In the Supreme Court of the United States

Ariel King,

Petitioner

v.

Michael Pfeiffer,

Respondent

On Petition for Writ of Certiorari to the Supreme Court of the Commonwealth of Virginia

PETITION FOR WRIT OF CERTIORARI

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November 16, 2009

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QUESTIONS PRESENTED

Since June 2008, *pro-se* litigant Dr. King's parental rights -- including her right of contact with her now six-year-old daughter -- were effectively terminated by a "final" "custody order" by the Juvenile and Domestic Relations (JDR) Court in Arlington, Virginia -- a court "not of record." The JDR Court entered a series of orders making an appellate review, including a statutorily provided *de novo* review by the Circuit Court, inaccessible.

1) Is it a denial of *pro-se* litigant parent's due process and equal protection rights to be denied substantive review, including her challenge to the state's subject matter jurisdiction, where that state's not of record court effectively terminated that parent's parental rights and made *de novo* appeal of right effectively unavailable to her?

2) Is it a denial of a six-year-old German-American child's rights, including the right to due process, equal protection and free speech, for a state to terminate all contact with her mother, without any evidentiary record or substantive *de novo* appellate review of right?

3) Is it a denial of the child's basic human rights, as set forth under the United Nations Convention on the Rights of the Child, where the child is a German citizen, and the child is barred from any contact with her mother, without record or substantive *de novo* appellate review of right?

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the Supreme Court of the Commonwealth of Virginia.

The Petitioner here and Appellant below is Dr. Ariel Rosita King

The Respondent here and Appellee below is Dr. Michael Herbert Pfeiffer

CORPORATE DISCLOSURES

Pursuant to Rule 29.6, Petitioner states:

None

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OPINIONS BELOW

The August 18, 2009 Opinion of the Supreme Court of the Commonwealth of Virginia is unreported and is reprinted in the appendix at Pet. App 21. The opinions of the Court of Appeals of Virginia are unreported and are reprinted in the Appendix at Pet. App 18, and Pet. App. 20. The opinions of the Arlington County Circuit Court are unreported and reprinted in the Appendix at Pet. App 15-16. The opinions of the Arlington County Juvenile and Domestic Relations Court are unreported and reprinted in the Appendix at Pet. App 1-14. A related opinion of the Supreme Court denying mandamus is reprinted at Pet. App. 17

JURISDICTION

The Supreme Court of the Commonwealth of Virginia issued its opinion on August 18, 2009. This Court has jurisdiction under 28 USC §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the Fourteenth Amendment of the US Constitution and various sections of the Virginia Code, including *VA Code §16.1-106 Appeals from courts not of record in civil cases*; *VA Code §16.1-113; How appeals tried; VA Code §20-124.2; Court-ordered custody and visitation arrangements*; and the Virginia UCCJEA, *VA Code § 20-146.1, et. seq.* The pertinent provisions are reproduced at Pet. App. 21-27.

STATEMENT OF THE CASE

The not of record Juvenile and Domestic Relations (JDR) Court of Arlington County was the Court of the first instance in Virginia. It was also the court that effectively terminated the parental rights of Petitioner Dr. King from her then five-year-old child, without any substantive or procedural review of right by a higher court. The issues of denial of due process and equal protection were first raised in Motions filed with the JDR Court, and raised in each brief filed in the Court of Appeals of Virginia and the Supreme Court of the Commonwealth of Virginia. The threshold challenge to whether any Virginia Court had subject matter jurisdiction was raised in Motions filed in the not of record JDR Court, and in each brief filed on appeal.

1. The "Not of Record" JDR Court Effectively Terminated The Mother's Parental Rights and Criminalized Her for Caring for Her Daughter

Dr. King is a US citizen who lived in Europe, but was convinced to return to the US to enable Dr. Pfeiffer, a German citizen, to complete his neurology medical studies in the US in September 2000. In June 2007, Dr. Pfeiffer took his possessions and left his family in Maryland for a one bedroom rental apartment in Washington DC. At that point, the family had lived in Maryland for over eight months.

