IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Cause No: ___________________

AMIR H. SANJARI,	)
Plaintiff	)
	)
	)
v.	)
	)
ALISON GRATZOL,	)
Defendant.	)
	)
In Rem:	)

COMPLAINT

DECLARATORY AND INJUNCTIVE RELIEF

1. The Plaintiff, Amir H. Sanjari, *self-represented, in propria persona*, is bringing the instant *in rem* action pursuant to the **First Amendment** (Freedom of Association, Speech & "liberty" and fundamental personal rights), **Fourth Amendment**, **Fifth Amendment** (Due Process), **Seventh Amendment** (Access to the Courts), **Eighth Amendment** (Cruel and Unusual Punishment), **Ninth Amendment** (un-enumerated Rights), **Thirteenth Amendment** (Peonage) and **Fourteenth Amendment** (Due Process and Equal Protection), as well as on the **federal questions** involved **28 U.S.C. § 1331** (**federal question**), **28 U.S.C. § 1332** (diversity of

citizenship), **28 USC § 1367** (supplemental jurisdiction), **28 USC § 1657** (priority of civil action), **28 USC § 2201** (Creation of Remedy), **28 USC § 2202** (Further Relief Upon Judgment) and relevant Rule(s) of the F. R. Civ. P. including but not limited to F. R. Civ. P. **1**, **60(b)(3)** and **60(b)(4)**.

2. This *in rem* action seeks injunctive relief and declaration that the (*in rem*) order (see below) issued by Elkhart Superior Court, Indiana, ("state court") is *void ab initio* because it violated the Due Process Clause of the **Fourteenth Amendment** as well as other fundamental rights guaranteed under the Constitution for the United States (*hereinafter* "U.S. Constitution", or "the Constitution"). The actions of the Elkhart County Superior Court were in contravention of Plaintiff's due process rights under the **Fourteenth Amendment**. The conduct and procedures used by the Indiana court in dealing with this case and arriving at the *in rem* order are "shocking" and egregious. Such procedures and conduct, not least including nepotism and cronyism, are prevalent in Elkhart court where Defendant's attorney, Max K. Walker, Jr., a disgraced[1] former deputy county prosecutor, has relatives as judges influencing legal actions. This case is not alone in suffering from such procedural and unlawful defects prevalent in Elkhart Superior court.

1 E.g., Walker beat a woman up, assaulted her 9-year old daughter. Upon hospitalization, the woman filed charges against Walker. Court documents show that the evidence against Walker got "lost" by the county. Walker got off unpunished. (Evidence available).
Also, there is evidence of cases being "fixed" involving Walker and Elkhart courts in more than just this case. (Evidence, victims and witnesses and various court documents to this effect are available.)

Furthermore, the said *in rem* order was fraudulently sought and obtained by the Defendant Gratzol in deliberate violation of the Plaintiff's secured rights.

3. The said deprivations of Rights since 2001 due to the *in rem* order have resulted in the Plaintiff's and/or his minor child(ren)'s loss of the following:

A) right to the requirements of due process where a substantive right is implicated,

B) parental rights, family life and freedom of association with and enjoyment and companionship, care, custody, control, and management of his natural minor children and the reciprocal right of each minor child to associate with him, without interference from the state, pursuant to the **First Amendment**,

C) right to equal protection to the legal and physical custody of his children pursuant to the **Fourteenth Amendment**,

D) right to life, liberty, or property and due process of law pursuant to the **Fifth Amendment**,

E) other rights, familial, parental, monetary (**Thirteenth Amendment**) deprivations and damages (including but not limited to physical and psychological) suffered by the Plaintiff and / or his children as a direct result of the said *in rem* order.

4. This is not a Domestic Relations ("DR") action (the Plaintiff is **not** seeking any declaration or ruling upon matrimony, divorce, custody, child support, or any Domestic Relations matter). It is about *void ab initio* and fraudulent orders, fraud, deception, violations of federally protected fundamental rights perpetrated by Defendant Gratzol and her co-conspirators. What is sought herein is a declaration and injunctive relief regarding the constitutionality (lack thereof) of the *in rem* order in question (order dated August 27, 2001).

