ORIGINAL

NO: 20-1428

In the Supreme Court of the United States

TAMMY NOERGAARD,
Petitioner,

vs.

CHRISTIAN NOERGAARD,
Respondent.

On Petition for a Writ of Certiorari to the Fourth District Court of Appeal, Division Three, Santa Ana, California

PETITION FOR A WRIT OF CERTIORARI

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Petitioner, *In Propria Persona*

QUESTIONS PRESENTED

1. Does a reviewing Court retain jurisdiction to review lower court decisions for due process violations under the Due Process and Equal Protection Clause of the 14th Amendment of the United States Constitution("Equal Protection Clause") that occur before and during a trial in a case involving the Hague Convention on the Civil Aspects of International Child Abduction ("Hague Convention"); or is jurisdiction limited to violations that fall under Hague Convention Article 26 that occurred *after* the trial and even when the attorney's fees represent a collateral legal consequence ?

- Does a litigant have a right to a timely trial, or do several years of delays result in violations of the Equal Protection Clause, Hague Convention Article 2, and/or the American Declaration on the Rights and Duties of Man("American Declaration")?
- Does a litigant have a fundamental right to equal justice under the law without regard to economic means in a Hague convention case, or can extreme trial costs and fees violate the Equal Protection Clause, Hague Convention Article 22, and/or the American Declaration?

2. Can egregious misconduct during trial court proceedings affect the trial such that it violates the Equal Protection Clause, and warrant reversal?

PARTIES TO THE PROCEEDING

All parties to the proceeding are named in the caption.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Tammy Noergaard ("Petitioner") respectfully petitions for a writ of certiorari to review the published judgment of the California 4th District Court of Appeal, Division three.

OPINIONS BELOW

The 2014 original Case Number (No.) 14FL000022 California trial court opinion(App. 182a-183a) is unpublished. The 2016 first Case No. G049854 California 4th District Court of Appeal, Division three reversal and remand order with instructions (App.157a-181a) is published. The 2016 Case No. S232641 order of the Supreme Court of California denying review (App.156a) is unpublished. The 2019 Case No. 14FL000022 California Statement of Decision (App.64a-99a) is unpublished. The 2020 second Case No. G057332 California 4th District Court of Appeal, Division three partial reversal and remand order with instructions (App.14a-33a) is published. The 2021 Case No. S266275 order of the Supreme Court of California(App.1a) denying review is unpublished.

JURISDICTION

The California 4th District Court of Appeal, Division three entered an Opinion on October 29, 2020.(App.14a-33a) Petitioner filed a timely petition

for rehearing, which was denied; however, the Court of Appeal issued corrections to the judgment on November 24, 2020.(App.12a-13a) Because of new mistakes introduced in the modified judgment, Petitioner filed a timely petition for rehearing to the modified judgment which was denied on 12/1/2020. (App.11a) Petitioner filed a timely petition for review on 12/28/2020, which the Supreme Court of California denied on March 10, 2021.(App.1a)

This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

TREATY, CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. The Hague Convention on the Civil Aspects of International Child Abduction("the Hague Convention" or "the Hague"), Oct. 25, 1980, 1343 U.N.T.S. 89, and relevant portions of its enabling statute, the International Child Abduction Remedies Act, 22 U.S.C. §§ 9001 & 9003.

II. Due Process and Equal Protection Clause of the Fourteenth Amendment, United States Constitution: Sec. 1.[Citizens of the United States.]

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of

law; nor deny to any person within its jurisdiction the equal protection of the laws.

III. American Declaration on the Rights and Duties of Man:

- Article I, Every human being has the right to life, liberty and the security of his person.
- Article II, All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.
- Article V, Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.
- Article VI, Every person has the right to establish a family, the basic element of society, and to receive protection therefore.
- Article VII, All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.
- Article IX, Every person has the right to the inviolability of his home.
- Article XVIII, Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to

his prejudice, violate any fundamental constitutional rights.

- Article XXIV, Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.

STATEMENT OF THE CASE[1]

A. BACKGROUND

The children in this case were both born in California, and the parties met, married and resided in California. The Petitioner, an American citizen, got her ex-husband a green card and they started the citizenship process for him, because of his stated intent of wanting to live and raise their children in California.

M.N. was four years old and S.N. was two years old when they were first violently abducted to Denmark by Respondent Christian Noergaard ("Respondent") after a temporary business trip for training to Germany.

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[1] Because of extreme financial hardships due to this case going on for almost seven years, resulting in two conflicting Court of Appeal published decisions, COVID-related workplace furloughs and closures, Petitioner had limited funds for an attorney to draft this Petition for a Writ of Certiorari. Petitioner will ask an attorney to appear before the US Supreme Court to substitute in, should the US Supreme Court grant this Petition for a Writ of Certiorari.

The Parties retained their California property, bank accounts, bank accounts for the children, driver's licenses, and other California contacts during what was supposed to be a temporary period in Germany. None of this changed while the children were abducted to Denmark. Petitioner went to find and reunite with the children who were abducted to Denmark, after the Danish system disregarded her request for their return under the Hague Convention.

Petitioner and several other non-ethnic Danish fathers and mothers later filed group Petitions against Denmark for violations of the Hague Convention, human rights violations, and other international law with the European Union (EU) and United Nations(UN) human rights committees. The EU and UN eventually ruled against Denmark for violations, and in 2019 Denmark closed down their old family court system, which had been applied with negative implications to the Noergaard children, and subsequently, Denmark recognized that failed system and created a new one and changed its law in an attempt to address the findings of the EU and UN. However, the old system and the records generated from the old Danish system is what has been applied in this case.

M.N. was nine years old when she started running away from Respondent's home he had moved to on the border of Denmark and Germany. When M.N. was ten years old, in March 2013, she ran away into Germany from the border town. In

Germany, a social worker contacted M.N.'s grandmother to come and get her, and she returned with her grandmother to California. Petitioner, Respondent and S.N. were still in Denmark. M.N.'s grandmother then contacted San Diego police and social services on her immediate return. When Petitioner had discovered where M.N. had run away to in March 2013, she and her Danish counsel immediately informed Danish authorities and Respondent that M.N. was residing at the Parties' California residence and continued working on a solution in the best interests of the children.

