

CAUSE NO. \_\_\_\_\_

<b>EX PARTE:</b>	§	<b>IN THE 226<sup>TH</sup> JUDICIAL</b>
<b>AMY MARIE DOCKSTADER (2902)</b>	§	
<b>NATALIE JOANNE KEATE (2902)</b>	§	<b>DISTRICT COURT</b>
<b>BRITTON BAUER KEATE (2902)</b>	§	
<b>JAMESON RAND KEATE (2902)</b>	§	<b>BEXAR COUNTY, TEXAS</b>
<b>MARRETA KEATE (2902),</b>	§	
<b>CHILDREN</b>		

**PETITION FOR WRIT OF HABEAS CORPUS  
WITH MEMORANDUM IN SUPPORT**

This is a Petition for Habeas Corpus with Memorandum in Support filed by Relators James Dockstader, Rulon Keate and LeLand Keate, the parents of the children. The names of the children to be brought before the Court for a determination of the current right of possession are Amy Marie Dockstader, Natalie Joanne Keate, Britton Bauer Keate, Jameson Rand Keate and Marreta Keate.

**FACTUAL SUMMARY**

**MONOGAMOUS FAMILIES LIVING IN SINGLE-FAMILY RESIDENCES**

Each of these three Relators now before the Court, live in a monogamous relationship with their wife (who was of age at the time of their marriage) and their children in single family, stand-alone, separate residences located on the YFZ Ranch property. There was no evidence nor allegation of physical or sexual abuse of any of these children.

**NO MEANINGFUL OPPORTUNITY TO BE HEARD**

A two-day Temporary Managing Conservatorship hearing was conducted in 51<sup>st</sup> Judicial District Court for Schleicher County, sitting in Tom Green County to determine custody for some 416<sup>1</sup> children. Over three-hundred attorneys appeared in the Courtroom and the San

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<sup>1</sup> Inexplicably that number is now being reported to have grown to 463 children.

Angelo Municipal Auditorium, where the proceedings were being televised by closed circuit. Many of the parents and children were sequestered in the San Angelo Coliseum, unable to view or hear the proceedings<sup>2</sup>. These physical constraints severely compromised counsel's ability to hear or be heard, to object, to examine exhibits or witnesses or to give any individualized consideration to their clients or their children, and the record amply demonstrates same.

None of these Relators were given notice of that hearing. None of these Relators, their wives or their children are even mentioned in the twenty-six CPS Investigative Summaries nor their testimony at that hearing.

Pursuant to Article 1, §§ 6, 8, 9, 10, 12, 13, 19 & 27 and Article 5, § 8 of the Texas Constitution, Articles 11.01 and 11.23 of the Texas Code of Criminal Procedure, §§ 157.371 and 157.376<sup>3</sup> of the Texas Family Code, and Amendments 1, 4, 6, 7 and 14 of the United States Constitution, The Texas Religious Freedom Act Section 110 et seq. of the Texas Practice and Remedies Code and 42 USC 2000 bb, the Relators ask this Court to issue a writ of habeas corpus to the Texas Department of Family and Protective Services ("the agency") to produce the bodies of their children, the Applicants herein, and show why they are being illegally restrained in their liberty.

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<sup>2</sup> The parents were advised that if they left the Coliseum to be present at the hearing, they ran the risk that they would not be allowed to return to their children. Moreover, the parents' cellular telephones had been seized and confiscated, preventing them from meaningfully consulting with their counsel during these proceedings.

<sup>3</sup> 157.376. No Existing Order

(a) If the right to possession of a child is not governed by an order, the court in a habeas corpus proceeding involving the right of possession of the child:

(1) shall compel return of the child to the parent if the right of possession is between a parent and a nonparent and a suit affecting the parent-child relationship has not been filed; or

(2) may either compel return of the child or issue temporary orders under Chapter 105 [*Settings, Hearings, and Orders*] if a suit affecting the parent-child relationship is pending and the parties have received notice of a hearing on temporary orders set for the same time as the habeas corpus proceeding.

(b) The court may not use a habeas corpus proceeding to adjudicate the right of possession of a child between two parents or between two or more nonparents.

