UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WESLEY TRENT SNIPES,

Plaintiff,

v.

04 Civ. ( )

CITY OF NEW YORK, a Municipal Corporation; COUNTY OF NEW YORK, a Municipal Corporation; Family Law Court of New York; LAPORTE COUNTY, a Municipal Corporation; PRISCILLA JO BECKMAN; ROBERT BECKMAN; MARJORIE WEINER; and DAVID KIRSHBLUM,

Defendants.

----------X

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF WESLEY SNIPES'S APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND/OR A PRELIMINARY INJUNCTION

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INTRODUCTION

Plaintiff Wesley Trent Snipes respectfully submits this Memorandum of Law in support of his application, pursuant to Rule 65, Fed.R.Civ.P., for a Temporary Restraining Order (hereinafter "TRO") and/or Preliminary Injunction.

As detailed below, Mr. Snipes easily meets both criteria for a TRO (and Preliminary Injunction): (a) the prospect of imminent irreparable injury; and (b) likelihood of success on the merits (or a balancing of the equities in his favor). In fact, as set forth below with respect to the legal arguments, and in the accompanying papers filed herewith, including the December 17, Declaration of Joshua L. Dratel, Esq. (hereinafter "Dratel Declaration"), and the Exhibits thereto,

particularly the December 14, 2004, Affidavit of Bill E. Branscum (hereinafter "Branscum Affidavit"), a private investigator, and the statements obtained by Mr. Branscum, with respect to the factual circumstances, Mr. Snipes has demonstrated an overwhelming likelihood of ultimate success on the merits of his action.

The legal analysis set forth below demonstrates that the New York courts lack any jurisdiction – personal or subject matter – over Mr. Snipes to compel his appearance in the Uniform Interstate Family Support Action (hereinafter "UIFSA") in Family Court, to order him to submit to a DNA extraction, and/or to effect process on him in any manner, including execution of the outstanding arrest warrant against him with respect to the UIFSA action pending in New York State court.

Regarding the facts, the statements obtained by Mr. Branscum reveal that the Indiana and New York authorities (in essence, the Defendants) who have instituted and prosecuted the New York UIFSA action against Mr. Snipes, and who have sought, obtained, and/or issued the warrant for his arrest, have done so despite the clear and indisputable evidence that the claims of paternity against Mr. Snipes are untrue and unfounded, and unworthy of belief, and are based on the delusions of mentally impaired woman who has previously been institutionalized, and whose family and friends have all disavowed her claims and confirmed her mental illness. The statements also establish that the Defendants were in possession of sworn statements to that effect, yet proceeded anyway (and recklessly and improperly failed to conduct any investigation, even the most cursory of which would have disclosed the same information that is in the statements).

Indeed, the UIFSA action against Mr. Snipes is the product of "runaway" prosecutors and

administrators who have ignored not only jurisdictional limitations imposed by statute and due process, but also incontrovertible facts that completely refute the allegations underlying the UIFSA action itself. Thus, the UIFSA action against Mr. Snipes constitutes an egregious abuse of UIFSA, is entirely without legal or factual merit, and represents a continuing violation of his constitutional rights for which he seeks relief and vindication in this Court.

In addition, the irreparable harm to Mr. Snipes is manifest. As long as the arrest warrant and/or the UIFSA action remain pending – and as Exhibit 4 to the Dratel Declaration makes clear, that warrant is still active – he is in need of immediate and injunctive relief in order to permit him to travel to New York, and/or live his life and pursue his career free of the fear of wrongful arrest and invasion of his personal privacy (via a forced extraction of a DNA sample).

Accordingly, for the reasons set forth below, and in the accompanying Dratel Declaration and Exhibits thereto, and in the Complaint itself, it is respectfully submitted that the Court should issue a TRO and/or Preliminary Injunction restraining and enjoining the Defendants from: (a) issuing, or acting upon, further process in the UIFSA interstate parentage and child support action pending against Mr. Snipes in New York, including, but not limited to any process commanding Mr. Snipes's physical arrest or incarceration, his bodily invasion including, but not limited to, the forcible extraction of DNA, and his personal appearance in said UIFSA proceedings; (b) disclosing Mr. Snipes's personal and private financial information from business associates or himself; and from disclosing in the future any of these state paternity proceedings to the public; and (c) continuing to prosecute Mr. Snipes under UIFSA in a tribunal, such as that in New York State Family Court, that lacks subject matter and/or personal jurisdiction over him.