B. TRIAL COURT HISTORY

Tammy Noergaard's ex-husband filed a petition under the Hague Convention in October 2013 seeking M.N.'s return to Denmark through the Orange County District Attorney's (OCDA) Office, falsely claiming he did not know her whereabouts in addition to other false statements.[2]

In 2014, the Orange County District Attorney's office was allowed to secretly initiate a case under

[2] In Orange County, California, cases that involve the Hague Convention are not traditional civil cases, but hybrid matters in which the OCDA's Office is directly involved as a party, attending hearings, making oral arguments, and filing motions and briefs from its initiation and through the end of a trial. However, defendants in Orange County, California, such as Petitioner Tammy Noergaard, are not afforded the same due process rights to a fair trial afforded to other parties in criminal or civil cases, including other Hague Convention cases in the US.

the Hague Convention without the involvement of the Petitioner, an American citizen, or doing any due diligence in the case to determine the actual facts in the matter, and then seized the child M.N, also an American citizen, with an armed police swat team to send her back to the foreign country she had been violently abducted to by Respondent Christian Noergaard("Respondent") to begin with.

In January 2014, the trial court, without contacting Petitioner, issued an order for the OCDA's office to seize M.N. and give her to Respondent. Upon an interview with the child and the reasons for her running away(abuse by Respondent), they took her to a juvenile social services center on January 31, 2014. The trial court held a first hearing on February 3, 2014, and the same day M.N. was then forced to live with Respondent and his attorney in a hotel.

When Petitioner went to court in Orange County, despite the fact she was cited as a party in the proceedings; she was told she was only allowed to sit in the back of the court room in the audience section, like having to sit in the "back of the bus" during the time of Jim Crow. Ms. Noergaard was not allowed to sit next to her own attorneys and the other parties, as Respondent was allowed to, while hearings in the trial court were in session.

The trial court ruled against Petitioner and refused to conduct an actual Hague trial. Citing Article 11 of the Hague Convention, about six weeks

later the trial court ordered M.N. returned to Denmark without allowing a trial to take place.

C. APPELLATE HISTORY: FIRST PUBLISHED REVERSAL AND REMAND

In 2016, in the G049854 Noergaard v. Noergaard[3] ("Noergaard I") published opinion, the Court of Appeal ordered a reversal and remand of the case citing due process violations and other errors with specific instructions that included the trial court;

- Conduct a full evidentiary hearing on crucial aspects of Petitioner's claims of spousal abuse and child abuse, including death threats.
- Afford mother the opportunity to present evidence supporting her claims of abuse and death threats, and to consider that evidence in a full and fair hearing, rather than admitting only father's evidence.
- Allow Petitioner to support her claim that M.N.'s forceful detention, pressure from father's influence, and history of abuse influenced the child's statements to the trial court.
- Determine what occurred in proceedings in Denmark, so it can fully and fairly assess mother's claim under the Hague Convention

[3] Noergaard v. Noergaard(2015), 244 Cal. App. 4th. 76, 197 Cal.Rptr.3d.546,2015 (Cal.App.4thDist.2015)

that Mother or Child's fundamental rights will not be protected there.

D. TRIAL COURT HISTORY AFTER FIRST REVERSAL AND REMAND

In response, the trial court delayed the case until 2019 over the objections of Petitioner's counsel that included:

> "MR. SUSSMAN: THE HAGUE CONVENTION DEMANDS THAT THESE TYPES OF PETITIONERS BE LITIGATED PROMPTLY AND EFFICIENTLY..."(App.153a:14-23)
> "... AND SO TO THAT DEGREE, I WOULD OPPOSE APPARENTLY PETITIONER'S NEW MOTION THAT THERE BE SOME EXTENSIVE AMOUNT OF DISCOVERY IN THIS MATTER."(*App.*154a:8-10)

The trial court disregarded Petitioner Counsel's objections:

> "THE COURT: ... AND THEN ON THE BACKSIDE OF ALL THAT I'LL SIT THERE AND ORDER A TRIAL SETTING CONFERENCE. I WAS THINKING OF SETTING A TRIAL SETTING CONFERENCE ON IT. BASICALLY ALSO STATUS REVIEW FOR WHERE WE'RE AT. I WAS THINKING

MAYBE DECEMBER OR JANUARY"(App.155a:10-16)

The trial court also refused to return M.N. to Petitioner in California for proceedings or for a 730 evaluation, and ordered she remain in Denmark with Respondent during the proceedings, and refused to grant access or visitation for the next three years.

The parties' other minor child S.N. resides in a boarding school, and is not living with M.N. or Respondent. There is another ongoing trial court case for the minor child S.N., Case No. 14FL000121 in the same trial court, and has been similarly delayed by the trial court to date.

After several years of delay, the trial court finally held a Hague trial in 2019 again ruling against the Petitioner. The trial court did not comply with any of the instructions in the Noergaard I Court of Appeal order, Hague case precedent, California statutes, and due process. The trial court also disregarded the Petitioner's counter-petition, filed under State law.

The trial court closed the court room, and then Petitioner, her counsel and/or her witnesses were yelled at, threatened for intimidation purposes, not allowed to testify to present the actual evidence regarding the issues of the case as instructed by the 2014 reversal and remand order, constantly interrupted, not allowed to finish their testimony, and/or limited in their testimony. The trial court

also substituted the unsubstantiated statements of the opposing attorneys for the documented evidence or testimony of witnesses.

The trial court then projected its own statements and/or the false statements of the other counsel onto Petitioner's counsel, Petitioner, and/or her witnesses that mislead the reviewing court regarding blame for the gross delays and costs in the trial court, as well as the errors during trial and in the statement of decision.

Based on instructions by the Court of Appeal to wait until after the trial to Appeal, [4] Petitioner appealed after the trial. Petitioner's counsel also raised the Appealable issues and misconduct that took place during trial court proceedings outlined in this Petition at oral arguments and in pleadings during Appeal.