On July 6, 2007, Dr. Pfeiffer appeared uninvited at a reception hosted by Dr. King at the Zambian Embassy in Washington DC. He was threatening and physically aggressive towards his

wife and daughter in front of many witnesses at an embassy function. The police escorted Dr. King and her daughter out of Washington DC and told her to seek a Temporary Protection Order (TPO). The TPO was issued but not renewed because the incident occurred at an international embassy outside of the DC Court's jurisdiction.

Cut off from all financial resources, Dr. King and her four-year old daughter stayed with friends until some form of emergency temporary housing could be secured without a deposit. Dr. King found such housing in Arlington Virginia, and moved into an Arlington rental apartment on July 10, 2007.

The Father Initially Sued for Divorce and Custody in Washington DC, But the Case was Dismissed for Lack of Subject Matter Jurisdiction: Dr. Pfeiffer initially tried to file for divorce and emergency custody against Dr. King on July 20, 2007 in Washington DC Superior Court. That case was dismissed because neither Dr. King or her child lived in Washington DC, the minimum statutory period of six months required for subject matter jurisdiction by a state court for having "home state" jurisdiction in a custody case under the DC Uniform Child Custody and Juvenile Enforcement Act (UCCJEA) (see, discussion *infra*). The DC Court specifically refused to resolve the question as to whether subject jurisdiction for child custody lied in Maryland (where they had lived for over six months), or Virginia (where Dr. King had secured emergency temporary housing only days before the DC hearing).

The Father Filed for Only Full Custody In the Not of Record JDR Court in Arlington: On August 9, 2007, only twenty-nine days after Dr King and her daughter secured emergency temporary housing, Dr. Pfeiffer filed a new Petition to take full custody in the Arlington JDR Court. The JDR court is not of record and is the most inferior court of the Commonwealth. Each litigant in JDR Court is entitled by statute to *de novo* review in the Arlington Circuit Court. VA Code §16.1-106. *Appeals from courts not of record in civil cases.* Reprinted at Pet. App. 21.

Dr. Pfeiffer sought to take custody away from Dr. King, who was the child's primary caregiver up until that point in her life. An unscheduled hearing was held prematurely on September 5, 2007. Instead of hearing Dr. King's motion for continuance of the upcoming hearing, the JDR court without waiting for a written answer addressing the question of jurisdiction or calling witnesses entered an interim order maintaining Dr. King's physical custody. The JDR Court also required Dr. Pfeifer to deposit the child's German passport with the Court as a precondition to his visitation.

In October 2007, the mother and child secured permanent housing and moved back to Maryland to be near the child's school. On November 8, 2007, a home study ordered by the Virginia JDR Court recommended as follows:

> *RECOMMENDATION: It is respectfully recommended that the parents, Dr. Ariel King and Dr. Michael Pfeiffer, share joint custody of their daughter, Ariana-Leilani, with physical*

custody being given to Dr. Ariel King.
- *Custody Investigation*, Arlington JDR Court, Nov. 8, 2007

The Mother Filed Motions to Dismiss Based on Lack of Subject Matter Jurisdiction: Despite the favorable JDR Custody Investigation, legal research revealed that Virginia did not have subject matter jurisdiction, as a matter of law. Dr. King, through counsel then filed motions to dismiss the Virginia case on November 20, 2007 and the second on November 30, 2007. Dr. King's Motions explained that Virginia did not have subject matter jurisdiction[1] under the Virginia UCCJEA, because neither the child or either of her parents had been living in Virginia six months prior to the commencement of the proceeding in Virginia, as required by the UCCJEA.[2]

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[1] "Subject matter jurisdiction' refers to the power granted to the courts by constitution or statute to hear specified classes of cases." *Moore v. Commonwealth*, 527 S.E.2d 415, 417 (2000). It cannot be waived, and "any judgment rendered without it is *void ab initio*." *Humphreys v. Commonwealth*, 43 S.E.2d 890, 893 (1947)). "Lack of subject matter jurisdiction 'may be raised at any time, in any manner, before any court, or by the court itself.'" (*Humphreys* at 893). For Federal Law, e.g. *Steel v. Citizens for Better Environment, 523 U.S. 83, 118 S. Ct. 1003 (1998); FRCP 12(h)(3)*

