19-7262
No. _____

Original Copy
ORIGINAL

FILED
OCT 15 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Washington, D.C. 20543 – 0001

DANILO MALLARI - PETITIONER

(Your Name)

vs.

VESSIGAULT, ET. AL. – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

(Name of Court That Last Ruled on Merits Of Your Case

# PETITION FOR WRIT OF CERTIORARI

DANILO MALLARI

(Your Name)

1861 Camino Real Way

(Address)

Roseville, California, 95747

(City, State, Zip Code)

(510) 861-4548

(Phone Number)

## QUESTION(S) PRESENTED

1. WHETHER THE PETITIONER HAS STANDING UNDER THE UNITED STATES CONSTITUTION TO BRING THE CASE BEFORE THE COURT OF JUSTICE?

2. WHETHER THE PETITIONER'S RIGHT TO DUE PROCESS (NOTICE AND HEARING) UNDER THE UNITED STATES CONSTITUTION HAVE BEEN VIOLATED?

3. WHETHER THE PETITIONER'S FIRST AMENDMENT RIGHT OF FREEDOM OF SPEECH HAS ALSO BEEN VIOLATED?

4. WHETHER THE EXCEPTION FROM STATE IMMUNITY FROM SUIT UNDER THE ELEVENTH AMENDMENT OF THE UNITED STATES CONSTITUTION APPLIES IN THE INSTANT CASE?

## LIST OF PARTIES

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

O 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:

Diana Marana

Doris Jordan

Colleen Traynor

## RELATED CASES

1. RK Ventures, Inc. v. City of Seattle, 307 F. 3d 1045, 1057 (9th Cir. 2002)

2. Sorranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1318-19 (9th Cir.1989)

3. Neighborhood Corp. v. Advisory Council in the Historic Preservation, 632 F. 2d 21 (6th Cir. 1980)

4. Monell v. Department of Social Services, 436 U.S. 658, 694 (1978)

5. Union Pacific Railroad v. Brotherhood, (08-604)

6. Mathews v. Eldridge Balancing Test, (1976)

7. Regents of the University of California v. Bakke, (1978)

8. Celotex Corporation v. Catrett, 477 U.S. 317 (1986)

9. Lundeen v. Gardner, US Court of Appeals, Eight Circuit, 1966, 354 F. 2d 401

10. Brandon v. Holt, 409 US 464, (1984)

11. Party Young, 209 US 123 (1908)

12. Lapides v. Board of Regents of University System of Georgia, 535 US 613 (2002)

TABLE OF CONTENTS



INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

12. LAPIDES V. BOARD OF REGENTS OF UNIVERSITY SYSTEM OF GEORGIA, 535 US 613 (2002)

STATUTES AND RULES

1. FIRST AMENDMENT RIGHTS – FREEDOM OF SPEECH - STANDING

2. FOURTEENTH AMENDMENT RIGHTS- DUE PROCESS - NOTICE AND HEARING AND EQUAL PROTECTION - DISCRIMINATION

3. ELEVENTH AMENDMENT – STATE IMMUNITY FROM SUIT - EXCEPTION

OTHER

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 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 United States district court appears at Appendix B 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 _____ 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 September 18, 2019.

[ ] 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: September 18, 2019, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

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 _____. A copy of that decision appears at Appendix _____.

[ ] 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 _____ (date) on _____ (date) in Application No. A_____.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. FIRST AMENDMENT RIGHTS – FREEDOM OF SPEECH

   STANDING INJURY=-IN=FACT-

The First Amendment prohibits Congress from establishing a religion or interfering with the free exercise of religion, abridging the freedom of speech and press, or the right of the people peaceably to assemble and to petition the government for redress of grievances.

2. FOURTEENTH AMENDMENT RIGHTS – DUE PROCESS AND EQUAL PROTECTION

   NOTICE AND HEARING DISCRIMINATION

Section 1. The state shall not deprive any person of life, liberty, or property, Without due of law, nor deny to any person within its jurisdiction the equal protection of the law.

3. ELEVENTH AMENDMENT – STATE IMMUNITY FROM SUIT

   EXCEPTION

## STATEMENT OF THE CASE

On April 7, 2003, petitioner established a home health agency and registered it with a business name, Medhealth Nursing, a limited liability company, before the Secretary of State, State of California, with himself as owner and sole member. The main purpose of which is to provide skilled and non-skilled services to elderly people who are confined in hospitals, skilled nursing and rehabilitation facilities, particularly to those who prefer to stay in their own homes.