E. APPELLATE HISTORY: SECOND PUBLISHED PARTIAL REVERSAL AND REMAND

In its original 10/29/2020 G057332 Opinion, Court of Appeal only partially remanded the underlying case regarding due process violations that took place after the trial and only in relation to

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[4] "... Petitioner has an adequate remedy at law, i.e., an appeal of the judgment that will be entered at the conclusion of trial. Any so-called "gag order" issued by respondent court does not prevent petitioner from filing an appeal from the judgment, providing an adequate record on appeal, or filing briefs that explain the basis for any contentions she may wish to make on appeal." Writ Order G057310 (App. 95a)

Article 26. Because of several errors in the Opinion, Petitioner filed Petitions for Rehearing. The Court of Appeal filed a 11/24/2020 modified Opinion("Noergaard II") and published the modified Opinion, but did not correct the errors and introduced additional errors in the modified Opinion.

Petitioner filed a timely Petition for Review in the California Supreme Court on 12/28/2020. Furthermore, Amici Curiae Voices Set Free – Intercept Abuse(VSF-IA) and International Victims Action Center(IVAC), who had been monitoring the case since 2016, filed an amici letter in support of the Petition for Review(App.2a-10a):

> "Understanding how the trial court became an instrument of abuse against the Petitioner in this case requires ... look at the way the other parties and trial court actually behaved in this case before, during and after the trial and during the Court of Appeal proceedings... the Statement of Decision and Appellate Opinion contain facts that could not be supported by the evidence, and the Petitioner was denied her due process rights to challenge the errors of the trial court's findings in the statement of decision; and the statement of decision(and resulting Appellate Opinion which relied on the Statement of Decision) itself was a result of direct aggression, procedural harassment, personal contempt, and manipulation of reality

against the Petitioner, her child, her attorneys, and her witnesses..."(App.5a:2-14)

The California Supreme Court denied the Petition for Review on 3/10/2021.

REASONS FOR GRANTING THE PETITION

I. Does a reviewing Court retain jurisdiction to review lower court decisions for harmful due process violations under the Equal Protection Clause that occurred before and during a trial, prior to the child's 16th birthday, and raised on appeal; or is jurisdiction limited to only due process violations that fall under Hague Convention Article 26 that occurred *after* the trial and even when attorney's fees represented a collateral legal consequence ??

The published 2020 Court of Appeal decision has run afoul of the principles of due process and equal protection of the law.

On 2/7/2019, the Court of Appeal via Writ in the underlying matter stated:

"... Petitioner has an adequate remedy at law, i.e., an appeal of the judgment that will be entered at the conclusion of trial. Any so-called "gag order" issued by respondent court does not prevent petitioner from filing an appeal from the judgment, providing an adequate record on appeal, or filing briefs that explain the basis for any contentions she may wish to make on

appeal."(App.104a, Noergaard v. Superior Court Writ Order G057310(Cal.App.4th Dist.2019))

Therefore, Petitioner and her counsel raised the due process issues after the trial on Appeal. In conflating the Hague Convention, the Court of Appeal failed to grasp the distinction between jurisdictional appellate due process issues it could review and limited itself to only issues that occurred after the Hague trial relative to the Hague Convention, Article 26.

The due process questions in this case have profound ramifications on litigators and lower courts. Furthermore, waiving the rights of litigants in Hague cases to defend themselves, and to dismiss the main portion of a case on such grounds as cited by the Court of Appeal at this given point in this case is unfair – especially when it was the Court of Appeal that instructed Petitioner and her counsel to wait until after the 2019 trial to Appeal these issues.

Given that the rights of a parent in the relationship with a child are among the most important and sacred in the United States, and given that California law permits an appeal from decisions regarding those rights, the State cannot, consistent with the Fourteenth Amendment, refuse to even to consider her due process claims. This Court in Santosky v. Kramer, 455 U.S. 745(1982) noted that the same point was made by a Committee of the House of Representatives in connection with the parental rights provisions of the Indian Child Welfare Act: "[T]he removal of a child from the

parents is a penalty as great [as], if not greater, than a criminal penalty. . . ." 455 U.S. at 759, quoting H.R. Rep. No. 95-1386, p. 22(1978).

Appellate review is the only effective legal remedy which ensures due process and a fair trial for a Respondent in a trial court case, and any accountability for trial court errors.

Indeed, this Court has highlighted the role that appellate review plays in promoting accuracy and preventing erroneous decisions in parental rights cases in the United States, that include Hague cases.[5]

Beyond the interest in accuracy that is promoted by an appeal, Lassiter emphasizes that appellate review is an important component in enforcing the due process rights of a parent without the financial resources as other litigants. By not allowing appellate review of due process violations that occurred before and during the trial, the California court's policy contravenes the protection of due process contemplated by Lassiter.

A litigant in an American courtroom cannot be denied the right to a full and fair opportunity to litigate the issues in the case.(Rodgers v. Sargent Controls & Aerospace(2006) 136 Cal.App.4th 82, 90.) In this case, the trial court did not comply with the

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[5] See, Lassiter v. Department of Social Svcs. (1981), 452 U.S. at 28-29 (stating that appellate review is one of the means by which North Carolina attempts to achieve accurate decisions); Santosky, 455 U.S. at 776 n. 4 (Rehnquist, J., dissenting) (noting the "error reducing power of procedural protections such as . . . appellate review").

2016 reversal and remand order after delaying the matter for several years; and Petitioner was unlawfully denied her right to a fair trial a second time, in violation of the 4th and 14th Amendments of the US constitution.

As a result, the Hague Convention and a child's age clearly does not preempt Petitioner's right to Appellate review of the due process issues raised on Appeal by Petitioner. Trial court Respondents in Hague cases should have their day in the Court of Appeal.

A. Did the Orange County court, as an actor for the State, violate the Interamerican treaty for Human Rights and other Human Rights treaties in its mishandling of the Hague case?