[2] *VA Code §20-146.1, et. seq.* Reprinted at Pet. App. 24-27. The UCCJEA, which is adopted in various forms in most states, uses a six-month "window" to determine a child's home state. A state has home-state jurisdiction if it was the home state on the day the custody action was filed *or* on any day during the six

Instead they had been living for six months in Maryland within the six month period prior to Dr. Pfeiffer's Virginia filing, thus making Maryland the child's "home state" for establishing subject matter jurisdiction under the UCCJEA at that time. Dr. King also argued, in the alternative, even assuming Virginia had original subject matter jurisdiction, Virginia lost continuing exclusive jurisdiction three months later, when Dr. King and the child returned to Maryland and no party to the proceedings remained living in Virginia.[3]

The Not of Record JDR Court Denied The Mother's Motion to Dismiss The JDR court held an unrecorded oral hearing on the jurisdictional issue on January 17, 2008, without taking evidence and denied the Motion to Dismiss with only the words:

> "Motion to Dismiss Denied. Continued for Full Hearing."
>
> - *See, Jan. 17, 2008 JDR Dismissal Order,* Reprinted at Pet. App. 1

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months preceding the filing. *VA Code § 20-146.12 (*Reprinted at Pet. App. 26-27); *see, Rosen v. Celebrezze*, 883 N.E.2d 420, 427-28 (Ohio 2008) (*citing Stephens v. Fourth Judicial Dist. Court*, 2006, 128 P.3d 1026, 1029 (Mont. 2006)).

[3] "Continuing Jurisdiction" refers to the ability of a state to enter any further child custody orders (including interim or temporary order). Under the Virginia UCCJEA, continuing jurisdiction is automatically lost as soon no party lives in Virginia. *See, VA Code §20-146.13.* Reprinted at Pet. App. 27.

The JDR Court -- which must first process the notice of appeal -- refused to allow an appeal of that *JDR Dismissal Order*, without issuing a written order, but leaving only a "sticky" note in the court file to that effect.[4]

The JDR Court Effectively Terminated Dr. King's Parental Rights in an Ex Parte Hearing Without Evidence and Proper Notice: Dr. King was representing herself *pro-se* in June 2008 because she could not afford a private attorney in Virginia at that time. She filed Motions to Continue seeking to postpone a June 6, 2008 JDR hearing. The Motions asked that the June 6, 2008 hearing be continued until 1) the Supreme Court of Virginia ruled on the subject matter jurisdiction issue raised by her pending petition for mandamus[5] *and 2)* the resolution of a pending investigation into sexual abuse, physical abuse and medical neglect by Dr. Pfeiffer initiated by a Maryland Court on June 2, 2008.[6] Rather

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[4] The JDR Clerk would not allow Petitioner to copy the note, because she said notes may not be copied.

[5] Dr. King filed *pro-se* a Petition for Writ of Mandamus and Prohibition on May 15, 2008 with the Supreme Court of Virginia. On October 17, 2008, the Petition was denied on procedural grounds: "*mandamus and prohibition are not substitutes for appeal and do not lie to challenge actions within a court's jurisdiction.*" *See, Mandamus Order of VA Supreme Court*, Rec. No. 080963, October 17, 2008, *rehearing denied* February 2, 2009, (unpublished) Reprinted at Pet. App. 17.

[6] A TPO was issued June 2, 2008 by a Maryland Circuit Court that gave Dr. King temporary custody and found: "*That there are reasonable grounds to believe that Respondent committed the following abuse: Statu-*

than continue the June 6, 20008 hearing, the Virginia JDR Court proceeded without Dr. King's presence.