JURISDICTION

5. The District Court of the United States ("USDC") is an **Article III** court with authority to hear questions arising under, and has original, concurrent, and supplementary jurisdiction over this cause of action pursuant to the authorities cited above, including, but not limited to: the following, to-wit: the Constitution, Treaties and Laws of the United States, including but not limited to the **International Covenant on Civil and Political Rights**, the **Universal Declaration of Human Rights** and **International Covenant on Rights of Children**, as well as the **Bill of Rights**, the **First Amendment**, **Fourth Amendment**, **Fifth Amendment**, **Seventh Amendment**, **Eighth Amendment**, **Ninth Amendment**, **original Eleventh, original Thirteenth Amendment** and **Fourteenth Amendment** (*see* the **Article VI Supremacy**

Clause of the Constitution, as lawfully amended which is also enshrined in the Constitutions of all 50 states of the United States), as well as on the **federal questions** involved **28 U.S.C. § 1331** (federal question), **28 U.S.C. § 1332** (diversity of citizenship), **28 U.S.C. § 1367** (supplemental jurisdiction), **28 U.S.C. § 1391** (Venue), **28 U.S.C. § 2201**, **28 U.S.C. § 2202**, and relevant Rule(s) of F. Civ. P. including but not limited to **F. R. Civ. P. 60(b)(3)** and **60(b)(4)**.

6. Furthermore, and additionally, on the basis of diversity (Defendant is a resident of Indiana, Plaintiff is not). The rule is well recognized that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction, ... and when controversies arise between citizens of different states the Federal jurisdiction may be invoked **217 US 268**.

> '*But this court has repeatedly decided that the jurisdiction of the courts of the United States over controversies between citizens of different states cannot be impaired by the laws of the states,.... But the courts of the United States are bound to proceed to judgment and to afford redress to suitors before them in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction.* ***Suydam v. Broadnax****, 14 Pet. 67;* ***Bank v. Jolly****, 18 How. 503.*'

This principle has been steadily adhered to. From 148 US 529.

SUPREMACY OF
THE CONSTITUTTION AND TREATIES OF THE UNITED STATES

7. The Constitution and Treaties of the United States are the Supreme Law of the Land (US) and their authorities take precedence over the federal statutes, the US Supreme Court ("USSC") directives, and US Courts of Appeals ("US-CA") directives respectively.
8. Any law, order and/or ruling that is abhorrent to the Constitution is unconstitutional, unlawful and *void* and its processing and execution is equally unlawful.
9. The United States, under its treaty obligations, such as those named above, is bound to conform to and properly apply and implement its own Constitution through its agencies and courts, i.e. the United States will be answerable in the United Nations (where documents have already been filed in this matter) for its courts' dereliction of duty in properly applying and implementing the Constitution.

> "*That it is the view of the United States that States Party to the Covenant should wherever possible refrain from imposing any restrictions or limitations on the exercise of the rights recognized and protected by the Covenant, even when such restrictions and limitations are permissible under the terms of the Covenant. For the United States, article 5, paragraph 2, which provides that fundamental human rights existing in any State Party may not be diminished ". "The United States declares that it will continue to adhere to the requirements and constraints of its Constitution in respect to all such restrictions and limitations. (3) That the United States declares that the right referred to in article 47 may be exercised only in accordance with international law.*" (signed 10.05.1977, Date receipt of Inst. 06.08.1992).
> United Nation International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial

Discrimination and Convention on Human Rights.

EXPEDITED CONSIDERATION IS REQUESTED

10. Due to the egregious atrocities and continued actual and potential harm (including but not limited to psychological and physical abuse as a direct result of the *void In Rem* order whose constitutionality is challenged in the instant action) and constitutional deprivation being perpetrated since 2001 upon the Plaintiff and his children, one of whom is still a minor, the Plaintiff requests that the instant action for declaratory and injunctive relief and for "good cause" (prevention of continued deprivation of constitutional rights and violations under federal criminal statutes as well as safety of minor child) be considered and dealt with *expeditiously* in accordance with the relevant constitutional and statutory laws, rights and privileges, not least that of provisions of **28 USC § 1657** (priority of civil action) stating:

> "*... that the court shall expedite the consideration of any action brought under chapter 153 or section 1826 of this title, any action for temporary or preliminary injunctive relief, or any other action if good cause therefor is shown. For purposes of this subsection, "good cause" is shown if a right under the Constitution of the United States or a Federal Statute (including rights under section 552 of title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit*."

and **F. R. Civ. P. 1** stating:

> "***Rule 1. Scope and Purpose of Rules***
> *These rules govern the procedure in the United States district*

courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action."