Denying a Respondent in a trial court case proper Appellate review of due process violations are also violations of the American Declaration on the Rights and Duties of Man articles I, II, V, VI, VII, IX, XVIII, and XXIV, in addition to the violations that occurred in the trial court since remand in this case.[6]

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[6] In the American Bar Association's (ABA) *Human Rights Magazine Vol. 39. No. 4,* John Pollock, the Coordinator for the Right to Civil Counsel for the Public Justice Center, wrote, "Most wealthy people would hire an attorney to avoid losing their home, their children, or, in cases that involve health or safety (such as domestic violence), potentially their very life ... civil litigant cannot hope for a 'fair trial' when facing off alone in an adversarial proceeding against a landlord's attorney, or a bank, or a state's social services agency, or an abuser that brings the full force of intimidation into the courtroom...And

California courts relative to both children and Petitioner, acted as actors of the State, and had an affirmative obligation to protect the rights of US Citizens, Petitioner and children, guaranteed by the American Declaration, from violation by the state, its agents and private actors.[7]

Petitioner faced a troubling pattern in the California Courts in Orange County which resulted in the worst possible outcome of denial of due process even under California law — and the humiliating manner in which the authorities treated Petitioner, her children, her counsel, and her witnesses since 2014. Since 2014, violations of the American declaration have been raised at every stage of the proceedings in this case.

The Court of Appeal stating(as an actor of the State) that they only had jurisdiction to review due process violations that took place after the trial and only related to Article 26, after ordering in a Writ that Petitioner and her counsel wait until after the trial to address the due process violations raised on Appeal; only seeks to distract from the California courts' own errors in orders since January 2014 through 2020.

The Charter of the OAS(Organization of American States) binds all Signatory States to its provisions, and to other sources of law that the

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what they stand to lose in basic human needs civil cases is every bit as precious as that at stake in most criminal cases."

[7] INTER-AMERICAN COMMISSION and COURT ON HUMAN RIGHTS case Gonzales vs. United States of America, Case No. 12.626, 2009, supra note 3, at 56

General Assembly of the OAS recognizes as controlling. The Inter-American Court has affirmed the General Assembly's view that the "Declaration contains and defines the fundamental human rights referred to in the Charter."[8]

This interconnectivity between the Charter of the OAS and the American Declaration likewise long has been recognized by the Inter-American Commission and Court of Human Rights, which has called the American Declaration a "source of international obligations" for OAS member states which includes the United States and specifically California courts in Orange County as judicial actor of the State.[9]

The facts of this case clearly demonstrate that California Courts did not act with due diligence. The failure of California Courts to act with due diligence, has resulted in the State incurring liability for the acts of private actors, as well as the state and its agents. California Court orders and conduct during parallel Noergaard cases in Orange County Court are responsible for violations of Petitioner's rights guaranteed by the American Declaration.

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[8] Inter-Am. C.H.R., Advisory Opinion OC-10/89 ¶¶ 43, 45 (July 1989), Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights.

[9] See, e.g., Report No. 74/90, Case 9850, Hector Geronimo Lopez Aurelli (Argentina), Annual Report of the IACHR 1990 ¶ III.6 (quoting I/A Court H.R., Advisory Opinion OC-10/89 ¶ 45); see also Mary and Carrie Dann v. United States, Case 11.140, Report No. 75/02 ¶ 163 (Dec. 27, 2002))

Provisions of the American Declaration provide that the US, and California Courts in Orange County by extension must provide an adequate and effective remedy whenever rights protected by the American Declaration are violated. The right to a remedy is a foundational principle of the universal and regional human rights systems and customary international law.

This case demonstrates that any legal remedies for Petitioner in Orange County were unnecessarily prolonged, and unlikely to bring effective legal relief. It is exactly this dynamic that allows the United States Supreme Court to apply the American Declaration to this case and to hold California Courts in Orange County to the standards and obligations therein.

II. Does a litigant have a right to a timely Hague trial, or do several years of delays result in violations of the Equal Protection Clause, Article 2 of the Hague Convention, and/or the American Declaration on the Rights and Duties of Man?

This Court should grant review to resolve the substantial uncertainty regarding the right of a litigant to a timely Hague trial and whether delays result in due process violations. One of the central questions in dispute throughout this case has been whether the ordered delays were in violation of due process.

The trial court rejected Petitioner's right to a timely trial since the August 26, 2016 hearing and throughout the underlying case. Petitioner's counsel objected to the trial court violations via writ to the Court of Appeal. The purpose of the delays were to harm Petitioner's defense case, and causing substantial prejudice to Petitioner's right to a fair trial, because the delay was for the purpose of gaining a tactical advantage in the case.

Timely access to a fair trial is settled precedent pursuant to Hague Convention, Article 2, which provides that "Contracting States shall[10] take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available" U.S. courts have presumed the existence of prejudice when the delay is unusually lengthy.[11]

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[10] The word "shall" in article 2 means it is imperative that a Respondent has a right to have *timely* access to the courts and going to trial.

[11] In *Cuellar v. Joyce (Cuellar II), 603 F.3d. (9th Cir. 2010),* the Ninth Circuit found that a party relied on legal tactics "intended to 'manipulate judicial process for purpose of delay.'" against pro bono counsel. The U.S. Supreme Court in *U.S. v. Marion 404 U.S.at 324 (1971)* observed that a delay may harm the defendant's case, and can cause substantial prejudice to rights to a fair trial, especially when that the delay was an intentional device to gain tactical advantage. *U.S. v. Jasper, 331 F. Supp.814 (E.D. Pa. 1971), vacated and remanded for reconsideration, 460 F.2d 1224 (3d.Cir. 1972)(two-and-one-third-year delay); U.S. v. Tate, 336 F. Supp.58(E.D. Pa. 1971) (fifteen-month delay)*

The Court of Appeal opinion did not apply settled precedent regarding Respondent's right to a timely trial.

III. Does a litigant have a fundamental right to equal justice under the law without regard to economic means in a Hague case, or can extreme trial costs and fees violate the Equal Protection Clause, Article 22 of the Hague Convention, and/or the American Declaration on the Rights and Duties of Man?