Without any reasons or findings of facts stated, the JDR Court issued an *ex parte* "final order" which only stated:

> SOLE LEGAL AND PHYSICAL CUSTODY OF ARIANA LEILANI KING-PFEIFFER IS

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tory abuse of a child (Physical, Sexual) (Forward to DSS for investigation." MD TPO, Case 70620FL, June 2, 2008 The next hearing was set for June 9, 2008. Dr. King took her child for medical treatment and diagnosis for a recently discovered severe neutropenia and sexual abuse. Meanwhile, a second judge at an unscheduled ex parte hearing called by the Dr. Pfeiffer's attorney on June 5, 2008 prematurely quashed the Maryland TPO. Dr. Pfeiffer then went on June 6 to a Virginia JDR Court hearing, that then proceeded *ex parte*, where the Judge accepted his attorney's word that Dr. King had kidnapped the child, custody needed to be transferred to the father and contact prohibited with the mother. At the Dr. Pfeiffer's insistence Dr. King was arrested at New York's Montefiore Children's Hospital where she sought evaluation and treatment for her child. Due to a misstatement of charges, Dr. King was held without bail in New York's Rikkers Island Prison for 23 days, although the maximum sentence for such alleged parental kidnapping was 30 days. Almost one year later, Dr. King was forced to plead guilty to parental kidnapping when the presiding Maryland court refused to allow Dr. King any of her expert witnesses and any defenses at her jury trial. Dr. King received no further imprisonment, nor was she placed on probation. An appeal is pending of the June 5, 2008 *ex parte* action that prematurely quashed the Maryland TPO.

> GRANTED TO HER FATHER, MICHAEL H. PFEIFFER. THE MOTHER, ARIEL R. KING, SHALL NOT HAVE ANY CONTACT WITH THE CHILD UNTIL SHE AVAILS HERSELF TO THE COURT AND COMPLETES A PSYCHOLOGICAL EVALUATION
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> - *June 6, 2008 JDR Custody Order,* Reprinted at Pet. App. 2-4

Concurrently, the JDR Court entered five *Capias* orders that would have caused Dr. King's arrest and imprisonment *if* she appeared before the JDR Court. *See, June 6, 2008 Capias Orders,* Reprinted at Pet. App. 5-11. The "no contact" "final order" together with the *June 6, 2008 Capias Orders* effectively terminated *pro-se* litigant Dr. King's parental rights without an evidentiary hearing and proper notice.[7]

The Not of Record JDR Court Denied The Mother's Motion to Set Aside the JDR Order In Another Ex Parte Hearing: In undated orders that were entered at a September 16, 2008 *ex parte* unrecorded hearing, the last actions were taken by the JDR Court. The JDR court ignored a *Motion To Quash Defective September 16, 2008 Hearing Notices And Continuance Of Hearing To A Later Date,* filed *pro-se* by Dr. King on

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[7] Dr. King already had a psychological (plus two more after that), and filed a praecipe in August 14, 2008 to that effect, however the JDR Court took no action -- despite her satisfaction of the Order's condition. In every evaluation, Dr. King was shown to be fit for being the child's mother. As noted in the text, the JDR Court's home study supported her fitness.

September 2, 2008. In its undated orders, the JDR Court denied Dr. King's *Motion to Set Aside the June 6, 2008 JDR Order* based on fraud by Dr. Pfeiffer and other irregularities, but granted Dr. Pfeiffer's Motion to release the child's German Passport from the Court. *See, September 16, 2008 JDR Orders*, Reprinted at Pet. App. 12-13

2. The Mother Is Denied Her Right to *De Novo* Appeal by the Arlington Circuit Court

On September 26, 2009 Dr. King filed a timely Notice of Appeal to the circuit court of the JDR orders. Reprinted at Pet. App. 14. As a matter of law, Dr. King was entitled to *de novo* review on such appeal. *VA Code §16.1-106. Appeals from courts not of record in civil cases.* Reprinted at Pet. App. 21. Dr. King's appeal to the Circuit Court sought review of the denial of her various Motions, including the JDR Court's failure to dismiss for lack of subject matter jurisdiction -- which may be challenged at any time.

