UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 15-cv-20821-UU– Civ (Honorable Ursula Ungaro)

MARIO JIMENEZ,
Plaintiff/Petitioner/Father

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.
Defendant(s)/Respondent(s),

and, in re: the support and welfare of
Mario Simon Jimenez-wizel
and Karen Nicole Jimenez-wizel
_____/

Amended Notice of Petition and Verified Petition For Warrant Of Removal

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

JURISDICTION

1. This District Court of the United States has jurisdiction over this cause of action, pursuant to the authorities cited above, including, but not limited to the following, to-wit: 28 USC § 1331, 28 USC § 1367, 28 USC 1441(b), 28 USC § 1441(c), 28 USC § 1441(e), 28 USC § 1443(1), 28 USC § 1443(2), and/or 28 USC § 1446, is an Article III court with authority to hear questions arising under the Constitution, Laws, and Treaties of the United States, including but not limited to the Bill of Rights, the First, Fourth, Fifth, Ninth Amendment, the Eleventh Amendment, the original Thirteenth Amendment, the Fourteenth Amendment, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights, with Reservations. *See* the Article VI Supremacy Clause of the Constitution of the United States of America, as lawfully amended (*hereinafter* "U.S. Constitution").

2. Both the Parent and parent child relationship are constitutionally protected. *Achumba v. Neustein, 793 So. 2d 1013* - Fla: Dist. Court of Appeals, 5th Dist. 2001. *DEPT. OF HEALTH & REHAB. SERVICES v. Privette, 617 So. 2d 305* - Fla: Supreme Court 1993. *RHB v. JBW, 826 So. 2d 346* - Fla: Dist. Court of Appeals, 2nd Dist. 2002, *Troxel v. Granville, 530 US 57* - Supreme Court 2000.

3. Plaintiff's has a liberty interests in directing the upbringing and education of children under his control. Feist v. Lemieux-Feist, 793 NW 2d 57 – SD: Supreme Court 2010. "The Troxel plurality, in affirming the Washington Supreme Court, recognized that parents have an interest in the care, custody, and control of their children. Id. at 65, 120 S.Ct. at 2060 (citing *Meyer v. Nebraska, 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923)* (holding that the liberty interest protected by the Due Process Clause includes a parent's right to "establish a home and bring up children" and to "control the education of their own [children]."); Pierce v. Soc. of Sisters, 268 U.S. 510, 534-35, 45 S.Ct. 571, 69 L.Ed. 1070 (1925) (recognizing parents' liberty

interests to "direct the upbringing and education of children under their control."); Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944) ("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."). Troxel also recognized that the relationship between "parent and child is constitutionally protected" under the Fourteenth Amendment Due Process Clause. Id. at 66, 120 S.Ct. at 2060 (citing *Quilloin v. Walcott, 434 U.S. 246, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978)*). A majority of the Court recognized parents' fundamental right to direct the upbringing of their children. See id. at 66, 120 S.Ct. at 2060; Id. at 77, 120 S.Ct. at 2066 (Souter, J., concurring); Id. at 80, 120 S.Ct. at 2068 (Thomas, J., concurring); Id. at 86, 120 S.Ct. at 2071 (Stevens, J., dissenting)."

4. Federal Rule CR 60b.

5. The due process violations give appropriate grounds for relief as the court has done in the following cases: A judgment is void if it is not consistent with Due Process of law. *Orner v Shala, 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)*. *Santosky v. Kramer, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)*, *DEPT. OF HEALTH*

& REHAB. SERVICES v. Privette, 617 So. 2d 305 - Fla: Supreme Court 1993 Parental Rights, *Achumba v. Neustein, 793 So. 2d 1013* - Fla: Dist. Court of Appeals, 5th Dist. 2001.

6. Plaintiff is seeking relief pursuant to 42 U.S.C. § 1983, and states that some of the Defendants acting under color of state law deprived and violated his First Amendment, Due Process rights, and other federal rights. *West v. Atkins, 487 U.S. 42,48 (1988)* (citing *Parratt v. Taylor, 451 U.S. 527, 535 (1981)*; *Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 155 (1978)*). "The Supreme Court has defined 'acting under color of law' as acting with power possessed by virtue of the defendant's employment with the state." Edwards *v. Wallace Cnzty. Coll., 49 F.3d 1517, 1522-23 (11th Cir. 1995) (citation omitted)*.

7. Plaintiff is further seeking relief against private parties, pursuant to 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 that the private owner of a mobile home park was acting 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 in violation of the Fourth Amendment because there was not a lawful eviction order or other judicial authorization."

8. Plaintiff is a Christian, a class of citizen not only protected under the United States Constitution but also protected under 42 U.S. Code § 1985, and is therefore also seeking relief against private parties that did not necessarily operate under color of state law pursuant to sections (2) and (3) of the same. *Griffin v. Breckenridge 403 U.S. 88 (1971)*. Conspiracy to interfere with civil rights: "(2)...if 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, or to injure him or

his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws...(3)...if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

RESERVATION OF RIGHTS DUE TO FRAUD

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

RECORD OF STATE PROCEEDINGS

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

INCORPORATION OF PRIOR PLEADINGS

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

FACTS AND ARGUMENTS OF THE CASE

12. A Foreign Final Order describing 50/50 shared Parenting Time was entered and recorded on July 7, 2011 (Exhibit BB).

13. Respondent / Mother and attorneys filed Request for Emergency Telephonic Hearing on July 20, 2012 (Exhibit A).

14. Plaintiff specifically complains on matters which go to related federal questions, such as federal criminal jurisdiction within the several States of the Union, and the denial or the inability to enforce, in the courts of a State, one or more rights under any law providing for the equal rights of citizens of the United States, or of all persons within the jurisdiction thereof, to-wit: Plaintiff complains of various systematic and premeditated deprivations of fundamental Rights guaranteed by the U.S. Constitution, by the Constitution of the State of FLORIDA, as lawfully amended (*hereinafter* "FLORIDA Constitution"), and by federal law.

15. On July 20th, 2012, Mrs. Reyes in conjunction with Mrs. Morales while working under the REYES & ARANGO MOORE, P.L. firm (which Mrs. Reyes represented under the legal entity of THE LEGAL DEFENSE FIRM OF SOUTH DADE, P.L., and whose firm Mrs. MOORE also represented), with the help and on behalf of Mrs. Wizel, conspired to violate Plaintiff's civil rights, 42 U.S. Code § 1985, by knowingly, willfully, negligently, and in bad faith misrepresenting information, engaging in Fraud Upon the Court, by providing inaccurate and misleading documentation to obtain an emergency hearing (Exhibit A) with Honorable Judge Mindy Glazer on Mother's motion to suspend time sharing with minor children. Nix v. Whiteside, 475 US 157 - Supreme Court 1986, Hazel-Atlas Co. v. Hartford Co., 322 US 238 - Supreme Court 1944.

