. 68-70, 90.
11. The following authority verifies Subject Matter jurisdiction in the instant case, Please see also Id. at XII.A.6-38; hence, the District court should have exercised its proper jurisdiction, not dismissed,  
  
"A due-process violation occurs when a state-required breakup of a natural family is founded solely on a "best interests" analysis that is not supported by the requisite proof of parental unfitness." Quilloin v. Walcott, 434 U.S. 246, 255, (1978).

“We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected.” See, e. g., Wisconsin v. Yoder, 406 U. S. 205, 231-233 (1972); Stanley v. Illinois, supra; Meyer v. Nebraska, 262 U. S. 390, 399-401 (1923). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." Prince v. Massachusetts, 321 U. S. 158, 166 (1944). “And it is now firmly established that "freedom of personal choice in matters of . . . family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." Cleveland Board of Education v. LaFleur, 414 U. S. 632, 639-640 (1974).

“We have little doubt that the Due Process Clause would be offended "[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest." Smith v. Organization of Foster Families, 431 U. S. 816, 862-863 (1977) (STEWART, J., concurring in judgment).”

### **C. Early and Inappropriate Dismissal of Federal Removal By Ignoring**

#### **Plaintiff’s Pro Se Rights:**

1. The court erred when prohibiting this case from Federal Court Removal alleging that Appellant failed “to allege any rights related to equality,” Doc. 14 p. 2, and ignoring Plaintiff’s Pro Se rights.
2. The District’s court order to amend complaint was entered on March 12, 2015; its due date was March 27, 2015.
3. Petitioner filed Motion for Extension of Time to Amend on March 24, 2015, Id. Doc. 10; however, Petitioner did not receive notification of its denial until Saturday March 28, 2015, forcing him to file a hurriedly amended complaint on

Mar. 30, 2015. Subsequently, an ORDER OF DISMISSAL, Doc. 14, was entered on Apr. 15, 2015 dismissing the removal.

4. Petitioner as Pro Se, is afforded liberal interpretation of pleadings; the district court prejudiced by denying Petitioner's Pro Se Motion for Extension of Time Erickson v. Pardus, 127 S. Ct. 2197 - Supreme Court 2007.
5. Petitioner's Motion for Extension of Time went unopposed; the filing of the premature Amended Petition compromised and prejudiced Petitioner's First and Fourteenth Amendment constitutionally protected liberty interests, his Parental Rights pursuant to Troxel and therefore further subjected children to extended tortuous Parental Alienation, as described in detail in Doc. 8, p. 125-138.
6. The extension of time would have only enhanced a just and fair decision; was justified since the Petitioner was Pro Se and "afforded liberal interpretation of pleadings." Doc. 13, p. 36-37, Erickson v. Pardus, 127 S. Ct. 2197 - Supreme Court 2007.
7. Appellant clearly stated, citing numerous legal cases, his Pro Se rights, Doc. 13, p. 36-37, for whom "pleadings are always to be construed liberally and expansively, affording them all opportunity in obtaining substance of justice, over technicality of form,"...for "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," also, courts are "required to



use its own common sense to determine what relief that party either desires, or is otherwise entitled to,” and for whom “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). Erickson v. Pardus, 127 S. Ct. 2197 - Supreme Court 2007.

8. Thus, "the court is under a duty to examine the complaint to determine if the allegations provide for relief on ANY possible theory" (emphasis added). Bonner v. Circuit Court of St. Louis, 526 F.2d 1331, 1334 (8th Cir. 1975) (quoting Bramlet v. Wilson, 495 F.2d 714, 716 (8th Cir. 1974)). Therefore, if the court entertains any motion to dismiss the case, it is to apply the standards of White v. Bloom. Further, if any theory entitles the Appellant to relief, even one the Appellant has not thought of, the court cannot and should have not dismissed the case.
9. Although Appellant did not quote the word “equality,” a technicality already debunked above, he argued, implicitly and plainly, throughout his amended complaint, Doc. 14, that his equal rights as a citizen of the U.S., his equal right of association with his children, as a father, as a man, his First Amendment Right to Practice his religion and Parent in Troxel v. Granville, were systematically violated over a course of almost three years in Family courts of the Eleventh Circuit of Florida, causing “irreparable injury,” Elrod v. Burns, 96 S Ct 2673; 427 US 347, (1976), mental anguish, FAA v. Cooper, 132 S. Ct.

1441 - Supreme Court 2012, and serious psychological and academic decompensation to minor children, most notably to son who was diagnosed with PTSD and Major Depression almost a year after his forced separation from Father, Doc. 8, p. 90.

10. Furthermore, as stated in McKenzie v. Riley, Dist. Court, MD Alabama 2013:

The Supreme Court has recognized that fundamental rights include those guaranteed by the Bill of Rights as well as certain "liberty" and privacy interests implicit in the due process clause and the penumbra of constitutional rights. *Glucksberg*, 521 U.S. at 720, 117 S.Ct. at 2267; *Paul v. Davis*. These special "liberty" interests include "the rights to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, to bodily integrity, and to abortion."