"*Rule 1, supra , as amended, requires federal courts to construe and administer the rules to secure the just, speedy and inexpensive determination of every action."*

Cited in **Catz v. Chalker**, 142 F.3d 279 (C.A.6 (Ohio) 1998) ("**Catz**").

> *"A judge should hear and decide matters assigned, unless disqualified," Canon 3A(2),* ***Code of Conduct For United States Judges*** *(hereafter referred to as "the Code of Conduct"). "A judge should dispose promptly of the business of the court." "In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. ..." Canon 3A(5), Code of Conduct.*

PARTIES

11. Plaintiff, Amir H. Sanjari's ("Sanjari") address is c/o 130 D Old Ferry Road, Haverhill, Massachusetts, 01830. He is an internationally known nuclear physicist of British citizenship, and US permanent residence.
12. Defendant, ALISON GRATZOL, (f/k/a Sanjari, "Alison", "Gratzol"), resides at 26795 Bridgewater Court, Elkhart, Indiana, 46514. She committed fraud, conspiracy and other federal crimes as well as deprivation of the Plaintiff's constitutional rights.

RESERVATION OF RIGHTS

13. Plaintiff hereby explicitly and implicitly reserves his fundamental Right to amend this and all subsequent pleadings, including if and when future events and/or discoveries prove that he has failed adequately to comprehend the full extent of the damage(s) which he has suffered at the hands of the Defendant and other involved parties, both named and unnamed, now and at all times in the future. *See* **Rules 8**, **15**, and **18** of the F. R. of Civ. P..

14. Plaintiff further reserves his Rights and privileges to either amend his (instant) Complaint or respond to the reasons or any issues raised in rebuttal by any and all parties or the court.

15. Plaintiff also reserves any and all of his explicit and implicit fundamental Rights under the Constitution and the Treaties of the United States, such as, but not limited to, the Right to a jury trial (**Seventh Amendment**), prompt consideration of the instant case by the US federal courts (or any redress, as maybe deemed necessary, from US Court of Federal Claims, or use of instruments in higher federal courts), etc. Plaintiff hereby gives notice that he does not and will not forgo any of his Rights or privileges, such as those under the Constitution and laws, whether or not explicitly stated herein.

SELF-REPRESENTED "*PRO SE*" STANDARD OF REVIEW

16. Because the Plaintiff is self-represented, the Court has a higher standard when faced with a motion to dismiss. **White v. Bloom**, 621 F.2d 276 makes this point clear and states: *A court faced with a motion to dismiss a pro se complaint must read the complaint's allegations expansively*, **Haines v. Kerner**, 404 U.S. 519, 520-21, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972), *and take them as true for purposes of deciding whether they state a claim*. **Cruz v. Beto**, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2D 263 (1972). Emphasis added.

17. *Pro se litigants' Court submissions are to be construed liberally and held to less stringent standards than submissions of lawyers. 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 and sentence construction, or litigant's unfamiliarity with 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)(holding *pro se* petition cannot be held to same standard as pleadings drafted by attorneys); **Then v. I.N.S.**, 58 F.Supp.2d 422, 429 (D.N.J. 1999).

18. *Courts will 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).

19. *Moreover, "the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory."* **Bonner v. Circuit Court of St. Louis**, 526 F.2d 1331, 1334 (8th Cir. 1975) (quoting **Bramlet v. Wilson**, 495 F.2d 714, 716 (8th Cir. 1974)) [Emphasis added].
Thus, if this court were to entertain any motion to dismiss this court would have to apply the standards of ***White v. Bloom****. Furthermore, if there is any possible theory that would entitle the Plaintiff to relief, even one that the Plaintiff hasn't thought of, the court cannot dismiss this case.*

20. *The courts provide pro se parties wide latitude when construing their pleadings and papers. When interpreting pro se papers, the Court should use common sense to determine what relief the party desires.*
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 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).

