No. ____

In The
Supreme Court of the United States

Daniel Delacruz, Sr.,
Petitioner,

v.

The State Bar of California, et al.,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

A disturbing trend in anti-Latino sentiment has emboldened the lower courts to eviscerate and extirpate the equal protection clauses of the Fourteenth Amendment and 42 U.S.C. § 1981. Such disparate application of the law runs "the risk of undermining the public's confidence in the judicial process." *Buck v. Davis*, 137 S. Ct. 759, 778 (2017).

The question presented is:

1. Does a dismissal of claims based on the *Rooker-Feldman* doctrine and First Amendment rights under the *Noerr-Pennington* doctrine violate the equal protection clauses under 42 U.S.C. § 1981 and the Fourteenth Amendment where; a state court had ruled that a settlement contract involving racial discrimination against Latinos lawfully restrains First Amendment rights; where a state court ordered that Petitioner must pay a related debt that was lawfully discharged in bankruptcy court; where discovery documents were withheld and destroyed; and, where there was a felony conviction for conspiracy to commit bank fraud that targeted Latinos?

PARTIES TO THE PROCEEDINGS

Daniel Delacruz, Sr. ("Petitioner") is a Latino and a United States citizen in the state of California. The respondents are the State Bar of California, Jayne Kim, Lisa Cummins, Manuel Jimenez, Larry Sheingold, and the State Bar Client Security Fund for debtor Richard McLaughlin (collectively "State Bar"); Tanimura & Antle, Inc., Rick Antle, Mike Antle, Carmen Ponce, L+G LLP, James Sullivan, and "John Doe" (collectively "TAI"); Sayler Legal Service, Inc. and Stephanie Sayler (collectively "Sayler"); Julie Culver ("Culver"); Richard Harray ("Harray"); Sue Antle, as the personal representative for Estate of Robert Antle ("Estate"); Raquel Ramirez ("Ramirez"), and Joshua Sigal. ("Sigal").

RELATED CASES

- *Delacruz v. Antle et al.,* No. 5:14-CV-05336-EJD, U.S. District Court Northern District of California San Jose Division Order entered Aug. 25, 2017.
- *Delacruz v. State Bar of California et al.*, No. 5:14-CV-05336-EJD, U.S. District Court Northern District of California San Jose Division Order entered Sept. 29, 2015.
- *Delacruz v. State Bar of California et al.*, No. 17-17340 U.S. Court of Appeals for the Ninth Circuit Order entered May 29, 2019.
- *Delacruz v. State Bar of California et al.*, No. 17-17340 U.S. Court of Appeals for the Ninth Circuit Mandate entered June 06, 2019.

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JURISDICTION

The Ninth Circuit issued its memorandum on April 15, 2019. App. 2. The Ninth Circuit order denying the petition for rehearing en banc was entered on May, 29, 2019. App. 2. The Ninth Circuit then entered its mandate of its judgment entered on April 15, 2019 to take effect on June 06, 2019. App. 3. Jurisdiction of this Court rests on 28 U.S.C. § 1254 (1).

STATUTORY PROVISION INVOLVED

42 U.S.C. § 1981 (a) provides:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons

> and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

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STATEMENT OF THE CASE

"The *Rooker-Feldman* doctrine forbids a losing party in state court from filing suit in federal district court complaining of an injury caused by a state court judgment, and seeking federal court review and rejection of that judgment. *Skinner v. Switzer,* [131 S.Ct. 1289, 1297 (2011)]. To determine whether the *Rooker-Feldman* bar is applicable, a district court first must determine whether the action contains a forbidden de facto appeal of a state court decision. *Noel v. Hall,* 341 F.3d 1148, 1158 (9th Cir. 2003). A de facto appeal exists when 'a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision.' *Id.* at 1164. In contrast, if 'a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction.' *Id.* Thus, even if a plaintiff seeks relief from a state court judgment, such a suit is a forbidden de facto appeal only if the plaintiff also alleges a legal error by the state court. *Maldonado v. Harris,* 370 F.3d 945, 950 (9th Cir. 2004); *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004) ('[A] plaintiff must seek not only to set aside a state court judgment; he or she must also allege a legal error by the state court as the basis for that relief')."

