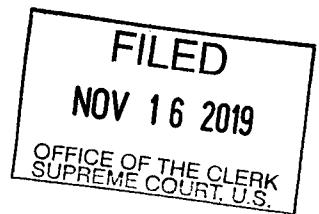


NO. 19-6734 ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

Arthur Lopez — PETITIONER  
(Your Name)

Cheryl Lopez vs.  
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Arthur Lopez  
(Your Name)

P.O. Box 13081

(Address)

Newport Beach, Ca 92658  
(City, State, Zip Code)

949 467 0937

(Phone Number)

QUESTION(S) PRESENTED

- 1.) Should Male, Catholic-Christian Father of Mexican-Heritage and Hispanic-Latino Race who is permanently injured/disabled and unable to afford private counsel be afforded a Court Appointed Attorney in a Family Law Case where his Parental Rights have been deprived for approximately four years and where the State Court, by its own motion, has appointed minor's counsel, and, who has petitioned, and been granted, continued, complete alienation of Petitioner's Four Lovely Minor Children from their, not only Biological, but also Presumed, Father-Petitioner?
- 2.) Should Mexican-Heritage and Hispanic-Latino Race Minority, Male Father be provided the same protections and guarantees under the United States Constitution, including the Fourteenth Amendment, in "Parental Rights" Deprivation Cases involving his four minor children as White-Caucasian, Female Mother?

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## **RELATED CASES**

See following attachment / Itemization .

Related Cases :

15HM12251 - Superior Court of California, County of Orange  
16HM10451 Harbor Justice Center - Newport Beach - Trial Court  
M-18067 (G057987) - Superior Court of California, County of Orange - Santa Ana -  
(Judge Cheri Pham) <sup>Habeas Corpus</sup> -  
16D001283 - Superior Court of California, County of Orange - Lamoreaux Justice Center - Orange - Family Court  
G054262 - California Court of Appeals 4<sup>th</sup> District, 3<sup>rd</sup> Div.  
G054361  
G057379  
G054626  
G054770  
G055004  
G055199  
G055356  
G055448  
G056017  
G056216  
G056467  
G056564  
G057060  
G057239  
G057278  
+ G057462 +  
G057649  
G057773  
G057987  
G058069

# Appellate Courts Case Information

## 4th Appellate District Division 3

[Change court](#)

*Court data last updated: 11/11/2019 01:49 PM*

### Case Summary

Trial Court Case: 16D001283  
Court of Appeal Case: G057462 —  
Supreme Court Case: S255865  
Division:  
Case Caption: Lopez v. Lopez  
Case Type: CV  
Filing Date: 03/11/2019  
Completion Date: 06/21/2019  
Oral Argument Date/Time:

### Cross Referenced Cases:

G054262	Lopez v. Lopez
G054361	Lopez v. The Superior Court of Orange County
G054626	The People v. Lopez
G054770	Lopez v. The Superior Court of Orange County
G055004	Lopez v. Lopez
G055199	Lopez v. The Superior Court of Orange County et al.
G055356	Lopez v. Union Bank N.A. et al.
G055448	Lopez v. The Superior Court of Orange County
G056017	Lopez v. City of Santa Ana
G056216	Lopez v. The Superior Court of Orange County
G056467	The People v. Lopez
G056564	The People v. Lopez
G057060	The People v. Lopez
G057239	Lopez v. Lopez
G057278	Lopez v. Lopez
G057379	Lopez v. Lopez
G057649	Lopez v. Lopez
G057773	Lopez v. Lopez
G057987 —	— In re Arthur Lopez on <u>Habeas Corpus</u>
G058069	Lopez v. Lopez
G058521	Lopez v. Irvine Company LLC et al.

[Click here](#) to request automatic e-mail notifications about this case.

Related Cases-cont. #2:

E071093	- California Court of Appeals 4 <sup>th</sup> District, Division 2 Riverside	↓ ↓ (See attached Case Detail)
E070899		
E070663		
E070307		
E069559		
S255865	- California Supreme Court	(See attached Case Detail)
S254047		
S252084		
S250265		
S248959		
S 248949		
S 248943		
S 244235		
S 242910		
S 242335		
S 241477		
S 240272		
S 240134		
S 244794		
S 248942		
S 247603		

# Appellate Courts Case Information

## 4th Appellate District Division 2

[Change court ▾](#)

Court data last updated: 08/15/2019 12:11 PM

### Case Summary

Trial Court Case:

RIV1701781

Court of Appeal Case:

**E069559**

Supreme Court Case:

S250265

Division:

Case Caption:

Arthur Lopez v. Cheryl Lopez

Case Type:

Filing Date:

Completion Date:

CV

11/22/2017

01/10/2019

### Cross Referenced Cases:

[E070307](#)

Arthur Lopez v. Cheryl Lopez

[E070663](#)

Arthur Lopez v. Cheryl Lopez

[E070899](#)

Arthur Lopez v. Cheryl Lopez

[E071093](#)

Arthur Lopez v. Cheryl Lopez

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**Supreme Court****Case Number**S255865

LOPEZ, MARRIAGE OF

S254047

PEOPLE v. LOPEZ

S252084

PEOPLE v. LOPEZ

S252084

PEOPLE v. LOPEZ

S250265

LOPEZ v. LOPEZ

S248959

LOPEZ v. CA 4/2 (LOPEZ)

S248949

LOPEZ v. S.C. (PEOPLE)

S248943

LOPEZ v. CA 4/3 (LOPEZ)

S248742

LOPEZ v. S.C. (CITY OF SANTA ANA)

S247603

LOPEZ v. S.C. (CITY OF SANTA ANA)

S244794LOPEZ v. UNION BANKS244235

LOPEZ v. S.C. (PEOPLE)

S242910

LOPEZ v. S.C. (PEOPLE)

S242335

LOPEZ, MARRIAGE OF

S241477

LOPEZ v. S.C. (PEOPLE)

S240272

LOPEZ v. S.C. (PEOPLE)

S240272

LOPEZ v. S.C. (PEOPLE)

S240134

LOPEZ v. LOPEZ

**Court of Appeal****Case Number**

G057462

G057060

G056467

G056467

E069559

G056216

G055356

G055004

G054770

G054361

G054361

G054262

**Trial Court****Case Number**

16D001283

30-2016-00869605

15HM12251

30-2016-00833841

RIV1701781

30-2017-00953313

30-2012-00565803

16D001283

15HM12251

30-2016-00880306

15HM12251

16D001283

Related Cases, - Cont. #3 :

30-2016 - 00833841

Superior Court of California, County of Orange  
Appellate Division - Santa Ana

↓      ↓

30-2016 - 00869605

30- 2016 - 00880306

Related Cases (cont #4):

SACV 18-01835

United States District Court for the Central  
District. Arthur Lopez v. California Court of Appeal  
Manuel Ramirez

SACV 19-01143

Arthur Lopez v. Superior Court of California  
County of Orange

SACV 17-02038

Arthur Lopez v. State of California,  
et al

SACV 17-01466

\* Arthur Lopez v. MUFG Union Bank  
\*(Also U.S. Court of Appeals for the 9th Circuit  
Case # 18-55748 and  
United States Supreme Court  
Case # Pending )

Docket # 19 A 240

Arthur Lopez v. MUFG Union Bank, NA  
United States Supreme Court

Docket

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REASONS FOR GRANTING THE WRIT .....	
CONCLUSION.....	

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APPENDIX B	California Court of Appeals 4 <sup>th</sup> District, 3 <sup>rd</sup> Division Case # B057462 - April 16, 2019 Dismissal of Case
APPENDIX C	Superior Court of California , County of Orange Lamoreaux Justice Center - Case# 16D001283 March 11, 2019
APPENDIX D	California Statute Family Code § 7895 Mandating Appointment of Counsel for Indigent Parents and free Transcripts
APPENDIX E	
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## TABLE OF AUTHORITIES CITED

### CASES

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\* "See Attached Case law" \*

Following

United States Supreme Court

- 1.) M.L.B. v. S.L.J. No. # 95-883
- 2) Abley Gail Bassiter v. Dept. of S. Serv. of Duthan, W.C.  
No. 79-6423

### STATUTES AND RULES

See Attached Following

### OTHER

117 S.Ct. 555  
Supreme Court of the United States

M. L. B., Petitioner,

V.