STATEMENT OF THE FACTS

This Memorandum of Law respectfully incorporates by reference the averments in the Dratel Declaration, the Branscum Affidiavit, and the Exhibits to those submissions, as well as the Complaint filed herewith. In the interests of brevity and efficiency, the facts set forth in those documents will not repeated herein.

ARGUMENT

POINT I

DEFENDANTS LACK BOTH PERSONAL AND/OR SUBJECT MATTER JURISDICTION OVER MR. SNIPES

As a threshold matter, a TRO and/or Preliminary Injunction should be issued whenever the moving party shows irreparable harm absent the requested injunctive relief pending final adjudication. The moving party must demonstrate either probable success on the merits or, if no probable success on the merits, the movant must show undue harm in the balancing of the hardships, as well as sufficiently serious questions going to the merits to warrant preliminary relief. *See Caulfield v. Board of Education of the City of New York*, 583 F.2d 605 (2d Cir. 1978).

As detailed below, Defendants have transgressed, and will continue to transgress – absent injunctive relief – jurisdictional limits clearly defined under UIFSA. Both the United States Supreme Court and the New York State courts have issued opinions that are directly on point, and which thereby assure Mr. Snipes success on the merits. Absent a TRO and/or Preliminary Injunction, and notwithstanding New York's total lack of subject matter and/or personal jurisdiction over Mr. Snipes with respect to the UIFSA action, Mr. Snipes faces the continued risk of arrest, imprisonment, and forced DNA extraction. Also, Mr. Snipes faces significant

adverse publicity that will irreparably damage his career and violated his right to privacy. All of this tangible harm violates Mr. Snipes's right to due process as guaranteed by the Fourteenth Amendment to the U.S. Constitution. Hence, it is respectfully submitted that the Court should issue the TRO and/or Preliminary Injunction.

The fundamental right to due process of law prohibits state incursions into protected liberty and property interests without "all the process that is due" given the weight of the interest involved. *Harhay v. Town of Ellington Board of Educ.*, 323 F.3d 206, 213 (2d Cir. 2003). The Fourteenth Amendment's due process clause requires a two-fold analysis: the deprivation of constitutionally cognizable interest in liberty or property and the absence of "adequate process before being deprived of that interest." *Harhay, supra.* Furthermore:

> in assessing whether a government regultion impinges on a substantive due process right, the first step is to determine whether the asserted right is fundamental. Rights are fundamental when they are implicit in the concept of order liberty, or deeply rooted in this Nation's history and tradition. Where the right infringed is fundamental, strict scrutiny is applied to the challenged governmental regulation.

Leebaert v. Harrington, 332 F.3d 134, 140 (2d Cir. 2003).

The United States Supreme Court has expressed special due process concerns when state courts subject non-residents to their order(s), as the right to due process limits the power of state courts over nonresidents. *Kulko v. Superior Court of California*, 436 U.S. 84 (1978). The state cannot, within the parameters of constitutional due process, enter judgment or assert personal jurisdiction over a nonresident defendant when there is no substantial nexus between the defendant's contact with the state and the subject matter of the state suit. *Kulko*, 436 U.S. at 84.

Family law, which implicates so many fundamental rights and invites precarious

invasions into those protected rights through selective forum shopping, requires a specific family-based nexus between the suit and the conduct of the non-resident in the state beyond minimal contacts or business involvement. As the Court held in this precise area of family law:

> [t]he Due Process Clause of the Fourteenth Amendment operates as a limitation on the jurisdiction of state courts to enter judgments affecting rights or interests of nonresident defendants. It has long been the rule that a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered only by a court having jurisdiction over the person of the defendant. The existence of personal jurisdiction, in turn, depends upon the presence of reasonable notice to the defendant that an action has been brought and a sufficient connection between the defendant and the forum State to make it fair to require defense of the action in the forum.

Kulko, 436 U.S. at 93.