21. *Defendant has the right to submit pro se briefs on appeal, even though they may be in artfully drawn but the court can reasonably read and understand them. See,* ***Vega v. Johnson****, 149 F.3d 354 (5th Cir. 1998).*

<u>*VOID* JUDGMENT</u>

22. A *void* (NOT voidable) judgment is a judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an <u>order procured by fraud</u> and <u>can be attacked at any time, in any court, either directly or collaterally</u>. See **Long v. Shorebank Development Corp.**, 182 F.3d 548 (C.A. 7 Ill. 1999).

23. As the Supreme Court stated in the case of **Marbury v.Madison***,* 5 US (2 Cranch) 137, 174, 176, (1803) *"All laws which are repugnant to the Constitution are null and void.".* **Miranda v. Arizona***,* 384 US 436, P 491 *concludes, "Where the rights secured by the Constitution are involved, there can be no rule making [or legislation] which would abrogate them."*

24. A judgment is *void* if it is not consistent with Due Process of law. ***Orner v. Shalala****,* 30 F.3d 1307, 1308 (1994)*;* ***V.T.A., Inc. v. Airco, Inc.****,* 597 F.2d 220, 221 (1979).

25. *If voidness of judgement is found then relief from judgement is not discretionary and any order based upon that judgement is also void*. **V.T.A., Inc. v. Airco**, Inc.,supra @ 221; **Venable v. Haislip**, 721 F.2d 297, 298 (1983).

26. When false evidence is used (fraud) and the 14th amend won't stand for it: **Miller v. Pate**. 386 U.S. 1 (1967);

27. A *void* order is not the same as a voidable order.

28. "*It may be stated as a general rule that fraud consists in anything which is calculated to deceive, whether it be a single act or combination of circumstances, whether is be by suppression of the truth or suggestion of what is false; whether is be by direct falsehood, or by innuendo, by speech or by silence, by word of mouth or by a look or a gesture. Fraud of this kind may be defined to by any artifice by which a person is deceived to his disadvantage.*"
Bisph. Eq. Sec. 206 Bouiver's Law Dictionary (unabridged, Page 1306)

Tweel v. U.S. , 550 F. 2d. 297.

29. "The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transaction." **Allen F. Moore v. Stanley F. Sievers**, *336 Ill. 316; 168 N.E. 259 (1929).*

Also, "*Fraud vitiates the most solemn contracts, documents, and even judgments*" **U.S. v. Throckmorton**, 98 U.S. 61.

STATEMENT OF THE FACTS

30. On or about August 1999, Defendant, ALISON GRATZOL, by and through her attorney MAX WALKER, filed for divorce seeking "sole custody" of the parties' two minor children (i.e. removal of the Plaintiff's fundamental equal parental rights) herein referred to by their initials, AFS, and MRS.
31. At the time of the filing by Defendants, all parties lived and worked in Elkhart, Indiana. MAX WALKER, filed the divorce action in Goshen, Indiana, in the Elkhart Circuit Court of Judge Terry Shewmaker.
32. Neither WALKER nor the Judge ever disclosed they had a conflict of interest that they had been law partners up until Shewmaker became a Judge of the Circuit Court. Walker has other contacts and relatives in Elkhart Superior Court.

33. Approximately one (1) year later, around August of 2000, Plaintiff Sanjari uncovered this conflict of interest. But, only after Judge Shewmaker had made a number of gender discriminatory and prejudicial decisions regarding custody and support against Plaintiff and in favor of Defendant GRATZOL.
34. Attorney MAX WALKER had brutally assaulted a woman friend and her minor (9 years old at the time) daughter. Upon hospitalization, the woman filed a criminal complaint against WALKER. The evidence somehow disappeared and got "lost". WALKER got away with a nominal suspension of his law license. Evidence (court records) available.
35. As can be seen by WALKER'S behavior, he has corruptly influenced, misused and abused the court process to his advantage and to the deprivation of Plaintiff's fundamentally secured rights in conspiracy with Gratzol.
36. Plaintiff contested Gratzol's "sole custody" (removal of Plaintiff's parental rights) demand. Defendant agreed with Plaintiff to equal shared (equal legal and physical) custody of the children. Plaintiff was unfairly forced to pay inordinate and excessive amount of child support to Defendant even though both parties were making almost identical income and had equal custody and parenting time with the children.
37. In August of 2000, after a change of judges on protest by Sanjari, Special Judge David Denton presided over the case. This was another friend and

associate of WALKER. During the proceedings involving the children, WALKER, specifically and explicitly stated in court that he didn't give a "fuck" about the children because his client (Gratzol) had control of them.