On May 1, 2008, petitioner applied on behalf of Medhealth Nursing, a HHA license or home health agency license to operate with the California Department of Public Health. He paid an application fee of US$ 3,867.14 and an initial licensing survey was conducted. On April 9, 2009, the application was denied and the denial was appealed to the Legal Services Division, California Department of Public Health, and was handled by respondent Tracy Vessigault. Unfortunately, the latter slept with the case and has not yet been scheduled for hearing for more than ten (10) years despite urgent appeals from the petitioner. The California Department of Public Health had refused to refund the said fee violating their own rules mandating its return to the applicant in case of denial.

On February 17, 2010, in his desire to render services to the needy especially the elderly, applied for another HHA license and again paid application fee of US$ 4,996.86 as ordered by the California of Public Health, if he wanted to pursue his business as home health agency. This was without prejudice of his first appeal. A licensing survey was conducted, passed, and, a HHA license was issued on Medhealth Nursing which expired on March 8, 2012. However, respondents failed to renew it on the said date and instead

revoked it without valid grounds notwithstanding payment of renewal fee. When petitioner asked for the return of the fee as mandated by Title 22, California Public Health rules, respondents refused to return it. This is double unjust enrichment at the expense of the petitioner, a clear violation of the law.

That sometimes in January, 2012, respondents transferred the California Department of Public Health district office from Daly City where petitioner normally transacted business matters relating to Medhealth Nursing's HHA license to other place without giving notice, verbal nor written, of their new office address to their licensees like petitioner in this case. Petitioner called respondents repeatedly through their telephone numbers and left messages containing information about the need to renew Medhealth Nursing's HHA license, however, no responses were received. On February 16, 2012, petitioner sent a letter to the respondents with the notion that the postal service would reroute it to their correct address. No answers were received until such time that Medhealth Nursing's HHA license expired on March 8, 2012 without renewing it which forced Medhealth Nursing to cease operation. When petitioner finally found respondents' office address at Brisbane, California, he, accompanied by his wife personally had gone to their office, sought an audience with them hoping that the matters would still rectified. However, respondents arrogantly confronted them which culminated into a heated argument about the adverse effect of non-renewal of the HHA license to the company, its workers and petitioner. This exchanged of unsavory remarks had calmed down only when Carmelita intervened and agreed to respondents' demand to pay renewal fee of US$4,996.86 and change of office location fee of US$25.00. On July 24, 2012, petitioner received from respondents Colleen Traynor, and Doris Jordan, signed by them the Statement of Deficiencies and Plan of Correction from which petitioner and his wife, the director of nursing services,

answered each and every finding alleged therein. They submitted also all the necessary documents required in support of such findings by the respondents.

On August 7, 2012, instead of renewal of HHA license, petitioner received from the respondents a letter revoking Medhealth Nursing's HHA license, without valid grounds, signed by respondent Diana Marana, an extreme move handed down without giving an opportunity for petitioner to explain his side, adduce evidences, and present testimonies of witnesses. On August 25, 2012, petitioner filed a written motion for reconsideration of the adverse decision before the California Department of Public Health District Office which up to now has not been set for hearing.

On August 28, 2012 at 10:00 in the morning, respondent Diana Marana, District Manager, called up petitioner and his wife Carmelita and instructed them to accomplish and submit as soon as possible the Statement of Deficiencies and Plan of Correction for the issuance of Medhealth Nursing HHA license which they submitted on September 4, 2012. Unfortunately, nothing has been heard from her, verbal nor written about the HHA license of Medhealth Nursing.

On May 23, 2013, petitioner filed a suit for damages against respondents before the Superior Court of California, Hayward. On August 30, 2013, respondents removed the case to Federal District Court, Oakland and on September 9, 2013, they filed a motion to dismiss the case which was granted by the court on February 20, 2014 without holding trial on the ground of petitioner's lack of standing to file the case in court.

On November 28, 2014, petitioner appealed the adverse decision of the Federal

District Court, Oakland, to the United States Court of Appeals for the Ninth Circuit for the reversal of decision.