11. Petitioner correctly claims the court has jurisdiction and the court agrees, however, the court inappropriately dismisses the Federal Removal; Doc. 14, p. 2, the Court states as follows:

“However, because Jimenez has asserted claims under 42 U.S.C. § 1983 and 42U.S.C. §§ 1985(2)-(3) , the Court has federal question jurisdiction over his claims pursuant to 28U.S.C. § 1331.”

12. Petitioner states with legal precedent that his Pro Se status grants him

“liberal interpretation of pleadings” and “protection against technical errors” as stated in his amended complaint, Doc. 13, p. 36-37; however, the District court failed to allow “liberal interpretation of pleadings [not] affording [him] all opportunity in obtaining of justice.”

**D. Early and Inappropriate Dismissal of Federal Removal By Ignoring**

**Plaintiff's Equal Right of Association With His Minor Children:**

1. Plaintiff's equal protection right of association with his children requires “**strict scrutiny**,” which the state court refused to acknowledge, and removal to federal court is required to ensure equal protection. Roberts v. U.S. Jaycees, 468 U.S. 609, 618 (1984).
2. Father and Mother, in the eye of the court, are similarly situated parents and must be afforded equal protection per the Fourteenth Amendment.
3. Given this right of association is a fundamental right, equal protection demands “**strict scrutiny**,” which was employed by neither the state nor District Court.
4. Both parents possess the right of free association with their children, and the children with their parents, which in the instant case were violated. Roberts v. U.S. Jaycees, 468 U.S. 609, 618 (1984).
5. Children have an equality right to be with both parents and the whole community has an interest in this happening for children "to grow into free and independent well-developed citizens.” Santosky v Kramer, 455 US 745, 760-790; 102 S Ct 1388; 71 L Ed 2d 599 (1982).
6. No preference in child rearing should be given based on sex demonstrated in this case. Stanton v. Stanton, 421 US 7, 10; 95 S Ct 1373, 1376, (1975).
7. The Constitution protects men and women equally from unjustified state interference. In this case, Petitioner's equal protection of association with his

minor children was violated by the state court with the use of a contrived "emergency" order, Doc. 8, p. 47-48. Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 896 - 98, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992).

8. Father's equal protection to associate with children was ignored in state court. The District Court owes “**strict scrutiny**” to equal protection of association since it impinged in the personal rights of the Petitioner and his children. City of Cleburne, Texas v. Cleburne Living Ctr., 473 U.S. 432, 440; 105 S.Ct. 3249; 87 L.Ed.2d 313 (1985).
9. The violation of this equal protection right “constitutes irreparable injury” not only to Plaintiff, but to minor children as well. Elrod v. Burns, 96 S Ct 2673; 427 US 347, (1976), and are “actionable for civil rights damages” as held in Griswold v. Connecticut, 381 US 479, (1965).

**E. The Court Erred Dismissing Case Ignoring Due Process Failure of Respondents to Provide Notice of Hearing Violating Rule 60 (b) :**

1. Petitioner received no Notice of Emergency Telephonic Hearing, written or otherwise from respondents, since their notice was filed same day the emergency telephonic hearing was held, Ibid. Doc. 8, p. 21-22, p. 23-26, p. 33-34, and to an invalid address, neither was Petitioner notified of any concerns on the part of any of the respondents.

2. Respondents' failure to provide Notice of Hearing Violated Petitioner's due process and Rule 60 (b) . The due process violations give appropriate grounds for relief as in the following cases: Id. at XI.10, and are "actionable for civil rights damages" as held in Griswold v. Connecticut, 381 US 479, (1965).

**F. The Court Erred Dismissing Case Ignoring Due Process Violation of Plaintiff's Sixth Amendment Right, Psychologist Hearsay and Right to Cross Examine:**

1. Petitioner establishes the facts of Respondents' violations of Sixth Amendment Violations of Right to cross examine Id. at XI.B.12-16.

The Supreme Court defines hearsay as:

"testimony given by a witness who relates, not what he knows personally, but what others have told him, or what he has heard said by others."

Cross v. Commonwealth, 195 Va. 62, 74, 77 S.E.2d 447, 453 (1953).

Although some arguments claim the Sixth amendment applies to criminal, not to civil, in the instant case, the same standard of "beyond a reasonable doubt" applies in Santosky v. Kramer, 455 US 745 - Supreme Court 1982,

"The only analogous federal statute of which we are aware 750\*750 permits termination of parental rights solely upon "evidence beyond a reasonable doubt",

exists in cases involving Termination of Parental Rights, where the Constitution

"protects individuals...from unjustified state interference." Pennsylvania v.

Casey, 505 U.S. 833, 896 – 98.