In further explication of this rule, the Court observed that: "the constitutional standard for determining whether the State may enter a binding judgment against appellant here is . . . that a defendant have certain minimum contacts with [the forum State] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Id.* The fundamental criterion for establishing jurisdiction is whether the "quality and nature" of the defendant's activity is such that it is "reasonable" and "fair" to require the non-resident defendant to conduct his defense in that state. *Id.* This "affiliating nexus" between the subject matter of the defendant's contact and the subject matter of the suit determines the constitutional parameters of state court authority over a non-resident. *Id.*

Specifically in *Kulko*, the Court ruled that California could not file a child support action against a non-resident father even though the father married his ex-wife in California, honeymooned in California, visited with his children in California, his children physically

resided in California with the consent of their father, and the father frequented California for independent matter. *Kulko, supra.* The court held that asserting "in personam jurisdiction" over the non-resident father "[made] a mockery of the limitations on state jurisdiction imposed by the Fourteenth amendment" because many of those contacts involved "unrelated actions." *Id.* Even the defendant's apprising himself of the marriage laws of California was constitutionally inadequate because apprising oneself of marriage laws does not relate to an action for child support. *Id.* Moreover, the Court also specifically distinguished "commercial transactions in interstate commerce" from "personal domestic relations." *Id.*

Again, the Court's ruling reemphasized the "affiliating nexus" requirement between a non-resident's actions and the specific subject matter of the state litigation. In short, the Constitution requires a volitional act of the defendant to "purposefully avail himself" of the benefits and protections of the very laws that form the subject matter of the suit. *Kulko, supra.* The Court noted the proper forum was "the state of the domicile" of the defendant, since none of the defendant's conduct evinced a reasonable expectation that he could be haled into court for a child support suit in a purely personal, domestic matter. *Id.*

Cognizant of these concerns in interstate paternity disputes, Congress required each state to adopt UIFSA, providing a uniform national system of adjudicating such matters. The history of the law reflected scholastic and state concern for the process rights of nonresidents, rights the uniform law attempted to balance within the necessary constitutional parameters outlined by the Supreme Court. UIFSA requires suit in only those states with an "affiliating nexus" between the family matter in dispute and the conduct of the parties to the suit. Congress also mandated that state governments follow regulations issued by the Secretary of Human and Health Services in

order to provide enforcement methods for this requirement.

In fact, Title IV-D of the Social Security Act (SSA), and accompanying statues with implementing regulations, prescribe the proper process for paternity prosecutions by welfare agents. Hence, each state's paternity laws incorporate federally mandated provisions. *See* 42U.S.C. §666, et seq.

That Congressional action deliberately conformed the federal statutes to the Supreme Court's rulings on the constitutional means of asserting personal jurisdiction over non-residents regarding paternity and child support actions. *Kulko, supra.*

a. The Defendants Violated The Subject Matter and Personal Jurisdictional Requirements under UIFSA.

UIFSA provides the only method and means for long arm jurisdiction in interstate paternity and child support cases. The drafters of UIFSA intended a state to use the long arm jurisdiction only to allow "the obligee's home state[1] the best opportunity to secure personal jurisdiction over the absent obligor." *David H. Levy & Cecilia A. Hynes, Highlights of the Uniform Interstate Family Support Act*, 83 Ill. B.J. 647 (1995). It was never intended as a forum shopping device for money-hungry litigants or publicity-seeking state welfare officials. These respected commentator's position is clearly supported by the policy behind section 201 of UIFSA; *e.g.*, to give the tribunals in the home state of the supported family "the maximum possible opportunity to secure personal jurisdiction over an absent respondent" (*see*, UIFSA (1996), Prefatory Note, II.A.2), which also conformed with UIFSA's other requirement concerning exclusive jurisdiction.

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[1] Indiana is the obligee's home state.

Of particular note, UIFSA anticipated that no forum would exercise jurisdiction if none of the parties resided in the forum state; as the drafters thoughtfully noted, there is no "appropriate nexus" between the forum state and the action sufficient to justify the exercise of jurisdiction over the action if neither the mother, the child, nor the father reside in the forum state. The Family Law Court of New York itself recognizes that it lacks both subject and personal jurisdiction under thosee factual circumstances, which are present here as well. *Rebecca B.W. v. Stephen B.*,501 N.Y.S. 2d 272, 131 Misc. 2d 651 (N.Y. Fam. Ct. 1986).

Additional New York authority fully supports Plaintiff Snipes's position herein. In assessing the jurisdiction of the Family Court in an inter-state UIFSA case, a Family Court judge must find that the "initiating" state complied with that state's laws before the Family Court can exercise jurisdiction over a UIFSA claim. *Neville v. Perry*, 648 N.Y.S. 2d 508, 170 Misc. 2d 347(N.Y. Fam. Ct. 1996).

