No. _____

In The

Supreme Court of the United States

DAVID BRANDON,

Petitioner,

vs.

SARAH BRANDON,

Respondent.

On Petition For Writ Of Certiorari From The Court Of Appeal Of California, Second Appellate District

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

California Family Code Section 2210(d) generally provides that an annulment based on fraud may be had in extreme cases where the particular fraud goes to the very essence of the marriage relationship. (*In re Marriage of Meagher and Maleki* (2005) 131 Cal.App.4th 1, 3.)

It is contended that whether the party(ies) intend to continue the married state beyond obtaining a green card goes to the essence of the marriage relationship. California does not recognize this as a form of marriage fraud rising to the level of annulment. It is further contended that because Immigration Marriage Fraud is a Federal issue and dissolution of marriage is a State issue, individual US citizens have no recourse against foreign nationals that violate Federal Immigration Laws regarding fraudulent marriage because States do not recognize Immigration Marriage Fraud.

States, in particular California, do not recognize Federal Immigration Marriage Fraud as a basis for granting annulment by reason of fraud. The question, therefore, presented is:

Are the States, in particular California, required to recognize Immigration Marriage Fraud as a basis for annulment in their dissolution of marriage statutes?

PARTIES TO THE PROCEEDING

PETITIONER:

David Brandon

RESPONDENT:

Sarah Brandon

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PETITION FOR A WRIT OF CERTIORARI

David Brandon, respectfully petitions for a Writ of Certiorari to review the judgment of The Supreme Court of the State of California.

OPINIONS BELOW

The opinion of the Court of Appeals of the State of California (App., infra, 2a-24a) is unpublished. The order of the Supreme Court of the State of California denying review (App., infra, 1a) is likewise unpublished.

JURISDICTION

The judgment of the California Court of Appeals was entered on April 17, 2018. A petition for rehearing was denied on July 11, 2018 (App., infra, 1a). The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

STATUTORY PROVISIONS INVOLVED

California Family Code Section 2210 provides as follows:

A marriage is voidable and may be adjudged a nullity if any of the following conditions existed at the time of the marriage:

(a) The party who commences the proceeding or on whose behalf the proceeding is commenced was without the capability of consenting to the marriage as provided in Section 301 or 302, unless, after attaining the age of consent, the party for any time freely cohabited with the other as his or her spouse.

(b) The spouse of either party was living and the marriage with that spouse was then in force and that spouse (1) was absent and not known to the party commencing the proceeding to be living for a period of five successive years immediately preceding the subsequent marriage for which the judgment of nullity is sought or (2) was generally reputed or believed by the party commencing the proceeding to be dead at the time the subsequent marriage was contracted.

(c) Either party was of unsound mind, unless the party of unsound mind, after coming to reason, freely cohabited with the other as his or her spouse.

(d) **The consent of either party was obtained by fraud**, unless the party whose consent was obtained by fraud afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as his or her spouse.

(e) The consent of either party was obtained by force, unless the party whose consent was obtained by force afterwards freely cohabited with the other as his or her spouse.

(f) Either party was, at the time of marriage, physically incapable of entering into the marriage

state, and that incapacity continues, and appears to be incurable.

Article VI of the United States Constitution Provides:

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

18 U.S.C. Section 1546 Provides:

(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute

or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States impersonates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws

by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or offers, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty of perjury under **section 1746 of title 28, United States Code**, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact –

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

(b) Whoever uses –

(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

(2) an identification document knowing (or having reason to know) that the document is false, or

(3) a false attestation, for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned not more than 5 years, or both.

(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481). For purposes of this section, the term "State" means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

8 USC 1325 further provides:

(a) Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or **(3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or**

imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both.

(b) Improper time or place; civil penalties

Any alien who is apprehended while entering (or attempting to enter) the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty of –

(1) at least $50 and not more than $250 for each such entry (or attempted entry); or

(2) twice the amount specified in paragraph (1) in the case of an alien who has been previously subject to a civil penalty under this subsection.

Civil penalties under this subsection are in addition to, and not in lieu of, any criminal or other civil penalties that may be imposed.

(c) Marriage fraud

Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.

(d) Immigration-related entrepreneurship fraud

Any individual who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be imprisoned for

not more than 5 years, fined in accordance with title 18, or both.