16. In violation of due process, Plaintiff did not receive proper notice of the hearing since the motion, notice of emergency hearing and notice of telephonic hearing were all sent to an address different than his at that time (Exhibit A), and which were filed the same day the minor children were improperly removed from Father's shared equal custody, not giving an opportunity to

Father to properly defend against this unwarranted attack, triggering due process relief per defective Notice in Rule 60b. *PEYSINA v. DEUTSCHE BANK NATIONAL TRUST COMPANY, Fla: Dist. Court of Appeals, 3rd Dist. 2013*. *Orner v. Shalala, 30 F. 3d 1307 - Court of Appeals, 10th Circuit 1994*.

17. Mrs. Reyes and Mrs. Morales conspired to violate Plaintiff's civil rights after going to the Department of Children and Families' (DCF) offices and not being able to obtain copies of a report of a then still opened and ongoing DCF investigation, went ahead and presented an illegally obtained and outdated copy of a University of Miami Child Protection Team (UM CPT) report dated June 12th, 2012 (Exhibit B).

18. DCF via its agents, Mrs. Lopez and Mrs. Hernandez, under the color of law conspired to violate Plaintiff's civil rights in violation of 42 U.S.C. § 1983, and 42 U.S. Code § 1985. West v. Atkins, 487 U.S. 42,48 (1988) (citing Parratt v. Taylor, 451 U.S. 527, 535 (1981); Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 155 (1978)). Griffin v. Breckenridge 403 U.S. 88 (1971).

19. Mrs. Lopez, working as a DCF Case Coordinator for UM Child Protection Team, in conjunction with Mrs. Hernandez, DCF Investigator, and Mrs. Wizel, conspired to violate Plaintiff's civil rights by conducting a secret UM CPT interview of the minor children without Plaintiff's consent or providing any notice, and then proceeded to give a copy of such report to Mother's attorneys depriving Plaintiff of the opportunity to question and clarify the erroneous conclusions that such report contained, such as asserting that "DCF should refer the children to intensive therapeutic intervention (page 6, Exhibit B)," when they were already receiving such intervention (Exhibit E) without any signs of the allegations made in the erroneous report, in violation of due process also triggering relief per unreliable, child hearsay in Idaho v. Wright, 497 US 805 - Supreme Court 1990 and Whorton v. Bockting, 127 S. Ct. 1173 - Supreme Court

2007. Also in violation of 42 U.S.C. § 1983, and 42 U.S. Code § 1985. *West v. Atkins, 487 U.S. 42,48 (1988)* (citing *Parratt v. Taylor, 451 U.S. 527, 535 (1981)*; *Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 155 (1978)*). *Griffin v. Breckenridge 403 U.S. 88 (1971)*.

20. Mrs. Wizel conspired to interfere with Plaintiff's civil rights and acted in concert with government officials, one of the deciding factors used in entanglement, and thus Mrs. Wizel can be held responsible for the requirement to comply with Plaintiff's constitutional rights. Although in general, an individual such as a parent is not responsible to respect one's constitutional rights, there are exceptions 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*, and in violation of 42 U.S. Code § 1985 when private parties conspire to violate the civil right of a class of citizen, in this case, Plaintiff's Christianity, and the practice of praying with his children, *Griffin v. Breckenridge 403 U.S. 88 (1971)*.

21. The CPT report was outdated, unreliable per standards in *Whorton v. Bockting*, and contained erroneous information that the final DCF report later identified as so, but which was purposely and negligently provided as being true to obtain the emergency hearing and subsequent order (Exhibit C).

22. Based on the allegations outlined in the CPT report, DCF started an investigation and subsequently closed their file (Exhibit D). The DCF report outlined their investigation and on July 18th, 2013, two days prior to the emergency hearing, the investigation officer stated: "As for the children, they continue to go one week with the Father and one week with the Mother."

23. DCF, after meeting with the different parties involved, visiting with the children and visiting the homes of each parent, did not find the children's safety at risk. In the same report, the investigator notes the risk level at (3) due to the prior two reports filed and found to be

without grounds (2011-078791-01, 2011-1907766-01). The prior two reports were filed by the Mother, and both were closed by DCF as "no indicator" after investigation.

24. In addition, Mother made a fourth false DCF accusation (2012-130113-12) on June 6, 2012 at 2:12 a.m., the same day and around the same time that Mother called police to interview 6 year-old daughter, alleging that Father had told minor: "The devil is going to kill everyone. Those bad angels will come kill us and something bad is going to happen" (Exhibit T).

25. Nonetheless, Mrs. Reyes and Mrs. Morales, conspired to violate Plaintiff's civil rights, 42 U.S. Code § 1985 and purposely misled the court, employing Fraud upon the court while relying on child hearsay due process violations in *Whorton v. Bockting, Smith v. State, 931 So. 2d 790* - Fla: Supreme Court 2006 and *Nix v. Whiteside, 475 US 157* - Supreme Court 1986, in paragraph 14 of their initial emergency motion stating that "the minor children are in danger while under the supervision of the Father and Stepmother," something totally contrary to DCF's findings.

26. Mrs. Reyes and Mrs. Morales conspired to violate Plaintiff's civil rights, 42 U.S. Code § 1985, knowing that the DCF report would not be in their client's favor, knowingly, willfully, negligently, and in bad faith provided the CPT report to violate Father's constitutional rights and separate him from his minor children, triggering relief per *Troxel v. Granville.*

27. Mrs. Reyes and Mrs. Morales conspired to violate Plaintiff's civil rights, 42 U.S. Code § 1985, and knew that the CPT report had erroneously assumed that the kids were not attending intensive therapeutic intervention, when in fact they were both attending psychological therapies on a weekly basis under the supervision of a licensed Clinical Psychologist, Dr. Alicia Vidal-Zas, secondary to the two years of separation the kids had suffered when their Mother decided to abscond with them in Nicaragua in disobedience of a divorce decree given in that country

(Exhibit BB), verifying the geographic parental alienation – a verified form of child abuse; further, the same violations are criminalized in Brazil and Mexico.

28. Dr. Vidal-Zas, on June 20, 2012, prepared a summary of treatment sessions of the children (Exhibit E) and on July 23rd, 2012 wrote a letter (Exhibit F) that noted the progress that the children had during the time they were under her care, and that there was no evidence of imminent danger to the children under the Father's care, further verifying the failure of the reliability requirement in *Whorton v. Bockting*.

29. Further failures of the hearsay reliability requirements in *Whorton v. Bockting*, are verficiations of Dr. Vidal-Zas's report which are not hearsay, the children were excelling in school, especially the oldest son, whose grades were mostly A and B's (Exhibit G), and who had recently been named STUDENT OF THE MONTH (Exhibit H), one of the proudest moment's in the Father and son's lives.

30. It was not until Mother falsely accused Father of Domestic Violence against her and children by accusing Father of trying to scare the children when praying with them (Exhibit S) and called Police in the middle of the night (Exhibit T) that children began to falsely accuse Father and Father's family as attested in the CPT report performed on 6/12/12 (Exhibit B), employing unreliable due process violations of child hearsay in *Whorton v. Bockting*.

