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Related MDJ

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

SUSAN SPELL, M.D.,

Petitioner,

vs.

NATALIE STONE, BRIAN EVANS, M.D., and COUNTY OF LOS ANGELES

Respondents.

ORAL ARGUMENT REQESTED

CASE NO: LACV19-05886 JGB-JC

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 2241, 28 U.S.C. 2254, 28 U.S.C. 2243, and 18 U.S.C 2265

PETITION FOR WRIT OF HABEAS CORPUS

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I. Introduction

1. Petitioner, Susan Spell, M.D., petitions this Court for a writ of habeas corpus to remedy the unlawful detention of minors LE, SE, and ZE by Respondents.

2. 28 U.S.C. 2241 provides:

> (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.
>
> (b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.
>
> …He is in custody in violation of the Constitution or laws or treaties of the United States; or…

3. 28 U.S.C. 2254 provides:

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

4. 28 U.S.C. 2243 provides:

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as

law and justice require.

5. 18 U.S.C. 2265 provides:

> (a)Full Faith and Credit.—
>
> Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory [1] as if it were the order of the enforcing State or tribe.
>
> (b)Protection Order.—A protection order issued by a State, tribal, or territorial court is consistent with this subsection if—
>
> (1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and
>
> (2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

II. Jurisdiction

6. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the State of California, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. §1651.

III. Venue

7. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Central District of California, the judicial district where LE, SE, and ZE currently are in custody.

IV. Parties

8. Susan Spell, M.D. (hereinafter "Petitioner"), is a *sui juris* resident of Los Angeles, Cal. residing at:

434 North Bedford Drive
Los Angeles County
Los Angeles, California
Tel.: +1 (310) 205-1686

9. Respondent, Natalie Stone (hereinafter "Stone") is a *sui juris* judge in the Superior Court of California for the County of Los Angeles with a principal place of business at:

201 Centre Drive
Monterey, CA 01754
Tel. +1 (323) 307-8009

10. Respondent, Brian Evans, M.D. (hereinafter "Evans") is a *sui juris* a plastic surgeon at the Grossman Burn Center with a principal place of business at:

21001 Costanzo
Woodland Hills, CA 91364
Tel. +1 (310) 387-8480

11. Respondent County of Los Angeles (hereinafter "County") is a county in the U.S. State of California and is the most populous county in the United States, with more than 10 million inhabitants as of 2018 with a principal place of business at:

500 W. Temple St., Room 358
Los Angeles, CA, 90012
Tel.: +1 (213) 974-1234

V. Factual Allegations

Background

12. Petitioner and Federal Respondent Evans had been going through a divorce for more than a year before the children, NE, LE, SE, and ZE were removed from the custody of Petitioner. Throughout the divorce proceedings, Petitioner had custody of all four children; Federal Respondent Evans had visitation rights.

13. Several instances of abuse occurred during these visits, some even warranting trips to the emergency room. Social workers and several doctors reported that the NE, LE, SE, and ZE were in imminent danger while under the care of Federal

Respondent Evans, according to medical records and a safety plan written by the Los Angeles County Department of Child and Family Services ("DCFS").

14. Magaly Baltazar, who worked with Federal Respondent Evans and Petitioner for years when they shared a joint medical practice, said she saw NE, LE, SE, and ZE daily, and was concerned at their reaction to visits with their father. "They would scream and cry and beg not to go," according to Baltazar. "Why do they have so much fear just to go visit their dad for a few hours? That told me there was something else going on," Baltazar continued. (See Facts are Severe below).

15. But each time the case went back to court, DCFS caseworkers encouraged the court to close the investigation against Federal Respondent Evans, marking the claims of abuse and risk "unfounded," notwithstanding documented evidence and his known history of violence. Evans had been arrested for seriously injuring Petitioner's wrist prior to their divorce. He also once pushed NE down, causing him to suffer a serious concussion, according to court transcripts and medical records.

16. One of the caseworkers had even drawn up an official safety plan with Petitioner in which she indicates abuse by Federal Respondent Evans. But court transcripts show that the caseworkers told family court officials no such abuse had ever been found.