S. L. J., Individually and as Next Friend of the Minor Children, S. L. J. and M. L. J., et ux.

No. 95-853.  
Argued Oct. 7, 1996.  
Decided Dec. 16, 1996.

## Synopsis

Mississippi Chancery Court terminated mother's **parental rights**, and mother appealed. Appeal was thereafter dismissed because of mother's financial inability to comply with Mississippi statutes that required her to pay in advance record preparation fees estimated at \$2,352.36. Mississippi Supreme **Court** then denied mother's application to appeal in forma pauperis, and mother petitioned for writ of certiorari, which was granted, 116 S.Ct. 1349. The Supreme **Court**, Justice Ginsburg, held that Mississippi statutes in question violated equal protection and due process clauses of Fourteenth Amendment.

Reversed and remanded.

Justice Kennedy filed opinion concurring in judgment.

Chief Justice Rehnquist filed dissenting opinion.

Justice Thomas filed dissenting opinion in which Justice Scalia joined, and in which Chief Justice Rehnquist joined in part.

## West Headnotes (6)

## Change View

1	<b>Constitutional Law</b>			
	Choices about marriage, family life, and upbringing of children are among associational rights ranked as of basic importance in our society, rights sheltered by	Fourteenth Amendment against State's unwarranted usurpation, disregard, or disrespect. U.S.C.A.		Constitutional Law Freedom of Association Familial association (Formerly 92k82(10))
	Const.Amend. 14.			Constitutional Law Equal Protection Particular Issues and Applications
	102 Cases that cite this headnote			Families and Children In general (Formerly 92k225.1)
				Constitutional Law Due Process Particular Issues and Applications
				Families and Children

		92k4382	Familial association, integrity, and privacy in general (Formerly 92k274(5))
2	<b>Constitutional Law</b> <b>Infants</b> Mississippi statutes that conditioned indigent mother's right to appeal judgment terminating her <b>parentalrights</b> on prepayment of costs violated equal protection and due process clauses of Fourteenth Amendment; mother's parental termination appeal was to be treated as <b>Court</b> had treated petty offense appeals, and Mississippi could not withhold transcript mother needed to gain review of sufficiency of evidence to support termination. U.S.C.A. Const.Amend. 14; Code 1972, §§ 11-51-3, 11-51-29.  210 Cases that cite this headnote	 92 92XXVI 92XXVI(B) 92XXVI(B)6 92k3228	Constitutional Law Equal Protection Particular Classes Poverty or Wealth; the Homeless <b>Court</b> and administrative costs or fees; assistance of counsel  (Formerly 92k225.1)
		 92 92XXVII 92XXVII(G) 92XXVII(G)18 92k4403.5	Constitutional Law Due Process Particular Issues and Applications Families and Children Removal or termination of <b>parentalrights</b>  (Formerly 92k4393, 92k274(5))
		 211 211I 211k1003 211k1006 211k1006(13)	Infants In General Constitutional, Statutory, and Regulatory Provisions Validity Dependent children  (Formerly 211k132)
3	<b>Constitutional Law</b> <b>Infants</b> Due process alone did not require that Mississippi give indigent mother right to appeal from termination of her <b>parental rights</b> . U.S.C.A. Const.Amend. 14.  103 Cases that cite this headnote	 92 92XXVII 92XXVII(G) 92XXVII(G)18 92k4403.5	Constitutional Law Due Process Particular Issues and Applications Families and Children Removal or termination of <b>parentalrights</b>  (Formerly 92k4393, 92k274(5))
		 211 211XIV 211XIV(K) 211k2374 211k2375	Infants Dependency, Permanent Custody, and Termination of Rights; Children in Need Appeal and Review Right of Review and Parties In general

(Formerly 211k242)

<b>4</b> <b>Criminal Law</b> Counsel at state expense in criminal case is constitutional requirement, even in the first instance, only when defendant faces time in confinement. U.S.C.A. Const.Amend. 14.  14 Cases that cite this headnote	 110 Criminal Law 110XXXI Counsel 110XXXI(B) Right of Defendant to Counsel 110XXXI(B)1 In General 110k1711 Offenses, Tribunals, and Proceedings Involving Right to Counsel 110k1715 Penalty, potential or actual  (Formerly 110k641.2(4))
<b>5</b> <b>Constitutional Law</b> When deprivation of parental status is at stake, counsel is sometimes part of process that is due. U.S.C.A. Const.Amend. 14.  29 Cases that cite this headnote	 92 Constitutional Law 92XXVII Due Process 92XXVII(G) Particular Issues and Applications 92XXVII(G)18 Families and Children 92k4403.5 Removal or termination of <b>parentalrights</b>  (Formerly 92k4393, 92k274(5))
<b>6</b> <b>Costs</b> <b>Infants</b> Generally, fee requirements are examined only for rationality, and State's need for revenue to offset costs, in mine run of cases, satisfies rationality requirement; exceptions to that rule are fees that impede basic right to participate in political processes as voters and candidates, right of access to judicial processes in cases criminal or "quasi-criminal" in nature, and cases involving termination of <b>parental rights</b> . U.S.C.A. Const.Amend. 14.  97 Cases that cite this headnote	

101 S.Ct. 2153  
Supreme Court of the United States

Abby Gail LASSITER, Petitioner,

v.

DEPARTMENT OF SOCIAL SERVICES OF DURHAM COUNTY, NORTH CAROLINA.

No. 79-6423.  
Argued Feb. 23, 1981.  
Decided June 1, 1981.  
Rehearing Denied Aug. 28, 1981.  
See 453 U.S. 927, 102 S.Ct. 889.

## Synopsis

The District Court, Durham County, Samuel F. Gantt, J., terminated a mother's parental rights and appeal was taken. The North Carolina Court of Appeals, Robert M. Martin, J., 43 N.C.App. 525, 259 S.E.2d 336 affirmed, and certiorari was granted. The Supreme Court, Justice Stewart, held that failure to appoint counsel for indigent parents in proceeding for termination of parental status did not deprive parent of due process in light of circumstances which included that petition contained no allegations upon which criminal charges could be based, no expert witnesses testified, case presented no specially troublesome points of law, and presence of counsel could not have made a determinative difference for petitioner; such decision does not imply that appointment of counsel is other than enlightened and wise.

Affirmed.

Chief Justice Burger filed concurring opinion.

Justice Blackmun filed a dissenting opinion in which Justice Brennan and Justice Marshall joined.

Justice Stevens filed dissenting opinion.

## West Headnotes (15)

### Change View

<p><b>1 Constitutional Law</b></p> <p>Due process has never been, and perhaps can never be, precisely defined. U.S.C.A.Const. Amend. 14.</p> <p>47 Cases that cite this headnote</p>	 <p>92 Constitutional Law</p> <p>92XXVII Due Process</p> <p>92XXVII(B) Protections Provided and Deprivations Prohibited in General</p> <p>92k3875 Factors considered; flexibility and balancing</p> <p>(Formerly 92k251)</p>
<p><b>2 Constitutional Law</b></p> <p>Due process expresses requirement of fundamental fairness. U.S.C.A.Const. Amend. 14.</p> <p>93 Cases that cite this headnote</p>	 <p>92 Constitutional Law</p> <p>92XXVII Due Process</p> <p>92XXVII(B) Protections Provided and Deprivations Prohibited in General</p> <p>92k3866 Fairness in general</p> <p>(Formerly 92k251)</p>

3	Constitutional Law		Applying the due process clause is an uncertain enterprise which must discover what fundamental fairness consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake. U.S.C.A.Const. Amend. 14.	92 Constitutional Law 92XXVII Due Process 92XXVII(B) Protections Provided and Deprivations Prohibited in General 92k3875 Factors considered; flexibility and balancing (Formerly 92k252.5)
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155 Cases that cite this  
headnote

4	<p><b>Trial</b>            The preeminent generalization that emerges from United States Supreme Court's precedents on an indigent's right to appointed counsel is that such a right has been recognized to exist only where</p>		<p>388 Trial            388III Course and Conduct of Trial in General            388k21 Presence of parties and counsel</p>
---	--	---	---

704 Cases that cite this  
headnote

5 Trial  
As a litigant's interest in personal liberty diminishes, so does his right to appointed counsel. U.S.C.A. Const. Amend. 14.