31. On 8/16/12, attorneys continued violations of Petitioner's 1st and 14th amendment constitutionally protected Parental Rights, due process in *Troxel v. Granville*, conspired to violate Plaintiff's civil rights, 42 U.S. Code § 1985, by harassing and bullying Father by filing and obtaining another fraudulent emergency motion with the sole purposes of self-profit and to transfer children to a different school through perjury to the courts, stating that the Mother had no free access to the children's records, which is inconceivable, triggering grounds for due

process relief in *Hazel-Atlas Co. v. Hartford Co., 322 US 238* - Supreme Court 1944, *Nix v. Whiteside, 475 US 157* - Supreme Court 1986, *Smith v. State, 931 So. 2d 790* - Fla: Supreme Court 2006. This further alienated children from Father, and selfishly removed them from all their school friends and teachers, something that probably also contributed to the son's poor performance in new school, per Troxel v. Granville.

32. Mrs. Reyes and Mrs. Morales conspired to violate Plaintiff's civil rights, 42 U.S. Code § 1985, by continuing their deceptive modus operandi by preventing Father through subversion of due process requirement of a full evidentiary hearing in *Santosky v. Kramer, 455 US 745 - Supreme Court 1982*, to present evidence of the independent psychological report paid for and performed by DCF under the supervision of a neutral psychologist, Dr. Michael DiTomasso, (Exhibit I), finding the Father had no psychological reasons for the heavy handed First and fourteenth amendment state sanctioned, constitutionally repugnant Parental Alienation per *Troxel v. Granville*, through violations of child hearsay and failing reliability standards in *Whorton v. Bockting*, when reliable evidence demonstrated his children were in a stable, safe, secure environment of the Plaintiff who is a Medical Doctor and engineer, not in any kind of danger under his care.

33. Respondents perpetuate frivolous, vexatious litigation violating due process, designed to harass, annoy and run excess fees; the case is ripe for relief in *SPOLTER v. SUNTRUST BANK, Court of Appeals, 11th Circuit 2010*.

34. The former judge in the case, Honorable Judge Pedro Echarte, refused to hear this evidence under the color of law when DCF performed the psychological evaluation one day before he had given his order in court. DCF had been trying for weeks before the judge's order to obtain the funds to conduct this psychological evaluation; a simple continuance and an orderly

pretrial conference would have enhanced due process, judicial economy, ultimately benefitting the parent –children relationship in *Troxel v. Granville*. *Lovett v. Clark, Middle Dist. Ga 2011*.

35. Respondents conspired to violate Plaintiff's civil rights, 42 U.S. Code § 1985, and also engaged in frivolous, vexatious litigation in *SPOLTER v. SUNTRUST BANK* through needless opposition to the neutral report of Dr. DiTomasso. Father and children were then abusively subjected to needless delay when he was subsequently forced to pay for another psychological evaluation with a psychologist attorneys had recommended, and who his attorney at that time, Mr. Gerald Adams, had opposed due to conflict of interest and incompetence (Exhibit J), psychologist Vanessa L. Archer:

36. Mrs. Archer was the same psychologist who evaluated the well-known Nubia Barahona case, negligently ignoring evidence that resulted in the death of Nubian Barahona; and as such, Plaintiff was seriously concerned about her professional competence. Please see official DCF reports, (Exhibit W).

37. Mrs. Archer conspired with Mother, and her attorneys to violate Plaintiff's civil rights, 42 U.S. Code § 1985, and as in the Barahona case, Mrs. Archer prejudiced evidence toward the attorneys who had recommended her, while ignoring the children's therapy reports, son's excellent academic performance while with Father, the deteriorating academic performance in the new school, and additional evidence that would have prevented the weighty damage to the Parent – Child relationship incurred from Respondents malfeasance contrary to *Troxel v. Granville*.

38. Mrs. Archer's evaluation, as in a case that led to Nubias Barahona's death and her siblings' torture, see http://www.nbcmiami.com/news/local/Barahona-Twins-File-Lawsuit-Against-State-Contractors-140226593.html, was based on unprofessional practices such as ex

parte communication with Judge (Exhibit X), false and misleading information and contained serious omissions that led to Father's removal of shared equal custody, and the subsequent physical, psychological and academic demise of minor son.

39. In both cases, as the "The Nubia Report" indicated "omission[s] made [by] Dr. Archer's report, [were] at best, incomplete" and unreliable, failing the "rational basis" test, her recommendations lacked basis in fact or law. Dr. Archer's "at best, incomplete" psychological opinions in other cases, led another judge, in the same report, to describe Dr. Archer's testimony value as junk by making the analogy of her testimony as comparable to toxic fast food obtained in a drive-by restaurant (Exhibit W).

40. In further violation of Petitioner's First and Fourteenth Amendment constitutionally protected liberty interests in *Troxel v. Granville*, Dr. Archer's prejudiced evaluation (Exhibit K) negated DCF's findings violating "best evidence rule", and recommended that Father have supervised visitations with his kids prejudicing through religious bigotry, and based on Mother's child hearsay reversed in *Whorton v. Bockting*, and brainwashing modus operandi of the Respondents purposing to destroy the Father Child relationship, the Father's First Amendment Christian beliefs therefore, Father's *Troxel v. Granville* "religious beliefs [were] excessive and intrusive, and likely approach[ed] a fanatic level," without basis in fact, law, reason or due process; then enshrined into law violating *Troxel v. Granville*.

41. Similarly to the Barahona case, Mrs. Archer, instead of reporting to the Judge pertinent information, such as the fact that son had denied what Plaintiff had been accused of in recordings Mrs. Archer had reviewed, please listen to excerpt here: https://youtu.be/oFlgcp3Gkg0 (full record of recordings already entered in state court docket, and available for review upon request

to state court), went ahead and requested to stop phone communication with children (Exhibit X) because son was contradicting what Mrs. Archer had written in her report.

42. Conspiring to violate Plaintiff's civil rights, 42 U.S. Code § 1985, and in an effort to further deceive the courts, show bias against Plaintiff and violate his due process right, Dr. Archer made a false DCF accusation (2012-223661-01, five false phone accusations in total) against Plaintiff and his family alleging that Plaintiff was burning his one year daughter's legs with an iron (Exhibit Z). The trauma of this false DCF call led to the miscarriage of a 2 months child Plaintiff's new partner and mother of one year old daughter was carrying.

43. Since Dr. Archer's defective report came back, the son's behavior demonstrated the damage qualifying as PTSD from legal abuse as a treatable, billable symptom in the DSM V. Experts in Brazil and Mexico widely recognize this modus operandi as child abuse and I concur. The child's grades and mental health deteriorated, diagnosed with Major Depression, and Post Traumatic Stress Disorder (PTSD), subsequently after six months, all the Legal Abuse and Parental Alienation abuse resulting when Father had near zero contact with his minor children except for a few inconsistent supervised visitations since December of 2012, leaving the children confused and troubled by the inconsistency, not by any action or allegation toward the Petitioner.