2. Here the egregious results demonstrate the Respondent's modus operandi to Terminate Parental Rights since parenting time was entirely terminated for almost three years to the date of this filing.
3. In a hearing held on Mother's motions for Temporary Relief, to Vacate Foreign Judgment/Modify Order, and for Temporary Attorney's Fees, Suit, Money and Costs, Plaintiff was again ambushed by Defendants' modus operandi when they provided a hearsay psychological report to Honorable Pedro Echarte, Ibid. Doc. 57-58.
4. Upon Plaintiff's objection, hearsay report was reviewed by the state court violating Plaintiff's Six Amendment Right to cross-examine witnesses.
5. Based solely on this hearsay report, the state court violated Plaintiff's Equal Right of Association with his minor children for almost three years, denying Plaintiff's "intimate human relationships" with his children due to "undue intrusion by the State" as in *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984), and unconstitutionally abridging "their natural relationship" as established in *Santosky v Kramer*, 455 US 745, 760-790; 102 S Ct 1388; 71 L Ed 2d 599 (1982).
6. The state court's egregious unconstitutional violations caused irreparable injury to Plaintiff and minor children, relegating Plaintiff to "only have supervised timesharing," with "no telephonic communication between the Father and minor children." Ibid. Doc. D.

7. No Sixth Amendment probable cause, witness spontaneity, testimony or verifiable credibility existed to justify Termination of Petitioner – child relationship, and Plaintiff had no opportunity to cross-examine psychologist who had written hearsay report.
8. The state court deprived Father of custodial relationship with his minor children which is “among the most drastic actions that a state can take against an individual’s liberty interest” shifting “custody from one parent to another,” and denying Plaintiff’s “due process guarantees” and never providing a “fair post-deprivation judicial review,” as in B.S. v. Somerset County, 704 F.3d 250, 275 (3d Cir. 2013).
9. Respondent’s fabrication of the contrived emergency, and the state court’s admission of hearsay evidence disallowed cross examination violating Petitioner and child Sixth Amendment protections right in Crawford v. Washington, 541 US 36 - Supreme Court 2004, Idaho v. Wright, 497 US 805 - Supreme Court 1990, Whorton v. Bockting, 127 S. Ct. 1173 - Supreme Court 2007, and as such are “actionable for civil rights damages” as held in Griswold v. Connecticut, 381 US 479, (1965).

**G. The Court Erred in Denying 42 U.S.C. 1983 Claims:**

1. Yvette B. Reyes Miller, The Legal Defense Firm of South Dade, Ana C. Morales, Margarita Arango Moore, Reyes & Arango Moore, P.L., Anastacia Garcia, Law Office of Anastasia M. Garcia, P.A., and Sabrina Salomon are attorneys or law where these individuals conspired to deprive Plaintiff and his minor children of their constitutionally protected rights inflicting “irreparable injury” to them, Elrod v. Burns, 96 S Ct 2673; 427 US 347, (1976), and making their civil rights violations against Plaintiff and minor children “actionable for civil rights damages” as held in Griswold v. Connecticut, 381 US 479, (1965).
2. The Supreme Court of the United States held in Ex parte Garland, 71 U. S. 333 (1866) that  
"Attorneys and counselors...are officers of the court, admitted as such by its order upon evidence of their possessing sufficient legal learning and fair private character;"  
and therefore, as officers of the court are also state actors, clothed with the authority of state law, who as stated throughout amended complaint, conspired against Plaintiff, acting under color of law to inflict “irreparable injury” to him and minor children, triggering claims under 42 U.S.C. § 1983. Elrod v. Burns, 96 S Ct 2673; 427 US 347, (1976), Griswold v. Connecticut, 381 US 479, (1965).
3. Vanessa Archer, and her firm Archer Psychological Services, P.A. acted under orders of the state court to conduct psychological evaluations of the Plaintiff, Doc. 8, p. 57-58, Doc. 13-2, p. 48-49, and Doc. C, and were also state actors,



clothed with authority of state law, who in this case conspired with other Defendants under the color of law in violations detailed in amended complaint and this brief, triggering claims under 42 U.S.C. § 1983, Rehberg v. Paulk, 611 F.3d 828 - Court of Appeals, 11th Circuit 2010. Her conspiracy deprived Plaintiff and his minor children of their constitutionally protected rights inflicting “irreparable injury” to them, Elrod v. Burns, 96 S Ct 2673; 427 US 347, (1976), and making the civil rights violations against Plaintiff and minor children “actionable for civil rights damages” as held in Griswold v. Connecticut, 381 US 479, (1965).

4. Mrs. Archer, had previously caused great harm to minor children whom she had been assigned to protect. In a well-published case, her “incompetence” was one of the main factors leading to the horrific death of Nubia Barahona, and to the torture of three of her siblings, Doc. 8, p. 72-88; an alarm Plaintiff pointed out in a complaint to the Health Department, Doc. 8, p. 111-113, and to the judges in state court, and something that should have immediately called into question her competency in Plaintiff’s case and others.
5. Plaintiff strongly believes that Mrs. Archer’s recurring errors endanger the children of Florida, and that she should have been investigated to prevent further harm to other children, but this was prevented by the state court when it refused to remove her from the case. Instead, Plaintiff was ordered to conduct a 2nd evaluation with her, Doc. 13-2, p. 48-49, and Doc. C, where she tried to force

Plaintiff to pay \$1,800.00, her usual fees, every six months in order to see his children; triggering Plaintiff's belief that he was dealing with a sophisticated form of racketeering, and that any further payments would be equivalent to sponsoring legalized kidnapping, Hj Inc. v. Northwestern Bell Telephone Co., 492 US 229 - Supreme Court 1989.