These requirements entail properly sworn affidavits validating the claim. *Id.* In addition, New York courts recognize that the federally mandated UIFSA establishes "clear rules" for when the court has jurisdiction over an inter-state paternity case. *Chisholm-Brownlee v. Chisholm*, 676 N.Y.S. 2d 818, 177 Misc. 2d 185 (N.Y. Fam. Ct. 1998). Thus, in *Chisholm*, the court held that if the inter-state petition itself failed to allege minimum contacts with New York consistent with the Fourteenth Amendment, the New York court lacked jurisdiction. *Id.*

The federally enacted UIFSA defines the "subject matter jurisdiction" for any UIFSA case. *Nelson v. Peters*, 2002 WL 1058566 (N.Y. Supp. 2002). This jurisdictional limitation takes on special meaning for the very limited jurisdiction afforded New York Family Courts. *Renzulli v. McElrath*, 712 N.Y.S. 2d 267, 271, 185 Misc. 2d 242, 247 (2000). The Family Court

is a court of specialized limited jurisdiction, and cannot exercise powers beyond those granted by statute. *Id.* In this regard, New York courts consistently have admonished that each judge must conduct a "due process" analysis before asserting jurisdiction over a non-resident in an interstate paternity case. *In re Regina H. v. Joseph A.C.*, 712 N.Y.S. 2d 347, 184 Misc. 2d 978 (N.Y. Fam. Ct. 2000). Even an admission by a putative father that he "lived and resided in New York" could not confer jurisdiction on the family court when there is an absence of any documented facts showing he "purposefully availed" himself of New York family laws. *Id.*

Moreover, mere visits to the state and commercial contacts with the state, even if those commercial contacts involved financial payment to the family, cannot meet the "due process" requirements for the legitimate assertion of Family Court authority over a non-resident. *Birdsall v. Melita*, 688 N.Y.S. 2d 283, 260 A.D. 809 (3rd Dept. 1999). When none of the parties reside in the state, the state lacks the "appropriate nexus" to exercise jurisdiction over the dispute. *Hopkins v . Browning*, 719 N.Y.S. 2d 839, 186 Misc. 2d 693 (N.Y. Fam. Ct. 2000).

New York courts recognize the limitations imposed by UIFSA, the persuasive authority of the commentators who drafted UIFSA, and, as always, the "compelling interest" a putative father has in any paternity dispute. *Luna v. Dobson*, 97 N.Y. 2d 178, 738 N.Y.S. 2d 5 (2001); *Hopkins, supra.* Not surprisingly, other jurisdictions agree.

For example, when jurisdiction does not exist under UIFSA, or the state version thereof, other states have determined that the state court lacks subject matter jurisdiction over such interstate paternity petitions. *See, e.g., In re Marriage of Zinke*, 967 P. 2d 210 (Colo. App. 1998); *Marriage of Metz*, P. 3d 1128 (Kan. App. 2003).

Similarly, when the residency requirements of UIFSA are not met, the court loses subject

matter jurisdiction over the claim. *Id.* Other provisions of state family law cannot defeat or overcome a jurisdictional defect under UIFSA, which trumps those provisions. *Id.* Whenever there is no "appropriate nexus" between the parties and the forum state, then jurisdiction is not justified under UIFSA. *Id.*

UIFSA codified the constitutional due process requirement in the statute itself, requiring courts to conduct both a long arm jurisdiction and due process analysis before they can assert any jurisdiction over the subject matter of a UIFSA claim. *Gullo v. Gullo*, 74 P. 3d 612 (Ok. Civ. App. 2003). Thus, a state trial court must conduct a due process analysis before taking any action against a nonresident respondent in an UIFSA case. *Marriage of Malwitz*, 2003 WL 21026719 (Colo. App. 2003).

Moreover, the party seeking to invoke jurisdiction over a nonresident in a UIFSA case via a long-arm provision has the burden of establishing jurisdiction . *South Carolina Dept. Of Social Services v. Basnight*, 551 S.E. 2d 274 (Ct. App. SC 2001). That burden requires showing that a particular respondent's conduct falls within the long arm jurisdiction under UIFSA, and that the character of the respondent's contacts with the forum state make asserting jurisdiction over the respondent sufficient to protect the due process rights of the respondent. *Id.* This, in turn, imposes a multi-layered analysis by state courts, asserting the duration of the respondent's activity, the relevant time frame for the respondent's activity, the circumstances of the respondent's activity, the inconvenience to the respondent in asserting jurisdiction over him in the forum state, and the state's interest in exercising jurisdiction. *Basnight, supra.*