44. Without the benefit of an evidentiary hearing and the opportunity to cross-examine Dr. Archer's one-sided evaluation, Judge Echarte gave further orders that negatively affected Father's ability to defend them. Any deprivation of a life, liberty or property constitutionally protected liberty interests requires due process. *Paul v. Davis, 424 US 693* - Supreme Court 1976.

45. After inappropriately reading inadmissible hearsay evidence from Dr. Archer's evaluation, Judge Echarte furiously told Father that he needed to reach an agreement to pay for his ex-wife

attorneys' fees, or that he would force him to do so. Fourth Amendment unreasonable seizure forbids Petitioner required paying attorney fees where due process and violations of constitutionally protected liberty interests have occurred. *Bane v Bane, 775 So. 2d 938;2000 Fla. FL SCT 2000*.

46. Further Fourth Amendment seizure violations occurred when due process ineffective assistance of counsel occurred pursuant to *Strickland v. Washington, 466 US 668* - Supreme Court 1984: Father's attorney at that time, Sabrina Salomon, told Father that he "should agree to pay half of his ex's attorneys fees, or that he would be forced to pay the whole amount since the judge was very angry with him while due process violations have occurred against Petitioner Dr. Jimenez." *Bane v Bane, 775 So. 2d 938;2000 Fla. FL SCT 2000*.

47. Upon Plaintiff's refusal to agree to pay since this would have prevented him from properly defending his children, his then attorney, replied that the Plaintiff should not worry, since "once they had the opportunity to present their case, they could change the agreement."

48. Later on, Father found out from different legal counsel that agreed orders can not be modified or appealed, and when Father asked his attorney if this was true, she confessed her mistake.

49. Conspiring with opposite counsel to violate Plaintiff's civil rights, 42 U.S. Code § 1985, a few days later, Mrs. Salomon called Father to her office to let him know that she had a conflict of interest, that she had been offered and had accepted a job in a batter women's shelter, and that this prevented her from continuing in his case; here attorney Salomon violated Rules of Ethics by lying to Petitioner resulting in egregious violations of constitutionally protected liberty interests. The case is ripe for relief per Rule 1.540, *Nix v. Whiteside, 475 US 157* - Supreme Court 1986,

Stephenson v. Stephenson, 52 So.2d 684, 686 (Fla. 1951), *Smith v. State, 931 So. 2d 790* - Fla: Supreme Court 2006.

50. Father requested former attorney to confess her mistake to the courts, but she did not respond to his requests. Subsequently, Father filed a formal complaint with the Florida Bar with supporting evidence as to Mrs. Salomon's actions in this case (Exhibit L), which is still pending.

51. Father believes that Mrs. Reyes and Mrs. Morales' inaccuracies, misrepresentations, and repeated contrived emergencies are not based on fact or law; yet, are litigated under the color of law, not the First and Fourteenth Amendment protections for the Petitioner and child in *Troxel v. Granville*. These actions are child abuse cloaked under Parental Alienation and legal abuse cloaked under the color of law; Respondents modus operandi represent a form of illegal enterprise for profit, which is based on vexatious litigation (applies to attorneys *SPOLTER v. SUNTRUST BANK, Court of Appeals, 11th Circuit 2010)*; "legal" bullying, intimidation and harassment of their victims, and that as such, it is by definition a form of racketeering. *Hazel-Atlas Co. v. Hartford Co., 322 US 238* - Supreme Court 1944, *Hazel-Atlas Co. v. Hartford Co., 322 US 238* - Supreme Court 1944, *Nix v. Whiteside, 475 US 157* - Supreme Court 1986.

52. This malfeasance by Mrs. Reyes and Mrs. Morales have led to psychological damages qualifying as PTSD deriving from legal abuse pursuant to the DSM V – a billable medical condition, to Father's minor children, most severely to his 12 year old son, who almost a year later of his unwanted alienation and with only very limited supervised visitations with Father, nearly failed subsequent grades leading to his teachers being very concerned for son's deteriorating behavior and grades (Exhibit M).

53. Around the same time, son was diagnosed with Major Depression, Post Traumatic Stress Disorder (PTSD), and ADHD (Exhibit N), and was requiring psychotropic medication, Mother

unilaterally discontinued intensive psychological therapeutic treatments against recommendations by CPT report and Dr. Vidal-Zas. Only a sociopathic parent would deprive their child of much needed treatment.

54. After forced separation – Parental Alienation designed by the Respondents, then enshrined into law and isolated from Father, the son went from being an A/B student, dramatically improving his FCAT scores, and being named student of the month while reunited with Father to nearly falling subsequent school years, and developing the above mentioned medical conditions as PTSD from legal abuse under the DSM V.

55. Respondents malfeasant actions led to Father filing a verified petition for dependency (Exhibit O), which he voluntarily dismissed without prejudice in the hope of getting a re-evaluation with a neutral psychologist to prove that he posed no danger to his children by exercising his First and Fourteenth Amendment Freedom of Religion, Parental Rights in *Troxel v. Granville* when he prayed with them, as was previously found by DCF's appointed psychologist, Dr. DiTomasso.

56. Because of Mrs. Archer's unprofessional behavior, Father filed complain with the Florida Health Department and received response that before being able to proceed with the investigation, Father would need to request "the judge who presided over the child custody proceeding to appoint another psychologist" (Exhibit Y).

57. Despite Father's strong objection, knowing that Father had reported Mrs. Archer to Health Department, and that Father believed that Mrs. Archer would not be impartial in a new re-evaluation, on October 18, 2013, Judge Scott Bernstein ordered a re-evaluation with Mrs. Archer.

58. In Father's re-evaluation, Mrs. Archer continued to show unprofessional behavior, violated Plaintiff's 1st amendment rights, showed bias against Father, and proceeded to try to engender continual patronage from Father, at $1,800 dollars per psychological evaluation, recommending that Father "should undergo re-evaluation in six months for purposes of assessing if his time-sharing should be expanded, or if a more permanent time-sharing agreement should be reached (Exhibit AA)."

59. Father believes that Mrs. Archer's unprofessional practices amount to a sophisticated form of racketeering where by definition "the potential problem may be caused by the same party that offers to solve it, although that fact may be concealed, with the specific intent to engender continual patronage for this party."

60. Father has also reported Mrs. Archer's unprofessional behavior and other anomalies in this case to Honorable Chief Justice, Bertila Soto, Honorable Florida Chief Justice, Jorge Labarga, and to the Florida Supreme Court Committee on Future of Florida Courts (please see www.SayNoToPAS.com for details).

61. Defendants' unprofessional and unethical conducts have intentionally and negligently inflicted mental distress to Father and his children, and have caused severe mental injuries to his son. Furthermore, their intentional misrepresentation of the truth, and repeated contrived emergency motions represent a form of harassment against Father. This racketeering under the color of law survives the standard of a.) *Negligent Infliction of Emotional Distress* and b.) *False Imprisonment* to the child given his verified emotional and academic decompensation in *Mistretta v. Volusia County Dept. of Corrections, 61 F. Supp. 2d 1255* - Dist. Court, MD Florida 1999 and c.) PTSD from *Legal Abuse Syndrome* in the DSM V as a medically treatable symptom of the American Psychological Association.