### 139 Cases that cite this headnote

388 Trial  
388III Course and Conduct of Trial in General  
388k21 Presence of parties and counsel

6	<b>Constitutional Law</b>		
	There is a presumption that an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty and the other element of the due process decision, i. e., the private interest at stake, the government's interest, and the risk that the procedures used	92	Constitutional Law
		92XXVII	Due Process
		92XXVII(E)	Civil Actions and Proceedings
		92k4017	Costs and Fees
		92k4020	Indigents; proceedings in forma pauperis
			(Formerly 92k317(2))

will lead to erroneous decision, must be balanced against each other and then weighed against the presumption. U.S.C.A. Const. Amends. 6, 14.

799 Cases that cite this  
headnote

7	<b>Child Custody</b> A parent's desire for and right to the companionship, care, <b>custody</b> , and management of his or her children is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection. N.C.G.S. §§ 7A-289.24, 7A-289.25(6), 7A-289.27, to 7A-289.30, 7A-289.34, 7A-587.		<b>Child Custody</b> 76D Child Custody 76DII Grounds and Factors in General 76DII(A) In General 76Dk22 Persons entitled in general  (Formerly 285k2(1))
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295 Cases that cite this  
headnote

8	<b>Infants</b>		
	<b>Parent's interest in accuracy and justice of decision to terminate parental status is an extremely important one. N.C.G.S. §§ 7A-289.24, 7A-289.25(6), 7A-289.27, to 7A-289.30, 7A-289.34, 7A-587.</b>		<b>Infants</b> <b>Dependency, Permanent Custody, and Termination of Rights; Children in Need</b>
	150 Cases that cite this headnote	211	In General
		211XIV	Persons and Relationships Affected or Subject
		211XIV(A)	In general
		211k1816	(Formerly 211k205)
		211k1817	

<p><b>9 Infants</b>  In a proceeding to <b>terminate parental status</b>, the state shares with the <b>parent</b> an interest in a correct decision, has a relatively weak pecuniary interest in avoiding the expense of <b>appointed counsel</b> and cost of lengthened proceedings his presence may cause, and, in some but not all cases, has a possibly stronger interest in informal procedure. N.C.G.S. §§ 7A-289.24, 7A-289.25(6), 7A-289.27, to 7A-289.30, 7A-289.34, 7A-</p>		<p>211 Infants</p> <p>211XIV Dependency, Permanent <b>Custody</b>, and <b>Termination</b> of Rights; Children in Need</p>
		<p>211XIV(A) In General</p> <p>211k1825 Interest, role, and authority of government in general</p> <p>(Formerly 211k194.1, 211k194)</p>
		<p>211 Infants</p> <p>211XIV Dependency, Permanent <b>Custody</b>, and <b>Termination</b> of Rights; Children in Need</p>

587; U.S.C.A.Const. Ampends. 6, 14.	211XIV(J) 211k2332	Counsel Right to Counsel
91 Cases that cite this headnote	211k2338	Indigents and paupers; public defenders

10	Infants	<p>Complexity of proceeding to <b>terminate parental</b> status and incapacity of uncounseled <b>parent</b> could be, but would not always be, great enough to make risk of an erroneous deprivation of <b>parent's</b> rights insupportably high. N.C.G.S. §§ 7A-289.24, 7A-289.25(6), 7A-289.27, to 7A-289.30, 7A-289.34, 7A-587; U.S.C.A. Const. Amends. 6, 14.</p>		<p>211 Infants</p> <p>211XIV Dependency, Permanent <b>Custody</b>, and <b>Termination</b> of Rights; Children in Need</p> <p>211XIV(J) Counsel</p> <p>211k2332 Right to Counsel</p> <p>211k2335 <b>Parent</b> or <b>parent</b> figure in general (Formerly 211k205)</p>
		<p>62 Cases that cite this headnote</p>		

11 **Constitutional Law**  
If, in a given proceeding for **termination of parental status**, the **parent's** interests were at their strongest, the state's interests were at their weakest, and the risks of error were at their peak, it could not be said that due process did not require **appointment** of counsel. N.C.G.S. §§ 7A-289.24, 7A-289.25(6), 7A-289.27, 7A-289.29, 7A-289.30, 7A-289.34, 7A-587; U.S.C.A. Const. Amend. 14.

364 Cases that cite this Headnote	
	
92	Constitutional Law
92XXVII	Due Process
92XXVII(G)	Particular Issues and Applications
92XXVII(G)18	Families and Children
92k4403.5	Removal or termination of parental rights (Formerly 92k4393, 92k274(5))

## 12 Constitutional Law

Constitution does not require **appointment** of counsel in every **parental termination** proceeding

and decision whether due process calls for **appointment** of counsel for indigent **parent** in such proceedings must be answered in first instance by trial **court** subject to appellate review. N.C.G.S. §§ 7A-289.24 7A-289.25(6), 7A-289.27, 7A-289.29, 7A-289.30, 7A-289.34, 7A-587; U.S.C.A. Const. Amend. 14.

534 Cases that cite this headnote



92	Constitutional Law
92XXVII	Due Process
92XXVII(G)	Particular Issues and Applications
92XXVII(G)18	Families and Children
92k4403.5	Removal or termination of parental rights

(Formerly 92k4393, 92k274(5))

## 13 Constitutional Law

Failure to appoint counsel for indigent parents in proceeding for termination of parental status did not deprive parent of due process in light of circumstances which included that petition contained no allegations upon which criminal charges could be based, no expert witnesses testified, case presented no specially troublesome points of law, and presence of counsel could not have made a determinative difference for petitioner; such decision does not imply that appointment of counsel is other than enlightened and wise. N.C.G.S. §§ 7A-289.24, 7A-289.25(6), 7A-289.27, 7A-289.29, 7A-289.30, 7A-289.34, 7A-587; U.S.C.A. Const. Amend. 14.

### 329 Cases that cite this headnote



92	Constitutional Law
92XXVII	Due Process
92XXVII(G)	Particular Issues and Applications
92XXVII(G)18	Families and Children
92k4403.5	Removal or termination of parental rights

(Formerly 92k4393, 92k274(5))

## Constitutional Law



<b>14</b> Fourteenth Amendment imposes on state the standards necessary to ensure it that judicial proceedings are fundamentally fair. U.S.C.A.Const. Amend. 14.	92	Constitutional Law
	92XXVII	Due Process
	92XXVII(B)	Protections Provided and Deprivations Prohibited in General
	92k3867	Procedural due process in general (Formerly 92k305(1))

56 Cases that cite this headnote

<b>15</b> <b>Constitutional Law</b> A wise public policy may require that higher standards be adopted than those minimally tolerable under the Constitution. U.S.C.A.Const. Amend. 14.		
	92	Constitutional Law
	92XXVII	Due Process
	92XXVII(B)	Protections Provided and Deprivations Prohibited in General

15 Cases that cite this headnote

92k3865	In general (Formerly 92k251)
---------	---------------------------------

**\*\*2155 Syllabus \***

**\*18** In 1975, a North Carolina state **court** adjudicated petitioner's infant son to be a neglected child and transferred him to the **custody** of respondent Durham County Department of Social Services. A year later, petitioner was convicted of second-degree murder, and she began a sentence of 25 to 40 years of imprisonment. In 1978, respondent petitioned the **court** to **terminate** petitioner's **parental** rights. Petitioner was brought from prison to the hearing on the petition, and the **court**, after determining, *sua sponte*, that she had been given ample opportunity to obtain counsel and that her failure to do so was without just cause, did not postpone the proceedings. Petitioner did not aver that she was indigent, and the **court** did not **appoint** counsel for her. At the hearing, petitioner cross-examined a social worker from respondent, and both petitioner and her mother testified under the **court's** questioning. The **court** thereafter **terminated** petitioner's **parental** status, finding that she had not contacted respondent about her child since December 1975, and that she had "wilfully failed to maintain concern or responsibility for the welfare of the minor." The North Carolina **Court** of Appeals rejected petitioner's sole contention on appeal that because she was indigent, the Due Process Clause of the Fourteenth Amendment required the State to provide counsel for her. The North Carolina Supreme **Court** summarily denied discretionary review.