Bell v. City of Boise, 709 F.3d 890, 897 (9th Cir. 2013).

"The *Noerr-Pennington* doctrine derives from the Petition Clause of the First Amendment and provides that 'those who petition any department of the government for redress are generally immune from statutory liability for their petitioning conduct.'" *Kearney v. Foley & Lardner, LLP*, 590 F.3d 638, 643-44 (9th Cir. 2009) (quoting *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 929 (9th Cir. 2006)). It "stands for a generic rule of statutory construction, applicable to any statutory interpretation that could implicate the rights protected by the Petition Clause." *Sosa*, 437 F.3d at 931. Under the doctrine's rule of statutory construction, federal statutes are interpreted "so as to avoid burdening conduct that implicates the protections afforded by the Petition Clause unless the statute clearly provides otherwise." *Id.*

In this case, it is undisputed that in May of 1999 Petitioner and TAI entered into a Mutual Settlement and Release Agreement ("Agreement") for Petitioner's lawsuit against TAI for racial discrimination, inter alia. TAI had released all claims against Petitioner pursuant to the Agreement which reads in relevant part:

Defendants fully understand and agree that the release contained in this Agreement includes, but is not limited to, all contract, tort, or personal injury claims,...or any other benefit incident to Plaintiff's employment with TAI, and any other state, federal or local laws or regulations of any kind, whether administrative, regulatory, statutory, or decisional.

DktEntry: 23-2 at SER 0290 § iii.

It is undisputed that TAI also agreed to not disseminate information regarding Petitioner pursuant to the Agreement, which reads in relevant part, "Defendants further agree not to disseminate information to the public by other means regarding Plaintiff." *Id.* at SER 0291 ¶ 2. It is also undisputed that TAI also agreed "not to harass Plaintiff, his known family members and agents." *Id.* at SER 0291 § d. It is further undisputed that TAI acknowledged in the Agreement that Petitioner "sought a boycott of TAI's business" but released Petitioner of all claims of defamation, slander and libel. *Id.* at SER 0286 ¶ D.

Yet, within weeks of entering into the 1999 Agreement, TAI caused Petitioner to lose his employment as a process server with Sayler because of TAI's attorney Richard Harray's falsehood that Petitioner was a felon. *Id.* at SER 0262 ¶ 409. TAI, Harray, and Sayler even had actual, inquiry, and constructive notice that the FBI and Department of Justice cleared Petitioner of any felonies because Petitioner was a registered process server and was serving legal documents with registration # 068 for his then employer Sayler. *Id.* at SER 0238 ¶ 252.

As a result, Petitioner resumed his boycott TAI website for racial discrimination against Latinos. The website contained a legal disclaimer stating that the contents were Petitioner's personal opinion and protected by the First Amendment. Website visitors were required to agree to the disclaimer prior to viewing or would be redirected away via a cancel button. *Id.* at SER 0209 ¶ 84.

In 1999, TAI then sued Petitioner in state court and obtained an injunction based on declarations and documents provided by TAI, Harray, and Sayler by successfully arguing that the Agreement lawfully restrains First Amendment rights. DktEntry: 2-1 at 14-15.

In 2005, Petitioner hired real estate broker Raquel Ramirez to sell his home and purchase a home in which Joshua Sigal was responsible for insuring that all documents were in legal compliance while employed as an officer by his wife's real estate company. Ramirez obtained a pre-approved real estate bank loan for Petitioner which falsely tripled Petitioner's monthly household income. Petitioner refused to sign the falsified bank loan and reported the foregoing respondents to several government entities. Ramirez was subsequently convicted of conspiracy to commit bank fraud. DktEntry: 23-2 at SER 0216 - 0220.