62. Mrs. Reyes and Mrs. Morales' inaccuracies and misrepresentations have caused injuries to Father's children, most specifically to his son, who may have to suffer of Major Depression and PTSD symptoms for the rest of his life due to do the illegal actions of these attorneys.

63. As per evidence presented above, Father poses no danger to minor children. However, Father's relationship with children continued to be hindered and was relegated to supervised visitations from December 2012 to October 2013, as attested by visitation notes (Exhibit P).

64. Father believes that forcing him to pay to see his children under supervision for the sole reason of praying of with them is not only a violation of his First and Fourteenth Amendment constitutional rights in *Troxel v. Granville*, but that this amounts to asking for a ransom for his children, and he does not negotiate with kidnappers, similar to *False Imprisonment* in *Mistretta v. Volusia County Dept. of Corrections, 61 F. Supp. 2d 1255* - Dist. Court, MD Florida 1999.

65. Mother has failed to ensure children's psychological therapies on a consistent basis (Exhibit Q) since ordered by the court, something that further harmed minor children, and their relationship with Father also verifying *Negligent Infliction of Emotional Distress* in *Mistretta v. Volusia*.

66. Most recently, Mother fired son's therapist, Mr. Gregorio Brown (305-968-5338), after he had offered to visit children at Father's home when reunification had started, which he believed should happened as soon as possible to avoid any further psychological harm to minor children, especially to son.

67. Conspiring to violate Plaintiff's civil rights, 42 U.S. Code § 1985, opposite counsel requested Guardian Ad Litem (GAL), Mrs. Anastasia M. Garcia, to be appointed to the case.

68. Mrs. Garcia conspired to violate Plaintiff's civil rights, 42 U.S. Code § 1985, by consistently ignoring the evidence in the case, which led to minor children deterioration.

69. On numerous and repeated occasions Father requested Mrs. Anastasia M. Garcia to intercede on behalf of minor children, as is her duty of GAL, but she failed to do so to this day. Mistretta Ibid.

70. On December 14th, 2014, in light of son's psychological and physical deteriorating condition, Father once again reached out to GAL stating: "Unless you have found verifiable evidence that I pose some kind of danger to the children, it is your duty as the GAL, to make a report and allow the children to have a relationship with their father." Furthermore, Father quoted in his e-mail a portion of Chapter 39 of Florida Statutes that required the GAL to proceed as Father was requesting, and which in violation of due process, the GAL had continually violated (Exhibit U).

71. On December 18th, 2014, Mrs. Garcia further conspiring to violate Plaintiff's civil rights, 42 U.S. Code § 1985, upset and in retaliation to Father's e-mail filed a biased and unlawful motion for payment of fees from Father only, in violation of prior court order requiring both parents to pay her fees.

72. On top of the above mentioned failures, the Mrs. Garcia failed to comply with numerous requirements established by Florida Law and by GAL organizations such as the FLORIDA GUARDIAN AD LITEM PROGRAM.

73. For instance, the GAL has not visited and/or monitored the children on a regular basis, negligently allowing the worsening of minor children's psychological and physical conditions; has participated in Father's religious discrimination by not allowing contact with children solely based on Father's religious views; and has engaged in ex parte communication with the judge showing clear bias against father as the motion filed by her shows (Exhibit U).

ADDITIONAL ALLEGATIONS

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

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

76. Furthermore, Plaintiff is not only free to teach his own religious practices to his children, but he is also an expert in raising his own children, his children have a right to be raised and nurtured by him until the state proves parental unfitness, which in this case, never did. *Brokaw v. Mercer County*, (2000), U.S. Court of Appeals, 7th Circuit, "Parents and children have a well-elaborated constitutional right to live together without governmental interference…Equally fundamental is the substantive due process right of a child to be raised and nurtured by his parents…Until the state proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of the natural relationship…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…Thus, substantive due process provides the appropriate vehicle for evaluating the constitutionality of the nearly four-month government-forced separation of C.A. from his parents…The due process clause of the Fourteenth Amendment

prohibits the government from interfering in the familial relationship unless the government adheres to the requirements of procedural and substantive due process…The Supreme Court has long recognized as a component of substantive due process the right to familial relations…("Parents and children have a well-elaborated constitutional right to live together without governmental interference."); … ("We recognize the constitutionally protected liberty interests that parents have in the custody, care and management of their children.")… The Due Process Clause "includes a substantive component that provides heightened protection against government interference with certain fundamental rights and liberty interests."…These decisions recognize that the right of a man and woman to marry, and to bear and raise their children is the most fundamental of all rights — the foundation of not just this country, but of all civilization…Equally fundamental is the substantive due process right of a child to be raised and nurtured by his parents…("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.") … ("a child's right to family integrity is concomitant to that of a parent"). Thus, substantive due process provides the appropriate vehicle for evaluating the constitutionality of the nearly four-month government-forced separation of C.A. from his parents. … ("[I]t is evident that there was interference with plaintiffs' rights of familial association because L.B. was physically removed from her home and from her parents for a period of almost 18 hours, which included an overnight stay in a pre-arranged shelter home… ("The due process clause of the Fourteenth Amendment prohibits the government from interfering in the familial relationship unless the government adheres to the requirements of procedural and substantive due process.")."

77. This was also a violation of Plaintiff's liberty interests in directing the upbringing and education of children under his control. *Feist v. Lemieux-Feist, 793 NW 2d 57.*

78. Allowing a court to select one parent's religious beliefs and practices over the other's, in the absence of a clear showing of harm to the child, would constitute a violation of the First Amendment, Troxel v. Granville, *Mesa v. Mesa, 652 So. 2d 456 (Fla. 4th DCA 1995).* Hence, the trial court's child custody determination must be predicated on evidence of harm, as opposed to mere speculation of harm to the child. *Mendez v. Mendez, 527 So. 2d 820, 821 (Fla. 3d DCA 1987).* "Harm to the child from conflicting religious instructions or practices...should not be simply assumed or surmised; it must be demonstrated in detail." *Id.* Otherwise, interference with religious matters in child custody cases absent an affirmative showing of compelling reasons for such action is tantamount to a manifest abuse of discretion. *Id.* The Respondents have not met the burden of proof which is on them.

79. In the instant case, on December 7, 2012, the Court ruled that Petitioner was to have only supervised visitation and that there was to be no telephonic communications between Petitioner and the minor children. In making its determination, the Court heavily relied on Dr. Archer's Psychological Evaluation Report. In said report, Dr. Archer expressed apprehension as to Petitioner's ability to parent the minor children as a result of Petitioner's religious practices and beliefs. Dr. Archer concludes based on subjective opinion – not on standards in *Troxel v. Granville* nor demonstrated verified harm to the child, that Petitioner be allowed only supervised visitation, as she "remains extremely concerned about the emotional safety of the children if left unsupervised in his care" due to what she describes as Petitioner's "fanatical", "excessive", and "intrusive" religious beliefs.