On November 21, 2016, the United States Court of Appeals for the Ninth Circuit reversed the decision, upheld petitioner's standing as an injured party to bring the case and remanded it to the lower court for further proceedings as to Section 1983 claim only. However, the same court which rendered the adverse decision took cognizance of the case without setting it for hearing as mandated. The Federal District Court, Oakland again dismissed the case upon filing of a motion for summary judgment by the respondents. However, respondents had not furnished the petitioner a copy of their motion. The latter came to know only when a copy of the adverse decision was sent to him by the court. Had the petitioner known of respondents' motion for summary judgment, he would immediately and vehemently oppose it for was totally flawed and defective.

On August 6, 2018, petitioner filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit complaining about lacked of notice and hearing conducted by the Federal District Court, Oakland. However, instead of upholding its previous ruling acknowledging petitioner's standing to file the case as an injured party following its rulings on RK Ventures, Inc. and Sorrannos' Gasco, Inc. cases, reversed its own decision without noting the palpable violation by the respondents and the Federal District Court, Oakland of petitioner's due process rights (notice and hearing) under the Fourteenth Amendment of the United States Constitution.

On June 24, 2019, petitioner filed a petition for panel rehearing on the sole ground that the United States Court of Appeals for the Ninth Circuit overlooked a material point

of fact or law in its decision which was denied on September 18, 2019.

On October 18, 2019, a petition for a writ of certiorari was filed before the United States Supreme Court, asking the Honorable Court to review whether the decisions of the Federal District Court, Oakland, and the United States Court of Appeals for the Ninth Circuit are in conformity with the constitutional requirements and its previous rulings with similar facts and issues as in the case at bar.

## REASONS FOR GRANTING THE PETITION

**A petition for a writ of certiorari should be granted by the Honorable Supreme Court for the following compelling reasons:**

**(a) That the United States Court of Appeals for the Ninth Circuit had decided the appealed case that is contrary or in conflict with its owns recent decisions in another two cases with regard to the standing of the petitioner to bring the case as an injured party.**

In the case of RK Ventures, Inc. v. City of Seattle, 307 F. 3rd 1045, 1057 (9th Cir. 2002), shareholders of corporation alleged personal injury sufficient to confer Section 1983 standing because they alleged violations of their Fourteenth Amendment rights. In RK Ventures, Inc., the two principal owns, ability to play rap and hip hop music and to associate with African-American, as well as the nightclub's ability to do the same. The Ninth Circuit held that this was sufficient to show they had personal standing to claim that the ordinance violated their First and Fourteenth Amendment rights,

In Sorrannos' Gasco, Inc. v. Morgan, 874 F. 2d, 1310, 1318-19 ( 9th Cir. 1989, the Court held that shareholder of corporation had Section 1983 standing to bring First Amendment claim because the right that was allegedly violated belonged to the shareholder. This case presents another example of how Section 1983 standing is applied to owners of a company. The Sorrannos were the sole shareholders and officers of Sorrannos' Gasco, Inc. They alleged that the Air Pollution Control District violated their First Amendment rights when it suspended Gascos' petroleum bulk plant permits and discouraged customers from doing business with Gasco in retaliation for Mr. Sorranno's public criticism of the district's policies. The Ninth Circuit held that the plaintiffs' argument that the defendants' actions were taken in retaliation for Sorranno's exercise of First Amendment

rights clearly alleges a direct and independent personal wrong. Mr. Sorrannos had standing to contest the deprivation of those rights. These were the basis of the United States Court of Appeals for the Ninth Circuit to reverse the Federal District Court, Oakland's dismissing the case, holding that petitioner, being the sole owner of Medhealth Nursing, has suffered personal and financial injuries on account of the respondents' misdeeds independent from his company with the further order to the same Federal District Court which rendered the adverse decision to hold a hearing. However, no hearings were held and for a sudden and unknown twist of events, the United States Court of Appeals reversed its previous ruling and dismissed petitioner's case, knowing that no hearings have been held in the Federal District Court, Oakland, in grave violations of its ruling.