In 2011, Petitioner graduated from law school, passed the California Bar Exam and applied for a law license with the State Bar. However, it is undisputed that Petitioner's moral character application was denied based on defamatory questionnaires and comments voluntarily submitted by TAI, Harray, Sayler, Sigal, Ramirez, and Culver. *Id.* at SER 0202 ¶ 50.

Petitioner sued TAI, Harray, Sayler, the Estate, and Culver for their defamatory State Bar questionnaires and statements pursuant to his reciprocal § 1981 rights as a Latino to enforce contracts and obtain an injunction under the Agreement (*Id.* at SER 0292, § h) just as TAI

obtained against Petitioner on January 31, 2001, which is undisputed by TAI. Dkt:Entry: 52-1 at HR ER 383-HR ER 385. Petitioner also sued Ramirez and Sigal for submitting defamatory and false statements to the State Bar that Petitioner harassed them with false complaints of real estate fraud. Yet, Ramirez was convicted of felony conspiracy to commit bank fraud. *Id.* at SER 0254.

The Ninth Circuit affirmed the district court's dismissal of claims against the non-government respondents on the basis that they were protected by the First Amendment under the *Noerr–Pennington* doctrine citing *Sosa,* 437 F.3d at 934-35 and that Petitioner's "federal claims do not fall within the narrow sham litigation exception" citing *Prof'l Real Estate Inv'rs, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 60-61 (1993). App. 1c.

The Ninth Circuit also affirmed the dismissal of Petitioner's claims against the government respondents the State Bar and Julie Culver as barred by the *Rooker-Feldman* doctrine by holding that Petitioner's "claims constitute a forbidden 'de facto appeal' of prior state court [moral character] judgments against [Petitioner] and are 'inextricably intertwined' with those judgments" citing *Noel*, 341 F.3d at 1163-1165 and *Craig v. State Bar of Cal.*, 141 F.3d 1353, 1354 n.1 (9th Cir. 1998). App. 1b.

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REASONS FOR GRANTING THE PETITION

I. THE NINTH CIRCUIT'S HOLDING THAT PETITIONER'S CLAIMS ARE BARRED BY THE FIRST AMENDMENT UNDER *NOERR-PENNINGTON* CONFLICTS WITH THIS COURT'S AND NINTH CIRCUIT PRECEDENTS

The Ninth Circuit's holding that the non-government respondents were protected by the First Amendment under *Noerr-Pennington* violated Petitioner's reciprocal *Rooker-Feldman* rights because a state court in Monterey County, California had ruled in 2001 that a 1999 settlement contract lawfully restrains First Amendment rights. DktEntry: 2-1 at 14-15.

The Ninth Circuit further held that denying Petitioner's request to modify a state court injunction was proper under the *Rooker-Feldman* doctrine citing *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283-84 (2005). App. 1b-1c. But the Ninth Circuit departed from this Court's precedent in *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985) which held, the "Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike."

The Ninth Circuit also departed from its own precedent in *Bell*, 709 F.3d at 897 because the district court had denied the non-government respondents' *Rooker-Feldman* defenses. App. 4k; *Delacruz v. Antle*, No. 5:14-CV-05336-EJD, 2017 WL 3670791, at *5 (N.D. Cal. Aug. 25, 2017). Moreover,

none of the non-government respondents appealed this holding to the Ninth Circuit.

TAI and Harray also admitted that both federal and state courts recognize contractual waivers citing two case laws: *Town of Newton v. Rumery,* 480 U.S. 386, 397 (1987) [upheld contractual waiver of right to sue]; *Tyler v. Children's Home Society,* 29 Cal.App.4th 511 (1994) [upheld waiver of due process right in agreement relinquishing child for adoption.] DktEntry: 2-1 at 16. It is also undisputed that TAI, Harray, and Sue Antle all admitted that the Agreement "reaches" all of them. DktEntry: 52-1 at HR ER 402.

Thus, it is racially discriminatory to preserve the non-Latino respondents' First Amendment and *Rooker-Feldman* rights while simultaneously eviscerating and extirpating Petitioner's identical and reciprocal rights because it relegates Petitioner to the status of a second-class citizen. Specifically, as a Latino, Petitioner has an equal protection right under 42 U.S.C. § 1981 to enforce the Agreement against TAI and any person acting by, through, under or in concert with them under the Agreement. Dkt:Entry: 23-2 SER 0289 § 2.b.i and SER 0292 § 6.