In an Unrecorded Unscheduled Ex Parte Hearing with only the Father's Attorney Present, the Circuit Court Summarily Dismissed the Appeal Thus Denying the Opportunity for *De Novo* Review of the JDR Order: Before the first scheduled hearing in the Arlington Circuit Court and, in turn, the *de novo* review of statutory right begun, Dr. Pfeiffer filed a Motion to Dismiss October 10, 2008, and had it expeditiously heard in an unscheduled *ex parte* hearing, in Arlington County Circuit Court Judge on October 17, 2008 -- before oppositions to the Motion were even due and before the first scheduled preliminary hearing. Dr. King was still under

threat of arrest or imprisonment by the JDR *Capias Orders* if she appeared in court *pro-se* and therefore remained caught in the legal "Catch-22." The Circuit Court entered an *ex parte* order dismissing the *de novo* appeal claiming that the case was "moot" despite the fact that no pleadings had yet been filed by Dr. King setting forth the issues to be raised and reviewed *de novo*, including the issues of 1) the lack of subject matter jurisdiction of the Virginia courts, and 2) her Motion to Set Aside the "final" *June 6, 2008 JDR Orders*.

3. The Mother's *Pro Se* Brief Is Rejected For Form of Mailing, and the Virginia Court of Appeals Summarily Affirms Without Review

Appellate briefs to the Virginia Court of Appeals were due by mailing on or before February 23, 2009. *VSCR §5A:3(c)* Dr. King filed an Appellate brief *pro-se* by mail with the Clerk of the Court of Appeals on February 23, 2009, using US Postal Service (USPS) priority mail, with signature confirmation.

On March 17, 2009, the Court of Appeals summarily refused to review the brief. *See, March 17, 2009 COA Dismissal Order,* Reprinted at Pet. App. 18. Although the Court of Appeals recognized that the brief was timely mailed on February 23, 2009 by USPS priority mail with signature confirmation, it said it would not be accepted because it was not mailed by the more costly "express" or "certified" mail. Even though the case below involved a threshold subject matter jurisdictional issue and the effective termination of parental rights and obvious procedural errors below, the Court of Appeals stated:

> *On appeal, the judgment of the trial court is presumed correct and the burden is on the party who alleges error to show by the record that reversal is the remedy to which appellant is entitled (cite and footnote omitted)*
>
> *Because the opening brief was not timely filed, appellant has failed to present to this Court any questions of error on the part of the trial court. "We will not search the record for errors .... " (cite omitted) Accordingly, we summarily affirm the judgment of the trial court without opinion as to whether error exists in the record. Rule 5A:27.*
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> - *See March 17, 2009 Order of Court of Appeal* Reprinted at Pet. App, 18

Had the brief been mailed by USPS "express" mail (the fastest alternative USPS offering) or "certified" mail, it would not have been delivered any faster or tracked any better than that experienced using the USPS priority mail, with signature confirmation. *See*, USPS Tracking for February 23, 2009 Brief to Court of Appeals, Reprinted at Pet. App. 28.

Dr. King sought timely rehearing explaining that the method of mailing was equivalent to certified mail named in the rules, and that under the Virginia case law, it was enough to show support by the documentation of mail tracking from USPS proving the identical results to satisfy the rule and thus, the brief should be treated as timely filed. In the alternative, Dr. King asked that the rule be waived given that the effective termination of parental rights were at issue.

On May 11, 2009, the Court of Appeals denied a Petition for Rehearing of their March 17 Order.

(*See, May 11, 2009 COA Order,* Reprinted at Pet. App. 19), *rehearing en banc denied, May 29, 2009.*

4. The Virginia Supreme Court Summarily Refused To Review Because It Was a Case Involving the Custody of a Child

On June 10, 2009, Dr. King filed a Petition for Appeal to the Supreme Court of Virginia. On August 18, 2009, the petition was dismissed for lack of jurisdiction to hear appeals of cases involving custody. *See, August 18, 2009 Order of the Supreme Court Virginia,* Reprinted at Pet. App. 20

This Petition for Certiorari seeks review of the proceedings below.