17. Baltazar, who continues to work as Petitioner's office manager, said she left

Evans' employ in 2012 after he asked her to lie to the courts and declare she had never seen him get violent with Petitioner or the children. She says she witnessed such behavior just days before that request was made and, in fact, provided a statement to the court detailing Evan's explosive outburst.

18. Federal Respondent Evans acted as an expert witness in child abuse cases for DCFS for 10 years. Upon information and belief, this afforded him undue influence with some social workers — but, something else may have also been at play.

19. In a 2013 meeting between the family, DCFS, and County Counsel, LE and SE made a shocking statement about one of their assigned caseworkers: "That's not our social worker, Tasha Beard, that's Brian's girlfriend," they said, referring to their father by his first name, according to a 2016 lawsuit that garnered a six-figure settlement with the County.

20. The girls said the caseworker, Tasha Beard, and Federal Respondent Evans had shut themselves in his bedroom with the door closed for a long time on a recent visit from the social worker. When later questioned in court, Beard admitted to spending time in Federal Respondent Evans' bedroom behind closed doors, though she denied their relationship was romantic or sexual.

Dubious DCFS Dealings

21. Things took a sharp turn in October 2013 when Petitioner arrived at her kids' school to pick them up but was told they had been detained by DCFS and were

going with Federal Respondent Evans. No social workers were present, Petitioner says, but DCFS called the school and said the children were not to leave with her, so school administrators forcibly put the kids into Federal Respondent Evans' car – there was no court order in effect.

22. Five days after taking NE, LE, SE, and ZE from school, DCFS submitted the warrant to remove, but it was denied. When Petitioner followed up with DCFS, she was told that the department had not ordered the NE, LE, SE, and ZE to be removed from Petitioner

23. In an October 10, 2013 email, Deputy County Counsel Micheline Ruben, Ruben stated "[Federal Respondent] Evans is acting on his own accord."

24. Nevertheless, a DCFS social worker returned the children to Petitioner at a sheriff's station shortly thereafter. In a video of the exchange, the DFCS employee threatens to take the children back unless the camera is shut off.

25. Around this same time, two different social workers, Barbara Smith and Nnenna Okeke, began separately investigating the new allegations against Federal Respondent Evans, according to the suit. They both determined the children were not safe with Federal Respondent Evans. An emergency restraining order was filed protecting Petitioner and the kids against Federal Respondent Evans and remanding the children back to Petitioner

26. Within days of taking on the case, though, Smith and Okeke were both instructed to stop contacting the family. The original case supervisor, Federal defendant

Adrian Hawkins, cancelled the order for the children to be placed back with Petitioner, and closed the new abuse referral against Federal Respondent Evans. Pages of Smith's notes about the case and misconduct by her fellow social workers went missing from court records, where upon information and belief, Federal defendant Hawkins, in a blatant case of destruction of evidence that resulted in obstruction of justice tampered with Smith's case notes; Petitioner retained such evidence according to records of text messages between Smith and Petitioner.

Rulings Reversed

27. Family court is responsible for divorce and custody proceedings, while the juvenile dependency court handles child abuse cases. Petitioner's family was going through the two systems simultaneously.

28. In late October 2013, just weeks after the unlawful removal, the family court arbitrarily switched custody for the three youngest children, LE, SE, and ZE to Federal Respondent Evans, notwithstanding the documented history of violence and lack of a fact-finding hearing.

29. Petitioner retained custody over the eldest son, NE. Judge David Cunningham, III, who had granted custody to Petitioner just months earlier, now said he was changing the orders because of missed visitations, and because DCFS had informed him that the multiple abuse allegations against Federal Respondent Evans were unfounded.

30. Two weeks later, in November 2013, juvenile dependency court Judge Carlos E. Vasquez granted custody of all four kids to Federal Respondent Evans after the DCFS caseworkers submitted documents alleging abuse by Petitioner.

31. According to DCFS documents, Petitioner's alleged abuse included subjecting the children to the custody battle between she and Federal Respondent Evans, making false abuse allegations against him, and talking poorly about him in front of the kids.