**Petitioner 's Personal, Direct, and Independent Injuries**

In the instant case, petitioner 's statement of his sentiments and grievances against respondents for the nonrenewal of Medhealth Nursing's HHA license is within his constitutionally protected right of freedom of speech under the First Amendment of the United States Constitution. Since they were no other justifiable avenues for the respondents to exact vengeance on petitioner on account of their heated arguments after the latter compliance with all the necessary requirements for the renewal of HHA license including payment of license renewal fee, they vented their anger on him, through Medhealth Nursing and revoked its HHA license without valid grounds, knowing this would extremely hurt him. As such, it brought personal, direct, and independent injuries on him because no matter how he endeavored to look a job as caregiver or any other occupations related to healthcare to earn a living for himself and his family, it failed because case managers, social workers, discharge planners of hospitals and skilled nursing facilities who usually referred patients, had been discouraged to hire his services and they refused to send him patients on fear that unpleasant episodes would likely occur on their health. These were reflective of respondents' disparaging and unfounded accusations on petitioner's alleged multiple violations of CDPH regulations, mentioned in the letter of revocation,

discrediting him as incompetent, and destroying his reputation in the healthcare community. He suffered financial and economic injuries, personally, directly, and independently from Medhealth Nursing, a company he laboriously established to provide patients with medical services, proofs of which are documents particularly income tax returns since the inception of this incident showing no income. These had been raised in the Federal District Court up to the time petitioner brought it on appeal to the United States Court Appeals for the Ninth Circuit. The Ninth Circuit upheld petitioner's position as to his standing to bring the case in court and remanded the case for further proceedings following its previous rulings on RK Ventures, Inc. and Serrannos' Gasco, Inc. However, the Federal District Court did not follow the United States Court of Appeals' order and instead dismissed the case. This is the basis for petitioner's appeal to the Ninth Circuit. However, the United States Court of Appeals for the Ninth Circuit dismissed the petition. A petition for rehearing was filed citing that the Ninth Circuit overlooked a material facts in the petition which were supported by documents. Again the United States Court of Appeals for the Ninth Circuit disregarded petitioner's plea and dismissed the petition.

**(b) That the United States Court of Appeals for the Ninth Circuit has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matters.**

In the case of Neighborhood Corporation v. Advisory Council in the Historic Preservation, 632, F. 2d, 21 (6th Cir. 1980), the district court denied plaintiffs' motion to amend and dismissed the case on grounds that plaintiffs' lacked standing and had failed to join the owners of the two buildings. Sixth Circuit reversed, holding that plaintiffs have shown standing by alleging that their members used the building aesthetic and architectural values. Injury-in-fact is not suffered only by residents of the the neighborhood in which affected historic properties are located but by persons with economic interest in the properties. The Court held that the district court erred by dismissing plaintiffs' complaint

for lack of standing and denying their motion for leave to amend their complaint. Second, the appellate court held that failure to join the building owners was not a proper reason to deny plaintiffs' motion for leave to amend.

**(c) Federal District Court, Oakland or a United States Court of Appeals for the Ninth Circuit has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.**

**FOURTEENTH AMENDMENT**

**PROCEDURAL DUE PROCESS**

**NOTICE AND HEARING**

A fair process (e.g., Notice and Hearing) is required for a government agency to individually take a person "life, liberty, or property. (Barbri, Constitutional Law, page 27)

In the case at bar, petitioner applied on behalf of Medhealth Nursing, a HHA license to the Licensing and Certification, California Department of Public Health, a government agency, to operate a home health agency upon payment of US$ 3.867.14. His application was denied on April 5, 2009. On April 30, 2009, he appealed the denial within the required period upon receipt to the Legal Services Division, California Department of Public Health and was handled by respondent Tracy Vessigault, staff counsel. Petitioner went personally to the latter's office and got an assurance that her decision would be handed down soon. However, for ten (10) years had elapsed since it was filed, no hearings had been held despite petitioner's urgent motion for the immediate resolution of the appealed case. In the case of Union Pacific Railroad Co. v. Brotherhood, 08-604, the Seventh Circuit

Court found which was affirmed by the United States Supreme Court that due process rights of the Brotherhood were denied because it was not clear when and how evidence of conferencing should be presented and dismissal for reasons that were not clear at the time of filing functioned as denial of due process rights. Fair procedure at a minimum requires an opportunity to present objection to the proposed action to a fair, neutral decision-maker. In applying the Mathews v. Eldridge balancing test (1976), the Court has held that the State generally must afford a prior hearing before a drivers license is suspended or terminated which did not happen in petitioner's case.

In the petitioner's second application for HHA license, when respondents Diana Marana, Doris Jordan, and Colleen Traynor had decided to revoke Medhealth Nurisng's HHA license, they failed to hold a hearing to give petitioner an opportunity to explain his side, adduce evidences, and present witnesses. This had made worse when after revocation they again deliberately ignored petitioner's written appeal and failed to schedule it for hearing. This is blatantly a violation of his right to due process, i.e., Notice and Hearing, protected by the Fourteenth Amendment of the United States Constitution.