REASONS TO GRANT THE PETITION

This petition seeks to address an epidemic problem that occurs all too often in the fractured state-level not of record family courts. As in this case, through a combination of actions taken by such not of record Courts, a legal "Catch-22" that effectively terminates a parents rights to have any contact with their child -- can result without due process and equal protection. The parent whose rights are terminated is typically the parent that raises the issue of abuse and neglect by the other parent. In this case, "Catch-22" is created from a lethal combination of court orders terminating the parental rights of the *pro-se* litigant and "*Capias Orders*" threatening imprisonment of that litigant if she appeared in Court seeking to correct those orders. *Pro-se* representation by one of the parties is common in not of

record courts because the bulk of the financial resources and/or earning power are typically in the possession or control of one parent.

While this Court has addressed the minimum procedural protections required for a litigant where parental rights are formally terminated, it has not *explicitly* addressed the need for protections where parental rights are effectively terminated in the context of "custody case." *M. L. B. v. S. L. J.*, 519 U.S. 102, 117 S.Ct. 555 (1996). As demonstrated by the instant case, custody cases that effectively terminate the rights of one of the parents have fallen between the cracks for constitutional protection. This has occurred in part because of the jurisdictional ambiguity created by each state autonomously interpreting its own version of the UCCJEA and applying its own standards,[8] and also in part because these cases are often handled by the lowest not of record family courts in the state. Those not of record family courts often operate without any transparency. The Federal court system provides no practical alternative venue except where there is a Federal statute specifically providing otherwise -- such as Hague cases under ICARA[9]. (*e.g.*,

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[8] Although Congress had adopted the *Parental Kidnapping Prevention Act (PKPA)* 28 U.S.C. §1738A, this Court has ruled that it provides no private right of action for compliance with the act's requirements for whether a state may rule on a custody matter. *Thompson v. Thompson, Aka Clay*, 108 S. Ct. 513, 484 U.S. 174, 178-179 (1988). In addition, the PKPA preceded the UCCJEA adopted now in many states.

[9] *International Child Abduction Remedies Act ("ICARA"), 42 U.S.C. §§ 11601-11610.*

Holder v. Holder, 305 F.3d 854, 866 (Fed. 9th Cir., 2002)).

The non-Hague Convention custody cases -- which constitute most custody cases -- are left to the not of record state courts that experience shows are adverse to "high conflict" cases on their docket. The experiences of Dr. King illustrate the impunity with which the not of record court in Virginia can operate. The instant case illustrates a scenario that can, and does, happen all to often in many family courts -- where parent-child connections are effectively destroyed with less meaningful appellate scrutiny than a traffic ticket case. The omission of scrutiny and concern arises from the stigma of being labeled "custody cases," that are delegated to the lowest tier not of record equity courts with the least due process protections.

Denial of due process and equal protection cannot be rationalized by a view that child custody decisions are "peculiar" because they may *theoretically* be changed if there is a "material change in circumstances." See, e.g., *Thompson v. Thompson*, 484 U.S. at 180 (*citing Hooks v. Hooks*, 771 F.2d 935, 948 (CA6 1985)). That view is a fiction in the case of a *pro-se* litigant who is threatened with imprisonment because they may never get that opportunity seek a change in the order. Even if they one day had their day in court, they would have to overcome the inertia of the original flawed decision, and faced the higher subjective standard of "material change in circumstances" applied by the very court that put the *pro-se* litigant in the "Catch-22."

This Court Has Spoken On the Applicability of The Fourteenth Amendment Protections Where Termination of Parental Rights Are At Stake:

The Court has been of the unanimous view that "the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment," and that "[f]ew consequences of judicial action are so grave as the severance of natural family ties." They are sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect. *M. L. B.*, at 102 117 and 119, (*quoting Santosky v. Kramer, 455 U. S. 745, 787, 102 S.Ct. 1388 (1992).* and *Boddie v. Connecticut*, 401 U.S. 371, 376, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971)).