32. But, in May 2014, Vasquez turned around and dropped the abuse case against Petitioner "in the interest of justice," according court records. DCFS filed an appeal almost immediately, and custody orders were stayed during the appeal -- a nearly year long process ensued during which time the NE, LE, SE, and ZE remained with Federal Respondent Evans.

33. DCFS won the appeal in April of 2015, Petitioner claims, in large part because her court-appointed attorney — Petitioner was no longer able to afford private counsel — failed to file the proper paperwork after Vasquez dismissed this case. The appellate court ordered the abuse case to be reopened.

34. During the new trial, DCFS levied a number of abuse allegations against Petitioner But, upon the close of trial arguments, juvenile dependency court Judge Federal defendant Natalie Stone told the social workers she would not be able to sustain the allegations because they did not indicate physical harm.

35. Federal defendant Stone gave the social workers a second chance to amend their petition to "conform to proof," which gave them a chance to add previously dropped allegations. Since these were added after trial proceedings had ended, Petitioner was unable to defend against these newly included allegations and lost the case.

Payouts and Prescriptions

36. In October 2015, Petitioner filed suit against the County ("DCFS Case #1"), alleging that NE, LE, SE, and ZE were improperly removed from her care without a warrant or fact finding hearing or threat of imminent danger and that the social workers on her case committed perjury and concealed and falsified evidence; after social worker Melinda Murphy was told to lie, she simply resigned and a *sine qua non* for Petitioner's allegations. In March of 2018, the County, on behalf of DCFS and the named social workers, agreed to settle for $150,000 another *sine qua non* for Petitioner's allegations.

37. Despite the settlement, Petitioner still did not secure custody over NE, LE, SE, and ZE. Shortly thereafter, Federal Respondent Evans agreed to let the eldest child, NE, live with Petitioner after tensions between father and son continued to fester, but the youngest three, LE, SE, and ZE remain in Federal Respondent Evans' custody to this day.

38. Federal Respondent Evans, in July 2017, admitted in court that he had been prescribing several psychotropic drugs to NE, LE, SE, and ZE for years.

39. Dozens of subpoenaed prescriptions show that Federal Respondent Evans prescribed drugs to treat ADHD, schizophrenia and bipolar disorder in increasingly high doses for three of the four kids. In court, Federal Respondent Evans said he only wrote prescriptions to refill what NE, LE, SE, and ZE's doctors had ordered when they ran out; but pharmacy records show otherwise attached herein as Exhibit "C".

40. Federal Respondent Evans also signed a release to allow NE, at the age of 15, to obtain a medical marijuana license. The form that Federal Respondent Evans signed disclosed that NE was already smoking marijuana several times per week since the age of 13 under Federal Respondent's Evan's watch and thought he needed much more.

41. As a result of these revelations, in July of 2017, family court Judge Federal defendant Mark Juhas ordered joint custody to be phased in over the period of several months, records show. But according to Petitioner, one month later, Federal Respondent Evans, filed a report with the court alleging new abuse by Petitioner says it was never reported to her or investigated by DCFS, but nevertheless, the joint custody order was cancelled, and Petitioner was required to continue with monitored visits.

DCFS Trial 2016-2019

42. On April 19, 2016, at the end of a multi-day trial, Federal defendant Stone announced that she could not find Petitioner guilty of the county's physical abuse

petition because the county had no allegations of physical abuse in their petition.

43. On May 11, 2016, Federal defendant Stone allowed the County the time to regroup where two new allegations of physical abuse were alleged against Petitioner Social worker, Federal defendant Mendoza alleged physical abuse on a monitored visit February 7, 2016 which is contrary to the report and testimony of monitor, Mr. Lincoln, in the trial; The Mendoza perjury consisted of two physical abuse allegations after the trial ended as follows:

    a. On February 7, 2016, a monitored visit, it has been alleged that Petitioner got NE upset because Petitioner was lying about Federal Respondent Evans for causing a child bruise; and

    b. On November 1, 2013, it was alleged that Petitioner kidnapped NE which caused him fear and he could have bruised jumping off a balcony

44. Nevertheless, NE was in Petitioner's custody on November 1, 2013, making it impossible for Petitioner to kidnap him. None of Petitioner children ever reported being afraid that Petitioner would harm them – NE was approximately 6-foot-tall on February 7, 2016 versus a 115 lb frame of Petitioner.

