No. 18-930

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 REHEARING

DAVID BRANDON
Self Represented
7521 Bovey Avenue
Reseda, CA 91335
harbingerofhorror@yahoo.com
818-792-2737

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PETITION FOR REHEARING

Petitioner respectfully moves this Court for an order (1) vacating its order of March 25, 2019, which denied the petition for writ of certiorari filed by Petitioner, and (2) granting the petition for writ of certiorari. The grounds for rehearing, which are substantial and were not previously presented, are stated below.

REASONS FOR GRANTING REHEARING

I. The Federal and State Laws Implicated in Petitioner's State Court Case Directly Conflict and Violate Petitioner's Right to Equal Protection Under the Fourteenth Amendment.

This case is about the harm done to a U.S. Citizen as a result of California's sanctuary state laws. It arises from an actual controversy litigated in the State Court. The forced result of that controversy caused significant prejudice to a citizen of the United States for the benefit of an alien. This result was forced by the California Values Act and California Senate Bill 54, which simply cannot be reconciled with federal law. To the extent that the law, as it was applied herein, favors one class of person (in this case, alien) over U.S. citizens it is akin in its primordial nature to segregation laws in that it instills a means to divide us. The only thing that has changed is the political agenda. This case presents an issue of a conflict between state and federal law. Petitioner believes his original Writ was

denied based upon a lack of clarity that this is a Constitutional case and not simply a family law case. Under the rules of preemption, California Senate Bill 54 cannot be interpreted consistent with either Federal law or with the Constitution of the United States. In addition to violating preemption rules, it also violates the Petitioner's civil right to equal protection under the Fourteenth Amendment. Senate Bill 54 is thus facially? invalid and should be found to be unconstitutional. But for Senate Bill 54, the Court should have granted the requested annulment. Because of Senate Bill 54, Petitioner stands to be victimized by his now ex-wife of 4 years due to the affidavit of support which he signed in good faith and is now enforceable against him for life.

In connection with the application for adjustment of status filed by Petitioner's now ex-wife, Petitioner was defrauded into signing an Affidavit of Support (USCIS Form I-864). This form is a contractual agreement with the United States to provide support for the alien until that alien either naturalizes, is no longer a lawful permanent resident and departs from the United States, dies, or has 40 quarters of earnings. A divorce does not terminate the Affidavit of Support. However, an annulment should terminate the Affidavit of Support, not to mention the alien's status. In other words, absent one of these terminating conditions, the Affidavit of Support is a lifetime liability.

Petitioner has consistently contended that he was defrauded into marrying his now ex-wife so that she could obtain legal permanent residency in the United

States. California has recognized the right of Petitioner's now ex-wife to enforce the Affidavit of Support. *See In re Marriage of Kumar*, 13 Cal.App.5th 1072 (2017). However, California has also rejected the one mechanism he could have used to terminate his obligation under that affidavit by failing to follow the federal definition of marriage fraud and instead applying an unreasonable standard that is inconsistent with federal law.

Specifically, under the federal Marriage Fraud statutes:

> "Marriage fraud" means "an alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 212(a)(6)(C)(i)) [8 USCS § 1182(a)(6)(C)(i)] and to be in the United States in violation of this Act if
>
> (i) the alien obtains any admission into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than 2 years prior to such admission of the alien and which, within 2 years subsequent to any admission of the alien in the United States, shall be judicially annulled or terminated, unless the alien establishes to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws, or
>
> (ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's marital agreement

> which in the opinion of the Attorney General was made for the purpose of procuring the alien's admission as an immigrant."

See 8 U.S.C. § 1227.

The Court did not apply this definition in determining whether marriage fraud was extant in the case below. Instead, it relied on the very limited definition (but explicitly not exclusive) of a fraud that would serve to invalidate a marriage; namely, that "the fraud relied upon must be such as directly defeats the marriage relationship and not merely such fraud as would be sufficient to rescind an ordinary civil contract. Fraudulent intent not to perform a duty vital to the marriage state must exist in the offending spouse's mind at the moment the marriage contract is made." *In re Marriage of Ramirez*, 165 Cal.App.4th 751 (2008).

The actual statute interpreted by this case reads, "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." California Family Code § 2210(d).

Accordingly, it is not a legislative limitation that prevented the Court from considering whether Federal Immigration Marriage Fraud could be a basis for annulment, it was judicial interpretation thereof.