STATEMENT

This case arises out of a United States citizen's (hereinafter "Petitioner") inability to annul his marriage to a foreign national (hereinafter "Respondent") based on Immigration Marriage Fraud in the state of California.

Federal immigration law provides that a relationship entered into for the main purpose of evading U.S. immigration laws is fraudulent. *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975); *Matter of M-*, 8 I&N Dec. 217 (BIA 1958).

Petitioner originally filed, In Pro Per, for a divorce from Respondent in August 2013 in the California Superior Court. The petition was subsequently, and timely, amended to pray for an annulment under the marriage fraud section of California Family Code Section 2210(d) with Immigration Marriage Fraud as the basis.

The California Superior Court held a four day trial and determined that nullity of the marriage was not warranted under California Family Code Section 2210. App., infra, 26a. The court further determined that Respondent's testimony denying an intent to come to the United States and marry the Petitioner was not for the

purpose of circumventing United States immigration laws was credible, ibid, despite evidence proffered showing that prior to the final breakdown of the marriage Respondent had previously lied to court authorities in a failed attempt to get a restraining order against Petitioner for domestic violence. App., infra, 34a. If granted, said order of protection would have availed Respondent of the opportunity to self-petition independently for her immigration status without relying on Petitioner had he been deemed an abusive legal permanent resident spouse under the Violence Against Women Act. 42 U.S.C. Sections 13701 through 14040.

The California Superior Court completely dismissed viable evidence that, if evaluated under Immigration Marriage Fraud case law, established Respondent's fraudulent intent to evade US immigration laws and could have afforded Petitioner an annulment. Yet, the California Superior Court denied nullity without considering the Immigration Marriage Fraud claim. The California Appellate Court affirmed, App., infra, 2a, but noted that the affirmation did not consider Immigration Marriage Fraud. App., infra, 17a, fn. 7.

The California Supreme Court subsequently denied review of the matter. App., infra, 1a.

REASONS FOR GRANTING THE PETITION

A. There is an acknowledged conflict over the applicability of Immigration Marriage Fraud laws to adjudications of state domestic relations

One basis to obtain an annulment in California is where consent of either party was obtained by fraud. California Family Code Section 2210(d). In interpreting this statutory provision, California has consistently applied the following:

> " . . . The test in all cases is whether the false representations or concealment were such as to defeat the essential purpose of the injured spouse inherent in the contracting of a marriage. Nothing short of this would justify an annulment; nothing more is required to establish the voidable character of the marriage contract . . . "

Douglass v. Douglass, 148 Cal. App. 2d 867.

On its face, the statutory language and the interpretation thereof is broad and far reaching. California, however, has historically found fraud in a limited number of scenarios. For instance, fraud has been found when, at the time of marriage: a spouse concealed the fact that she did not intend to have sexual relations (*Rathburn v. Rathburn*, 138 Cal. App. 2d 568; *Millar v. Millar*, 175 Cal. 797); a party misled the other regarding an intent to have children when no such intention existed (*Maslow v. Maslow*, 117 Cal. App. 2d 237); a wife concealed her pregnancy by another man

(*Hardesty v. Hardesty*, 193 Cal. 330); concealment of sterility (*Aufort v. Aufort*, 9 Cal. App. 2d 310); *Vileta v. Vileta*, 53 Cal. App. 2d 794); and concealment of marital history (*Williams v. Williams*, 178 Cal. App. 2d 522).

California deems these infractions as sufficient to rise to the level of nullity, but it refuses to recognize or even consider the fact that whether a party conceals an intent to marry for the sole purpose of obtaining permanent residence status in the United States defeats the essential purpose inherent in the contracting of a marriage. The resulting effect is to disregard immigration marriage fraud as a basis for appropriate relief.