6. In line with Petitioner's ancestors founders and protectors of Democracy in the Americas, President and General Maximo Jerez and President and Coronel Evaristo Carazo, Plaintiff refuses to negotiate with kidnapers or terrorists, or anyone who tries to usurp his God given and Constitutionally protected rights, even if this means not been able to see his children until they are adults or his death. As one of his heroes, Patrick Henry, Plaintiff states: "Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!"
7. DCF is an organization created by the state of Florida to protect the children and families of Florida; unfortunately, as the Miami Herald documented deaths of over 534 children in the last six years prove, it has miserably failed to protect the children and families of this state. This grisly statistic further verifies racketeering in Hj Inc. v. Northwestern Bell Telephone Co., 492 US 229 - Supreme Court 1989.

8. Plaintiff contacted DCF on numerous occasions as to the illegal actions of Theresa Hernandez, Melyssa Lopez, and other Defendants, but DCF officials refused to take any actions against them, even when a 5th False DCF accusation caused the death of Appellant's 8-week unborn baby, Doc. 13-2, p. 45-47. As such, DCF authorities silently conspired with the illegal actions of these two state actors, both of whom knew that providing an ex-parte copy of a report, Doc. 8, p. 27-32, of a still ongoing DCF investigation, Doc. p. 35-39, to opposite counsel would prejudice an unfair advantage against Plaintiff, and that the report would be used to conjure the contrived “emergency telephonic hearing” motion, also triggering this whole fraud; more documented racketeering Hj Inc. v. Northwestern Bell Telephone Co., 492 US 229 - Supreme Court 1989.
9. "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken `under color of' state law." United States v. Classic, 313 U.S. 299, 326 (1941); and therefore, all of the state actors mentioned, Id. at XII.G.1-8, are liable under 42 U.S.C. § 1983, also Rehberg v. Paulk.
10. The above mentioned Defendants’ conspiracy deprived Plaintiff and his minor children of their constitutionally protected rights inflicting “irreparable injury” to them, Elrod v. Burns, 96 S Ct 2673; 427 US 347, (1976), and making the civil rights violations against Plaintiff and minor children “actionable for civil rights damages” as held in Griswold v. Connecticut, 381 US 479, (1965).

11. Preemptively, as Defendants may claim qualified immunity, the Court states in Harlow v. Fitzgerald, supra, 457 U.S. at 819, that the test for qualified immunity is “the objective legal reasonableness of an official’s acts. Where an official could be expected to know that certain conduct violates statutory or constitutional rights, [such as contriving the “emergency telephonic hearing” with no Notice of Hearing, Id.], he should be made to hesitate; and *a person who suffers injury caused by such conduct may have a cause of action*” (*emphasis added*).
12. In the instant case, Defendants not only had an objective legal reasonableness that their conduct would violate statutory or constitutional rights and could lead to “irreparable injury,” but they deliberately and maliciously conspired to inflict these injuries, giving Plaintiff cause of action under 42 U.S.C. § 1983, also Rehberg v. Paulk.
13. As to Mrs. Wizel, and/or the rest of the Defendants, since they may claim to just be private citizens, and not be held liable under 42 U.S.C. § 1983: while a private citizen cannot ordinarily be held liable under § 1983 because that statute requires action under color of state law, if a private citizen conspires with a state actor, then the private citizen is subject to 42 U.S.C. § 1983 liability.
14. Brokaw v. Mercer County, 235 F.3d 1000 (7th Cir 2001) quoting Bowman v. City of Franklin, 980 F.2d 1104, 1107 (7th Cir. 1992) “To establish § 1983 liability through a conspiracy theory, a plaintiff must demonstrate that: (1) a state official and private individual(s) reached an understanding to deprive the plaintiff

of his constitutional rights, and (2) those individual(s) were willful participants in joint activity with the State or its agents.” Fries v. Helsper, 146 F.3d 452, 457 (7th Cir. 1998) (internal quotation and citations omitted).