"A parent's interest in the accuracy and justice of the decision . . . is . . . a commanding one." "Unlike other custody proceedings, it leaves the parent with no right to visit or communicate with the child . . . ." (footnote omitted))). *M. L. B. at 102, 117 (quoting Lassiter v. Department of Social Services. of Durham City., 452 U.S. 18, 27 and 29, 101 S.Ct. 2153 (1981)* (appointment of counsel for indigent defendants in parental status termination proceedings is not routinely required by the Constitution, but should be determined on a case-by-case basis)

The Court has found that appeal of parental termination must be treated as the Court has treated petty offense appeals. The Court's decisions concerning access to judicial processes, reflect both equal protection and due process con-

cerns. The court has further found that in these types of cases, ``[d]ue process and equal protection principles converge." A ``precise rationale" has not been composed, because cases of this order ``cannot be resolved by resort to easy slogans or pigeonhole analysis." The Court has recognized, ``[m]ost decisions in this area," ``res[t] on an equal protection framework," for due process does not independently require that the State provide a right to appeal. *See, M. L. B. at 120.*

The Court places decrees forever terminating parental rights in the category of cases in which the State may not ``bolt the door to equal justice." *Griffin v Illinois, 351 U. S. 12 at 24, 76 S.Ct. 585 (1956).* The fact that a case might be labeled as "civil" would not deter this Court from a fourteenth amendment analysis. *See, M. L. B., v. S. L. J., 519 U.S. 128.*

As this court has stated although the Federal Constitution guarantees no right to appellate review, once a State affords that right, the State may not "bolt the door to equal justice". *Griffin* at 24 (1956). When deprivation of parental status is at stake counsel is sometimes part of the process that is due. *See, Lassiter, 452 U. S., at 31-32.*

This Case Raises The Important Question Of Whether Equal Access To A Fair Appeal Or Rehearing Can Occur If The *Pro-Se* Litigant, Whose Parental Rights Are Terminated, Is Under The Threat Of Arrest If She Appears In Court, and Counsel Not Provided:

In the instant case, Dr. King could not appear before the Circuit Court because of fear of arrest under the JDR court's *Capias Orders*, thus preventing her from defending the motion to dismiss

of Dr. Pfeiffer which succeeded in cutting off the *de novo* review of the JDR Court. Similarly, Dr. King could not appear before the JDR Court below when it denied her Motion to Vacate based solely on the Dr. King's not appearing in the Court and exposing herself to potential civil arrest and imprisonment by the JDR Court's *Capias Orders*.

The use of civil contempt orders to imprison *pro-se* litigants in custody cases who have no counsel to fully exercise their rights of appeal and defend their rights is all too common. The grant of this Petition would allow this court to address this important issue.

Denial of Due Process and Equal Protection Where The JDR Decision Was Arbitrary, Without Reason or Findings of Fact, and a "Catch-22" State Action:

Like in the *M.L.B. Case*, the JDR Order described no evidence, and otherwise details no reasons for finding Dr. King "clear[ly] and convinc-ing[ly]" unfit to be a parent. *See, VA Code §20-124.2 (B). Court-ordered custody and visitation arrangements.* Reprinted at Pet. App. 23. Despite this, Dr. King was denied her right to *de novo* appeal because she had no attorney to represent her, and no effective way to appear on her own behalf due to the JDR Court created "Catch-22" of custody and *Capias Orders* threatening Dr. King's arrest and imprisonment. This "Catch-22" denied Dr. King both due process and equal protection.

Denial of a *De Novo* Appeal of the Not of Record Court Proceedings In Itself Is a Denial of Due Process and Equal Protection:

The JDR Court in Virginia is not a "court of

record." All litigants in the JDR Court are entitled by statute to *de novo* appellate review in the Circuit Court

Dr. King was entitled to a fair *de novo* review of the JDR Court's decision in the Circuit Court with the aid of a court-provide attorney particularly given that Dr. King was threatened by the JDR Court with arrest and imprisonment if she appeared, including appearing in any hearing before the Circuit Court to represent herself in her statutorily entitled *de novo* appeal.

Dr. King was denied due process and equal protection because of the Catch-22 created by the Virginia JDR Court's orders. Namely, Dr. King was unable to participate in her appeal because if she appeared she was threatened with arrest and imprisonment by the *Capias Orders*. She could not defend her appeal because she could not appear. Virginia did not offer counsel to Dr. King to represent her in her appeal.