80. Here the children are subjected to Parental Alienation, Emotional Distress and *Negligent Infliction of Emotional Distress* in *Mistretta v. Volusia* not based on fact, law or constitutionally protected liberty interests in *Troxel v. Granville*, nor have Respondents demonstrated evidence

required to survive the burden of proof which is on them, not the Plaintiff to prove that he is a fit parent. This error is not trivial since the Respondents' malfeasance has resulted in profound psychological, emotional damage and academic decompensation in the children.

81. SCOTUS has very clearly stated that a natural parent and their child constitutes a natural family. However. under the color of law, Defendants conspired in a form of "entanglement" to break up the natural family based on nothing more than the court's opinion of best interest, intruding impermissibly on "the private realm of family life which the state cannot enter." *Smith v. Organization of Foster Families, 431 U.S. 816, 862-63 (1977)* (Justice Stewart concurring), cited with approval in *Quilloin v. Walcott, 434 U.S. 246, 255 (1978)*. "If 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, I should have little doubt that the State would have intruded impermissibly on 'the private realm of family life which the state cannot enter."

82. Except for mere speculation and "concern" for the children's emotional safety, Dr. Archer's report fails to demonstrate evidence of just how Petitioner's religious beliefs are psychologically harming the children. The report lacks evidence showing how Petitioner's religious beliefs, which provide instruction to the child for Truth, Justice and Integrity are harming the children. The Court's December 7th Order is void of any resemblance to First and Fourteenth Amendment inalienable protections for Parental rights in *Troxel v. Granville*; rather, prejudices the Parent Child relationship toward verified, egregious damage, not based on fact, law or constitutional muster. Thus, Respondents violated Petitioner's right to free exercise of religion, as established under the First Amendment and Fourteenth Amendment Parental Rights in *Troxel v. Granville*, when it relied on Dr. Archer's Report in making its determination that

Petitioner was to have only supervised visitation and that telephonic communications between Petitioner and children were to be prohibited pending further order.

83. Moreover, the Respondents' reliance on Dr. Archer's Report and exclusive reliance on Petitioner's religious beliefs as the only factor for their recommendations contained therein, demonstrates that Petitioner's religious beliefs when making their determination, was the only factor prompting the Respondents modus operandi to destroy the Parent Child relationship in *Troxel v. Granville*. As such, the Court's action constitutes a direct violation of Petitioner's First and Fourteenth Amendment constitutionally protected liberty interest of Parental Rights where their modus operandi to destroy the Parent Child relationship was not based on fact, law or respect for inalienable Parental Rights in *Troxel v Granville* but subjective opinion, hostile toward the Petitioner's religion.

84. The Court disallowed the due process of a full evidentiary hearing in First, Fourth, Fifth and Fourteenth Amendments. Petitioner was deprived of the sixth amendment constitutional guarantees in *Whorton v. Bockting* to cross-examine Dr. Archer and her views as to the detrimental effect of Petitioner's religious beliefs, on his ability to parent the minor children as well as demonstration of the children's social, psychological and academic ability in the environment of having their home split by divorce. Notably, Petitioner had recently undergone another psychological evaluation by Dr. Michael DiTomasso to whom Petitioner was referred by Department of Children and Families (DCF). In his evaluation, Dr. DiTomasso offered a contrary opinion and recommendation regarding Petitioner's parenting ability religious beliefs; however, the burden of proof lies on the Respondents, not the Petitioner.

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

notice of the hearing and an opportunity to cross-examine the evidence in a full evidentiary hearing presented against him. The order lacks due process and is null and void from the onset.

86. The due process violations give appropriate grounds for relief as the court has done in the following cases: A judgment is void if it is not consistent with Due Process of law. *Orner v Shala, 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)*.

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

88. In the instant case, the Petitioner was not afforded due process. First, Petitioner was not given notice of the July 20th hearing where the court granted Respondent's Emergency Motion to Suspend Timesharing and ordered that he be allowed only supervised visitation with the minor children pending further order of the Court. Respondent had filed the Emergency Motion to Suspend Timesharing and that very same day the Court held a telephonic hearing to address Respondent's Motion without providing Petitioner adequate notice thereof. In fact, Petitioner received actual notice of the July 20th telephonic hearing only after answering the telephone and being addressed by the Judge who was already presiding over the hearing. Furthermore, in making its determination, the Court based its decision on hearsay evidence failing standards of burden of proof and did not provide Petitioner with the opportunity to cross-examine the evidence presented against him in the required full evidentiary hearing. Here, no emergency existed.

89. Specifically, the Court relied on the University of Miami Child Protection Team Report ("CPT Report"), which was presented at the hearing and attached to Respondent's Motion. Hence, Petitioner did not have the opportunity to cross-examine the expert witness/es responsible for writing the CPT Report. The Court simply accepted and adopted the CPT report and the child hearsay allegations contained therein, violating *Whorton v. Bockting*, as "truth" to the detriment of Petitioner, and then suspended Petitioner's Parental Rights in *Troxel v. Granville* without providing him with the opportunity to meaningfully present his case. Moreover, the Court was not advised of the fact that two frivolous DCF investigations had been previously investigated and closed with a finding of "no indicator" as to the allegations of abuse by Petitioner. Neither was the court advised of the final DCF investigation, from which the CPT Report was issued and upon which the Court had relied in making its determination, was actually closed on July 20,

2012, the same day the telephonic hearing was held. This denial of his due process rights in July, resulted in Petitioner and the minor children having no contact for the next five months, and supervised visitations until October 26, 2013, last day that Petitioner had any contact with minor children after being forced to pay a second evaluation with fraudulent and conspiring psychologist, Vanessa Archer, who requested repeated patronage with her in the form of re-evaluations every six months (Exhibit AA).

90. Moreover, on December 7, 2012, the Court ordered that Petitioner shall continue supervised timesharing and that there shall be no telephonic communications between him and the minor children. Once again, the Court relied on mere hearsay allegations in pleadings violating *Whorton v. Bockting* in making its determination to violate Petitioner's Parental Rights in *Troxel v. Granville*. The Court's decision was based on Dr. Vanessa Archer's Psychological Evaluation Report which expressed subjective opinion lacking evidence as to Petitioner's ability to parent the minor children due to what the psychologist personal opinion characterized as Petitioner's "fanatical", "excessive", and "intrusive" religious beliefs. Respondents' neither allowed required due process of a full evidentiary hearing, nor cross-examination of Dr. Archer, nor allowed evidence to contradict her allegations. As such, Petitioner was deprived of his due process and Parental rights in both the July 20th telephonic hearing and the December 7th hearing.

91. Additionally, there was no emergency situation which would require the Court to bypass Petitioner's due process rights when ordering the modification of Petitioner's timesharing. Although Respondent raised allegations of abuse by the Petitioner towards the minor children, these allegations were proven time and again to be unfounded. In fact, the Department of Children and Families had twice investigated the abuse allegations and closed out the

investigations with a finding of "no indicator". Additionally, Dr. Archer's report acknowledges that Petitioner poses no risk of physical abuse or harm to the minor children.