15. Plaintiff submits verified evidence proving the previous points but was not allowed to present them because the District Court prematurely and inappropriately dismissed Plaintiff’s Removal. Doc. 1 and 13.
16. Further, in the instant case, the “irreparable injury” and damages were verified, immediate, and had already occurred to the Petitioner and his children through the racketeering of the Respondents, but these had been ignored in the state court for almost three years, allowing federal intervention as in Mitchum v. Foster, 407 US 225 - Supreme Court 1972,  
  
“At the same time, however, the Court clearly left room for federal injunctive intervention in a pending state court prosecution in certain exceptional circumstances—where irreparable injury is "both great and immediate," 401 U. S., at 46, where the state law is " `flagrantly and patently violative of express constitutional prohibitions,' " 401 U. S., at 53, or where there is a showing of "bad faith, harassment, or . . . other unusual circumstances that would call for equitable relief." 401 U. S., at 54. In the companion case of Perez v. Ledesma, 401 U. S. 82, the Court said that "[o]nly in cases of proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction and perhaps in other extraordinary circumstances where irreparable injury can be shown is federal injunctive relief against pending 231\*231 state prosecutions appropriate." 401 U. S., at 85. See also Dyson v. Stein, 401 U. S. 200, 203.
17. Fourteenth Amendment due process and equal protection violations were detailed regarding Parental Rights in Troxel v. Granville, when Respondents conspired to

terminate Parental Rights in the back door violation of due process Petitioner detailed; its nature triggered this Removal.

18. The court errs stating those violations of Petitioner's Fourteenth Amendment protections were not listed or detailed. Petitioner details violations of due process regarding the lack of Proper Notice of Hearing, Doc. 8, p. 21-26, and details them at length all throughout amended complaint, Doc. 13.
19. Petitioner explains in detail how Rule 60(b) relief applies where his due process was violated regarding lack of notice. The lack of notice on the part of the Respondents was neither error, neglect nor any excusable matter; rather, it was a deliberate, contrived, intentional conspiracy to deprive the Petitioner of his equal right of association with his children, and his First Amendment practice of religion as applied to his children, through violations of due process, and deprivation of Parental Rights under the color of law. Cavaliere v. Allstate Ins. Co., 996 F. 2d 1111 - Court of Appeals, 11th Circuit 1993,

“On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; ... or (6) any other reason justifying relief from the operation of the judgment.”

#### **H. The Court Erred in Denying 42 U.S.C. § 1985(2)-(3) Claims:**

1. Section 42. U.S.C. 1985(2) provides a cause of action for obstruction of justice where “two or more persons conspire for the purpose of impeding, hindering,

obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws.”

2. Plaintiff’s equal right of association with his children was blatantly scorned by Defendants violating Plaintiff’s and minor children’s “equal protection of the laws,” triggering strict scrutiny by the District Court.
  3. In order to state a claim under this section, Plaintiff pleaded “a private conspiracy with a racial or otherwise class-based invidiously discriminatory motivation.” Lyon v. Ashurst, No. 08-16778, 2009 WL 3725364, at \*2 (11th Cir. Nov. 9, 2009).
  4. As clearly stated in Id. X, INTRODUCTION AND IMPORTANCE OF THE CASE, and amended complaint, the only accusation and the conspiracy against Plaintiff pertains to his First Amendment Protection to pray with his children, an invidiously motivated discrimination based on Plaintiff’s First Amendment faith and Christian religious practice.
  5. The discrimination affects not only Petitioner and his children as a specific class of citizens, namely Christians; but to hundreds of thousands in the U.S. and around the world, who, as in the instant case, are increasingly being singled out and persecuted for being followers of Jesus Christ. **Christians are a class-based of citizens deserving protection from religious persecution in federal courts.**
- Thus, the lower court erred in denying 42 U.S.C. § 1985(2) claims.

6. In the instant case, the state court permitted violation of Plaintiff's "Free Exercise Clause of the First Amendment...made applicable to the States by the Fourteenth Amendment," giving additional grounds for the Federal Removal and protection afforded to parents by SCOTUS in Wisconsin v. Yoder, 406 US 205 - Supreme Court 1972.
7. In order to state a claim pursuant to 42 U.S.C. § 1985(3), Plaintiff alleged in Id. X, and in amended complaint: "(1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States." Park v. City of Atlanta, 120 F.3d 1157, 1161 (11th Cir. 1997).
8. To prove the private conspiracy, Plaintiff shows "(1) that some racial, or perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the conspirators' actions, and (2) that the conspiracy aimed at [interfering] with rights that are protected against private as well as official encroachment." Id. (quoting Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 267-78 (1993)). Here Barreiro v. Barreiro, 377 So. 2d 999 - Fla: Dist. Court of Appeals, 3rd Dist. 1979, demonstrates identical modus operandi of Respondents animus to thievery of Petitioner's Fourteenth Amendment Parenting Time and religious discrimination.



9. Plaintiff further sought relief against private parties, pursuant to the state action doctrine exception of “entanglement,” a form of “abuse of process,” which is “the use of legal process by illegal, malicious, or perverted means, Soldal v. Cook County, where “the Supreme Court found the private owner of a mobile home park acted under color of state law when he acted with sheriff’s deputies to seize an individual’s property. The Court found that this conduct constituted state action violating the Fourth Amendment since no lawful eviction order or other judicial authorization” existed.
10. In the instant case, Mother and Defendants conspired to terminate Plaintiff’s civil rights and acted in concert with government officials, deciding factors used in entanglement and racketeering, and were responsible for violating requirements to comply with Plaintiff’s constitutional due process through proper Notice and Evidentiary hearing to verify Fourteenth Amendment Parental rights.
11. Although in general, an individual such as a parent is not responsible to respect one’s constitutional rights, exceptions exist to the state action doctrine such as in the instance case of entanglement, a form of “abuse of process,” which is “the use of legal process by illegal, malicious, or perverted means,” Soldal v. Cook County, 506 U.S. 56, 113 S. Ct. 538, 121 L. Ed. 2d 450 (1992), and in violations of 42 U.S.C. § 1985, when private parties conspire to violate civil rights of a class of citizen; in this case, Plaintiff’s First Amendment Christianity faith, and practice of praying with his children were violated in a conspiracy between

private parties and state actors under the color of law triggering relief afforded by 42 U.S.C. § 1985, Griffin v. Breckenridge, 403 U.S. 88 (1971).