38. On August 23, 2000 the Elkhart Superior Court issued the final divorce decree. Both parties, Sanjari and Gratzol, shared equal physical and legal custody of the children. **EXHIBIT #1, pg 1, §2** --Indiana Decree of Dissolution. (Gratzol's then boyfriend, later to become her husband, John Gratzol, moved into the marital house hardly a week after this date).

39. At this time, Gratzol and her husband John Gratzol set about on their willfully malicious campaign to alienate the oldest minor child, AFS, against Plaintiff father. This inflicted and initiated a long period of psychological problems upon AFS which was to be intensified by the Gratzols later. Alison Gratzol herself had suffered (resulting in suicide attempts, etc in early adulthood), and ostensibly still suffers from psychological inflictions, mental instability and problems perpetrated upon her by her own mother. Defendant Gratzol began inflicting the same upon AFS, and now MRS.

40. In June of 2001 Plaintiff was about to take the two children to England (travel expenses had been paid a long time before) for a month vacation and visit with relatives (Sanjari and the said children are British citizens) that had been planned many months earlier with the knowledge and agreement of

both parents. As part of a conspiracy carefully planned well in advance (of Sanjari's and children's trip to England) by the Gratzols and Walker to deprive Sanjari of his parental rights and equal custody, a few days prior to the departure, they got a secret *ex parte* court order from Elkhart court (by now under special judge Michael D. Cook), without service of process and in violation of Sanjari's due process rights (a normal occurrence and violation in Elkhart courts), to freeze and garnish Sanjari's salary and bank accounts leaving him destitute and with no money for rent, subsistence, household and all other expenses necessary for and associated with bringing up two children. This diabolical act by the Gratzols and Walker was particularly egregious and inhumane given that the two minor children actually *lived* with Sanjari at least 50% of the time, i.e. his own 50% (equal legal and physical custody) plus any additional time that Gratzol did not want the said children with her.

41. Gratzol and Walker had the Elkhart county sheriff, again without service of process, impound Sanjari's car on the day he and the children left for England. The impounding of the car was effected, without Sanjari's knowledge, by the sheriff a few hours after Sanjari's and his children's departure. Similarly, an unlawful (civil) body attachment was also issued against Plaintiff a week or two later while he and the children were in

England. In violation of Sanjari's due process, no lawful notice or service of process (either timely or properly) was issued to him (either by the Elkhart court or by Gratzol or her attorney), nor was Sanjari given the opportunity to challenge the allegations contained in the said orders prior to their issuance.

42. While in England, in July 2001, Sanjari received letters from the Elkhart County sheriff's department informing him that his car had been imounded and a body attachment issued against him.

43. As originally had been planned and agreed, the children returned to Indiana on July 10, 2001. Sanjari's return to Indiana was delayed as he remained in England a little longer to get together some money to deal with the fraudulent machinations of Gratzol and Walker in Indiana and challenge said unconstitutional orders. No doubt this had entered into Gratzol's and Walker's calculations when they plotted their conspiracy.

44. On July 12, 2001, only two (2) days after the children were back in Indiana, Gratzol and Walker filed another secret and *ex parte* petition for "sole custody" of the minor children, (i.e. removal of Sanjari's fundamental parental rights) falsely and fraudulently, under oath, alleging that Sanjari (father) would not be returning to the United States. **Exhibit # 2, §5**. In this case, too, Gratzol and Walker did not serve service of process to Sanjari of the petition. This constituted malicious use, misuse or abuse of the court

process and defrauded Sanjari out of his fundamentally secured rights, and in violation of his due process and equal protection rights, as well as defrauding the court. Again, in violation of Sanjari's due process rights, neither Gratzol, nor her attorney issued lawful, proper and timely notice to Sanjari. This was in violation of the US Constitution and laws, and Indiana constitution and laws.

45. These acts constituted blatant fraud and conspiracy to deprive Sanjari of his due process rights under the **Fourteenth Amendment**.