*Held :*

1. The Constitution does not require the **appointment** of counsel for indigent **parents** in every **parental** status **termination** proceeding. The decision whether due process calls for the **appointment** of counsel is to be answered in the first instance by the trial **court**, subject to appellate review. Pp. 2158–2162.

(a) With regard to what the "fundamental fairness" requirement of the Due Process Clause means concerning the right to **appointed** counsel, there is a presumption that an indigent litigant has a right to **appointed** counsel only when, if he loses, he may be deprived of his physical liberty. The other elements of the due process decision—the private interest at stake, the government's interest, and the risk that the procedures used will lead to erroneous decisions, *Mathews v. \*19 Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18—must be balanced against each other and then weighed against the presumption. Pp. 2158–2160.

(b) The **parent's** interest in the accuracy and justice of the decision to **terminate parental** status is an extremely important one (and may be supplemented by the dangers of criminal liability inherent in some **termination** proceedings); the State shares with the **parent** an interest in a correct decision, has a relatively weak pecuniary interest in avoiding the expense of **appointed** counsel and the cost of the lengthened proceedings his presence may cause, and, in some but not all cases, has a possibly **\*\*2156** stronger interest in informal procedures; and the complexity of the proceeding and the incapacity of the uncounseled **parent** could be, but would not always be, great enough to make the risk of an erroneous deprivation of the **parent's** rights insupportably high. Thus if, in a given case, the **parent's** interests were at their strongest, the State's interests were at their weakest,

and the risks of error were at their peak, the *Eldridge* factors would overcome the presumption against the right to **appointed** counsel, and due process would require **appointment** of counsel. Pp. 2159–2162.

2. In the circumstances of this case, the trial judge did not deny petitioner due process of law when he did not **appoint** counsel for her. The record shows, *inter alia*, that the petition to **terminate** petitioner's parental rights contained no allegations of neglect or abuse upon which criminal charges could be based; no expert witnesses testified; the case presented no specially troublesome points of law; the presence of counsel could not have made a determinative difference for petitioner; she had expressly declined to appear at the 1975 child **custody** hearing; and the trial **court** found that her failure to make an effort to contest the **termination** proceeding was without cause. Pp. 2162-2163.

43 N.C.App. 525, 259 S.E.2d 336, affirmed.

# In re Ella B.

Download PDFCheck if overturned

Court of Appeals of the State of New YorkJun 8, 1972

30 N.Y.2d 352 (N.Y. 1972)Copy Citation

## Cases citing this document

- Reist v. Bay Circuit Judge

The New York Court of Appeals similarly declared: "A parent's concern for the liberty of the child, as well...

- In re Weldon

The history of the conflict between Dahlari and her mother — a conflict which triggered the interest of the...

## 112 Citing cases

### Summaries written by judges

- Holding that an individual who has a right to court-appointed counsel in a child neglect case must be advised of that right  
Summary of this case from In re Adoption of J.D.F
- Holding that "an indigent parent, faced with the loss of a child's society, as well as the possibility of criminal charges, is entitled to the assistance of counsel"; "parent's concern for the liberty of the child, as well as for his care and control, involves too fundamental an interest and right to be relinquished to the State without the opportunity for a hearing, with assigned counsel if the parent lacks the means to retain a lawyer"; and since a right to counsel exists, "it follows that one is entitled to be so advised"  
Summary of this case from In re "A" Children
- Explaining that if a parent were not advised of the right to counsel, "there could be no assurance either that he knew he had such a right or that he had waived it"  
Summary of this case from Chris L. v. Vanessa O. (In re Natalia O.) 9 Summaries

### Chief Judge FULD.

Whether the Family Court is required to advise an indigent parent, charged with child neglect, that he is entitled to be represented by assigned counsel is the question presented by this appeal.

The Family Court Act (§ 1043, subd. [a]; prior to May 1, 1970, § 343, subd. [a]) makes provision for legal representation but is silent with respect to the right of indigent parents to assigned counsel:

"The court shall advise the parent or other person legally responsible for the child's care of a right to be represented by counsel of his own choosing and to have an adjournment to send for counsel and consult with him."

The order appealed from should, therefore, be modified, without costs, and the matter remitted for further proceedings in accordance with this opinion and, as so modified, affirmed.

Judges BURKE, SCILEPPI, BERGAN, BREITEL, JASEN and GIBSON concur.

12 Cal.4th 226  
Supreme Court of California.

In re BRYCE C., a Minor.  
VERNON S., Petitioner and Appellant,  
v.  
JEROME C., Objector and Respondent.

No. S040932.  
Dec. 26, 1995.

**Synopsis**

Following decision of the Superior Court, Kern County, No. 293962, Gary T. Friedman, J., refusing stepfather's petition to declare child free from **parental custody** and control, father requested appointment of appellate counsel to represent him in stepfather's appeal. The Court of Appeal denied request. Father petitioned for review. The Supreme Court, Arabian, J., granted petition and held that Court of Appeal had authority but was not required to appoint appellate counsel for father.

Reversed and remanded.

Kennard, J., filed opinion concurring in part and dissenting in part.

24 Cal.3d 22  
Supreme Court of California, In Bank.

Julia Ann SALAS, Plaintiff and Respondent,

v.

Miguel Martinez CORTEZ, Defendant and Appellant.

DAVID M., a minor, etc., et al., Plaintiffs and Respondents,

v.

David Duran CASTELLANOS, Defendant and Appellant.

L.A. 30971.

April 11, 1979.

Rehearing Denied May 17, 1979.

### Synopsis

Suits were instituted at behest of state to determine parentage of minor children. The Superior Court, Ventura County, Robert R. Willard and Lawrence Storch, JJ., entered adverse judgments from which defendants appealed. The Supreme Court, Bird, C. J., held that: (1) due process requires **appointment** of counsel to represent indigent defendants in paternity proceedings wherein state appears as a party or appears on behalf of mother or child, and (2) judgments which were entered against individuals by involuntary default when, without assistance of counsel, each individual was found to be father of child in each case on basis of alleged facts which were deemed admitted because not contradicted and testimony of mother which was not subjected to cross examination were subject to being reversed and cases were subject to being remanded to trial court for purpose of **appointing** counsel for individuals if they could demonstrate that indigency.

Reversed and remanded.

Richardson, J., dissented and filed opinion which Clark and Manuel, JJ., concurred.

Opinion, Cal.App., 145 Cal.Rptr. 727, vacated.

### West Headnotes (13)

Change View

#### 1 Constitutional Law

Central to the due process right under the Federal and State Constitutions is the guarantee that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. U.S.C.A. Const. Amend. 14; West's Ann. Const. art. 1, § 7(a).



92	Constitutional Law
92XXVII	Due Process
92XXVII(E)	Civil Actions and Proceedings
92k3953	Notice and hearing in general (Formerly 92k305(2))

5 Cases that cite this headnote

**2 Constitutional Law**

Due process guarantee that persons forced to settle their claims of right and duty through the judicial process be given a meaningful opportunity to be heard includes the right of a defendant to appointed counsel under certain circumstances regardless of whether the action is labeled criminal or civil. U.S.C.A. Const. Amend. 14; West's Ann. Const. art. 1, § 7(a).

9 Cases that cite this headnote



92	Constitutional Law
92XXVII	Due Process
92XXVII(E)	Civil Actions and Proceedings
92k3991	Trial
92k3992	In general (Formerly 92k314)



92	Constitutional Law
92XXVII	Due Process
92XXVII(H)	Criminal Law
92XXVII(H)10	Counsel
92k4800	In general (Formerly 92k268.1(1))

**3 Constitutional Law**

Touchstone of due process is fundamental fairness. U.S.C.A. Const. Amend. 14; West's Ann. Const. art. 1, § 7(a).