Petitioner also has reciprocal § 1981 contract rights to obtain an injunction under the Agreement which anticipated every possible legal permutation including moral character complaints, *Rooker-Feldman* immunity, and *Noerr–Pennington* immunity pursuant to § 2.b.i, § 2.b.ii, § 2.b.iii, DktEntry: 23-2, SER 0289-SER 0290, § 4.a and § 4.d, *Id.* at SER 0291, and § 6 of the Agreement. *Id.* at SER 0292.

But the Ninth Circuit departed from its own precedent in *NAAAOM, et al. v. Charter Communications,* 908 F.3d 1190, 1199 (9th Cir. 2018) which held, "mixed-motive claims are cognizable under § 1981. Even if racial animus was not the but-for cause of a defendant's refusal to contract, a plaintiff can still prevail if she demonstrates that discriminatory intent was a factor in that decision such that she was denied the same right as a white citizen."

The Ninth Circuit also departed from this Court's precedent in *California Motor Transport Co. et al. v. Trucking Unlimited et al.,* 404 U.S. 508, 515 (1972) which held:

> First Amendment rights may not be used as the means or the pretext for achieving "substantive evils"...which the legislature has power to control...A combination of entrepreneurs to harass and deter their competitors from having "free and unlimited access" to the agencies and courts, to defeat that right by massive, concerted, and purposeful activities of the group are ways of building up one empire and destroying another...If the end result is unlawful, it matters not that the means used in violation may be lawful.

The Ninth Circuit also held that claims against the government respondents were barred by *Rooker-Feldman* citing *Noel,* 341 F.3d at 1163-1165 and *Craig,* 141 F.3d. at 1354 n.1 (9th Cir. 1998). App.

1b. But the Ninth Circuit departed from its precedent in *In re Gruntz,* 202 F.3d 1074, 1083 (9th Cir. 2000) which held, "a reverse *Rooker–Feldman* situation is presented when state courts decide to proceed in derogation of the stay, because it is the state court which is attempting impermissibly to modify the federal court's injunction."

The Ninth Circuit also departed from its precedent in *Noel*, 341 F.3d at 1163, which held "where the federal plaintiff does not complain of a legal injury caused by a state court judgment, but rather of a legal injury caused by an adverse party, *Rooker-Feldman* does not bar jurisdiction."

The Ninth Circuit also departed from its precedent in *In re Pavelich*, 229 B.R. 777, 781 (B.A.P. 9th Cir. 1999) which held "[b]y federal statute, any judgment of any court that does not honor the bankruptcy discharge is 'void' to that extent. Specifically, a bankruptcy discharge 'voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived'. 11 U.S.C. § 524(a)(1). The discharge also operates as an injunction against the commencement or continuation of an action to collect a discharged debt as a personal liability of the debtor. 11 U.S.C. § 524(a)(2)."

In this case, it is undisputed that TAI filed a stay to Petitioner's bankruptcy filing on a basis that included the alleged "defamation of TAI related parties." DktEntry: 33-2 at 382. TAI then withdrew

their stay after Petitioner filed a motion for sanctions against TAI because of TAI's frivolous stay of the injunction to Petitioner bankruptcy confirmation. DktEntry: 2-1 at 28-29, 32. Yet, in 2012, TAI's attorneys James Sullivan and Carmen Ponce told the State Bar that Petitioner had defamed TAI. DktEntry: 23-2 at SER 0261. Sullivan also told the State Bar that TAI never received a "red cent" of their attorney's fees judgment for the breach of contract case in Monterey County Superior Court case #M 49083. *Id.* at SER 0209 ¶ 82.