92. **Res Judicata and Due Process. The Court erred by improperly modifying the terms of the foreign divorce decree and relitigating the issues that have already been litigated with full notice and opportunity to be heard in the foreign court, a court of competent jurisdiction without the required showing of a change of circumstances.**

93. Florida courts are willing to recognize judgments of dissolution rendered in foreign countries under principles of comity or voluntary cooperation. See *Pawley v. Pawley, 46So. 2d 464 (Fla. 1950)*. In order to be entitled to comity, the foreign judgment must incorporate the elements which would support it if it had been rendered in Florida. See *Gonzalez v. Rivero, Melero, and Option One Mortgage Corp, 51 So. 3d 534 (Fla. App. 2010)*. For instance, the grounds relied upon for divorce must be sufficient under Florida law. Jurisdictional requirements pertaining to residency or domicile and basic due process and notice requirements must also be met. *Id.* at 535.

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

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

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

97. The Court has also stressed the importance of finality of judgments in dissolution of marriage proceedings. For instance, in *Davis v. Dieujuste, 496 So. 2d 806 (Fla. 1986),* the Court held that "where a trial court has acquired jurisdiction to adjudicate the respective rights and obligations of the parties, a final judgment of dissolution settles all such matters as between the spouses evolving during the marriage, whether or not these matters were introduced in the dissolution proceeding, and acts as a bar to any action thereafter to determine such rights and obligations." Id. at 5 12. Moreover, even if a Court were authorized to revisit issues that have been settled by a final judgment of dissolution of marriage, such as a custody determination, a

modification of timesharing or parental responsibility in Florida requires a showing of a "substantial, material, and unanticipated change of circumstances." See Fla. Stat. § 61.13 (3). See *Crittenden v Davis, 89 So. 3d 1098 (4th DCA 2012)*.

98. In the instant case, there was a final judgment of dissolution of marriage granted by a Nicaraguan court, a court of competent jurisdiction. After a full hearing, where proper notice and opportunity to be heard was provided to both parties, the Nicaraguan court granted the divorce of the parties and ordered that they were to have equal timesharing of their minor children. As such, the Mother is estopped from questioning the validity of a foreign decree, where she was present at the hearing, and submitted herself to the foreign court's jurisdiction. Mother should have made her allegations at the original proceedings in Nicaragua, of which she had full notice and opportunity to be heard. As a result, Mother is barred by laches and estoppel from attacking the validity of the foreign decree and modifying the timesharing arrangements duly entered by the Nicaraguan court.

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

100. Thereafter, on July 20, 2012, the Court granted Mother's Motion to Suspend Timesharing and suspends Petitioner's timesharing without there being a showing of a substantial change of circumstances that would warrant a modification of the timesharing schedule ordered by the Nicaraguan divorce decree. Instead of modifying the timesharing on the basis of the series of the contrived "emergency" motions that have been filed in bad faith, a Supplemental Petition for

modification of timesharing should have been filed in order for the Court to order a modification of timesharing in accordance with Fla. Stat. 61.13 where the parties would have also had an opportunity to present evidence.

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

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

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

B) A parent whose time with a child has been limited to only supervised visitations clearly has had his or her rights to raise that child severely restricted. In *Troxel v. Granville, 527 U.S. 1069 (1999)*, Justice O'Conner, speaking for the Court stated, "The Fourteenth Amendment provides that no State shall 'deprive any person of life, liberty, or property, without due process of the law.' We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, 'guarantees more than fair process.' The Clause includes a substantive

component that 'provides heightened protection against governmental interference with certain fundamental rights and liberty interest" and "the liberty interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interest recognized by this Court." Logically, these forms of fundamental violations are inherently a federal question.

C) The compelling state interest in the best interest of the child can be achieved by less restrictive means than supervised visitations or sole custody for that matter. A quarter-century of research has demonstrated that joint physical custody is as good if not better than sole custody in assuring the best interest of the child. As the Supreme Court found in *Reno v. Flores, 507 U.S. 292, 301 (1993)*: "'The best interest of the child,' a phrase criterion for making the decision as to which of two parents will be accorded custody; yet, widely abused under the color of law through "judicial discretion as demonstrated here by the Respondents who violated Petitioner's Parental Rights under the color of "best interest". Narrow tailoring is required when constitutionally protected liberty interests based rights are involved. The state must show adverse impact upon the child before restricting a parent's inalienable parental rights in Troxel. The parent-child relationship of a married parent is protected by the equal protection and due process clauses of the Constitution. In 1978, the Supreme Court clearly indicated that only the relationships of those parents who from the time of conception of the child, never establish custody and who fail to support or visit their children are unprotected by the equal protection and due process clauses of the Constitution. *Quilloin v. Walcott, 434 U.S. 246, 255 (1978)*. Clearly, divorced parents enjoy the same rights and obligations to their children as if still married. The state through its family law courts, can impair a parent-child relationship through issuance of a limited visitation order, however, it must make a determination that it has a compelling interest

in doing so. Trial courts must, as a matter of constitutional law, fashion orders which will maximize the time children spend with each parent unless the court determines that there are compelling justifications for not maximizing time with each parent. Throughout this century, the Supreme Court also has held that the fundamental right to privacy protects citizens against unwarranted governmental intrusion into such intimate family matters as procreation, child-rearing, marriage, and contraceptive choice. *Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 926-927 (1992)*.

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

parent has a constitutionally protected liberty interest in the companionship and society of his or her child." Id. at 1418, citing *Kelson v. City of Springfield, 767 F. 2d 651 (9th Cir. 1985)*. In Smith the court stated "We now hold that this constitutional interest in familial companionship and society logically extends to protect children from unwarranted state interference with their relationships with their parents." Id. In essence, the Supreme Court has held that a fit parent may not be denied equal legal and physical custody of a minor child without a finding by clear and convincing evidence of parental unfitness and substantial harm to the child, when it ruled in *Santosky v. Kramer, 455 U.S. 745, 753 (1982)*, that "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment."

102.In the instant state proceedings, Petitioner has been continually deprived of the full right to equal care, custody, control, and management of the minor children, and the same approaching **three years**, without any requisite showing of past or potential harm – of any kind – upon the minor children, while, instead and contrarily, Respondent has been consistently documented in acts of minor to medium psychological abuse towards the children, long-ranging neglect of several important matters regarding the children, such as academic performance, removal of children from therapists, and, a general haphazard disdain for the minor children's welfare, needs, and emotional stability… yet, the state court essentially coddles Respondents' complicit behavior *against* and under color of the best interests of the children, and has gone to extraordinary lengths to clandestinely perpetrate these egregious manifestations of contrived emergencies conspiring to violate due process resulting in constitutionally repugnant First and Fourteenth Amendment Parental Alienation per SCOTUS in *Troxel v. Granville*.