12. Petitioner's demonstrates detailed violations in the lack of proper Notice for the contrived "emergency hearing" exploited to hijack due process, Parental Rights, and Plaintiff's free exercise of religion, where State and Federal 1<sup>st</sup>, and Fourteenth Petitioner's protected liberty interests were violated. The court erred stating,

"In his Amended Complaint, Jimenez seeks relief pursuant to 42 U.S.C. § 1983 and alleges that Defendants violated his First Amendment rights, Due Process rights, and other federal rights, which are not identified in his Amended Complaint" Doc. 14, p. 2.

13. The Petitioner detailed the respondent's complicitness, planned and executed as they previously committed under the color of law verified in by Barreiro v. Barreiro, 377 So. 2d 999 - Fla: Dist. Court of Appeals, 3rd Dist. 1979, where state courts reversed where contrived "emergency" hearings were exploited to short circuit due process. Thus, the court erred in stating that violations of Plaintiff's "First Amendment rights, Due Process rights, and other federal rights" were "not identified in his Amended Complaint." Id.

14. Therefore, Petitioner properly established Federal Question Removal jurisdiction, and the case should have never been dismissed. The tsunami of family law corruption triggering the rise in Federal litigation demonstrates the state courts

are in desperate need of review for the uncomplicated exercise of rule of law. Hj Inc. v. Northwestern Bell Telephone Co., 492 US 229 - Supreme Court 1989.

**I. Defendants' Modus Operandi Is A Form of Sophisticated Racketeering, Constituting Crimes Against Humanity:**

1. Plaintiff and minor children are victims of a widespread form of racketeering. Petitioner demonstrates that the preponderance of the Respondents' modus operandi is typical of this racket, and that in reprisal for Appellant's whistleblowing before the Florida Supreme Court, Doc. 8, p. 1-4, and website: [www.SayNoToPAS.com](http://www.SayNoToPAS.com), where Plaintiff exposes their ongoing, regular, systematic abuses, his children have been held hostages denying him the ability to visit children under supervision despite Plaintiff's repeated demands to obey a judicial order to do so, Doc. B and C. Hj Inc. v. Northwestern Bell Telephone Co., 492 US 229 - Supreme Court 1989.
2. Defendants' behavior mirror more that of cartel or racketeering <sup>2</sup> than that expected in a court of law, a practice that plagues American Family courts, and is one of the greatest scams in American history, as is well-documented in the Divorce Corp documentary, which "uncover[ed] the last vestige of lawlessness in

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<sup>2</sup> Blacks law dictionary "a person making his living in enterprises and in a manner that is contrary to law."

America. Family courts are a dark corner of the judicial system where fiefdoms and tyrants thrive, where the supreme law of the land is routinely ignored, where children are taken hostage for profit, and where lives are destroyed as a matter of course." As exemplified by this case, and warned by Judge Watson L. White, Superior Court Judge Cobb County, Georgia: "There is something bad happening to our children in family courts today that is causing them more harm than drugs, more harm than crime and even more harm than child molestation." Hj Inc. v. Northwestern Bell Telephone Co., 492 US 229 - Supreme Court 1989 on racketeering:

"`[C]riminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events,' " *ante*, at 240. This definition has the feel of being solidly rooted in law, since it is a direct quotation of 18 U. S. C. § 3575(e)"

3. In the instant case, the Respondents' modus operandi, purposes, results, participants and methods of commission are similar, not isolated to the instant case, but include multiple, ongoing incidents as in Barreiro v. Barreiro, 377 So. 2d 999 - Fla: Dist. Court of Appeals, 3rd Dist. 1979. Since the Racketeering in Petitioner's case fits the definition of Racketeering in Hj v. Northwestern Bell Telephone, it inherently includes the lack of due process, and thus the District Court should have retained subject matter jurisdiction and not dismissed the case.
4. The "legal" bullying, intimidation and harassment of their victims, includes "mental anguish" FAA v. Cooper, 132 S. Ct. 1441 - Supreme Court 2012, is by

definition a form of racketeering. Hazel-Atlas Co. v. Hartford Co., 322 US 238 - Supreme Court 1944, Nix v. Whiteside, 475 US 157 - Supreme Court 1986.