## **RELATORS**

Relators are James Dockstader, Rulon Keate and LeLand Keate. The Relators reside in Schleicher County, Texas. Each Relator and their children are members of a monogamous family unit with their wife (who was of age at the time of their marriage and their children in single family, stand alone separate residences located on the YFZ Ranch property. There was no evidence non allegation of physical or sexual abuse of these children.

## **RESPONDENT**

Respondents are Carey P. Cockerell, in his capacity as Commissioner of the Department of Family and Protective Services. The Department of Family and Protective Services (“The Agency”) is a department of the State of Texas; Respondent is an official of the State of Texas and is being addressed in his representative capacity; all actions of Respondents were undertaken in those capacities. Child Protective Services (CPS) is a subdivision of the Agency under the supervision and control of Respondent Cockerell. Respondent resides in Travis County, Texas. Respondents may be served with citation at the place of business located at P.O. Box 149030, MC: Y-956, Austin, Texas 78714 for the Texas Department of Family and Protective Services.

## **SUBJECT MATTER JURISDICTION**

The children applicants, Amy Marie Dockstader, Natalie Joanne Keate, Britton Bauer Keate, Jameson Rand Keate and Marreta Keate are restrained in their liberty by the Texas Department of Family and Protective Services (“the Agency”) (a division of the government of the State of Texas) in San Antonio, Bexar County, Texas. Under Articles 11.01<sup>4</sup> and 11.23<sup>5</sup> of

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<sup>4</sup> “The writ of habeas corpus is the remedy to be used when any person is restrained in his liberty. It is an order issued by a court or judge of competent jurisdiction, directed to any one having a person in his custody, or under his restraint, commanding him to produce such person, at a time and place named in the writ, and show why he is held in custody or under restraint.”

the Texas Code of Criminal Procedure and § 157.371(a) of the Texas Family Code, the District Courts of Bexar County, Texas have jurisdiction to issue writs of habeas corpus challenging the illegal restraint of the children in San Antonio, Texas.

### **JURISDICTION OVER THE PERSON**

In addition, this Court has jurisdiction over the persons, the children in “state” custody in San Antonio, Texas pursuant to the illegal actions of the Texas Department of Family and Protective Services.

### **VENUE**

The illegal detention of the Applicants by the Texas Department of Family Protective Services at a location in San Antonio, Texas is at issue in this case. Thus, both the Texas Constitution and Section 157.371 (a)<sup>6</sup> of the Texas Family Code confer jurisdiction of this case in either the place of the court of continuing jurisdiction or in this Court in Bexar County, Texas which is the place where the children are located. *See Black v. Onion*, 694 S.W.2d 52, 55 (Tex.App.-San Antonio 1985) [habeas proper vehicle where temporary orders were entered without notice and hearing]; *Trader v. Dear*, 565 S.W.2d 233, 235 (Tex. 1978) [habeas is proper vehicle to enforce valid order in court of continuing jurisdiction]; *Garza v. Shilling*, 576 S.W.2d 147, 151 (Tex. Civ. App. 1978) [habeas is appropriate remedy to achieve speedy relief from illegal restraint].

“Elizabeth sought possession of Belinda pursuant to Section [157.376].<sup>7</sup> That subsection applies if the right to possession of a child is not governed by a court

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<sup>5</sup> “The writ of habeas corpus is intended to be applicable to all such cases of confinement and restraint, where there is no lawful right in the person exercising the power, or where, though the power in fact exists, it is exercised in a manner or degree not sanctioned by law.”

<sup>6</sup>Section 157.371 provides: “The relator may file a petition for a writ of habeas corpus in either the court of continuing, exclusive jurisdiction or in a court with jurisdiction to issue a writ of habeas corpus in the county in which the child is found.”