This due process analysis under UIFSA requires that the "quality and nature" of the respondent's activity in the forum state suffice to make it both reasonable and fair to force the

respondent to defend in this foreign state. *Gullo, supra.* Again, the courts, following *Kulko*, distinguished "commercial" activities from domestic activities. Hence, a court cannot confer personal jurisdiction over a nonresident respondent under UIFSA for that respondent's commercial contacts in the forum state. *Id.* The court must conclude the putative father purposefully availed himself of the state's (family court) laws, that the claim in the case "relates to and arises out of" the activities of the putative father in the state, and the exercising jurisdiction over the respondent is truly "reasonable" under the circumstances of the case. *Gullo, supra.* And, as always, this burden remains on the petitioner, not the respondent, to prove these jurisdictional facts. *Id.*

For example, a court had no jurisdiction over a UIFSA claim for child support for two children, even though the parent had resided in the state with another child born of the relationship. *Abu-Dalbouh v . Abu-Dabouh*, 547 N.W. 2d 700 (Minn. Ct. App. 1996). Similarly, a respondent's marriage, honeymoon, and vists with his children in the forum state failed to suffice to meet the due process jurisdictional requirement of UIFSA. *Coleman v. Coleman*, 2003 WL 21040172 (Ala. Civ. App. 2003). *See also Zinke; Metz.*

Even frequent contacts between a nonresident parent and a child within the state by both phone and mail fail to suffice to meet the minimum contacts threshold for constitutionally permissible personal jurisdiction over the nonresident parent in a matter involving the child. *Zinke, supra; In re Marriage of Crew*, 549 N.W. 2d 527 (Iowa 1996).

These state court rulings reiterate the critical role of an "affiliating nexus" between the respondent's conduct and the forum state, with the focus on the respondent's intent.

b. Right to Relief from this Court.

The need for national uniformity in paternity cases requires special federal monitoring to insure consistent adjudication concerning the jurisdictional requirements of UIFSA. *Metz, supra.* A jurisdictionally defective judgment may be challenged in any proceeding. *Gullo, supra.* In fact, "any judgment a court renders against a defendant over whom the court does not have personal jurisdiction is not merely voidable, but void." The Supreme Court of the United States, in recognizing that a void judgment "has no legal force or effect," stated:

> [b]ut, if it [a court] act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal, in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers.

Elliot v. Peirsol, 26 U.S. 328, 340 (1828); *see also Outten v. Campbell*, 2002 WL 1042181 (Tenn. Ct. App. 2002).

Courts have even approved writs of mandamus when a lower court asserted jurisdiction over a respondent without meeting the due process requirement of UIFSA. *Coleman, supra.* UIFSA thus limits the jurisdiction of courts acting under its provisions by imposing as jurisdictional prerequisites both personal residence of the parties and constitutional jurisdiction over the defendant.

Here, the New York Family Court used Plaintiff's minimal commercial contacts to find that Plaintiff was "found within the State."[2] The Defendants' theory permits essentially

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[2] The hearing examiner made the finding, a task he was not authorized to perform as a matter of law. The hearing examiner is an administrative official attached to the Family Court of New York whose sole duties involve administrative tasks such as ascertaining the mathematical formula for child support. His only fact-finding role is to apply that formula to a

unfettered state court invasions of the most protected rights for anyone such as Plaintiff, who has national and international business interests. Being involved in the film industry, Mr. Snipes may very well have commercial "contacts" with film distributors and cinema houses in every state in the nation. However, that extremely discrete, limited, and intangible connection does not mean he can be sued for determination of parentage and child support in every state in the country, and thereby be at the mercy of any and every opportunistic state prosecutor looking for a high-profile "scalp." Indeed, a celebrity, even by subjecting himself to process merely to disprove baldly false accusations would, by so doing, declare "open season" on himself in

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person's income situation.