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

NOTICE OF PRO SE RIGHTS

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

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

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

107. Indeed, the courts will even go to particular pains to protect pro se litigants against consequences of technical errors if injustice would otherwise result. *U.S. v. Sanchez, 88 F.3d 1243 (D.C.Cir. 1996)*. Moreover, "the court is under a duty to examine the complaint to determine if the allegations provide for relief on ANY possible theory." (emphasis added) See, e.g., *Bonner v. Circuit Court of St. Louis, 526 F.2d 1331, 1334 (8th Cir. 1975)*, *Bramlet v. Wilson, 495 F.2d 714, 716 (8th Cir. 1974)*, *Thomas W. Garland, Inc. v. City of St. Louis, 596 F.2d 784, 787 (8th Cir. 1979)*, *Bowers v. Hardwick, 478 U.S. 186, 201-02, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986)*, *Brooks v. Blue Cross & Blue Shield of Fla., Inc., 116 F.3d 1364, 1369 (11th Cir. 1997)*, *O'Boyle v. Jiffy Lube International Inc., 866 F.2d 88 (3rd Cir. 1989)*.

NOTICE OF RELATED CASES

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

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

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

110.Plaintiff has a federal question right to full and equal lawful treatment in a state court of law, and according to the various protections under not only the Florida Constitution, but more importantly under those of the U.S. Constitution and federal law.

111.Plaintiff has a federal question right for the protection of both the Parent, and parent child relationship to remove the instant state proceedings, under 28 USC §§ 1441 and 1443, in order to be free from the denial of such equal civil rights and treatment established by the above allegations. *Achumba v. Neustein, 793 So. 2d 1013 - Fla: Dist. Court of Appeals, 5th Dist. 2001*. *DEPT. OF HEALTH & REHAB. SERVICES v. Privette, 617 So. 2d 305* - Fla: Supreme Court 1993. *RHB v. JBW, 826 So. 2d 346* - Fla: Dist. Court of Appeals, 2nd Dist. 2002, *Troxel v. Granville, 530 US 57* - Supreme Court 2000.

112.Plaintiff has a federal question right to the liberty interests in directing the upbringing and education of children under his control, Feist v. Lemieux-Feist, 793 NW 2d 57 – SD: Supreme Court 2010, to remove the instant state proceedings, under 28 USC §§ 1441 and 1443, in order to be free from the denial of such equal civil rights and treatment established by the above allegations.

113.Plaintiff has a federal question right of due process violations to remove the instant state proceedings, under 28 USC §§ 1441 and 1443, in order to be free from the denial of such equal civil rights and treatment established by the above allegations, and giving appropriate grounds for relief as the court has done in the following cases: A judgment is void if it is not consistent with Due Process of law. *Orner v Shala, 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)*. *Santosky v. Kramer, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)*, *DEPT. OF HEALTH & REHAB. SERVICES v. Privette, 617 So. 2d 305* - Fla: Supreme Court 1993 Parental Rights, *Achumba v. Neustein, 793 So. 2d 1013* - Fla: Dist. Court of Appeals, 5th Dist. 2001.

114.Plaintiff has a federal question right pursuant to 42 U.S.C. § 1983 to remove the instant state proceedings, under 28 USC §§ 1441 and 1443, in order to be free from the denial of such equal civil rights and treatment established by the above allegations, where Defendants acting under color of state law deprived and violated Plaintiff's First Amendment, Due Process rights, and other federal rights. *West v. Atkins, 487 U.S. 42,48 (1988) (citing Parratt v. Taylor, 451 U.S. 527, 535 (1981)*; *Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 155 (1978)*). "The Supreme Court has defined 'acting under color of law' as acting with power possessed by virtue of the defendant's employment with the state." *Edwards v. Wallace Cnzty. Coll., 49 F.3d 1517, 1522-23 (11th Cir. 1995)* (citation omitted).

115.Plaintiff has a federal question right against a private party, 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*, to remove the instant

state proceedings, under 28 USC §§ 1441 and 1443, in order to be free from the denial of such equal civil rights and treatment established by the above allegations.

116.Plaintiff has a federal question right pursuant to 42 U.S. Code § 1985 to remove the instant state proceedings, under 28 USC §§ 1441 and 1443, in order to be free from the denial of such equal civil rights and treatment established by the above allegations.

117.Petitioner has a federal question right, under the protections of the Civil Rights Act of 1964, et seq., and as interpreted by the U.S. Supreme Court to *include* prohibitions against discrimination based on sex or gender, to now remove the instant state proceedings, under 28 USC §§ 1441 and 1443, in order to be free from the denial of such equal civil rights and treatment established by the above allegations.

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

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

120.Plaintiff has a further federal question right not to be discriminated as articulated according to the above allegations, under the expressed public policy of the United States of America, by and through certain Acts of Congress strictly specifying the critical value of

protecting children, youth, and family bonds, and the joint responsibilities of federal courts therein. *See* 42 USC §§ 12301, 12351, 12352, 12371, 12635.

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

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

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

NOTICE TO PARTIES

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

SUMMARY AND PRAYER

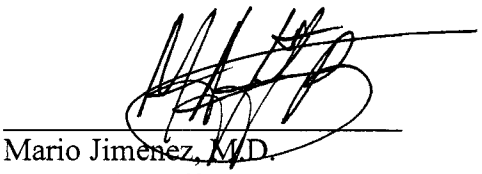
125. Plaintiff reiterates that his request for removal to this Court is not just about a supported and reasonable *expectation* of the future manifest deprivation of his various civil rights within said state court, but also that such a deliberately unlawful pattern of the same is well established.

126. Without the immediate intervention, and the exercise of full jurisdiction and authority by this Honorable Court in removing said lower state proceedings, the Plaintiff and his minor children will be otherwise subjected to egregious denial and inability to enforce in said state court one or more rights under the laws providing for the equal rights of citizens of the United

States, and will be likewise unlawfully forced to suffer manifest and irreparable injuries therein, without reasonable remedy.

WHEREFORE, the undersigned Plaintiff, MARIO JIMENEZ, requests a Jury Trial and now prays for all orders void of due process in state court be vacated, and for the removal of the above-encaptioned state court proceedings into, and under, the jurisdiction of this United States District Court, with all speed, ordering to reinstate the order granted by Honorable Judge Robert N. Scola on October 6, 2011 (Exhibit R) which restored Father's 50/50 timesharing with the minor children in accordance with the divorce decree of the Nicaraguan Court, and which was the order in effect prior to the inappropriately filed emergency motion of July 20, 2012; to order Defendants to pay all plaintiff's attorneys fees and costs associated and derived from Defendant's negligent filing of the misleading CPT report; and to order the payment of $10,000,000.00 (ten million dollars) in compensatory and punitive damages to be shared by Defendants for the life-long negative physical, and psychological consequences that Defendants' actions have caused to plaintiff's children and family, especially to his oldest son, and grant any and all other relief deemed just and proper in the premises.

Respectfully submitted,



Mario Jimenez, M.D.
Pro Se Plaintiff

VERIFICATION

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