Dr. King was effectively denied the *de novo* appeal she was entitled to, which appeal others in similar situations were afforded because if they could afford their own counsel.

The Denial of Acceptance of an Appellate Brief that Was Timely Mailed Is Also a Denial of Due Process and Equal Protection:

Dr. King, being *pro-se*, believed that USPS's online "priority mail with signature confirmation" was the online equivalent to what the Court's rules called USPS's "certified mail." Even if it was not, the filing could not have arrived sooner to the clerk's office by any other method offered by the USPS, as demonstrated by the tracking information from USPS.

That Court refused to "search for [even the obvious] errors," despite that the case involved obvious errors that caused the effective termination of parental rights, and that threshold issues of whether the Virginia even had subject matter jurisdiction were at issue. No doubt had Dr. King been able to afford a Virginia attorney who regularly filed before the Virginia Court of Appeals, this superficial issue might not have occurred. By refusing an appeal only because the *pro-se* litigant used a functionally equivalent USPS mail service that had all of the features of the specified USPS service, Dr. King was denied due process and equal protection in the same way that this Court found when a litigant could not afford to purchase the requisite transcript *(Griffin)* or pay a particular filing fee *(In Re M.L.B.)*.

The Denial of Constitutional and Internationally Recognized Human Rights of the Child Without Substantive Review Is a Denial of Due Process and Equal Protection:

The unheard victim of this case is Dr. King's now six-year-old daughter of both German and US citizenship. She did nothing wrong, yet her rights, including equal protection, freedom of speech, and liberty to have contact with her mother (including even supervised telephone calls and birthday cards), were denied without due process and equal protection. One can only imagine what this child is thinking about her mother's existence and why her mother -- who tried to get help for her -- has been erased from this child's life. As this court stated, "[f]ew consequences of judicial action are so grave as the severance of natural family ties," *M. L. B. at 119*. Thus, the

Fourteenth Amendment Protections must be extended to the child, who has lost something no one can replace -- her protective natural mother. With the loss of her natural mother, she has lost her primary proponent of her African-American, Jewish and German heritage. She has lost her greatest protector from abuse and neglect. To this child, her mother now no longer exists because a not of record Virginia JDR court was able to bar all contact with her mother, in a one line order with no findings of substantial evidence to support that outcome and contrary to the recommendations of the only Court-directed custody evaluation that was received by that Court. Such an outcome -- without any evidentiary hearing of record with proper proof and with no effective appellate review to the *pro-se* litigant parent due to threat of arrest -- is surely unconstitutional. It also flies in the face of the rights this child has under international law as a German citizen. See, UN Convention on the Rights of the Child, *United Nations, Treaty Series, vol. 1577, p.* 3 (1989), (Ratified by all countries *except* the US and Somalia). Even children of incarcerated criminals are allowed to have some form of contact with their incarcerated parents. Dr. King -- who has never been found to be an unfit mother and in her professional life has helped thousands of children -- sought to protect her own daughter from abuse and neglect by seeking medical and psychological care for her daughter -- fulfilling a legal obligation that she has as a parent.

Dr. King's daughter's basic constitutional and human rights to have contact with her mother cannot be taken away without some form of substantive review of the "not of record" JDR Court

decision and the requisite showing of "clear and convincing" evidence. *See, VA Code §20-124.2 (B). Court-ordered custody and visitation arrangements.* Reprinted at Pet. App. 23.

The due process and equal protection denied Dr. King also caused the denial of freedom of speech, liberty, expression, and internationally recognized human rights to her now six-year-old child.

CONCLUSION

For the reasons set forth herein, the Petition should be granted, and ultimately the relief of reversal be granted. Denied fairness, due process, equal protection, and fundamental human rights for both child and parent call for this court to enable them to have their day in court, which only this court can do at this time. By doing so, this Court will help address a significant problem in the often-overlooked and out-of-view family courts of many states.

Respectfully submitted,

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