**EQUAL PROTECTION**

**DISCRIMINATION**

No person shall be denied the equal protection of the law. The Equal Protection Clause of the Fourteenth Amendment is limited to state action. The Supreme Court has recognized at least in relation to property regulation that an equal protection claim may be brought not only for discrimination against a group, but also for arbitrary treatment against an individual– a class of one, like petitioner in the instant case. (Barbri, Constitutional Law, pages 31 & 32)

Here, the Federal District Court's assertion in its decision that the basis of the discrimination is that petitioner is from the Philippines was wrong because he had never raised as an issue his race, national origin, or alienage although he mentioned the country from where his family came from to emphasize the place where he, being a distributor of medicines and medical equipment, and his wife, Carmelita, a doctor of medicine and a nurse for twenty five (25) years, before they migrated in the United States plus ten (10) years of local experiences as director of nursing of different nursing facilities in California, sufficient enough to operate a business like Medhealth Nursing, a home health agency. What he brought as an issue was the fact that he was singled out among thousand of HHA licensees in the state of California by respondents by revoking Medhealth Nursing' HHA license without valid grounds, an evident retaliation of a heated arguments that previously transpired between them. Respondents discriminatory intent or motive is to avenge their sense of hurtful pride and feelings by going after petitioner's business, Medhealth Nursing and revoked its HHA license. This is proven by the petitioner through his sworn affidavit, and corroborated by Carmelita, also in her sworn affidavit who witnessed the incident. Thus, the Federal District Court, Oakland, was incorrect to rule that petitioner did not have proof of discriminatory intent or motive on the part of the respondents. The burden of proof lies on the respondents as mandated by law that there were compelling government purpose to revoke the HHA license which they miserably failed to adduce and prove. The Federal District Court, Oakland, should exercise its duty of strict scrutiny, the level of review involving the issue of discrimination, a violation of equal protection clause guaranteed by the Fourteenth Amendment of the United States Constitution. It should review the legitimacy of respondents' acts. However, the Federal District Court, Oakland, had failed to exercise the power of review, relinquished its mandated duty, and dismissed the case without valid grounds. In the case of Celotex Corporation v. Catrett 77 U.S. 317 (1986), the Supreme Court held that if one party advances factual support for their claims and the second party rests on its unsupported pleadings, the court may grant summary judgment against the second party. However, in this case, despite petitioner's overwhelming pieces of evidence

supported by affidavits, and jurisprudence, the Federal District Court, Oakland, did the opposite, granted respondents' summary judgment, and dismissed petitioner's complaint. In Lundeen v. Gardner, US Court of Appeals, Eight Circuit, 1966, 354 F. 2d 401, the contest for the insurance proceed Arises between adverse claimants; the original beneficiaries, and the second wife of assured and the trustee under the last will and testament of the of the deceased. Both intervener and Northwestern alleged that sometime in 1961, the decedent effected a change of beneficiaries in favor of intervener. Intervener presented affidavits and exhibits in support of her position and moved for summary judgment. The motion was granted and plaintiff contested this ruling on the ground that a summary judgment is not proper at this point in the litigation and there remains a genuine issue on the material fact. The problem was only, did the affidavits and exhibits of intervener sustain the necessary burden in order to allow a summary judgment? The trial court felt the burden was sustained and from the above related facts, the Court agrees with the trial court's conclusion. The Court is on the opinion that if this information were presented at trial, intervener would be entitled to a directed verdict, summary judgment is in order. Biggs Public Service Coordinated Transp. 280 F. 2d 311,313 – 14 (3th Cir. 1960).

Rule 56 (c) of the Federal Rules on Summary Judgment expressly provides that " the judgment sought should be rendered if the pleadings, discovery, and disclosures materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