The State Court also made a very curious and unsupported assertion that, "federal immigration law is

irrelevant to this dispute because absent an express Congressional indication to the contrary or an actual conflict of law, state law (not federal law) governs domestic relations." The Court does not cite any authority for this assertion and thus could be its first articulation of this idea, which is unsupportable. First, presumptively, the plain language of the Constitution of the United States should not require a specific Congressional indication. Rather a specific Congressional indication should be required when it seeks to avoid a Constitutional issue. The presumption of Constitutionality is a basic tenet of statutory interpretation. Secondly, contrary to the Court's assertion, there is an obvious and glaring conflict here between state and federal law. This conflict casts a claimant into a purgatory of penumbras where the state law, as interpreted by the state's courts, necessitates a result that is completely at odds with a clear directive of Congress. Congress made clear that there are circumstances, such as those extant here, where federal law sets standards for domestic relations matters. The State of California's refusal to apply to those standards results in a paradox in which one's domestic status is different under federal and state law: never married under the one, forever married (for purposes of the Affidavit of Support) under the other. For a victim of this conflict, this irreconcilable status is unendurable and the very reason the Constitution contains the supremacy clause.

II. The Family Court Judge Was Placed on Notice and Was Provided With Evidence of Federal Crimes, But the Appellate Court Was Prohibited From Enforcing the Law Due to the Passage of Senate Bill 54, Which Places the State of California in a Position of Undermining Federal Law and Violating Petitioner's Equal Protection Rights.

8 U.S.C. § 1325(c) and 18 U.S.C. § 1546(a) are federal criminal laws that make marriage fraud a crime. 8 U.S.C. § 1325(c) provides that "[a]ny 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." 18 U.S.C. § 1546(a) also states that "[w]hoever knowingly makes under oath, or as permitted under penalty of perjury . . . , 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, . . . shall be fined under this title or imprisoned . . . , or both."

Under the California Values Act, Senate Bill 54 ("SB 54"), state and local law enforcement agencies are prohibited from using money or personnel to investigate, interrogate, detain, detect, arrest, or prosecute persons for immigration enforcement purposes, as specified, and would, subject to exceptions, proscribe other activities or conduct in connection with immigration enforcement by law enforcement agencies. The bill would apply those provisions to the circumstances in

which a law enforcement official has discretion to cooperate with immigration authorities.

In actuality, however, SB 54 prevents the reporting of certain immigration related crimes when U.S. citizens are victims but not when aliens are victims. In other words, law enforcement mechanisms exist specifically to protect defrauded aliens, such as Notario Fraud task forces; however, there is no reciprocity for defrauded citizens.

Petitioner provided ample evidence in the family court proceedings below that his now ex-wife fraudulently married him; however, Petitioner is unable to utilize California resources and law enforcement to investigate and prosecute these fraud crimes, which violates his right to equal protection under the Fourteenth Amendment.

The Judge was also provided with ample evidence of more than just marriage fraud. For instance, Petitioner provided the Court with evidence that his now ex-wife entered on a non-immigrant, non-dual intent visa with immigrant intent. Visa fraud is also a federal crime carrying a sentence of up to 15 years. *See* 18 U.S.C. § 1546(a). Yet the Judge would have been guilty of a crime had they reported this.

III. California SB 54 Violates the Supremacy Clause By Forcing the Courts to Fail to Follow Federal Law in an Area Where Federal Law Should Control Based on the Clear and Manifest Purpose of Congress.

U.S. Constitution Article VI, clause 2 states, in its entirety: "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, anything in the Constitution or laws of any State to the contrary notwithstanding."

This section of the Constitution is unambiguous. The federal definition of marriage fraud must be respected by the States as marriage fraud. In this instance, there are two problems self-evident in the decision of the California Supreme Court. The first problem is that the Court refused to apply the federal definitions as Petitioner requested. The second is that the Court, by virtue of SB 54 was absolutely barred from applying this federal definition, creating a situation in which the rights of the alien were by operation of law, superior to those of the rights of a citizen.

If the Court had applied the federal definition as required by the U.S. Constitution, it would have found marriage fraud and annulled the marriage. However, SB 54 explicitly prevented the Judge and Justices from doing so. There are several provisions of SB 54 that would make the Judge's acts unlawful if she applied

the federal definition of marriage fraud, including the prohibition of inquiring about an individual's immigration status, *see* Cal. Gov. Code § 7284.6(A), and Performing the functions of an immigration officer, whether pursuant to Section 1357(g) of Title 8 of the United States Code or any other law, regulation, or policy, whether formal or informal, *see* Cal. Gov. Code § 7284.6(G).