This Court should grant review to resolve the substantial uncertainty in California regarding unreasonable costs and fees ordered in a trial court and the misuse of fees and costs to delay the case and increase its costs, and urge the Court to consider the fundamental importance of the right to equal justice without regard to economic status and the essential role of Government code § 68630, Family Code(FC), §3153 and California Rules of Court §5.241(b)(1), and Article 22 of the Hague Convention in addition to the US Constitution.

The trial court was informed by Petitioner's counsel that the California 730 psychological expert selected stated that it was cost prohibitive for a 730 to move to Denmark to do an evaluation, and an evaluation would have to be conducted in California for it to be affordable.

The trial court first would not allow a request for a fee waiver until Petitioner's counsel took a writ,

and then would not enforce it after it ordered one and Petitioner's counsel had to take more writs to the Court of Appeal regarding the bad faith tactics address the violations of the other counsel and the trial court.(App.134a and 151a)

On 12/23/2016, the trial court then ordered a 60/40 division of fees and appointed an additional expert, where Petitioner would have to pay the majority of fees. Again, the trial court made this order without proper notice, again without properly determining who had the greater resources, while refusing to enforce its own fee waiver for Petitioner.

The attorneys the trial court appointed to the case required fees paid in full before he would set a trial or resolve issues for trial, based on the misstatements of the other parties; rather than enforcing her fee waiver(App.149a-150a), so the court appointed attorneys would accept the monthly payments towards fees she could actually afford.

The trial court disregarded Petitioner's counsel objections that Respondent had all of his attorney fees and court costs paid by the Danish government since 2014. The trial court also disregarded that Respondent had additional guarantees of payment from Denmark and Danish Legal Aid, for of all minor's counsel's fees and his own counsel's fees, in addition to all other expenses and fees related to this case.(12/23/2016 Reporter Transcript(RT), App.140a:8-26,141a-142a)

Amicus curiae and Petitioner's counsel filed briefs with objections and writs to the lower courts

regarding this case being misused as a means of economic abuse against Petitioner to generate several hundred thousand dollars for the other attorneys that are being paid for by a foreign country.

The trial court then continued delaying the case and disregarding Petitioner attorney's objections about the overbilling and exorbitant fee demands of the appointed attorneys.

California Government code § 68630[12] shows the California legislature intended equal justice without regard to their economic means. Furthermore, Article 22 of the Hague convention which states that "No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative

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[12] "...The Legislature finds and declares all of the following: (a) That our legal system cannot provide "equal justice under law" unless all persons have access to the courts without regard to their economic means. California law and court procedures should ensure that court fees are not a barrier to court access for those with insufficient economic means to pay those fees. (b) That fiscal responsibility should be tempered with concern for litigants' rights to access the justice system. The procedure for allowing the poor to use court services without paying ordinary fees must be one that applies rules fairly to similarly situated persons, is accessible to those with limited knowledge of court processes, and does not delay access to court services. The procedure for determining if a litigant may file a lawsuit without paying a fee must not interfere with court access for those without the financial means to do so. (c) That those who are able to pay court fees should do so, and that courts should be allowed to recover previously waived fees if a litigant has obtained a judgment or substantial settlement."

proceedings falling within the scope of this Convention".

California Family Code(FC), §3153 and CRC§5.241(b)(1) specify that allocation of fees between parties requires the determination of who has greater financial resources by the trial court. Hague Convention, Article 22 states that "No security, bond or deposit, however described, shall[13] be required to guarantee the payment of costs and expenses in the judicial or
administrative proceedings falling within the scope of this Convention".

Equal justice without regard to economic status is a cornerstone of the American justice system.[14]

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[13] The word "shall" means it is imperative no security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial proceedings, and it is not left to judicial discretion of a Court for fee orders to delay the case. Furthermore, the period for both parties to brief an issue must be provided pursuant to CCP§1005(b), and even a motion brought *sua sponte* by the Court, does not waive this rule.

[14] See Justice Lewis F. Powell, Address at Legal Services Corporation: A Presidential Program of the Annual Meeting of the American Bar Association 2 (Aug. 10,1976) ("Equal justice under law is not merely a caption on the facade of the Supreme Court building; it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists. ... It is ... fundamental that justice should be the same, in substance and availability, without regard to economic status."); "Justice is indiscriminately due to all, without regard to numbers, wealth, or rank." Georgia v. Brailsford, 3 U.S. 1, 4 (1794); "[n]o duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government." Gulf, C. & S.F. Ry. Co. v. Ellis, 165 U.S. 150, 160 (1897).

As the evidence in this case shows, such financial fees and costs as what was ordered in this case since reversal and remand, rendered justice unequal. The due process questions related to the misuse of costs and fees in this case are not mooted by the child's age or the Hague Convention.

Given the fundamental nature of parental rights, and given that California law authorizes an appeal from decisions of a California Superior Court; it violates both the Due Process and the Equal Protection Clauses of the Fourteenth Amendment to delay a trial and dismiss an appeal except for only those who have sufficient wealth to pay the amounts that were charged here, while closing it to those who do not.

A. It is a violation of the Equal Protection Clause when a litigant is threatened with imprisonment on a contempt charge over costs and fees in a Hague case, and a trial court refuses to set the matter for trial and delays the trial, because a litigant cannot afford to pay, the costs and fees were not owed, and there was no order the litigant was in contempt of.

On 10/7/2016 the trial court allowed Respondent to file a frivolous contempt action against Petitioner for alleged non- payment of additional minors counsel Sheryl Edgar fees("minor counsel"). This is in spite of the fact that there were no outstanding minor counsel fees owed by Petitioner, and no order of additional fees owed that Petitioner was in contempt of.

Petitioner's counsel also objected to the overbilling of minor counsel and their actions to increase the costs of the case *(App. 128a-133a)*

There are exceptions to what can be brought as a contempt action in California, and pursuant to *CRC§5.241(C)(3),* Respondent lacked standing to bring this contempt action and there was no court order for fees owed that Petitioner was in contempt of. Even if Respondent had standing, under California Code of Civil Procedure*(CCP) §1218.5(b),* any action was barred under the statute of limitations and Hague Convention, Article 22.