9 Cases that cite this headnote



92	Constitutional Law
92XXVII	Due Process
92XXVII(B)	Protections Provided and Deprivations Prohibited in General
92k3866	Fairness in general (Formerly 92k251.3)

**4 Constitutional Law**

Whether due process requires appointment of counsel in a particular case depends on interests involved and nature of proceedings. U.S.C.A. Const. Amend. 14; West's Ann. Const. art. 1, § 7(a).

5 Cases that cite this headnote



92	Constitutional Law
92XXVII	Due Process
92XXVII(E)	Civil Actions and Proceedings
92k3991	Trial
92k3992	In general (Formerly 92k314)

**5 Parent and Child**

If paternity is to be determined in an adversary proceeding at the behest of the state, the interests of all concerned demand that the defendant be able to defend fully and fairly. West's Ann. Welfare & Inst. Code, §§ 11350.1, 11475.1; West's Ann. Civ. Code, §§ 7001, 7006.



285	Parent and Child
285II	Proceedings to Determine Parentage
285II(A)	In General
285k160	Trial or Hearing
285k161	In general (Formerly 76Hk57 Children Out-Of-Wedlock, 205Ak57 Illegitimate Children)

**6 Parent and Child**

There is no state interest sufficiently compelling to



285	Parent and Child
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warrant depriving an indigent defendant of counsel at time crucial determination is made in a paternity proceeding that he is legally to be considered a child's father. West's Ann.Welfare & Inst.Code, §§ 11350.1, 11475.1; West's Ann.Civ.Code, §§ 7001, 7006.

7 Cases that cite this headnote

**7 Parent and Child**

**Appointment** of counsel for indigent defendants will make fact-finding process in paternity cases more accurate and thereby further legitimate interests of the state in securing support for dependent children. West's Ann.Welfare & Inst.Code, §§ 11350.1, 11475.1; West's Ann.Civ.Code, §§ 7001, 7006.

15 Cases that cite this headnote

285II  
285II(A)  
285k158

Proceedings to Determine Parentage  
In General  
Counsel  
(Formerly 76Hk57 Children Out-Of-Wedlock, 205Ak57 Illegitimate Children)

  
285  
285II  
285II(A)  
285k158

**Parent and Child**  
Proceedings to Determine Parentage  
In General  
Counsel  
(Formerly 76Hk57 Children Out-Of-Wedlock, 205Ak57 Illegitimate Children)

**8 Child Support**

**Parent and Child**

Legitimate interests of state in ascertaining **parent** each of minor children and enforcing **parental** support obligations will be furthered if accuracy and fairness of paternity suits are improved by providing for representation of indigent defendants. West's Ann.Welfare & Inst.Code, §§ 11350.1, 11475.1; West's Ann.Civ.Code, §§ 7001, 7006.

11 Cases that cite this headnote

  
76E  
76EV  
76EV(C)  
76Ek210

Child Support  
Proceedings  
Hearing  
In general  
(Formerly 76Hk57 Children Out-Of-Wedlock, 205Ak57 Illegitimate Children)

  
285  
285II  
285II(A)  
285k158

**Parent and Child**  
Proceedings to Determine Parentage  
In General  
Counsel  
(Formerly 76Hk57 Children Out-Of-Wedlock, 205Ak57 Illegitimate Children)

**9 Parent and Child**

When state initiates paternity proceedings, whether on behalf of mother or on behalf of child, state owes it to child to ensure that an accurate determination of parentage will be made. West's Ann.Welfare & Inst.Code, §§

  
285  
285II  
285II(A)  
285k160  
285k161

**Parent and Child**  
Proceedings to Determine Parentage  
In General  
Trial or Hearing  
In general

11350.1, 11475.1; West's Ann.Civ.Code, §§ 7001, 7006.

2 Cases that cite this headnote

(Formerly 76Hk57 Children Out-Of-Wedlock, 205Ak57 Illegitimate Children)

**10 Constitutional Law**

Due process requires **appointment** of counsel to represent indigent defendants in paternity proceedings wherein state appears as a party or appears on behalf of mother or child. West's Ann.Welfare & Inst.Code, §§ 11350.1, 11475.1; West's Ann.Civ.Code, §§ 7001, 7006.



92	Constitutional Law
92XXVII	Due Process
92XXVII(G)	Particular Issues and Applications
92XXVII(G)18	Families and Children
92k4390	Parent and Child Relationship
92k4392	Children out-of-wedlock; paternity (Formerly 92k306(1))

32 Cases that cite this headnote

**11 Courts**

Rule that due process requires **appointment** of counsel to represent indigent defendants in lawsuits brought at behest of state to determine parentage of minor children is applicable in all cases not final as of date of opinion announcing rule. West's Ann.Welfare & Inst.Code, §§ 11350.1, 11475.1; West's Ann.Civ.Code, §§ 7001, 7006.



106	<b>Courts</b>
106II	Establishment, Organization, and Procedure
106II(H)	Effect of Reversal or Overruling
106k100	In General
106k100(1)	In general; retroactive or prospective operation

4 Cases that cite this headnote

**12 Courts**

In cases where a judgment of paternity has become final, fact that defendant did not have counsel may not be advanced as a reason to attack that judgment. West's Ann.Welfare & Inst.Code, §§ 11350.1, 11475.1; West's Ann.Civ.Code, §§ 7001, 7006.



106	<b>Courts</b>
106II	Establishment, Organization, and Procedure
106II(H)	Effect of Reversal or Overruling
106k100	In General
106k100(1)	In general; retroactive or prospective operation

2 Cases that cite this headnote

**13 Parent and Child**

Judgments which were entered against individuals in paternity proceedings by involuntary default when, without assistance of counsel, each individual was found to

be father of child in each case on basis of alleged facts which were deemed admitted because not contradicted and testimony of mother which was not subjected to cross-examination were subject to being reversed on due process grounds and cases were subject to being remanded for purpose of affording trial **court** an opportunity to **appoint** counsel for individuals if they could demonstrate their indigency. West's Ann.Welfare & Inst.Code, §§ 11350.1, 11475.1; West's Ann.Civ.Code, §§ 7001, 7006.

37 Cases that cite this headnote

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. 19 A 358.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was June 19<sup>th</sup>, 2019. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including November 16, 2019 (date) on October 15, 2019 (date) in Application No. 19 A 358.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution. Civil Rights  
14<sup>th</sup> Amendment

- Ca Family Code § 7895

# 1<sup>ST</sup> Statement of Facts

1 Most Honorable United States  
2 Supreme Court this case arises  
3 from the State of California relentless  
4 Crusade to alienate Petitioner and his  
5 four minor children from each other going  
6 back to November 22, 2015.  
7 Petitioner was married to his ex-spouse  
8 on October 20, 2001 and fathered four  
9 lovely children who were born June 30, 2002,  
10 January 12<sup>th</sup>, 2005, July 17<sup>th</sup>, 2006 and  
11 October 11<sup>th</sup>, 2011. The first two born  
12 were girls and upon the youngest's arrival  
13 Petitioner became the Primary Caregiver of  
14 all four since his ex-spouse chose  
15 and preferred to return to a standard  
16 office work schedule.

17 Fast forwarding to the unfortunate and  
18 life changing events of November 22<sup>nd</sup>, 2015,  
19 Petitioner and Respondent became permanently  
20 separated following the very difficult  
21 circumstances that included Petitioner being  
22 assaulted by Respondent, who was the initiating  
23 aggressor but never charged by the Bias investigator(s)  
24 involved in presenting a report to the O.C. District  
25 Attorney that gave rise to Misdemeanor Case # 15HCU2251.  
26 The Bias officers involved withheld evidence and is the  
27 basis for an ongoing Habeas Corpus petition before the  
28 California Supreme Court S257770. Moreover,

1<sup>st</sup>  
Statement of Facts

1 following the jury trial for Case # 15HU12251,  
2 Petitioner was found "Not Guilty" of 3 ~~Pro~~  
3 charges, these included 1.) NO Wrongdoing whatsoever  
4 as to Petitioner's ex-wife, 2.) NO Wrongdoing, of a lesser  
5 charge, as to Petitioner's ex-wife and 3.) NO Wrongdoing  
6 whatsoever as to Petitioner's son (N.A.L.).