Indeed, by its very language, California Government Code § 7284.6(G) actually makes it unlawful for the judge or Justice to apply the federal definition since applying the federal definition is also a task that a federal immigration officer would perform. Indeed, by the language of this statute, a state court judge or Justice in California can never find any kind of marriage fraud, because federal immigration officers are also charged with determining whether there has been marriage fraud.

This is not only irreconcilable but also forces California judges and Justices to violate federal law and the U.S. Constitution. Notably in this regard, 18 U.S.C. § 231 criminalizes the acts specifically required in SB 54. 18 U.S.C. § 231 states, in pertinent part,

> (3) Whoever commits or attempts to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or

> commodity in commerce or the conduct or performance of any federally protected function—Shall be fined under this title or imprisoned not more than five years, or both.

Thus, the state court judge and Justices are in a clear Catch-22. They must either violate California law or federal law. If they follow California law, they must withhold information necessary to a federal law enforcement function. If, on the other hand, they follow federal law and provide the information, they have violated California law. This is an untenable predicament.

CONCLUSION

A case of "national interest" is one that presents important public policy considerations; a novel issue of law; one that because of peculiar facts and circumstances may set important precedent; one with international policy implications; one that is urgent or sensitive; or one that substantially affects the uniform application of the law. This case is all of these.

It is egregious that an entire state continues to show such indelible prejudice as a result of ill-conceived and irresponsible laws. It is clear that California did not contemplate or foresee the harm its sanctuary state laws would do to a United States citizen, or how the practical effect of those laws put the interests of non-citizens over citizens when a dispute of this nature arises. It is further egregious that

California would create not only an incentive but also a necessity to violate federal law.

Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined under this title or imprisoned not more than seven years, or both.

Under 18 U.S.C. § 2382, I report treason of the state of California to you.

A CASE OF HUMANITY

Please pardon this more personal Petition, but the sanctity of our nation is a heavy burden I carry, and I feel there is simply no other way. As the very first Citizen in American history ever to be "forced" to fight a Federal case all the way through State court, into your court, I feel optimistic you will not allow this unique case to go by. Most surrender by now, but I continue to fight, by the law, because I believe in Justice. "**EQUAL JUSTICE UNDER THE LAW**". Is that not your motto? What about our justice?

Sanctuary laws make America weak! They tell the world that Americans are stupid, that immigrants can do whatever they want to us, and even our own

government refuses to protect us. We can't have both, and maintain as a union! sanctuary laws are dividing our nation to civil unrest.

Too many have forgotten that all of us have the same exact rights. I am a US citizen, representing millions of Americans who have been oppressed and victimized for far too long. Damn it! We have rights too!

I get it. The Supreme Court is the ultimate tribunal. It wants to hear a case that will indelibly prove, based on federal law, state statute, Court Documents, and published facts that **sanctuary laws** violate Articles **IV**, **VI**, and **XIV** of the **US Constitution.** You denied me at first, but here I present the big picture.

A plethora of politicians can file a cavalcade of cases that get abated ad hoc, but this case has slipped through the cracks to you. I am not an attorney. I am just a man, who has been begging for justice by barking at an avalanche for a very long time now. I have sacrificed too much and come too far not to use my civil rights to address this national treason. I ask for my day, in the only Court that can decide this case. I tried playing this politically correct, but that was not enough. At this juncture, I have nothing left to lose. Again, I am "forced".

So, do you decide the Civil Rights of millions of American Citizens, victimized under **Sanctuary Laws**, or do you side with the latest political agenda out to overthrow the government? I guess that depends on whom you feel you work for. I'm sorry, but I have nothing left. We have nothing left.

I never asked to be the civil rights face of sanctuary laws. All I wanted was a family. I was "forced" every step of the way. I sincerely apologize if any of this Petition angers you, but I ask you. This is an argument now. Is it not? In my defense, I submit the following.

There comes a time when the line in the law must be drawn. There comes a time when a single citizen is forced to stand up, put their foot down, and say, "No! Not anymore! I am a human being and this has to stop!"

Respectfully submitted,

DAVID BRANDON
Petitioner in pro per

Date: April 19, 2019

CERTIFICATE OF PETITIONER

As Petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

DAVID BRANDON