To justify ignoring Federal law, the California Appellate Court asserted the following (App., infra 16a-17a):

> "The whole subject of domestic relations has traditionally been dealt with by local authorities (*Buechold v. Ortiz* (9th Cir. 1968) 401 F.2d 371, 372). The power to make rules to establish, protect and strengthen family life is committed to the state Legislature by the Constitution of the United States (*Labine v. Vincent*, 401 U.S. 532, 538[])." (*In re Marriage of Hillerman* (1980) 109 Cal.App.3d 334, 339-340.) "When state family law conflicts with a federal statute, preemption must be 'positively required by direct enactment' of Congress (*Wetmore v. Markoe*, 196 U.S. 68, 77[]), or must be the 'clear and manifest' purpose of Congress (*Ray v. Atlantic Richfield Co.*, 435

> U.S. 151, 158[]), as evidenced by an 'actual conflict' between the state and federal law (*Florida Avocado Growers, Inc. v. Paul* (1963) 373 U.S. 132, 141[]), which does 'major damage' to the 'clear and substantial' governmental interests involved in the federal scheme [citation]." (*In re Marriage of Hillerman*, *supra*, at pp. 341-342.)
>
> We are presented with nothing demonstrating Congress "positively required" any federal immigration laws to preempt state annulment law, or that there is an "actual conflict" between California's annulment law and federal immigration law."

First, the contention is not that federal law, i.e. immigration marriage fraud, preempts California statute, but that California statute already encompasses immigration marriage fraud. If the test is whether or not the false representations or concealments were such as to defeat the essential purpose in the contracting of a marriage, immigration marriage fraud lies squarely within the meaning of California's statute. What could defeat the essential purpose in the contracting of a marriage more than whether or not a party(ies) intends to stay married subsequent to obtaining permanent residence status?

Second, if California requires an act of Congress to enforce federal law to protect the United States citizens within its borders against the manipulations of illegal aliens, Congress has already spoken. 8 CFR 216(a) indicates that the Marriage Fraud Amendments of

1986 were a clear and manifest purpose of Congress to combat immigration marriage fraud. Here, Congress expresses its intentions as follows:

> "The Marriage Fraud Amendments of 1986 ("IMFA") were enacted in response to a growing concern about aliens seeking permanent residence in the U.S. on the basis of marriage to a citizen or resident when either the alien acting alone, or the alien and his or her reputed spouse acting in concert, married for the sole purpose of obtaining permanent residence. . . ."

In short, the state of California is under the erroneous impression that federal immigration marriage fraud laws do not apply to adjudications regarding the domestic relations of its citizens. This is despite the fact that immigration marriage fraud is in and of itself an issue that affects the domestic relations of countless United States citizens every year. This is despite the fact that California's statutory provision and interpretations thereof encompass that which is provided by immigration marriage fraud laws. This is despite the fact that Congress' concerns regarding aliens seeking permanent residence in the United States on the basis of marriage to United States citizens and intentions to protect United States citizens from being fraudulently induced into these sham marriages has been made clear. Resolution of the applicability of immigration marriage fraud laws to California and other states like it would, therefore, settle the implied conflict between federal and state laws with respect to domestic

relation matters and grant access to the proper forum in which United States citizens can seek relief.

B. The question presented is of exceptional importance

It is well known that one of the fastest and easiest ways for a foreign national to gain United States citizenship is through marriage to one who is already a citizen. Each year nearly half a million United States citizens are seduced and misled into marrying foreign nationals for this purpose. See Fleischer, Jodie Yarborough, Rick and Jones, Steve. "Americans Say Immigrants Duped Them Into Marriage, Then Claimed Abuse to Stay in USA." *News4 I-Team* [Washington] 13 Feb. 2018. To fast-track their citizenship status, some immigrants even take advantage of the loophole afforded them via the Violence Against Women Act whereby immigrants are entitled to legal assistance, benefits and permanent residence by making false claims that they have been abused by their spouse. *Ibid.*

Not only have citizen complaints been ignored by U.S. Citizenship and Immigration Services (*Ibid*), studies have shown that enemies of the United States, i.e. terrorists, have gained and retained access to the United States by virtue of marriage to a United States citizen. See Kephart, Janice, L. "Immigration and Terrorism, Moving Beyond the 9/11 Staff Report on Terrorist Travel." Center For Immigration Studies [Washington] 1 Sept. 2005.

Obviously, the federal government's efforts to combat these acts to defraud and intentions to terrorize the United States is too vast to handle alone. Who better to report on and deflect these acts but those who witness and experience the day to day actions and behaviors of these immigrants and know them the best, i.e. those who are married to them.

Immigration marriage fraud is detrimental to individual United States citizens and a threat to United States national security. Granting United States citizens a state forum to expose those engaged in this activity is a sufficiently and substantial reason to warrant this Court's review.