7 In addition, Petitioner was never charged with any  
8 wrongdoing whatsoever as to 2 of his, not involved, other  
9 children. Through the alterations that unfolded,  
10 however, Petitioner was found guilty of  
11 Abuse/Child Endangerment for having spanked his  
12 oldest daughter one time with an open hand,  
13 leaving no marks, whatsoever, on her left  
14 shoulder. Petitioner was also found guilty of  
15 a misdemeanor cell phone interference charge  
16 and consequently was sentenced to 30 days  
17 total in custody in addition to some fines.  
18 However, the trial judge also issued a  
19 3 year no-contact order against Petitioner  
20 precluding him from seeing, writing or  
21 any contact whatsoever with all of his  
22 four children, including the three non-victim  
23 children. This unlawful (based on clear California  
24 Case Law)- court order is the basis for Petitioner's  
25 case with this court under Docket # 19-6472,  
26 please take judicial notice.

27 Fast forwarding to the conclusion of said  
28 unlawful protective order which expired 1/14/2019,

1<sup>ST</sup>  
1 Statement of Facts

1 Petitioner attempted to get permission  
2 from his ex-wife to wish his second  
3 born daughter a Very Happy Birthday  
4 by phone since she had just turned  
5 "14" on January 12<sup>th</sup>, 2019 and there no longer  
6 existed a no-contact order as it had  
7 just expired. However, not only was Petitioner  
8 not granted permission by Respondent but  
9 rather never even received a call back  
10 and instead Petitioner found himself again  
11 consumed by filings and hearings in the  
12 State Family Court - Lamoreaux Justice  
13 Center - Superior Court of California, County of Orange  
14 The net result of all of these hearings  
15 and filings has been a continuance of  
16 the initial three year alienation  
17 from his four children - three of which  
18 have nothing to do with the ongoing  
19 Habeas Corpus case as the misdemeanor  
20 convictions related to Petitioner's oldest  
21 daughter who is now 17. The state courts  
22 have refused to permit even phone calls  
23 to Petitioner's children, minors counsel  
24 has been appointed and he has moved the  
25 court to continue this alienation despite  
26 Petitioner's exemplary record before and after the  
27 events of November 22<sup>nd</sup>, 2015. Petitioner is  
28 currently involved in several appeals related to these

1ST

STATEMENT OF THE CASE

deprivation tactics by the Respondent, Illinois Counsel and the State Court which include refusal to provide equal protection under Law and even Due Process since the Superior Court has ordered no more filings can be made by Petitioner in this case despite not being permitted to exercise his Parental Rights under the 14<sup>th</sup> amendment. Moreover, despite several hearings and pleadings by the Respondent and Illinois Counsel seeking to deny Petitioner's Parental Rights entirely, the State Superior and Court of Appeals have refused to provide Petitioner with an attorney despite his permanent injuries and disabilities which are doctor confirmed and prevent Petitioner from deriving employment income and consequently can not afford to pay for a private attorney.

Family Code. California Statute Provides for a Court Appointed Attorney  
§§ 7895 when Parental Rights are Being terminated. This is exactly what has been done for nearly four years. Petitioner has included an abundance of Case Law to support his claim to representation as an indigent Parent in a family law case where Misdemeanor Convictions are related. For all these reasons Petitioner seeks relief through this court for his Family Reunification.

2<sup>nd</sup> Statement of Facts  
for  
only In Support of Petition

1 Honorable California Superior Court of California.  
2 County of Orange - Lamoreaux Justice Center  
3 please accept Petitioner Father Arthur Lopez's  
4 Response To Minors' Counsel Issues and Contentions  
5 Brief of April 7<sup>th</sup>, 2019.  
6

7 To begin, Petitioner firmly opposes Attorney  
8 Brian Baron's Requested Orders as it clearly  
9 does not provide for what is in the Best Interest  
10 of all four minor children and moreover it  
11 clearly attempts to deprive Arthur Lopez  
12 of not only his U.S. Constitutional Civil  
13 Rights under the 5<sup>th</sup> and 14<sup>th</sup> Amendments,  
14 but also his Father-Parental Rights as  
15 provided by the State of California and  
16 the United States of America Laws and  
17 Statutes.

18  
19 First, the issue of the "Best Interest" of  
20 the four minor children for whom Petitioner  
21 Arthur Lopez is not only the Biological  
22 Father but also the Presumed Father (having  
23 been married to the Children's mother at  
24 conception and lived with all four children  
25 during the first two years of their lives). In  
26 addition, Petitioner acknowledges Paternity  
27 therefore as articulated through the Uniform Parentage  
28 Act - Paternity Law, meets by several factors/facts



## 2<sup>nd</sup> Statement of Facts

1 the California and Federal criteria establishing  
2 Arthur Lopez as the "Father" (a) § 31602  
3 Hence, under California Family Code § 3010 Petitioner  
4 is provided and guaranteed to be equally  
5 entitled to the custody of the child (ren)  
6 see exhibit 'A'. Moreover, under California  
7 Family Code 3011 In making the determination  
8 of the child (ren)'s best interest in a  
9 dissolution of marriage proceeding the following  
10 factors shall be considered:

- 11 a) the health, safety, and welfare of the  
12 child (ren)
- 13 b)(1) history of abuse by one parent against  
14 (A) Child
- 15 (B) Other Parent
- 16 (C) Person seeking Custody has a dating relationship

18 Accordingly, as to the (a) health, safety and welfare  
19 of the children, Petitioner has a proven track  
20 record of providing a solid environment for the  
21 nurturing of good health and balance nutritious  
22 diet as the primary caregiver of all four of his  
23 children while their mother was away from the  
24 home 8-10 hours daily Monday - Friday between  
25 Jan. of 2012 and November 22, 2015. During this  
26 period all four children received consistently great  
27 medical check ups and dental examinations  
28 as scheduled every 6 to 12 months. In fact,

## 2<sup>nd</sup> Statement of Facts

1 Petitioner's oldest daughter was not diagnosed  
2 with diabetes until 8 months after sole  
3 custody was designated to her mother.  
4 Petitioner learned of this diagnosis in July of  
5 2016 through a financial disclosure filed  
6 by respondent seeking financial contributions  
7 for a special diet that was prescribed.  
8 Furthermore, Petitioner is able to devote  
9 a considerable amount of his day and night  
10 time to the care of his four children  
11 since he is not able to work due to  
12 injuries to his back, hip and neck suffered  
13 during a traumatic fall in December of 2015.  
14 These disabilities do not prevent Petitioner to  
15 care for himself or his four minor children  
16 and are the subject of two disability  
17 claims being processed through the Social Security  
18 Department for which petitioner is represented  
19 by the Law offices of Lawrence Rohlfing -  
20 562-868-5886 and law offices of Dr. Bill Lator  
21 800-803-5090. In addition to these disability  
22 benefit claims petitioner is confirmed as  
23 eligible for approximately \$2550.<sup>00</sup> in monthly  
24 benefits by the Riverside County Social  
25 Services Division upon confirmation of having  
26 at least 51% (or more) of parental custody  
27 of his four children - see exhibit 'B'.  
28 Petitioner is currently receiving \$528 in monthly

## 2<sup>nd</sup> Statement of Facts

1 Benefits and has been screened and qualified  
2 for these since September of 2018 and  
3 has met w/ Supervisor Saenz regarding the  
4 additional family benefits described above  
5 as recently as late March 2019 at  
6 which time she provided the sliding  
7 scale - Exhibit B - which reflects the  
8 benefit based on the family size (5 =  
9 over \$2500 - monthly). Beyond this stable monthly  
10 allowance Petitioner intends to address  
11 his permanent neck and back/hip injuries  
12 upon resolution of his active personal injury  
13 claim with the Federal Buildings ILA  
14 division through the U.S. Court of Appeals  
15 9<sup>th</sup> Circuit process. This is paramount  
16 since the initial surgery advised is over \$30,000  
17 as prescribed by the consulted surgeon - Samuel Beckerman.  
18 Petitioner also has a younger brother who  
19 has owned his home in Corona for over  
20 ten years and has been employed with  
21 his current employer for over ten years  
22 as well. Petitioner's children have always  
23 had an affectionate familial relationship  
24 with Petitioner's only brother and vice versa.  
25 This address is 1129 Fallbrook Drive; Corona, CA 92880  
26 and all of the Petitioner's children have been to this  
27 home as has their mother.