In the case at hand, respondents' summary judgment is not supported by any documents, discovery, pleadings, and/ or affidavits. They had not filed and presented even an iota of evidence to contradict petitioner's allegations since the inception of the suit. They failed to rebut petitioner's documentary evidences such as proof of payments of the HHA license fees, affidavits of witnesses, list of expert witnesses, and written interrogatories as a mode of discovery. The proof of respondents' lack

of evidence was their answers on September 1, 2017 to petitioner's written interrogatories which quote " THEY CANNOT YET PRODUCE EVIDENCE BECAUSE THEY WERE STILL INVESTIGATING THE FACTS OF THE CASE UNTIL DISCOVERTY WAS COMPLETED AND RESERVED THEIR RIGHT TO CHANGE AND ALL HEREIN RESPONSES" unquote. The right to change responses had never happened until they filed summary judgment. The summary judgment had no basis at all for the glaring fact that respondents had not presented evidence to prove it and yet the US Federal District Court, Oakland and US Court of Appeals for the Ninth Circuit sustained it and dismissed petitioner's case. What are the basis for these Courts to uphold respondents' summary judgment? They took advantage of his being indigent and unrepresented by counsel against respondents represented by the California Attorney General. Petitioner had protested the state's representation using taxpayers' monies because respondents were being sued individually and in their private capacities for abuse of power under the " Stripping Doctrine" and the state of California is not impleaded in the case, being immune from suit under the Eleventh Amendment of the United States Constitution. Initially, petitioner was represented pro bono By Atty. David Washington. For unknown reasons, the US Federal District Court, Oakland warned petitioner's counsel to withdraw from the case and threaten him with disciplinary actions. Atty. David Washington was compelled to withdraw as counsel of petitioner, leaving him unrepresented in the succeeding proceedings. Petitioner was forced to represent himself as pro se litigant, unable to hire another counsel for lack of money. This is utmost discrimination and unfair, a flagrant transgression of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

"Stripping Doctrine," an exception to state immunity from suit under the Eleventh Amendment of the United States Constitution which makes respondents individually and personally liable for their illegal acts. It permits state official who used his or her position to act illegally to the detriment financially or otherwise of other persons or businesses, to be sued in his or her individually capacity. In other words, once public official has acted illegally, he or she is theoretically stripped of his or her

position's power and eligible to be sued as individual. The Supreme Court has openly called "Stripping Doctrine," a legal fiction. Therefore, a citizen may sue an official under the doctrine and get around any sovereign immunity that official might have held with his or her position with the state. Constitutional Torts, U.S.C., Section1983 allows state officials to be sued in their individual or official capacities, a privilege which was demonstrated in Brandon v. Holt, 409 U.S. 464 (1984). The case of Party Young, 209 U.S. 123 (1908) allows federal courts to enjoin the enforcement of unconstitutional state (or federal) statutes on the theory that immunity does not extend to a person who acts unconstitutionally because the state is powerless to authorize the person to act in violation of the United States Constitution. Here, respondents even though they are state employees cannot hid behind the state's immunity for their unlawful acts under the "Stripping Doctrine." They cannot invoke the state immunity to escape liabilities for their illegal conduct because the law regards them as acting in their private and personal capacities. They act with abuse of power and authority and hence beyond their functions as state employees, suable under "Stripping Doctrine."

**Waiver of State's Sovereign Immunity**

On May 3, 2013, petitioner filed a suit for damages against respondents before the Superior Court of California, County of Alameda for revoking Medhealth Nursing's HHA license without valid grounds. Respondents represented by the California Attorney General, removed the case to US Federal District Court, Oakland, an exception to state immunity from suit. Under the Eleventh Amendment of the United States Constitution, a state may waive its immunity by removing the case from state court to Federal district court. This is clearly elucidated by the United States Supreme Court in the case of Lapides v. Board of Regents of University System of Georgia, 535 U.S. 613 (2002) which ruled that a state waives its Eleventh Amendment immunity when it removes a case from state court to federal court. The university officials voluntarily removal of the action expressly invoked the jurisdiction of the federal

courts and thus constituted a waiver of sovereign immunity with regard to state law claims. It is an established general principle that a state's voluntary appearance in federal courts is a waiver of its Eleventh Amendment immunity.

Wherefore, foregoing premises considered, it is respectfully prayed unto the Honorable United States Supreme Court, as last bastion of hope and fairness, to reverse the decisions of the Federal District Court, Oakland, and the United States Court of Appeals for the Ninth Circuit dismissing the case and order another Federal District Court to conduct a hearing to protect petitioner's rights of Freedom of Speech under the First Amendment and Due Process ( Notice and Hearing ) and Equal Protection under the Fourteenth Amendment of the United States Constitution.

Such other reliefs as this Honorable United States Supreme Court deems just and equitable under the circumstances.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

**DANILO MALLARI**

Petitioner Pro Se

Date: January 1, 2020