46. The Elkhart County Superior Court knowingly went along with this conspiracy by granting the *ex parte* order (hereinafter referred to as *in rem* ' "sole-custody" order ', fraudulently dated August 27, 2001[2]) without appearance by Sanjari, and merely on the basis of the lie that Sanjari was not returning to the US. Attached **Exhibit # 3, pg 1 §2**, shows the said (*in rem*) order removing Sanjari's fundamentally protected parental rights of equal custody of his children in violation of his due process and equal protection rights. This resulted in the exercise of "sole-custody" of the children by Gratzol, and loss of Sanjari's family life, mutual care, companionship, love and association with his children since 2001, in addition to resulting in

2 Elkhart Court records, including, but not limited to the docket or the Chronological Case Summary ("CCS") have been repeatedly falsified and tampered with to prevent any effective appeal by and remedy for Sanjari.

financial loss and damage to him. There is a family right to privacy which cannot be invaded or it becomes actionable. **Griswold v. Connecticut**, 381 US 479, (1965).

47. Sometime in the week after September 11, 2001, in a telephone conversation while Sanjari was trying to communicate from England with his children in Indiana, both the Gratzols told him of their intention that they "*will get* [Sanjari] *out of the children's lives*". Thus far, with egregious deprivation of Sanjari's constitutionally protected parental rights, they, in conspiracy with Walker, appear to have succeeded in their schemes.

48. Upon further delay due to the restrictions on international travel after September 11, 2001, Sanjari returned to the US (as maybe irrefutably verified by the US Immigration Department, Sanjari's new employer at the time, the children, and other parties involved) in October 2001, since which date he has been living in the US. This is ***prima facie*** evidence that the Defendant Gratzol's claim, which was the sole basis for seeking and granting the "sole-custody" order, that Sanjari was not returning to the US was deliberately false and fraudulent. And that the said "sole-custody" order dated August 27, 2001, was sought and issued based upon lies and through fraud and deceit by Defendant Gratzol in conspiracy with her husband and her attorney. Upon the confirmation of Sanjari's return to the US in October

2001, Gratzol and Walker conspired with others to falsify the date of the "sole-custody" order to August 27, 2001, which resulted in putting it outside the time line for any appeal by Sanjari. As a result of this and some other irregularities, Sanjari was unable to file a timely direct appeal of the order. In any case, a *void* order has no force of law.

49. Since 2001, Defendant Gratzol and her husband have gone on to obtain further unlawful and unconstitutional orders from the Elkhart Superior Court in the state case in conspiracy with Walker, et al.. These orders subsequent to and based upon the "sole-custody" order of 2001 are also *void* both on grounds of having been sought and obtained fraudulently and in violation of due process and other constitutional rights in themselves, as well as being based upon the aforementioned *void* "sole custody" order.

CLAIM FOR RELIEF

50. The Plaintiff contends and asserts that the said *in rem (ex parte)* "sole custody" order is *null* and *void ab initio* because it was both sought and granted fraudulently and in violation of his fundamental constitutional rights of due process, equal protection and parental rights (**Fourteenth Amendment**), as:

A) no notice or service of process, as required by law and due process, of

the Gratzol's petition (of July 12, 2001) was issued to Sanjari. Nor was Sanjari timely and lawfully informed of the said petition (he was in England which Gratzol and Walker were well aware of). *The Due Process Clause of the Fourteenth Amendment requires that severance in the parent-child relationship caused by the state occur only with rigorous protections for individual liberty interests at stake. ... The parent-child relationship is a liberty interest protected by the Due Process Clause of the 14th Amendment.* **Bell v. City of Milwaukee**, 746 F 2d 1205, 1242-45; (7th Cir., WI, 1984). Also, [t]*he liberty interest of the family encompasses an interest in retaining custody of one's children and, thus, a state may not interfere with a parent's custodial rights absent due process protections*. **Langton v. Maloney**, 527 F Supp 538, D.C. Conn. (1981).

B) it was based upon a lie (i.e .that Sanjari was not ever returning to the US), deceit and fraud upon Sanjari, his children and the Court.

This violated the Plaintiff's **Fourteenth Amendment** and other rights. Fraud vitiates everything.

C) it is unconstitutional. The USSC has a well-established history on the fundamental rights of parents. E.g., USSC, as a matter of due process, has held that a fit parent may not be denied [or have removed his] equal legal and physical custody of [his] minor child[ren] without a finding by clear and

convincing evidence of parental unfitness and substantial harm to the child, when it ruled in **Santosky v. Kramer**, at 745, 753, that "*[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment*."