The trial court and the same other legal counsel were trying to jail Petitioner to delay the trial so the matter would never go to trial, after it had already been delayed since 2014 and resulted in the first remand. The trial court also specifically stated he would still not set a Hague trial again in 12/23/2016, eight months after remand, because of the contempt proceeding regarding alleged additional fees owed. *(12/23/2016 RT, App. 142a:9-11)* After delaying the matter further over this issue and it adding an additional several months of costs to the case, the contempt was dropped less than 24 hours before the hearing.

It is not only US Courts that have recognized the nexus between fees/costs, and equal justice; and that the greater the fees and costs, the more acute and widespread the disparate impacts. The American Bar Association(ABA) Working Group on Building

Public Trust in the American Justice System [15] addressed the concern that excessive judicial costs and fees disproportionately harm the millions of Americans who cannot afford to pay them, exacerbating disparities, diminishing trust in our justice system, and trapping litigants in cycles of economic abuse through the legal system.[16]

In cases involving fundamental rights, this court's precedents prohibit a state from denying its citizens access to existing avenues in a court system simply because of their financial limitations. In a significant line of cases, this Court consistently has protected the right of citizens, no matter their financial station, to pursue fundamental legal interests through existing avenues in state judicial systems.

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[15] In August 2018, the Working Group proposed, and the House of Delegates adopted, Ten Guidelines on Fines and Fees, designed to ensure equal treatment of litigants in the justice system, and to promote fair practices that consider a litigant's individual financial circumstances. The report accompanying the Guidelines laid out some of that evidence. The report noted, for example, that an estimated 10 million Americans owe more than $50 billion in debts imposed by the justice system. *See ABA Guidelines, Report at 2, http://bit.ly/2NhGzDy.* Further, the ABA cited studies showing that nearly two-thirds of current prisoners were assessed court fines and fees, and have little prospect of paying them when they leave prison, as 60 percent remain unemployed a year after release. *Id.* The facts of this case regarding the contempt action as it related to minor counsel fees, and the commentary to the guidelines debunks the popular misconception that the US long ago abolished "debtors' prisons." *ABA Guidelines, Comm. at 3-4.*

[16] *ABA Resolution 114 (Aug. 2018), Report at 2, http://bit.ly/2NhGzDy [hereinafter ABA Guidelines, Report].*

This Court's decision in Boddie v. Connecticut, 401 U.S. 371(1971) held that it is a due process violation to require monetary fees that prevents a litigant from access to the courts in a matter involving a fundamental interest.

Thus, the Court of Appeal should have determined the cumulative effect of the trial court error on the case of the violation of the Equal Protection Clause when the trial court threatened to imprison Petitioner on a contempt charge in a Hague case, and it refusing to set the matter for trial because of fees and costs. It is all the more outrageous because, in fact, the fees and costs were not owed, there was no order for additional fees owed that Petitioner was in contempt of, these actions in the trial court resulted in exponentially increasing the fees and costs in the trial court, and these fees and costs were a large portion of the costs and fees discussed in Noergaard II.

IV. Can egregious misconduct during trial court proceedings, so seriously affect the trial as to violate the Due Process and Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, as to warrant reversal?

This Court should grant review to resolve the substantial uncertainty regarding whether trial court and other attorney misconduct can so seriously affect the trial as to warrant reversal.

The outcome of this Hague case was irretrievably prejudiced by the very misconduct which is at the core of this case, and there cannot be a reliance upon the outcome of the tainted case as a basis to avoid liability and reversal of judgments for the very acts which tainted it. Petitioner's injuries arose out of the mishandling of the Hague proceeding in which the perjury occurred and Petitioner had no ability to assert any claim based upon those injuries within that proceeding.

After Petitioner and her counsel objected to the continuing misconduct on Appeal, the Court of Appeal, in its opinion, accepted the offending attorney's apology for one instance of blatant, material and deliberate misrepresentation and misconduct(App.38a-63a); when the issue as to whether judicial and counsel misconduct had so seriously affected the trial as to warrant reversal should have been considered by the Court of Appeal. There were several instances of similar misconduct and false statements raised by Petitioner's attorney on Appeal where Respondent's counsel made materially false statements such as the one in his declaration signed under penalty of perjury regarding the history of the case to the Court of Appeal.

Several tests for determining when legal error constitutes attorney or judicial misconduct have been adopted in California.

"Egregious" legal errors have been identified as a type of error that justifies appellate review.

Although "egregious" is a subjective term, the most obvious example of an egregious error is a denial of constitutional rights.

Petitioner's counsel repeatedly objected to the opposing attorneys who made oral statements as well as filed pleadings that "grossly and repeatedly misrepresent the law and the facts" in the trial court and Court of Appeal. This is sufficient to constitute egregious behavior.[17]

Petitioner's counsel also objected to the misconduct and increasingly abusive behavior by the trial court throughout the trial court proceedings since remand, and to the Court of Appeal.

The California Commission on Judicial Performance sanctioned a judge for denying due process in a civil trial.(See Broadman, Decision and Order(Cal. Comm'n on Judicial Performance Feb. 26, 1999)(admonition for this and other misconduct).[18]. As in the Broadman case, the trial court in the Noergaard case followed an alternative procedure for a Hague proceeding without stating he was going to follow an alternative procedure nor offering Petitioner a traditional Hague trial if she wanted one, or stating he would not be complying

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[17] *In re White, 121 Cal. App. 4th 1453 (2004).* In *General Refractories Co.v.Fireman's Fund Ins. Co., 2002 U.S. Dist.LEXIS 25324, 2002 WL 376923(E.D. Pa.)*, - the Third Circuit agreed with the litigant that the following intra-litigation conduct was egregious bad faith conduct by the opposing counsel: a pattern of delay, stonewalling, deception, obfuscation and pretense; and (2) misrepresenting facts to the Court and opposing counsel;

[18] available at http://www.cjp.ca.gov./pubdisc.htm

with the G049854 reversal and remand order when he proceeded with an alternative procedure. The trial court also conducted the Hague trial in a manner that departed completely from the usual procedures required by the adversary system.