<sup>7</sup> Formerly section 14.10(e).

order. Jay responded that Belinda's possession was governed by the temporary orders entered in his motion to modify proceeding brought under section 14.08. Those temporary orders however, were admittedly entered without notice to Elizabeth. Section [262.109]<sup>8</sup> provides that an order for temporary conservatorship may not be entered except after notice and a hearing. Absent proper notice, Judge Onion was not entitled to issue the temporary orders, *Whatley v. Bacon*, 649 S.W.2d 297, 299 (Tex.1983). We thus conclude that section [157.376]<sup>9</sup> applies in Belinda's case since there were no existing orders affecting the right to her possession at the time Elizabeth sought the writ of habeas corpus other than the invalid temporary orders issued by Judge Onion." *Black v. Onion*, 694 S.W.2d 52, 55 (Tex.App.-San Antonio 1985). See also Article 1, § 12<sup>10</sup> and Article 5, § 8<sup>11</sup> of the Texas Constitution. See also *Armstrong v. Reiter*, 628 S.W.2d 439, 440 (Tex. 1982)[writ is to be granted upon showing of bare legal right to possession of the child].

Further, the writ of habeas corpus may be brought in the county where the child is found since the 51<sup>st</sup> District Court has entered no final orders and thus lacks continuing exclusive jurisdiction over a suit affecting a parent child relationship. *Trader v. Dear*, 565 S.W.2d 233 (Tex. 1978). There are no final orders in these cases. A court only acquires continuing exclusive jurisdiction over a suit affecting a parent child relationship on rendition of a final order. Tex. Fam. Code sec 155.001<sup>12</sup> *In re Aguilera*, 37 S.W.3d 43, 47 (Tex. App.--El Paso 2000, no pet.) (granting writ in part). The Agency has only temporary orders.

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<sup>8</sup> Previously section 11.11(b)

<sup>9</sup> Previously section 14.10(e).

<sup>10</sup> "The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual."

<sup>11</sup> "District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body. District Court judges shall have the power to issue writs necessary to enforce their jurisdiction."

<sup>12</sup> 155.001. Acquiring Continuing, Exclusive Jurisdiction.

**(a) Except as otherwise provided by this section, a court acquires continuing, exclusive jurisdiction over the matters provided for by this title in connection with a child on the rendition of a final order.**

(b) The following final orders do not create continuing, exclusive jurisdiction in a court:

- (1) a voluntary or involuntary dismissal of a suit affecting the parent-child relationship;
- (2) in a suit to determine parentage, a final order finding that an alleged or presumed father is not the father of the child, except that the jurisdiction of the court is not affected if the child was subject to the jurisdiction of the court or some other court in a suit affecting the parent-child relationship before the commencement of the suit to adjudicate parentage; and

## ILLEGAL RESTRAINT

Possession of the Applicants is presently being illegally maintained by the Texas Department of Family and Protective Services ("the Agency"). *See* Temporary Orders of Managing Conservatorship for all but one of the applicants attached as Exhibit 6, 7, 8.

## CHILDREN IDENTIFIED

Amy Marie Dockstader, Natalie Joanne Keate, Britton Bauer Keate, Jameson Rand Keate and Marreta Keate.

The following children are the subject of this suit:

NAME: Amy Marie Dockstader                      SEX: Female  
BIRTHPLACE: St. George, Utah  
BIRTHDATE: June 12, 1998

NAME: Natalie Joanne Keate                      SEX: Female  
BIRTHPLACE: Sandy, Utah  
BIRTHDATE: November 30, 2001

NAME: Britton Bauer Keate                      SEX: Male  
BIRTHPLACE: Hilldale, Utah  
BIRTHDATE: April 24, 2005

NAME: Jameson Rand Keate                      SEX: Male  
BIRTHPLACE: Hilldale, Utah  
BIRTHDATE: November 28, 2006

NAME: Marreta Keate                      SEX: Female  
BIRTHPLACE: Hilldale, Utah  
BIRTHDATE: September 17, 2006

## POSSESSION GOVERNED BY INVALID COURT ORDER

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(3) a final order of adoption, after which a subsequent suit affecting the child must be commenced as though the child had not been the subject of a suit for adoption or any other suit affecting the parent-child relationship before the adoption.

(c) If a court of this state has acquired continuing, exclusive jurisdiction, no other court of this state has jurisdiction of a suit with regard to that child except as provided by this chapter or Chapter 262.