5. This malfeasance by Defendants have led to grave “irreparable injury,” Elrod v. Burns, 96 S Ct 2673; 427 US 347, (1976), and damages including Mental Anguish qualifying as legal abuse pursuant to the DSM V, to Father’s minor children, most severely to his 12 year old son, who almost a year later of his unwanted alienation with Father, went from being a top student in his class, and attending psychological therapies without any signs of abuse from Father, Doc. 8, p. 47-48, to nearly failing subsequent grades, being diagnosed with Major Depression, and PTSD, being suspended on several occasions from school, and leading his son’s teachers to be very concerned for son’s deteriorating behavior and grades, Doc. 8, p. 68-70, 90.

#### **J. Conspiracy to Deprive Petitioner and Child of Parenting; Judicial**

##### **Immunity:**

1. The state court actors who entered the order infringing the Petitioner’s Parental Rights, Doc. 8, p. 33-34, Doc. C and D, could not have done so without the conspiracy of the DCF, psychologist, attorneys and Mother, named as Respondents triggering jurisdiction of 42. U.S.C. 1983 and 42 U.S.C. 1985 also in Barreiro v. Barreiro, 377 So. 2d 999.

2. The improper court order terminating Petitioner's Parental Rights under the color of law, could not have occurred without the verified conspiracy modus operandi documented in contriving the emergency, resulting in "irreparable injury" as documented by decompensation of Petitioner's son; therefore, the original jurisdiction not limited to Federal Removal code 28 U.S.C. 1331, 28 U.S.C. 1446 and 42 U.S.C. 1983 and 42 U.S.C. 1985, implicitly include the Respondents named as parties. The court agreed that Federal Question jurisdiction is established in Doc. 14, p. 2 as follows:

"However, because Jimenez has asserted claims under 42 U.S.C. § 1983 and 42U.S.C. §§ 1985(2)-(3), the Court has federal question jurisdiction over his claims pursuant to 28U.S.C. § 1331."

Petitioner established jurisdiction; the case should not have been dismissed.

3. Further, Petitioner was warned by the District court of the difficulty in attacking the judicial immunity under the 42 U.S.C. 1983 in the initial District court Order, Ibid. Doc. 9, p. 3; the Petitioner's intention was to preserve that argument addressing judicial immunity for a later time; however, the Petitioner's priority is to establish Federal Question jurisdiction since he and his children have been egregiously injured, Elrod v. Burns, 96 S Ct 2673; 427 US 347, (1976), and subjected to Mental Anguish<sup>3</sup> through Respondent's legal abuse; every passing day worsens the magnitude of injuries sustained;

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<sup>3</sup> According to the expert professional opinion of Petitioner who is a practicing physician.

Petitioner's son borders on suicidal tendencies solely due to Respondent's malfeasant conspiracies to hijack the Parent Child association through their abusive conspiracies. FAA v. Cooper, 132 S. Ct. 1441 - Supreme Court 2012.

### **K. Defamation Through Fraud Upon the Court**

1. A mere hearsay report by psychologist Vanessa Archer stating that Parent's religious practice of praying with his children may "approach a fanatic level," Ibid. Doc. D, even when a state appointed psychologist had a contradictory opinion but whose opinion was arbitrarily ignored by the same court, was all it took to deprive Plaintiff, an exemplary member of society, and living example of the "American Dream," of his children.
2. Nowhere did the state demonstrate a "compelling interest," as required in Sherbert v. Verner (1963), to refuse to accommodate First Amendment religiously motivated conduct. The United States Constitution recognizes "a presumption that fit parents act in the best interest of their children" and that "there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of [fit parents] to make the best decisions concerning the rearing of [their] children." Troxel, 530 US at 68-69 (opinion by O'Connor, J.).
3. Evidence shows in the community that plaintiff exemplifies excellence of character and perseverance; that he is if anything, a "fanatic of the infinite

human potential,” of profound benefit to the children by demonstration of integrity, hard work and dedication, and not of any religion per say. Ibid. Doc. 8, p. 96-99.

4. Plaintiff came to the U.S.A. as a teenager escaping the communist tyranny his native country, Nicaragua, had fallen into; worked and studied full time for over seven years graduating Cum Laude from Florida International University as an Electrical Engineer, while preparing for medical school. Ibid. Doc. 8, p. 109.
5. Due to Plaintiff’s father needs of a heart transplant, and the economic hardship that this caused, Plaintiff had to postpone pursuing his medical education for twelve years. But when he continued his medical training, obtained the highest scores of his class as a resident at University of Miami/ Jackson Memorial Hospital, Ibid. Doc. 8, p. 108.
6. In the hiatus between engineering and medicine, Plaintiff realized his childhood dream of participating in the Olympic Games, obtaining a Boxing bronze medal at the Olympics trials of 1996, Ibid. Doc. 8, p. 110.
7. All the while, however, Plaintiff has been an outstanding example in the community, serving in numerous leadership positions, and now running as Florida State Senator in the upcoming 2016 elections to defend the children and families of his most beautiful state, Florida.
8. Defendants could not have chosen a more inappropriate example to try to label a “religious fanatic,” and then violate his and his children’s constitutionally



protected rights. Plaintiff is a living example of the American dream, and this most glorious nation, the U.S.A., a beacon of hope and faith to the world, "one nation under God, indivisible, with liberty and justice for all."