45. On May 23, 2016, Federal defendant Stone explained that she found Petitioner guilty based on social workers new physical abuse allegations and based on the children's "out of control behaviors on visits in 2016" and she placed children

with Federal Respondent Evans because they were attending and doing well in school. Federal defendant Stone wrongfully found Petitioner guilty of physical child abuse far outside the legal standard of child abuse in California, terminated her visitation rights, gave Federal Respondent Evans sole custody notwithstanding a restraining order against him; Federal Respondent Evans is not the biological father of the children, but that Petitioner had contracted with a sperm donor and had embryos frozen in time when Petitioner was a student at New York University in New York. Similarly, Federal Respondent Evans failed to take court ordered anger management or parenting classes presumably because he would have failed miserably.

46. Now, at all times relevant to these proceedings, Federal defendant Lavin was a San Fernando Valley social worker who conspired with Federal defendants Mendoza and Woillard to: make false statements continuously submitted to court from August 18, 2015 to the termination of Dependency proceedings on July 7, 2016; fabricated evidence throughout the dependency Proceedings and repeated suppression of exculpatory evidence in written court reports; and alleged that Petitioner had taken NE, LE, SE, and ZE to an anti-DCFS rally instead of their 5-year old cousin's birthday party in Laguna Beach when in fact she took them to Laguna Beach. Upon information and belief, there are many anti-DCFS rallies in the County and the facts of the instant action, in part, tell why.

47. At all times relevant to this Complaint, Federal defendant Kim Nemoy was the

Deputy Counsel to the Federal defendant County of Los Angeles whose significantly egregious conduct include but was not limited to:

a. A false claim that Federal Respondent Evans is the biological father of NE, LE, SE, and ZE which could not be farther from the truth;

b. Lodged a fraudulent restraining order against Petitioner and her husband Christopher VonSchlobohm alleging physical abuse by Petitioner on May 12, 2014; and

c. After a paternity test turned up negative Federal defendant Nemoy fabricated evidence that the paternity test evidenced Federal Respondent Evans as the biological father of LE, SE, and ZE.

48. On March 4, 2017, a one Dr. Satenberg, a juvenile court ordered therapist made a report on Federal Respondent Evans physical abuse, which NE, LE, SE, and ZE disclosed in therapy. Since 2015, the children were living with Siena Coffey, who upon information and belief was Federal Respondent Evans girlfriend and her 4 adult children whose sole form of income was the procurement and dissemination of narcotics. Upon information and belief, Coffey forced the children to take pills with a view towards, upon information and belief, sex-trafficking them as a further means of income to fund the Enterprise. For the District Court's benefit, "sex trafficking is commonly defined as:

> Sex trafficking is human trafficking for the purpose of sexual exploitation, including sexual slavery. A victim is forced, in one of a variety of ways, into a situation of dependency on their trafficker and then used by said trafficker to give sexual services to customers.

49. There is evidence of such occurrences in a case styled as 19-cv-2678 *Wood v. County of Contra Costa* (N.D.C.A, filed May 17, 2013).

50. Upon information and belief, each of NE, SE, LE, and ZE were afraid to report such for fear of being left homeless.

51. In Family Court on June 6, 2017, Federal Respondent Evans testified as a hostile witness and admitted that he failed to disclose that NE was on controlled drugs, marijuana diagnosed bipolar, not attending school, failed in almost every class for 4 years since 2015. Upon information and belief, NE was physically struck by Coffey and her adult children.

52. Social workers failed to disclose exculpatory evidence that included but was not limited to: (i) children were diagnosed bipolar with ADHD in 2016; (ii) were under the influence of controlled substances in 2016; and (iii) were subjected to physical harm at home living with Coffey and her 4 adult kids.

53. By her shocking, arbitrary, and egregious conduct, Federal defendant Stone abused her discretion, obstructed justice, and violated Federally protected rights by denying the testimony of the children and adding charges against Petitioner after the trial ended; Federal defendant Stone violates the due process clause of the Fourteenth Amendment as it relates to Petitioner.