The trial court in this case also mistreated Petitioner's counsel and her witnesses, and allowed mistreatment by the other counsel. In re Van Voorhis[19], the California Commission on Judicial Performance emphasized that its finding of misconduct was based on the judge's treatment of counsel when he ruled that certain evidence should be excluded, not on whether the ruling was correct.[20] In a condescending and "somewhat hostile tone," the judge engaged in a critique of the prosecutor that was disparaging, mocking, and sarcastic.

In re Hammermaster, the Supreme Court of Washington held, "[j]udicial independence does not equate to unbridled discretion to bully and threaten, to disregard the requirements of the law, or to ignore

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[19] Van Voorhis, Decision and Order (Cal. Comm'n on Judicial Performance Feb. 27, 2003) (removal for eleven instances of improper courtroom demeanor), *available at* http://cjp.ca.gov/pubdisc.htm, *petition for review denied, available at* http://www.courtinfo.ca.gov/courts/supreme/.

[20] The masters had found that the prosecutor's attempt to have a police officer describe the horizontal gaze nystagmus test was reasonable. The incident before Judge Van Voorhis took place in 1999, and in 1995, the California Court of Appeals had held that the gaze nystagmus test was admissible as a basis for an officer's opinion that a defendant was driving under influence of alcohol without requiring expert testimony. *See* People v. Joehnk, 42 Cal. Rptr. 2d 6 (Cal. Ct. App. 1995).

the constitutional rights of defendants" [21] The United States Court of Appeals for the District of Columbia Circuit stated that "we are all at a loss to see why those should be the only remedies, why the Constitution, in the name of 'judicial independence,' can be seen as condemning the judiciary to silence in the face of such conduct.,[22]

Trial judges who do indulge in displays of hostility can prompt corrective measures by a reviewing Court, if the displays of hostility were sufficiently extreme.[23]

> "... 3. I have testified as an expert witness in civil and criminal court cases over 100 times prior to this case in my career so far....
> 4. My experience in Judge John Flynn's court room was quite out of the ordinary, relative to my considerable experience as an expert witness ... As I expressed to Ms. Noergaard's counsel, up

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[21] Re Hammermaster, 985 P.2d 924 (Wash. 1999) at 936

[22] Re *McBryde (2001,* United States Court of Appeals for the District of Columbia Circuit*),* 264 F.3d at 68. The court described one instance in which the judge had ordered a lawyer to attend a reading comprehension course when she failed to have her client attend a settlement conference as required by the judge's standard pretrial order. The court noted: Appeal is a most improbable avenue of redress for someone like the hapless counsel bludgeoned into taking reading comprehension courses and into filing demeaning affidavits, all completely marginal to the case on which she was working. Possibly she could have secured review by defying his orders, risking contempt and prison. *Id.* at 67-68.

[23] U.S. v. Candelaria-Gonzalez, 547 F.2d 291, 297 (5th Cir. 1977) (trial judge's sarcasm, his frequent interruptions and his antagonistic comments ... deprived defendant of fair trial)

until my testimony in Judge Flynn's court, I had only been treated with the utmost respect and dignity by judges, magistrates, and administrative hearing officers. My experience in Judge Flynn's court was a marked departure from my other testimonial experience. This was the first and only time that I have been received by the court with disrespect, contempt, and incivility...." *(App.34a-37a ¶3-4)*

- **MS. SALCIDO:** YOUR HONOR, I WOULD JUST ASK THAT COUNSEL COULD JUST TONE DOWN HIS VOICE. HE'S YELLING."(*2/1/2019 RT*, App.107a: 12-13)
- "**MS. SALCIDO:** YOUR HONOR, I'M JUST GOING TO ASK ... THAT SHE NOT YELL AT THE WITNESS."(*1/24/2019 RT*, App.114a: 13-15)
- "**MS. SALCIDO**: ... BUT THAT WAS WHEN WE WERE SUPPOSED TO BEGIN THE PROCEEDINGS AT 10:30 THIS MORNING....YOUR HONOR, I MUST SAY THAT THIS SEEMS RATHER ABUSIVE BY THE COURT AT THIS TIME TO CAUSE THE WITNESS..."(*2/1/2019 RT*, App.108a: 5-7,21-21)

Several times, the trial court would also not afford Petitioner or her counsel the same opportunities to speak or object as he afforded the

other parties, become threatening when they tried to object, cutting them off and/or speaking over them.

- "**MS. MCKEON:** YOUR HONOR, I'M SORRY. I WAS NOT GIVEN A CHANCE TO SAY ANYTHING ABOUT — IN RESPONSE TO THE ARGUMENTS OF EVERYONE REGARDING JUDICIAL NOTICE, BUT I WOULD LIKE THE COURT TO NOTE THAT THE COURT OF APPEAL DID CITE TO THESE REPORTS.." *(6/9/2017 RT App.138a:8-12)*
- "**MS. SALCIDO**: I DIDN'T GET A CHANCE TO RESPOND TO THE SHELL GAME HE JUST PUT ON, YOUR HONOR. THAT'S WHAT I'M TRYING TO POINT OUT."(*1/28/2019 RT*, App.110a: 12-14)
- "**MS. SALCIDO**: YOUR HONOR, GIVE HER A CHANCE TO RESPOND. I OBJECT HE'S NOT GIVING THE WITNESS A CHANCE TO PROPERLY REPLY."(*1/23/2019 RT*, App.117a: 7-9)
- "**MS. SALCIDO:** OBJECTION, YOUR HONOR, AGAIN FOR CLARITY, I WOULD ASK THE COURT ADMONISH COUNSEL TO LET MY CLIENT FINISH."(*1/23/2019 RT*, App.118a: 13-15)
- **MS. SALCIDO:** SHE DIDN'T FINISH. HOW DO WE KNOW WHAT SHE WAS GOING TO SAY?"(*1/25/2019 RT*, App.112a: 24-25)

- "**MS. SALCIDO:** .... AND HE'S NOT EVEN LETTING HER FINISH HER ANSWER."(*1/23/2019 RT*, App.116a: 22-23)