9. Plaintiff would like to acknowledge and give credit for all of his accomplishment to his Lord and Savior, Jesus Christ: "Blessing and honor and glory and power belong to the one sitting on the throne and to the Lamb forever and ever." If acknowledging this truth makes him a "fanatic," then Plaintiff is guilty as charged.

### **XIII. RESPONDENTS WAIVER OF OBJECTION TO**

#### **REMOVAL:**

A. 28 U.S. Code § 1447 requires an objection from the adversarial party within 30 days, where then it can be remanded. Respondents filed no objection. Even when the District Court erred in some areas as stated above, it asserted that it had federal question jurisdiction; therefore, the case should have been removed and proceeded in District Court. Peterson v. BMI Refractories, 124 F. 3d 1386 - Court of Appeals, 11th Circuit 1997 addresses jurisdiction:

28 U.S.C. § 1406 ("Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose a timely and sufficient objection to the venue."); 28 U.S.C. § 1447(c) ("A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a).")

## **XIV. CONTEMPT AND VIOLATION OF FEDERAL REMOVAL**

### **CODE 28 U.S.C. 1331:**

A. Respondents are in violation 28 U.S.C. 1446 all state proceedings are to “go no further.” Santosky v. Kramer, 455 US 745 - Supreme Court 1982:

We cannot believe that it would burden the State unduly to require that its fact finders have the same factual certainty when terminating the parent-child relationship as they must have to suspend a driver's license.

B. Respondents have continued to litigate repeatedly after service of Notice of Removal in clear contempt of Federal courts.

## **XV. VIOLATIONS OF ORDERS AND SANCTIONS SOUGHT:**

A. Permanent Alienation of children<sup>4</sup> violating 14<sup>th</sup> Amendment parental rights in Troxel v. Granville, 530 US 57 - Supreme Court 2000. Court orders to facilitate, not veto communication were routinely violated by respondents with impunity, in a form of extortion and racketeering, forcing Appellant to pay for supervised visitations when these services could be provided for free by an organization led by 90 year-old children-and-family advocate, Mercedes Christian, and her organization, Leaders of Peace Foundation, Ibid. Doc. B. U.S.C. 1983 sanctions apply per Garcia v. Reyes, 698 So. 2d 257 - Fla: Supreme Court 1997, through fabricated evidence in Rehberg v. Paulk.

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<sup>4</sup> Petitioner’s two minor children permanently alienated since July 20<sup>th</sup>, 2012.

B. Sanctions from Obstruction of Justice 18 U.S.C. 1512, 18 U.S.C. 1513 are appropriate since Respondents' perjured testimony, fraud upon the court resulting in fraudulent destruction of Petitioner's Parental and Equal Association Rights.

C. Sanctions from fabricating evidence should be granted per Rehberg v. Paulk.

D. Damages should be granted per 42 U.S.C. 1983 and 42 U.S.C. 1985 in Garcia v. Reyes, 698 So. 2d 257 - Fla: Supreme Court 1997 since "irreparable injury" occurred with permanent Parental Alienation. Petitioner requests this court will preserve this argument for a later time.

## **XVI. PRAYER FOR RELIEF:**

1. Remand case to hold federal subject matter jurisdiction.
2. Remand case to afford "**strict scrutiny**" and "**actionable civil rights damages**" for constitutionally protected rights violations alleged in this case.
3. Remand case to protect Plaintiff's Free Exercise Clause of the First Amendment.
4. That while this court decides the merits of this case, order Defendants to obey state court order, Doc. C, to allow Plaintiff supervised visitations with Mercedes Christian's foundation, Leaders of Peace; if Defendants violate this order, as they have been doing to this day, Doc. B, they will be found in contempt of this court.

5. To ask for relief according to U.S.C. 1983 and/or U.S.C. 1985.
6. Order a Federal Grand Jury investigation against Defendants as to their Modus Operandi and crimes alleged in this case.
7. Plaintiff's equal protection right of association with his children should be restored.
  - A. Any order void of due process is void from the onset. The due process violations give appropriate grounds for relief as the court has done in the following cases: Id. at XI.10.
8. All orders including and subsequent to the emergency telephonic hearing will be vacated.
9. 14<sup>th</sup> amendment parental rights will be restored with a change of primary residence for the children to make up the almost three years of parenting time that Plaintiff has lost with his children.
10. A downward modification will be required pursuant to Title IV guidelines.
11. Any other measure of justice that is fair and just in the court's discretion.

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE  
REQUIREMENTS.**

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 13,964 words, excluding parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. Civ. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 2007 in 14-point Times New Roman.

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 8<sup>th</sup> day of June, 2015, a true and complete copy of the foregoing **PLAINTIFF’S OPENING BRIEF**, by depositing the same in the United States mail, postage prepaid, has been duly served upon all parties whose names and addresses are listed below:

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