There was never any claim, much less proof, of parental unfitness or harm to the children in Gratzol's seeking and Elkhart court's issuing of the said "sole-custody" order (see **Exhibits 2** and **3**). I.e. there was never any showing of state "compelling interest" nor "strict scrutiny" in removing Sanjari's fundamentally protected equal custody. Hence, this action by Elkhart court violated Sanjari's right of due process before the deprivation of a fundamental right, therefore the Elkhart court's judgment is *void* and all fruits from that *void* judgment are tainted as well. *State Judges, as well as federal, have the responsibility to respect and protect persons from violations of federal constitutional rights*. **Gross v. State of Illinois**, 312 F 2d 257; (1963). Also, [f]*ather enjoys the right to associate with his children which is guaranteed by this **amendment (First)** as incorporated in **Amendment 14**, or which is embodied in the concept of "liberty" as that word is used in the Due Process Clause of the **14th Amendment** and Equal Protection Clause of the **14th Amendment***. **Mabra v. Schmidt**, 356 F Supp 620; DC, WI (1973).

Also, quoting **Santosky v. Kramer**, 455 U.S. at 749, 753-754 (1982) in **Franz v. United States**, 707 F.2d 582 (1983), the Court stated:

"*…the Court has expressly held that the interest of a parent, who has temporarily lost custody of his child; in avoiding elimination of his rights ever to visit, communicate, or regain custody of the child is important enough to entitle him* ***to the procedural protections mandated by the Due Process Clause.***" *Id.* at 596. [Emphasis added.].

51. The failure to serve service of process of her petition (**Exhibit # 2**) upon Sanjari lawfully, legally, constitutionally and properly as required by law and due process constitutes violation of Sanjari's due process rights before even the deprivation of his other fundamental rights, under the **Fourteenth Amendment**, by the Elkhart court. Hence, the said "sole-custody" judgment is *void* and all fruits from that *void* judgment are tainted as well, i.e. all orders, judgments and proceedings based upon the said *in rem* order are also *void ab initio*.

52. Needless to say, the said *in rem* "sole-custody" order has caused, in addition to deprivation of constitutional Rights, family life, "liberty", "pursuit of happiness", livelihood, irreparable harm to Sanjari and his children and resulted in psychological and physical abuse of the children in the unlawful custody imposed upon them as the direct effect of the said *void in rem* order.

Hence, the said order is also in violation of Sanjari's and his minor children's **Eighth Amendment** as it inflicted and continues to inflict upon them cruel and unusual punishment (the above deprivations and harm) by the state and its court, especially where no law or contract had been broken by the victims. This punishment by Indiana court violates both Common Law and the Constitution.

DOMESTIC RELATION EXCEPTION AND ROOKER-FELDMAN DO NOT APPLY

53. Domestic Relations and Rooker-Feldman exceptions do NOT apply to the instant case as it is merely "incidental" and irrelevant that the atmosphere giving rise to the *in rem* order was that of DR. The issues before this Court are NOT Domestic Relations issues. Sanjari is NOT seeking declarations on DR issues. The issues before this Court are fraud, deception and constitutional violations resulting in and from the *in rem* order and the claim of its unconstitutionality.

In **Catz v. Chalker**, 142 F.3d 279 (C.A.6 (Ohio) 1998), "*former husband's action, seeking a declaration that the state divorce decree was void as a violation of due process, was not a core domestic relations case to which the domestic-relations exception applied). Catz did not seek declaration of*

marital or parental status, but instead presented a constitutional claim in which it was incidental that the underlying action involved a divorce. Id. Fourteenth Amendment. The domestic-relations exception has no generally recognized application as a limitation on federal question jurisdiction; it applies only as a judicially implied limitation on diversity jurisdiction. ***U.S. v. Johnson****, 114 F.3d 476 (C.A.4 (Va.) 1997)*.".

Also, **Nesses v. Shepard**, 68 F.3d 1003, 1005 (Cir. 7, 1995).