Thus, Petitioner's reciprocal *Rooker-Feldman* rights voids the State Bar Court judgment on Petitioner's moral character proceedings because TAI and the government respondents herein unlawfully relitigated TAI's defamation and breach of contract claims against Petitioner. Specifically, the State Bar Court unlawfully held that Petitioner made "false statements of fact" (DktEntry: 33-1 at 144-145) and then ordered that despite the bankruptcy discharge, Petitioner was required to pay the $28,000 attorney's fees judgment that was imposed by a California state court. *Id.* at 149. These State Bar Court findings were legal wrongs and illegal acts because it is undisputed that Petitioner lawfully obtained an injunction that discharged the $28,000 debt under 11 U.S.C. § 727 of the Bankruptcy Act.

It is also undisputed that Culver was the wife of Anthony Lombardo - a law partner with Lombardo & Gilles who had represented TAI in the foregoing state court for an injunction to enforce the Agreement against Petitioner and also represented TAI when they unsuccessfully challenged Petitioner's

bankruptcy confirmation. It is undisputed that Culver was a crony of the late TAI president and CEO Rick Antle and a law school crony of moral character committee member Lisa Cummins who obsessively questioned Petitioner over TAI's injunction and the subsequent related bankruptcy filing during Petitioner's State Bar moral character proceedings. DktEntry: 2-1 at 32-33. It is also undisputed that Culver sabotaged Petitioner's law license application on behalf of TAI. *Id.* at 38.

II. THE NINTH CIRCUIT'S DECISION CONTRAVENES THIS COURT'S PRECEDENT ON SUBSTANTATIVE EVILS AND NINTH CIRCUIT COURT PRECEDENTS REGARDING DISCOVERY ABUSES AND FALSEHOODS

The Ninth Circuit decision to dismiss this claim contravenes this Court's precedent in *Trucking Unlimited,* 404 U.S. at 515 which held that "First Amendment rights may not be used as the means or the pretext for achieving 'substantive evils'...If the end result is unlawful, it matters not that the means used in violation may be lawful."

The Ninth Circuit also departed from its own precedent in *Theofel v. Farey-Jones,* 359 F.3d 1066, 1079 (9th Cir. 2004) which held that discovery abuses are not barred by *Noerr-Pennington.*

Specifically, the non-government respondents' moral character complaints against Petitioner should not be immunized by *Noerr-Pennington* because they were used as a pretext for the substantive evil of attempting to collect the foregoing $28,000 debt that Petitioner lawfully discharged in bankruptcy court.

Noerr-Pennington should also not immunize

substantive evils of withholding and destroying inculpating evidence and instructing the State Bar to destroy evidence. Specifically, since 2012 TAI colluded with the State Bar to withhold documents that were submitted by Richard Harray, James Sullivan, Stephanie Sayler, Joshua Sigal, Raquel Ramirez, Julie Culver, Lisa Cummins, and Larry Sheingold. DktEntry: 23-2 SER 0202 ¶ 50. This pattern of violating Petitioner's substantive due process of law rights continued through September of 2015 because TAI's attorney James Sullivan claimed that he did not retain a copy of his voluntary questionnaire that he submitted to the State Bar despite testifying under oath on May 18, 2012 that he obtained records regarding Petitioner dating back to 1999 from "deep storage." In October of 2015, TAI's attorney Richard Harray also destroyed his voluntary questionnaire after he perused the amended complaint that cited Sullivan's failure to keep his copy. Yet, Harray had kept documents from Petitioner's 1997 racial discrimination lawsuit against TAI. TAI's attorney Carmen Ponce also left the State Bar a voicemail on April 29, 2015 instructing them to destroy evidence by stating in relevant part, "I just sent you an email and I probably shouldn't have sent my thoughts in writing, so I am asking you to delete it, once you...if you could read it and delete it, if that's alright with you. I wouldn't want that to be circulated or cause additional issues." DktEntry: 2-1 at 22.

The Ninth Circuit also departed from its own precedent in *Clipper Exxpress v. Rocky Mountain Motor Tariff,* 690 F.2d 1240, 1261 (9th Cir. 1982)

which held that under *Noerr-Pennington* "[t]here is no first amendment protection for furnishing with predatory intent false information to an administrative or adjudicatory body. The first amendment has not been interpreted to preclude liability for false statements."