54. On July 7, 2016 Petitioner was informed by Federal defendant Stone that she was to pay $250,000 in court costs or risk the loss of visitation of NE, SE, LE, and ZE.

Unfortunately, in California, such party refunds the State the cost of a court appointed attorney which Petitioner only had from November 6, 2013 to October 15, 2015.

55. Under the premises Petitioner and SE, LE, and KE have been caused to suffer, fear, intimidation, public humiliation, public embarrassment, a denial of Due Process, emotional upset, anxiety, and they have otherwise been rendered sick and sore.

VI. Arguments

56. In *Lehman v. Lycoming County Children's Servs. Agency*, 648 F.2d 135, 139 (3d Cir. 1981), the Court recognized that habeas corpus has been used in child custody cases in England and in many of the states and that the federal habeas corpus statute authorizing federal court collateral review of federal decisions can be construed to include child custody cases.

57. However, the Court found "reliance on what may be appropriate within the federal system or within the state system to be "of little force" in determining what is appropriate between the federal and state systems. The federal writ should be reserved "for those instances in which the federal interest in individual liberty is so strong that it outweighs federalism and finality concerns."

A. Next Friend

58. The term "next friend" is derived from case law construction of the statute which provides that "[a]pplication for a writ of habeas corpus shall be ... verified by the

person for whose relief it is intended or by someone acting in his behalf."

59. 28 U.S.C. § 2242 provides:

> Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.
>
> It shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known.

60. In the instant application, Petitioner has standing. Petitioner acts on behalf of her children. Petitioner has maintained her parental rights.

61. In the case of SE, LE, and ZE, "the federal interest in individual liberty is so strong that it outweighs federalism and finality concerns." (see also *Stone v. Powell*, 428 U.S. 465, 478 n.11, 495 n.37 (1976).

62. SE, LE, and ZE were simply removed from their biological mother's custody and directed to a non-biological step-parent who suffers from anger management issues and is the subject of multiple restraining orders.

63. Thus, Petitioner meets the requirement of "Next Friend," *res ipsa loquitur.*

B. Nguyen Da Yen v. Kissinger, 528 F.2d 1194, 1201 (9th Cir. 1975)

64. In *NDY*, the court recognized that it is well established that custodial restraints on a minor child are a sufficient deprivation of liberty to be challenged by way of habeas corpus.

65. The majority of American states accept the English view that a child's absence from the parent's legal custody is equivalent to illegal restraint on the child and

that habeas corpus is the appropriate remedy for such restraint. The writ has the capacity to reach all manner of illegal detention. *Harris v. Nelson*, 394 U.S. 286,291 (1969).

66. The overwhelming weight of applicable precedent clearly indicates that federal habeas corpus jurisdiction exists to challenge state child custody judgments. The question is whether federal-state comity considerations render inappropriate the exercise of federal habeas jurisdiction (*Lehman).* Petitioner claims that it is not inappropriate. In the instant application, Petitioner has standing. Petitioner acts on behalf of her children. Petitioner has maintained her parental rights, *res ipsa loquitur.*

67. The issue in cases such as *Lehman* is not who shall have custody of the child or even whether the petitioner-parent's rights should have been terminated, but rather the constitutional sufficiency of the state court proceedings. (See *Pukas v. Pukas*, 129 W. Va. 765, , 42 S.E.2d 11, 13 (1947), *State v. Cheeseman*, 5 N.J.L. 522, 525 (1819)); Note, supra note 44, at 272 ("Unless a statute grants the state courts power to change custody in the habeas proceeding, the states follow English practice in limiting the scope of the common law hearing to the question of whether a child is in unlawful custody with reference to a preexisting custody right." Petitioner has maintained her Fourteenth Amendment rights were violated, *res ipsa loquitur.*

C. Facts are Severe

68. *Lehman* held that the federalism and finality concerns implicated by such an extraordinary interference with a state's judicial system outweigh the federal interest in liberty in all but cases of special urgency where restraints on liberty are immediate and severe.