C. The California Superior Court decision, affirmed by the Appellate Court and denied review by the Supreme Court, is incorrect

California's position, as expressed by the Appellate court, that "federal immigration law is irrelevant to this dispute" (App., infra, 13a), is incorrect. While that contention may be true in general, Petitioner sought the application of a specific federal immigration law, i.e. immigration marriage fraud. That federal immigration law has an inherent marital issue embodied within it, i.e. the validity of a marriage.

In its decision to deny Petitioner a nullity, the California Superior Court completely disregarded and misinterpreted all proffered evidence that, if evaluated under immigration marriage fraud laws, was sufficient

to establish Petitioner's claim of immigration marriage fraud.

First, federal law provides that the burden is on the alien, herein Respondent, to prove the marriage was not entered into for the purpose of evading immigration laws. *Baliza v. INS*, 709 F.2d 1231, 1233 (9th Cir. 1983). The California Superior Court placed the burden of proof on the Petitioner (the US citizen) to show that "respondent (sic) intent was to marry him for the sole purpose of obtaining a 'green card' ". App., infra, 26a. Further, in dismissing Petitioner's claim, the California Superior Court was merely swayed by Respondent's contention that she did not marry for the purpose of circumventing immigration laws. App., infra, 26a. The fact that Respondent had previously filed false claims of spousal abuse (App., infra, 33a) didn't even weigh in on Respondent's credibility.

Second, federal law provides that the test for fraudulent-at-inception is based on whether the parties intended to establish a life together at the time they were married. See, e.g., *Yohannes v. Holder*, 585 F.3d 402, 405 (8th Cir. 2009) ["central issue is whether couple intended to establish a life together at the time they were married"]. In applying this test the federal law has looked at objective facts to shed light on the alien's state of mind at the time of marriage noting that the conduct of the parties before and after the marriage are relevant. See, e.g., *Matter of Laureano*, 19 I&N Dec. at 2 (citing *Lutwak v. United States*, 344 U.S. at 604).

Petitioner proffered a substantial amount of evidence detailing preparations Respondent made to come to the United States for a permanent stay prior to her entry into the country on a visitor's visa. Evidence showed that Respondent claimed to not be in love with Petitioner when she arrived but entered into a marital relationship with Petitioner less than a week after her arrival. Evidence showed that Respondent's wedding attire consisted of garments she brought with her from her country of origin. Evidence showed that there is a significant difference in the parties ages. Evidence showed Respondent's treatment of Petitioner during the marriage did not rise to the level of that customarily shown by a wife towards her husband. Evidence showed that Respondent filed false claims of spousal abuse against Petitioner. Evidence showed that Respondent left the marital home less than a week after receiving her notification that she had been granted permanent legal status. Evidence showed how Petitioner went to extreme lengths to maintain the marital relationship where Respondent did not.

Evidence showed Respondent's acts and behaviors prior to, during and after the marriage that are consistent with one marrying for the sole purpose of evading United States immigration laws. Yet, California courts dismissed, disregarded and misinterpreted this evidence to fit within its own family law statute which, as applied, does not consider immigration marriage fraud as a basis for annulment. In so doing, California erroneously denied Petitioner an annulment, not on the merits, but out of hand.

D. This case is a superior vehicle for addressing the question presented

This case presents a strong vehicle for this Court to address the question of whether states are required to recognize Immigration Marriage Fraud as a basis for annulment in their dissolution of marriage statutes.

Federal courts will not hear cases that involve state family law issues such as divorce or child custody. " . . . state law (not federal law) governs domestic relations." App., infra, 13a. Immigration Marriage Fraud is a federal law with a state domestic relations issue imbedded within. Clearly, this is a conundrum that, short of resolution, leaves United States citizens no recourse against the unscrupulous aliens that prey upon them.

As discussed, hereinabove, Petitioner provided ample evidence to show Respondent's fraudulent intent but was denied proper relief because the facts were not examined under the applicable law. Consequently, this case presents the most straightforward facts for this Court to make a determination as to whether state courts are a proper forum to address and apply the laws of Immigration Marriage Fraud in their family law cases concerning dissolution of marriage, and give effect to Congressional intent.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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