In Chapter 686 (New York Family Court Act), hearing examiners preside only as follows – when "appointed in proceedings to compel support pursuant to section 439." §120(b). It is only after "proceedings in which it makes a finding of paternity" that the court can consider proceeding "to order support." §511. Indeed, only where the father "does not deny paternity" can a support action be filed under article 4, the article authorizing hearing examiners. §562. Under §439, hearing examiners "shall not be empowered to hear, determine and grant any relief with respect to . . . issues of contested paternity . . . which shall be referred to a judge." Similarly, "where the respondent denies paternity, the respondent defaults in appearing before a hearing examiner after the court has obtained jurisdiction over the respondent . . . the hearing examiner shall not be empowered to determine the issues of paternity, but shall transfer the proceeding to a judge of the court for a determination upon the issue of paternity." §439(b).

In addition, under §3-23 of the New York Civil Rights laws, no person can be arrested in a civil proceeding without a statutory provision authorizing such action. Under §153 of the Family Court Act, the supposed statute authorizing the warrant, the warrant can only be issued "in a proper case" in which the person's presence at a hearing is deemed necessary." Notably, if there is some conflict between warrant provisions of different statutes, then the warrant provision in the paternity statute "controls." §157. The court's warrant authority is limited to cases in which the summons cannot suffice. §526. The only time a "failure to appear" can lead to a warrant is when the respondent is already "on bail or on parole." *Id.* As neither condition applied here, no warrant could issue against Mr. Snipes. Moreover, the remedy for non-appearance in a paternity case is for the hearing examiner to transfer the entire action to a Judge. §439.

virtually every jurisdiction. Only by insisting on the prerequisites of personal and subject matter jurisdiction can a celebrity such as Mr. Snipes avoid replaying this nightmare in any indeterminable number of courts.

Consistent with the Supreme Court's clear precedent in *Kulko*, and the unequivocal mandate in UIFSA, the Defendants could not subject an admitted non-resident of the state of New York to a forced bodily invasion, public humiliation, and physical arrest arising out of matters alleged to have occurred in Illinois, and which were completely unrelated to Mr. Snipes's occasional and tangential commercial contact with New York.

POINT II

DEFENDANTS HAVE VIOLATED, AND THREATEN TO CONTINUE VIOLATING, PLAINTIFF SNIPES'S FOURTH AMENDMENT CONSTITUTIONAL RIGHTS

The Fourth Amendment prohibits unwarranted seizures, a time-honored prohibition that applies to both bodily arrest warrants and forced body extractions, such as DNA testing: "[i]t is established that blood and urine tests constitute searched under the Fourth Amendment." *Anthony v. City of New York*, 339 F.3d 129,142 (2d Cir. 2003). As such, the state cannot compel such intrusive tests or extractions absent special needs, exigent circumstances, or the legal equivalent of probable cause. *Id.*

The controlling decision of the Supreme court established that the state must meet stricter restrictions for the more intrusive nature of bodily invasions. *Schmerber v. California*, 384 U.S. 757, 769-770 (1966). The interests in human dignity outweigh any benefit from the mere chance that any such intrusions might produce desired evidence. *Id.* In the absence of a clear indication that in fact such evidence will be found, these fundamental human interests require law officers

to suffer the risk that such evidence may disappear unless there is an immediate search. *Id.* Thus, the state must show a "clear indication" that necessary evidence requires such intrusive invasions of personal liberty; otherwise, such invasions violate the Fourth Amendment.

Cognizant of these concerns, Congress carefully crafted a statutory scheme to protect these constitutional rights against unwarranted bodily invasions in paternity cases. State welfare paternity testing involved particular risks, since indigent parents may want to protect the real father from state collection. Hence, Congress required state agencies meet a minimum threshold before ordering anyone to undergo bodily invasions associated with paternity testing. *See* 42 U.S.C. §666(a)(5)(B)(I).

Under federal law, consistent with these constitutional standards, a state welfare agency cannot order paternity testing unless the birth parent submits a sworn statement alleging paternity, as well as the facts of the paternity, and, above all, the facts in the case demonstrate a "reasonable" possibility of paternity. Even then, the state agency must conduct its due diligence under 42 U.S.C. § 654(29), and should refuse a DNA test if certain good cause exists. Finally, as a matter of federal law, the state agency must also follow its more restrictive state laws. *See* 42 U.S.C. § 666(a)(5)(B)(I). In that context, due to special concerns about the uniquely invasive nature of compulsory bodily invasions, New York law prohibits any administrative hearing examiner from ordering such testing in any contested paternity case, or even in any case in which the respondent merely does not appear. *See* New York Family Court Act § 439(b).

This dual requirement – that only a judge can issue a DNA test, and that tjere be sworn testimony substantiating the claim – comports with the "probable cause" standard that governs permissible Fourth Amendment seizures and searches.