(d) Unless a final order has been rendered by a court of continuing, exclusive jurisdiction, a subsequent suit shall be commenced as an original proceeding.

Present possession of the children is governed by invalid court orders. A copy of the court orders are attached as Exhibits 8, 9 & 10 and incorporated into this application by reference. Relators have a superior right to possession of the children by virtue of the rights and duties of a parent as set forth in Section 151 et seq. of the Texas Family Code.

### **GROUND FOR RELIEF**

I. The temporary orders for managing conservatorship are invalid since no notice or hearing was provided to the Relators. 1R-7R at Ex. 12-18. 5<sup>th</sup> and 4<sup>th</sup> US Constitution, Article 1 §§ 13, 19 & 27 and § 262.109 Texas Family Code.

II. The seizure of the Applicants violates their 5<sup>th</sup> and 14<sup>th</sup> Amendment due process and equal protection rights under the US Constitution. 4R70, 4R12, 5R29.

III. The seizure of the Applicants violates their Article 1, § 13, 19 & 27 due process and due course of law rights under the Texas Constitution. 4R12, 5R29.

IV. The procedures employed to remove and keep the Applicants from the Relators violates their right to due process and due course of law under Article 1, §§ 13, 19 & 27. 5R17.

V. The procedures employed to remove and keep the Applicants from the Relators violates their right to due process under the 5<sup>th</sup> and 14<sup>th</sup> Amendments US Constitution. 5R17.

VI. The seizure of the Applicants violates their right to be free from unreasonable searches and seizures under the 4<sup>th</sup> Amendment to the US Constitution. 4R68.

VII. The seizure of the Applicants violates their right to be free from unreasonable searches and seizures under Article 1, § 9.

VIII. By forcibly removing these children from their religious community and prohibiting them from practicing their religion, CPS is violating the rights of the children and their parents to freely exercise their religion as guaranteed by the Texas Religious Freedom Act.

IX. CPS has removed these children from their homes and now holds them in state custody based on their membership in the church and based on the religious beliefs of their fellow church members in violation of the First Amendment rights of the children and their parents to freely exercise their religion.

X. CPS's removal of the children violates their parents' rights to raise their children as they see fit and in accordance with their religious beliefs as guaranteed by the Due Process Clause of the Fourteenth Amendment and the Free Exercise Clause of the First Amendment.

XI. The seizure of the Applicants violates their rights as secured under the 1<sup>st</sup> Amendment of the US Constitution, free exercise of religion, freedom of assembly, freedom of association and free speech. 4R68- 69, 76.

XII. The seizure of the Applicants violates their rights as secured under Article 1, §§ 6, 8 and 27 of the Texas Constitution, free exercise of religion, freedom of speech, freedom of assembly and association.

XIII. The seizure of the Applicants violates their rights as secured under Texas Religious Freedom Act, § 110.004 et seq. Texas Civil Practices and Remedies Code.

XIV. The conditions in which the Applicants are being detained include interference with their rights to the free exercise of religion, assembly and association under the 1<sup>st</sup> Amendment of the US Constitution.

XV. The conditions in which the Applicants are being detained include interference with their rights to the free exercise of religion, speech, assembly and association under Article 1, §§ 6, 8 & 27.

XVI. The Texas legislature enacted an illegal bill of attainder in violation of Article 1, Section 10 of the United States Constitution which has punished the Applicants and Relators.

XVII. The Texas legislature enacted an illegal bill of attainder in violation of Article 1, Section 16 of the Texas Constitution which has punished the Applicants and Relators.

## FACTS

On April 3, 2008, the Texas Department of Family and Protective Services (“the Agency”) seized the Applicants from the Yearning for Zion Community (“the Community”) located at 2420CR300 (Rudd Road), Eldorado, Schleicher County, Texas after entering the Community under the putative authority of a criminal search and arrest warrant and an order to investigate child abuse. *See* Search Warrant Affidavit, Search Warrants No. M-08-001S and M-08-002S and Order for Investigation of Child Abuse attached as Exhibits 1, 2, 3, 4 and 5. The Petition for Orders in Aid of Investigation of a Report of Child Abuse or Neglect recites the same alleged complaint call to which the Search Warrant Affidavit refers as the basis for the



Agency's need to enter the Community to investigate. *See* Petition at Exhibit 6.<sup>13</sup> This complaint call is key because it was apparent that it did not come from within the State of Texas.