69. Petitioner maintains that the facts of the instant application are severe for all the following reasons:

a. At the age of 8, both SE and LE reported to Petitioner that Federal repsondent Evans was doing inappropriate sexual things to them; Evans social history is that his Uncle raped him from the age of 6 to 12.

b. When removed from the Petitioners custody in 2014, at the age of 9, LE began to experience vaginal bleeding which a medical doctor confirmed it was not from premature menstruation; Evans social history is that his Uncle raped him from the age of 6 to 12.

c. Shortly after, Federal respondent Evans had his girlfriend living with hime with her two adult daughters; the daughters began to sell sex for money and began to include SE and LE;

d. Thereafter, ZE reported that Federal respondent Evans forced ZE to receive oral copulation and Evans licked his "balls;" Evans social history is that his Uncle raped him from the age of 6 to 12;

e. SE and NE were placed on 5850 suicide holds while under the care of Federal respondent Evans;

f. In 2016, the adult daughters began involving 11 year old SE and LE with theft of cars and breaking into homes;

g. The adult daughters forced NE to case houses they planned to rob; at the age of 15, NE went on drug deals with the adult daughters instead of going to school;

h. Federal respondent Evans had a live in nanny who quit because Evan was giving the kids sleeping pills and having them sleep in bed with him; Evans social history is that his Uncle raped him from the age of 6 to 12.

i. At one of the times relevant hereto, ZE was found in a coma and NE was out on a 5850 suicide hold while under the care or Federal respondent Evans;

j. Petitioner surmises that NE, SE, LE, and E will recant should the District Court not issue five (5) year restraining orders from Federal respondent Evans

k. In a November 2013 call to Peace Over Violence hotline, SE is heard telling the operator of her fear of being directed back to Federal Respondent Evans.

l. Upon information and belief, Federal Respondent Evans chokes SE, LE, and ZE until they pass out wherein a report is made that CPS deems unfounded because of Evans relationship with CPS;

m. SE is continuously belittled by Federal Respondent Evans being called fat, stupid, and ugly to the point where she now suffers from obesity with low

self esteem.

n. Petitioner claims that when Federal Respondent Evans is served with this application, he will retaliate by beating SE (a 14 year old female), LE (a 14 year old female), and ZE (a 9 year old male).

o. Evans social history is that his Uncle raped him from the age of 6 to 12.

70. The instant application meets the requisite severity or special urgency in child custody cases, *res ipsa loquitur.*

D. Habeus Corpus is Allowable When Accompanied by a Federal Cause of Action.

FOURTEENTH AMENDMENT – LEGAL STANDARD

71. Section One of the Fourteenth Amendment to the United States Constitution provides:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

72. In the past thirty-five years, the case law reads and is authority that:

a. It is well settled that parents have a substantive due process right to the custody of their children and, except in emergency circumstances, a procedural due process right to a pre-deprivation child custody hearing;

b. The Fourteenth Amendment imposes a requirement that except in emergency circumstances, judicial process must be accorded both parent and child before removal of the child from his or her parent's custody may be effected;

c. "[A] parent may . . . bring suit under a theory of violation of his or her right

d. to substantive due process . . .. Parents have a 'substantive right under the Due Process Clause to remain together [with their children] without the coercive interference of the awesome power of the state.'") (quoting *Tenenbaum v. Williams*, 193 F.3d 581, 600 (2d Cir. 1999) (second alteration in original)); *Cox v. Warwick Valley Cent. Sch. Dist.*, 654 F.3d 267, 275 (2d Cir. 2011); and

e. "The interest of natural parents 'in the care, custody, and management of their child is a 'fundamental liberty interest' protected by the Fourteenth Amendment." (quoting *Santosky v. Kramer*, 455 U.S. 745, 483 753 (1982)).

73. In stating a claim of a violation of procedural due process, Petitioner alleges:

a. the existence of a property or liberty interest that was deprived (the biological Mother of the unlawfully removed and detained NE, LE, SE, and ZE) and

b. deprivation of that interest without due process as a result of witness tampering, obstruction of justice, extortion, and a civil conspiracy to cover it up (the lack of any non-tarnished fact-finding hearing since the inception of this matter).