Here, no Family Court judge ever found any reasonable possibility of paternity based on sworn testimony, yet a hearing examiner, acting outside of his authority and subject matter jurisdiction, ordered a compulsory bodily invasion of Mr. Snipes. As a result, here is now an extant warrant for Mr. Snipes's arrest. *See* Complaint, p. 8, ¶ 40. These state actions violated Plaintiff Snipes's Fourth Amendment rights – violations that pose the distinct and concrete threat of ongoing and irreparable harm to snipes without immediate injunctive relief.

POINT III

DEFENDANTS ARE VIOLATING MR. SNIPES'S RIGHT TO PRIVACY AND INTIMATE ASSOCIATION UNDER THE FIRST AMENDMENT

The right to intimate association of one's choice protects against state invasion of privacy, including illicit "defamatory" campaigns that impair intimate relationships . *Patel v. Searles*, 305 F.3d 130, 140 (2d. Cir. 2002); *see also M.L.B. v. S.L.J.*, 519 U.S. 102 (1996).

The First Amendment protects a person's private life from undue governmental exposure and interference. *See Griswold v. Connecticut*, 381 U.S. 479 (1965). Decisions involving parenthood and the choice to assume the responsibilities attendant thereto are at the bedrock of this right to privacy, form contraception to the termination of pregnancies. Significantly, this privacy interest specifically incorporates a basic "right to confidentiality." *Plante v. Gonzalez*, 575 F. 2d 1119 (5th Cir. 1978). Thus, whenever the state reveals intimate information obtained under a pledge of confidentiality, it violates the individual's right to privacy. *See Fadjo v. Coon*, 633 F. 2d 654 (5th Cir. 1979).

The Fourteenth Amendment applies this fundamental First Amendment right against the states, protecting the "substantive right" to intimate association against "the coercive interference

of the awesome power of the state." *Anthony v. City of New York*, 339 F. 3d at 143. The federal Constitution thus limits the right of the state to impose upon a person a relationship as intimate as that of parent and child. Therefore, under these controlling principles, the right to intimate association provides every putative parent a "compelling interest" in a properly adjudicated paternity proceeding.

UIFSA, by requiring the "initiating state" and "responding state" to engage in certain conduct prior to making public the alleged facts of a case, has built in safeguards to protect the rights to privacy and intimate association. *See* 42 U.S.C. § 666; *see also* 45 C.F.R. § 300. Here, neither Indiana as the "initiating state," nor New York as the "responding state" fulfilled their statutory mandated duties. In fact, they abrogated them.

That failure to follow federally imposed statutory obligation has not only violated Mr. Snipes's First Amendment rights to intimate association and privacy, but unless Defendants are enjoined, Mr. Snipes will continue to suffer deprivation of those fundamental rights.

CONCLUSION

The specific facts found by the Defendant hearing examiner established that Plaintiff's only contact with the State of New York was a minimal commercial contact having no nexus whatsoever to the domestic law regarding parentage or child support. Under UIFSA, as well as case authority from New York, several other states, and the United States Supreme Court, there was and is no subject matter or personal jurisdiction over Plaintiff in the State of New York or the State of Indiana. Defendants, and each of them, are acting in the complete absence of legal, judicial authority.

As a result, their actions are, as alleged in Plaintiff's complaint for declaratory relief, null

and void *ab initio*. So too, neither Indiana nor New York performed the required steps under federal law to protect Mr. Snipes's rights of privacy and intimate association.

As a consequence of Defendants' actions, which were performed knowingly and deliberately, notwithstanding the lack of subject matter and personal jurisdiction, and the wholly unauthorized actions of the Defendant hearing examiner, Mr. Snipes suffers under the irreparable continuing imminent threat of arrest for forced DNA extraction.

The requested injunctive relief is necessary to protect Mr. Snipes from further violations of his body, privacy and rights to due process – rights protected by the First, Fourth and Fourteenth Amendments to the United States Constitution.

Dated: 17 December 2004
New York, New York

Respectfully submitted,

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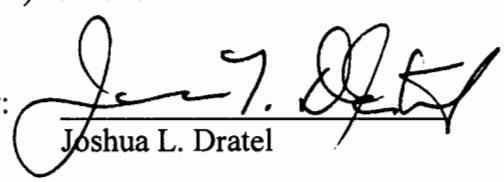
By: 
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