28 In summary on this subject of health, safety

## 2nd Statement of Facts

1 and welfare Petitioner will add that he has  
2 his own vehicle for transportation and  
3 given the above listed facts and plan  
4 clearly not only has a proven track  
5 record going back to the birth of his  
6 first child in June of 2002 @  
7 which time Petitioner had just purchased  
8 a multi million dollar, 5000 sq ft semi  
9 custom estate in Justin Ranch (11540 Hoxie)  
10 Justin, (a 92782) but also earned over  
11 \$100,000.00 that year, but also is prepared  
12 and eager to resume his role as protector,  
13 provider and present Father.  
14

15 Secondly, as to (b)(A) history of abuse against  
16 a child by parent seeking custody, Petitioner  
17 has accepted the findings of this trial in  
18 January of 2016 where he was found guilty  
19 of one count of Child Endangerment as to  
20 one child (the oldest). As a consequence to this  
21 significant life changing offense, Petitioner  
22 received what the Superior Court of CA-Harbor Justice  
23 presiding judge determined to be a just  
24 punishment for this serious transgression  
25 upon the conclusion of the jury trial & guilty  
26 verdict. The sentencing was carried out on or about  
27 January 14<sup>th</sup>, 2016 (8:22-25) and in addition to 30 Days  
28 of Incarceration <sup>(Completed)</sup> Petitioner was required to complete  
of

## 2<sup>nd</sup> Statement of Facts

1 30 Days of physical labor, <sup>(Completed) 4/20/16</sup>, pay a considerable <sup>25\$ monthly</sup> <sup>(Payment Plan)</sup>  
2 fine, accept four years of informal probation,  
3 pay restitution, accept a 3 year stay away <sup>(Completed w/ 1/14/19)</sup> <sup>(no violation)</sup>  
4 order, attend and complete Anger Management 10 week  
5 Course and Child Abuse 52 week Course -  
6 both of which Petitioner completed with flying colors (Highest  
7 Marks of #5 in both Courses) - see exhibit "A". Please note,  
8 Petitioner was provided a monthly payment plan for the  
9 Court fines which is paid up to date through  
10 May 20<sup>th</sup>, 2019 (\$25 - monthly payments).  
11 These details related to the punishment  
12 rendered for Petitioner's failings serve to  
13 support Petitioner's acceptance of his wrongs  
14 and his eagerness to comply with the conditions  
15 set out by the presiding judge @ sentencing,  
16 all of which have been fulfilled as ordered.  
17 Moving forward Petitioner has not  
18 engaged in any violations of the three  
19 year protective order or the four year  
20 informal probation. In addition, Petitioner  
21 has remained engaged with his Catholic  
22 Christian Church of more than fourteen  
23 years where all four children were  
24 Baptized and where Petitioner's oldest attended  
25 school in her early school years.  
26 For all these facts Petitioner strongly disagrees and  
27 opposes Counsel Brian Baron's recommendation to  
28 deny reunification of petitioner with his four

## 2<sup>nd</sup> Statement of Facts

1 children. Furthermore, the 5<sup>th</sup> amendment  
2 of the U. S. Constitution guarantees every  
3 citizen and petitioner against being  
4 twice punished for the same offense, simply  
5 stated a person can not be prosecuted or  
6 punished twice for the same offense. In fact,  
7 Double Jeopardy protections extend to  
8 State Courts through the 14<sup>th</sup> amendment  
9 as well. Moreover the United States  
10 Supreme Court has further determined  
11 that the right against Double Jeopardy  
12 is not limited to Capital Crimes and  
13 corporal punishment, but also extends  
14 to all felonies and all misdemeanors.  
15 See Exh. C - U. S. v. Halper, 490 U.S. 435, 440 (1989)  
16 also see Boston Municipal Court v. Lydon 466 U.S. 294, 30 (1989)  
17 by Benton v. Maryland, 395 U.S. 784 (1969)  
18 the United States Supreme Court incorporated  
19 the Double Jeopardy Clause against the States  
20 ruling that the federal Double Jeopardy Clause  
21 is applicable to state and federal prosecutions.  
22 Also, in United States v. One Assortment  
23 of 89 Firearms, 465 U.S. 354 (1984) the Supreme  
24 Court held that the prohibition on Double Jeopardy  
25 extends to Civil Sanctions which are applied  
26 in a manner that is punitive in nature (Exh. C).  
27

## 2<sup>nd</sup> Statement of Facts

1 children. Furthermore, the 5<sup>th</sup> amendment  
2 of the U.S. Constitution guarantees every  
3 citizen and petitioner against being  
4 twice punished for the same offense, simply  
5 stated a person can not be prosecuted or  
6 punished twice for the same offense. In fact,  
7 Double Jeopardy protections extend to  
8 State Courts through the 14<sup>th</sup> amendment  
9 as well. Moreover the United States  
10 Supreme Court has further determined  
11 that the right against Double Jeopardy  
12 is not limited to Capital Crimes and  
13 corporal punishment, but also extends  
14 to all felonies and all misdemeanors,  
15 see Exh. C - U.S. v. Halper, 490 U.S. 435, 440 (1989)  
16 also see Boston Municipal Court v. Lydon 466 U.S. 294, 30  
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21 is applicable to state and federal prosecutions.  
22 Also, in United States v. One Assortment  
23 of 89 Firearms, 465 U.S. 354 (1984) the Supreme  
24 Court held that the prohibition on Double Jeopardy  
25 extends to Civil Sanctions which are applied  
26 in a manner that is punitive in nature (Exh. C).  
27 Moreover, the 3 year protective order issued on 1/17/16  
28 @ Petitioners sentencing by the Harbor Justice Center  
15  
and C-1

## 2nd Statement of Facts

1 in Newport Beach - Superior Court of California - County of Orange  
2 expired in its entirety as to all of Petitioner's four  
3 children and his ex-wife on January 14<sup>th</sup>, 2019.  
4 Additionally, Petitioner had absolutely no  
5 violations of the parameters set by this  
6 stay away order and its issuance, was  
7 clearly a part of the punishment imposed  
8 by the presiding judge at sentencing of this and  
9 all of the other incarceration and sanctions ordered  
10 including fines to the court, Sheriff and Newport  
11 Beach Police Department (fines to the court on a  
12 payment plan of 25<sup>th</sup> per mo. current through 5/20/19, O.C. Sheriff  
13 has been paid in full and N.B.P.D has received F10-  
14 (payments).  
15 In summary, Petitioner has accepted responsibility  
16 for his transgressions that led to his conviction  
17 following his trial in January of 2016 and has made every  
18 possible effort to fulfill the mandate of the court and succeeded  
19 and has proceeded clear of any other missteps  
20 through this 3 1/2 yr. period and has every intent  
21 to remain on this path of lawfulness.  
22 Petitioner has also every intent of providing  
23 nothing but a nurturing environment for his  
24 four children, free of the unpleasanties of the  
25 22<sup>nd</sup> of November 2018 and any other uncomfortable  
26 experiences they have had during Petitioner's  
27 previous marriage. Petitioner would also request  
28 this court take judicial notice of the three NOT GUILTY

## 2<sup>nd</sup> Statement of Facts

1 Verdicts related to Petitioner's ex-wife and 1-  
2 to Petitioner's oldest boy. Moreover, Petitioner's ex-wife  
3 attacked Petitioner multiple times on 11/22/15  
4 and initiated aggression and physical contact upon  
5 Petitioner - Please take judicial notice of the  
6 complete trial transcript provided to this court  
7 in support of the Requested Restraining Order  
8 submitted on January 18, 2019. Petitioner also  
9 opposed Respondent's Restraining Order of 1/16/19 which  
10 was subsequently denied by this court - Petitioner  
11 respectfully request this court take judicial  
12 notice of Petitioner's opposition filing, as well  
13 as this court's denial. Petitioner has no history of any sort of abuse towards his  
14 ex-wife. Most importantly for this process and court's  
15 consideration, Petitioner seeks to convey that  
16 no recurrence of anything of this nature  
17 will ever repeat itself and having filed  
18 for divorce and having been granted a restored  
19 single status ensures no other possibility  
20 of interactions of an involved nature. •  
21 Lastly, Petitioner is and has always been  
22 heterosexual and does not oppose marrying  
23 again when the ideal woman is found.  
24 However, Petitioner remains unattached and aside  
25 from his back, neck injuries is generally healthy  
26 and has had regular doctor visits and exams  
27 during the past three years and is entirely free  
28 of any dependencies or addictions.