The Ninth Circuit also departed from its own precedent in *Freeman v. Lasky, Haas & Cohler*, 410 F. 3d 1180, 1184 (9th Cir. 2005) which held that under *Noerr-Pennington* "alleged anticompetitive behavior consists of making intentional misrepresentations to the court, litigation can be deemed a sham if 'a party's knowing fraud upon, or its intentional misrepresentations to the court deprive the litigation of its legitimacy.' "]).

In this case, *Noerr-Pennington* should not immunize Raquel Ramirez and Joshua Sigal because their moral character complaints against Petitioner with the State Bar were used as a pretext to achieve the substantive evil of concealing and furthering Ramirez' and Sigal's criminal bank fraud conspiracy that targeted Latinos including Petitioner. Specifically, it is undisputed that Petitioner refused to participate in Ramirez' and Sigal's criminal bank fraud conspiracy in which Petitioner reported Sigal and Ramirez to several government entities. Moreover, it is further undisputed that Ramirez is now a convicted felon for conspiracy to commit bank fraud. DktEntry: 2-1 at 18.

Noerr-Pennington should also not immunize TAI and Harray because Petitioner's law license was denied in relevant part on their falsehood that Petitioner was a felon. DktEntry: 23-1, SER 0097, fn.

3. As described supra, Sayler, TAI, Harray and the State Bar were on actual, inquiry, and constructive notice that the FBI and DOJ cleared Petitioner of any felonies. DktEntry: 23-2, SER 0238 ¶ 252.

III. THE NINTH CIRCUIT'S DENIAL OF THE PETITION FOR REAHEARING EN BANC CONTRAVENES THIS COURT'S PRECEDENTS ON EXTRAORDINARY CIRCUMSTANCES AND A DUTY TO CONSTRUE STATUTES TO AVOID CONSTITUTIONAL INFIRMITIES

Petitioner's petition for a hearing en banc included the issue of the district court's denial of Petitioner's FRCP Rule 60 motion based on abuse of discretion. DktEntry: 67-1 at 6. The Ninth Circuit denied the petition for rehearing en banc. App. 2.

But the Ninth Circuit decision contravenes this Court's precedent in *Buck v. Davis,* 137 S. Ct. 759, 773 (2017) in which a petition for a rehearing en banc had also been denied. *Buck* held that district court's denial of a FRCP Rule 60 motion for reconsideration was abuse of discretion because extraordinary circumstances can be met by factors including "risks of injustice to the parties", "risk of undermining the public's confidence in the judicial process", and racial discrimination. *Id.* at 778.

The Ninth Circuit decision also contravenes this Court's precedent in *U.S. v. Delaware & Hudson Co.,* 213 U.S. 366, 407 (1909) which held that a court has a plain duty to construe a statute in a manner that will avoid constitutional infirmities.

In this case, the Ninth Circuit's denial of the petition for a rehearing en banc under FRAP Rule 35(b)(1) and FRCP Rule 60 motion for

reconsideration were construed in a manner that infirmed Petitioner's Fourteenth Amendment equal protection rights.

Specifically, there is a serious risk of undermining the public's confidence in the judicial process because it is racially discriminatory to Petitioner, as a Latino, to allow TAI, as non-Latinos, to unilaterally benefit from the *Rooker-Feldman* doctrine.

The Ninth Circuit decision is also an injustice to Petitioner because for twenty years, the lower courts and TAI have infirmed Petitioner's reciprocal First Amendment rights pursuant to the equal protection clauses of the Fourteenth Amendment and 42 U.S.C. § 1981 based on TAI's aforementioned injunction against Petitioner in which TAI has unilaterally benefited. (DktEntry: 2-1, at 28-30).

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CONCLUSION

The petition for writ of certiorari should be granted because the lower courts departed from long established equal protection rights pursuant to the equal protection clauses of the Fourteenth Amendment and 42 U.S.C. § 1981.

Respectfully submitted,

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