74. In stating a claim of a violation of substantive due process, Petitioner alleges that:

(1) she had a valid property or liberty interest (the biological mother of the

removed and detained NE, LE, SE, and ZE), and (2) that interest was infringed upon in an arbitrary or irrational manner (the arbitrary allegation of "neglect") contrary to the legal standard of neglect defined as:

> Any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation; or
> An act or failure to act which presents an imminent risk of serious harm.

(see 42 U.S.C.A. § 5106g).

75. Further, Petitioner maintains that, quoting *Tenenbaum*, that the unlawful removal and detention of NE, LE, SE, and ZE, "was 'so shocking, arbitrary, and egregious that the Due Process Clause would not countenance it even where it accompanied by full procedural protection.'" *Cox v. Warwick Valley Cent. Sch. Distr.*, 654 F.3d 2267, 275 (2d Cir. 2011) (quoting *Tenenbaum*, 193 F.3d at 600):

a. So shocking in that on November 1, 2013 NE, LE, SE, and ZE were handed by school administrators to social workers of DCSF without the benefit of a warrant, removal order or any other official document of a Family Court;

b. So arbitrary by DCSF's seeking of a Warrant and Order of Removal five days later to cover their tracks which was denied by a Family Court judge; and

c. So egregious in the November 1, 2013 removal and detention, NE, LE, SE, and ZE were handed to Federal Respondent Brian Evans, M.D. a documented physical abuser who was the subject of a temporary restraining order and protective order issued by the County court.

76. As a result, by a. to c. above, Petitioner has suffered the shock of her conscience that persists to this day.

77. Emergency circumstances did not exist then and do not exist now to warrant the shocking, arbitrary, and egregious removal of the minor children, NE, SE, LE, and ZE, from Petitioner's custody contrary to the legal standard of neglect – it is not even close.

78. Respectfully, also of importance in this Fourteenth Amendment claim are the words from a May 10, 2019 Grand Report in Contra Costa County, Cal. attached herein as Exhibit "D" where it is stated:

> In non-emergency cases [such as the instant action], CFS social workers have 30 days to conclude an investigation and draft a plan for intervention, if warranted. If the plan calls for a child to be removed from the home, the social workers prepare a case to present to the Family Court which makes the final determination regarding the child. According to CFS officials, the court accepts the recommendations of social workers 80-85% of the time.
>
> Once a child is removed from the home, the social worker is responsible for working with the parents to create a plan for reunification where appropriate, including steps the parents must take to qualify for having the child returned. These might include psychological evaluation, anger management training, substance abuse counseling, or other actions.

79. The record reflects that none of the above protocol was followed – it is not even close and is a violation of Petitioner's Fourteenth Amendment rights.

80. Upon information and belief, the once happy-go-lucky foursome born of a Triple AAA rated mommy, a medical doctor, and graduate of Harvard Medical School NE, LE, SE, and ZE suffer from obesity, self-esteem issues, anger management issues, suicidal tendencies, and a fascination with the make believe.

VII. Custody

81. LE, SE, and ZE are under the direct control of Federal Respondent Evans, a non-biological parent.

VIII. Prayer for Relief

WHEREFORE, Petitioner prays that the Court grant the following relief:

1. Assume jurisdiction over this matter;

2. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;

3. Pursuant to 28 U.S.C. § 2243 issue an order directing Respondents to show cause why the writ of habeas corpus should not be granted; Grant Petitioner a writ of habeas corpus directing the Respondents immediately release SE, LE, and ZE from custody;

4. Enjoin Respondents from transferring SE, LE, and ZE outside of this judicial district pending litigation of this matter or removal proceedings;

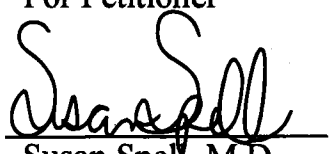
5. Issue five (5) year orders of protection for the benefit of Petitioner, Christopher Von Schlobohm, Nicholas Evans, Sarah Evans, Lauren Evans, and Zachary Evans from Federal respondent Evans pursuant to 18 U.S.C. 2265(b)(1);

6. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

7. Grant any other and further relief as the Court deems just and proper.

Dated: July 6, 2019
Los Angeles, Cal.

For Petitioner



Susan Spell, M.D.