## 2<sup>nd</sup> Statement of Facts

Now as to Points of Authorities beyond what is already included Petitioner who's Background is in Auto Finance for better than 30 yrs humbly submits the following relevant cases:

1.) San Bernardino Cty. Children and Family Svcs. v. J.S. (In re N.F.), 2017 Cal App. - Doctrines of Law Exception - Serves to support Plaintiff  
Court of Appeals of CA, 4<sup>th</sup> District, Div. 2 held lower court could not terminate his parental rights based solely on poverty-related housing instability

(In re P.C. (2008) 165 Cal App 4<sup>th</sup> 98, 99-100, 80 Cal Rptr 3d 895 (P.C.);

In re G.S.R. (2008) 159 Cal App. 4<sup>th</sup> 1202, 1212-1213, 72 Cal Rptr 3d 39 (G.S.R.)

2.) Adoptive Couple v. Baby Girl, 570 U.S. 637

The Supreme Court of the United States held that the South Carolina Supreme Court judgement should be reversed and remanded for further proceedings when Father argued his Parental Rights should not have been terminated. (See Exhibit 'H')

3.) Santosky v. Kramer, 455 U.S. 745

Supreme Court of the United States held that a clear and convincing standard was necessary to protect petitioner's due process rights and vacated the Supreme Court of New York judgement and remanded so that the hearing could be conducted under a constitutionally proper standard - See Exhibit 'J'

2nd Statement of Facts  
Points of Authorities (cont.)

1 4.) N.L.B. v S.L.J., 519 U.S. 102

2 \* Supreme Court of the United States held  
3 The Fourteenth Amendment did not permit a  
4 state to condition the taking of an appeal  
5 from the termination of Parental Rights on the  
6 affected Parent's ability to pay record transcription costs.  
7 The judgement from the Supreme Court of Mississippi was  
8 reversed, see exh. 'J'

9  
10 5.) Pierce v Soc'y of Sisters, 268 U.S. 510

11 \* Supreme Court of the United States held  
12 the legislation requiring children to attend  
13 public schools interfered with Parental Rights.  
14 see exh. 'K'

15  
16 6.) Caban v. Mohammed, 441 U.S. 380

17 \* Supreme Court of the United States  
18 held that the New York statute at issue  
19 violated the Equal Protection Clause  
20 as it treated unmarried parents differently  
21 according to their sex. The Court  
22 reversed judgement from the New York Court  
23 of Appeals see exh. 'L'

24  
25 7.) In re Baby Girl D., 37 Cal. 3D. 65

26 \* Supreme Court of California held  
27 that appellant had a right to the opportunity  
28 to retain and develop a parent/child relationship.  
Court Reversed and Remanded judgement terminating natural  
father's custodial rights <sup>19</sup> see exh. 'M'

Page Number

2<sup>nd</sup> Statement of Facts  
Points and Authorities (cont.)

1 8.) Supreme Court of California In Re M. 14 Cal 3d 71  
2 Court held Father legitimated minor child and acquired  
3 custody rights equal to those of mother

4  
5 9.) Supreme Court of California In Re Marriage of Harris  
6 Court held that the Court of Appeals judgement  
7 order pertaining to visitation rights to grandparents  
8 violated parent's (mother's) Constitutional liberty  
9 interest in the custody, care and control of his  
10 child and affirmed judgement.

11  
12 10.) Ca Court of Appeal, 1<sup>st</sup> Dist, 575 - In Re T.G., 215 Cal 2d 4<sup>th</sup>  
13 held the Order terminating Parental Rights  
14 was reversed and case was remanded, see Exh. 'N'  
15 Court never made finding parent was unfit parent.

16  
17 11.) Renee J. v Superior Court, 26 Cal. 4<sup>th</sup> 735  
18 \* Supreme Court of California Reversed  
19 Court of Appeal judgement denying Reunification Services  
20 due to concern of recidivism. Due Process  
21 Argument was made by Appellant. Judgement was Reversed.  
22 See exh. 'O'.

23  
24 12.) Supreme Court of California In Re Matthew C, 6 Cal 4<sup>th</sup> 384  
25 Court Reversed Appellate Court denial of  
26 Mother's review of Juvenile Court order -  
27 Substantial Right of Appellant was affected Court Reversed  
28 See Exh. 'P'.

## 2<sup>nd</sup> Statement of Facts

1 Last issue Petitioner brings to this Court  
2 with regard to Counsel Baron's Request is his  
3 reference to CPS and Investigator Ameguita's report  
4 of 01/2016 both of which Petitioner has  
5 objected to for serious violations of Due Process,  
6 Equal Protection under law and Clear Bias  
7 due to Petitioner's Male gender. These objections  
8 were documented with the Executive offices of the  
9 Superior Court, also with this court and the  
10 Ombudsman of the Court staff. Petitioner reiterates  
11 his objections that they are part of any  
12 consideration. Moreover, Petitioner has  
13 respectfully requested from Mr Baron a  
14 copy of the Interview Narratives from Ms. 'Wes'  
15 interviews with Petitioner's four children  
16 and Mr. Baron has objected to this request  
17 and has refused to honor subpoenas for these documents  
18 and gone as far as making reference to sanctions  
19 against petitioner for making such requests.  
20 Consequently, Petitioner agreed to withdraw his  
21 subpoena pending clarification from this  
22 court as to their validity having been  
23 issued by the clerk of the Court. See  
24 exhibit 'Q' - Petitioner also submits Family Code  
25 3025 which states Records shall not be  
26 denied to a Parent because that Parent is not the  
27 Child's Custodial Parent.

28

~~21~~ 21

Page Number

## 2nd Statement of Facts

1 In closing, Petitioner submits to this court  
2 additional references related to the effects of  
3 preventing parent and child from having contact  
4 for an extended period, some call this  
5 Parental Alienation syndrome. Petitioner  
6 can appreciate his children having feelings  
7 of uncertainty given the prolonged interaction  
8 with Petitioner their Father. However,  
9 Petitioner intends on making every possible  
10 effort to regain the assurance, comfort,  
11 joyfulness and free spirit each one of  
12 Petitioner's children exhibited throughout  
13 their years as a family unit before the  
14 events of 11/22/15. Exhibit R

16 Petitioner respectfully seeks this court's  
17 opportunity to start on this path by  
18 granting the orders requested and denying  
19 Counsel Brian Baron's Reunification opposition.

23 Respectfully and humbly submitted,

24 *Arthur Lopez*  
25 *Arthur Lopez*  
26 *Arthur Lopez*  
27 *Arthur Lopez*  
28 *Arthur Lopez*

24 April 16<sup>th</sup>, 2019

22

Page Number

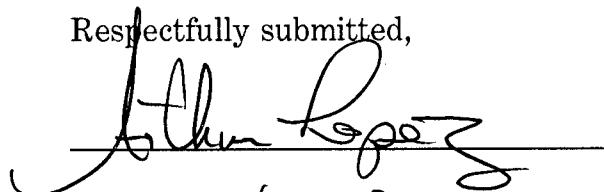
#### REASONS FOR GRANTING THE PETITION

This Petition should be granted to restore an Equilibrium in the Parental Rights of Mothers and Fathers in the State of California to the Benefit of Minor Children and the Entire Family as guaranteed and intended by the Supreme Founding Authority of our United States of America the Constitution.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
\_\_\_\_\_  
Date: November 16, 2019