Moreover, CPS and law enforcement did not remove all of the children on the first day. Even though the Agency claimed that a child was in immediate danger of harm in its petition an order to investigate, [Exhibit 6] and the Agency removed bus loads of children, it waited two days before removing additional children, the Applicants herein.

The entry of the community was performed as a raid by armed law enforcement. Two mothers described it in reports recorded by CPS workers:

"I advised Marilyn the purpose of my interview with her was to gather information about her and her family and to assess if there was any abuse or neglect of the children. Marilyn stated 'we are peaceful people'. Marilyn stated she did not understand why 'the men with the guns' raided their ranch. Marilyn then added, 'and it was a raid'. Marilyn said when the men with the guns raided their ranch it 'scared the living spirit out of the children'. I did not ask Marilyn to elaborate what she meant by that." Pet Ex 18, 7R.

"Ms. Johnson stated that they are normal people and that they have rights. Ms. Johnson stated that everyone is trying to cooperate so that they do not make the situation worse than it is, but that they are scared because of the people that forced them out of their ranch with guns and told them that they had to get on a bus. Ms. Johnson stated that no one ever came and talked to all the children so they feel like they were taken out of their ranch illegally. Ms. Johnson stated that none of the children have ever seen a gun in their life." Pet Ex 19, 7R.

The Agency removed the children from the Community and has held them in illegal custody since that date, has prevented their contact with their parents and counsel<sup>14</sup> has moved them to San Antonio, Bexar County, Texas outside the care and custody of their parents. *See*

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<sup>13</sup> It is odd that while the petition for order and aid of investigation asks for investigation of **Sarah Jessop Barlow** and her child the petition asks the Court to order schools, shelters and daycares to cooperate with the investigation and to order the release of the children's medical physiological and psychological records. The department used this order to examine every child on the ranch instead of the two children it specifically referred to.

<sup>14</sup> Cell phones were taken away from the seized persons so that they lacked the ability to communicate with counsel, family or friends. Thereafter, the phones were returned briefly and then pursuant to a court order were removed once again. *See* Order of April 13, 2008 authorizing the agency and "law enforcement" to remove "all electronic communication devices." Exhibit 7.

Putative Order granting Temporary Managing Conservatorship to the Agency attached as Exhibit 8, Putative Order on Placement of Children attached as Exhibit 9, and Putative Temporary Orders Following Adversary Hearing and Notice of Hearing attached as Exhibit 10. Although, the Agency sought and obtained temporary managing conservatorship of the children, no other order affecting the parent-child relationship has been entered by any court. Further, the Relators have not been given any access to their children nor are they being permitted to exercise custody of their children.

The Agency entered the Community with law enforcement officers [4R156] based upon a telephone call from a known non-local number in Colorado Springs, Colorado to the New Bridge Family Shelter by a thirty three year old childless female identifying herself as a 16 year old female who said that she was Sarah Jessup Barlow and spiritually married to a 49 year old man, Dale Evans Barlow, that was physically and sexually abusing her. 4R152. The Agency's pre-raid investigation determined that the accused 49 year old man was an Arizona resident, under supervision on probation by an Arizona probation officer who resided in Arizona. Before execution of the warrant, Sheriff Doran was also advised that Dale Barlow was in Arizona and not within the Community. In fact, the Sheriff spoke to Mr. Barlow in Arizona by cell phone and, after confirming his identity, Barlow told the Sheriff that he did not know any Sarah Jessup and had never been to the yearning for Zion Community nor to Texas for some twenty years. The Agency was also advised that there was no Sarah living in the Ranch. 4R158.

After the approximately week long search of the Community, no female meeting the above description of Sarah Jessop Barlow has been located by the authorities.