54. In **Loubser** (*pro se*) **v. Thacker, et al.,** No. 05-3058 , U.S. CA7 (Indiana) 03.08.2006, Decided, regarding inapplicability of Rooker-Feldman, stated,

> *"The grounds* [Rooker-Feldman] *on which the district court dismissed* ***Loubser's*** *suit were erroneous. The claim that a defendant* [....] *"so far succeeded in corrupting the state judicial process as to obtain a favorable judgment" is not barred [*6] by the Rooker-Feldman doctrine.* ***Nesses v. Shepard****, 68 F.3d 1003, 1005 (7th Cir. 1995). But Rooker-Feldman does not impose a duty to exhaust judicial and administrative remedies before pursuing a federal civil rights suit.*

55. In any case, the instant *in rem* action is not an appeal from the state court. Actions in Indiana state courts regarding the instant *in rem* order have been concluded. There is no action in the state court pending regarding the said *in rem* order.

56. In any case, collateral actions are allowed in federal courts pertaining to *void* orders and their unconstitutionality (see *VOID* JUDGMENT above).

57. Allowing the "judicially created doctrines" of Rooker-Feldman and domestic relations to impede the instant action would be "abuse[d]" of "authority" by federal courts. USSC in **Marshall v. Marshall**, 126 S. Ct. 1735, 1748 (2006), ("Marshall", a case from the Texas domestic/probate court), *unanimous*, in which the USSC expressly admonishes the lower federal courts for that abuse, stating:

> *"we warned that the lower courts have at times extended Rooker-Feldman "far beyond the contours of the Rooker and Feldman cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to* ***28 U. S. C. §1738." 544 U. S., at 283****. Rooker-Feldman, we explained,* ***is a narrow doctrine****".*

And,

> *"Last Term, in Justice Ginsburg's lucid opinion in* ***Exxon Mobil Corp. v. Saudi Basic Industries Corp.****, 544 U. S. 280 (2005), the Court finally interred the so-called "Rooker-Feldman doctrine." And, today,* ***<u>the Court quite properly disapproves of the District Court's resuscitation of a doctrine that has produced nothing but mischief for 23 years</u>.*** *My disagreement with the majority arises not from what it actually decides". .... "Rather than preserving whatever vitality that the* [probate/domestic] *"exception" has retained as a result of the Markham dicta. I would provide the creature with a decent burial in a grave adjacent to the resting place of the Rooker-Feldman doctrine. See* ***Lance v. Dennis****, 546 U. S.,* USSC No. 05-555*(2006)*["Lance"] *(STEVENS, J., dissenting) (slip op., at 2–3)*. "
> (Emphasis added).

58. In **Ankenbrandt v. Richards**, 504 U.S. 689 (1992), the USSC clearly explained:

> "*The* <u>*Barber*</u> *Court thus did* ***not*** *intend to strip the federal courts of authority to hear cases arising from the domestic relations of persons unless they seek the granting or modification of a divorce or alimony decree*."
> (emphasis added). They further added,
>
> "*By concluding, as we do, that the domestic relations exception encompasses* ***only*** *cases involving the issuance of a divorce, alimony, or child custody decree, we necessarily find that the Court of Appeals* ***erred*** *by affirming the District Court's invocation of this exception*." (emphasis added).

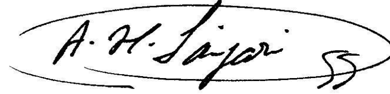
59. Sanjari is not seeking the granting or modification of a divorce or alimony decree. He is seeking a ruling upon the constitutionality (lack thereof) and voidness of the said *in rem* judgment.

WHEREFORE, the undersigned Plaintiff, Amir H. Sanjari, *self-represented*, now requests from the court the following:

A- declaratory and injunctive relief declaring the said *in rem* order (issued and dated August 27, 2001, by Elkhart Superior Court of Indiana), and all subsequent orders based upon it, *void ab initio*,

B- and for all other relief deemed just and proper in the premises.

Respectfully submitted,



Dated: September 11, 2007

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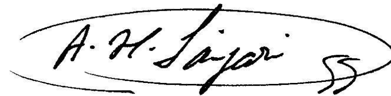
Amir H. Sanjari
self-represented,in propria persona

c/o 130 D Old Ferry Road
Haverhill, MA 01830
Ph: (978) 373 1612

VERIFICATION

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

Executed this _11th _ day of September, 2007.



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