An attorney is entitled to a timely opportunity to make objections. From this it necessarily follows that a trial judge is without power to foreclose that opportunity by any order or admonition. [24] An objection is more difficult to raise because of judge's abrupt actions or statements.[25]

During the trial, the trial court arbitrarily reversed its rulings.(App.100a-103a) US Courts have consistently found that a Court arbitrarily reversing its rulings results in violating a litigant's rights to the effective assistance of counsel and the overall fairness of the trial. It is one thing to postpone a ruling on admissibility of prior evidence until after testimony, it is another thing all together to definitively rule evidence inadmissible inevitably influencing how counsel advises only to completely reverse the ruling after testimony. The distinction is a critical one that implicates the defendant's right to

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[24] *"The power to silence an attorney does not begin until reasonable opportunity for appropriate objection or other indicated advocacy has been afforded." (Cooper v. Superior Court (1961) Cal. 2d. 291, 298)*

[25] Gori v U.S., 367 U.S.364, 365 n.6, 6 L. Ed.2d 901, 81 S. Ct. 1523(1961) (because of precipitous course of events, there was no opportunity for [an] objection) See U.S.v.Blueford, 312 F.3d.962, 974(9th Cir. 2002)("Where a party has 'no opportunity to object to a ruling or order,' he may not be prejudiced for failing to do so.")

the effective assistance of counsel and the overall fairness of the trial.[26]

Petitioner and her counsel had relied on trial court rulings when it abused its discretion by reversing itself during the trial as outlined in the sections above, as well as violating the advocate-witness rule regarding his statements and the statements of the other counsel.[27] Throughout the underlying case, the trial court consistently cited that the other attorneys being attorneys as being the reason for substituting their unsworn/unproven statements for evidence from witnesses and records in the case.

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[26] People v. Hall, 23 Cl App 5th 576, 232 Cal.Rptr..3d.865, 2018 Cal App LEXIS 455, 2018 WL 2276109)"In our view, the Court's belated about-face ruling on the admissibility of extremely prejudicial evidence deprived defendant of the "guiding hand of counsel at every step in the proceedings against him, " just as surely as the rule restricting the timing of the defendant's testimony did in Brooks v. Tennessee (1972) 406 U.S. 605, 406 U.S. at page 612. We have no doubt that the Court's reversal of its previous ruling "placed defense counsel into the untenable position of having to make an uninformed tactical decision" about how to advise his client and "forced counsel to make an uninformed, unintelligent decision"" (People v. Gonzalez(2006)38 Cal.4th 932, 960)

[27] "When a lawyer asserts that something not in the record is true, he is, in effect, testifying. He is telling the jury: `Look, I know a lot more about this case than you, so believe me when I tell you X is a fact.' This is definitely improper." (U.S.v.Kojayan (9thCir.1993) 8F.3d1315, 1321.) It violates the "advocate-witness" rule. (U.S. v. Prantil (9thCir.1985) 756F.2d759, 764.) "A juror's communication of extrinsic facts implicates the Confrontation Clause. See Jeffries.v.Wood, 114 F.3d 1484, 1490(9th Cir.1997) (en banc). The juror in effect becomes an unsworn witness, not subject to confrontation or cross examination. See id."

In a number of opinions, US Courts noted ways in which counsel misrepresented the way in which evidence had been used.[28]

The trial court also manifested bias in the presentation of evidence, and the judge officiously and unnecessarily usurped the duties of the other parties and in doing so created the impression he was allying himself with the other parties.[29]

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[28] See Gulbranson v. Duluth, Missabe & Iron Range Ry., 921 F.2d 139, 142-43 (8th Cir.1990) (plaintiff argued on appeal that statements had been offered for non-hearsay purpose of showing knowledge on part of defendant rather than for truth of matter asserted, but on closing argument plaintiff's attorney not only used statements for truth but suggested that they warranted "more credibility than the live testimony of the witnesses"); see also Taylor v. National R.R. Passenger Corp., 920 F.2d 1372, 1377 (7thCir. 1990) (noting that appellee in its brief mischaracterized evidence as impeachment evidence in violation of principles in prior opinion of court; evidence of prior back injury inadmissible both substantively and for impeachment used to suggest that plaintiff had preexisting injury and "this tenuous evidence was used to bootstrap argument that [plaintiff] lied on his employment application")

[29] *Waidla v. Davis 2017 US Central Dist. Court California LEXIS 209365 HN39:* In People v. Park, the COURT OF APPEAL found that the defendant was denied the right to a fair trial and abused his discretion by interrogating witness with conduct which bordered on advocacy when trial judge officiously and unnecessarily usurps the duties of the opposing counsel by taking over questioning of witnesses because he is allying himself with the other party. People v. Clark, 3 Cal.4th.41,833 P.2d.561,10 Cal.Rptr.2d.554,1992 Cal.LEXIS 3491,92 Daily Journal DAR 10654,92 Cal.Daily Op.Service 6658 HN 13

A. This court should grant review to resolve a Respondent's right to respond or object to the prima facie case in the trial court before a trial court makes a ruling on it.

This Court should grant review to resolve whether a Respondent has a right to respond or object to a prima facie case before the trial court makes a ruling on it

California and US Case law support that only after a respondent has responded to the plaintiff's prima facie case, a trial court has before it all the evidence it needs to decide.[30]

The Hague Convention also provides that it is a trial court petitioner who proves a prima facie case, and the child must be returned unless a trial court respondent can prove an affirmative defense. [31] Proving habitual residence is one of three parts of the prima facie case, and the trial court was obliged to consider evidence on the totality of the circumstances in this case. [32] After the OCDA's

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[30] ST. MARY'S HONOR CTR v. HICKS, 509 U.S. 502 (U.S. Supreme Court 1993) citing Postal Service Bd. of Governors v. Aikens (1983)460 U.S., at 715; SAN DIEGANS FOR OPEN GOVERNMENT v. CITY OF SAN DIEGO, Cal. 4th, Div.1 (2016); People v Turner, 8 Cal. 4th. 137, 878. P. 2d. 521, 32 Cal. Rptr. 2d. 762, 1994 Cal. LEXIS 4151, 94 Daily Journal DAR 11425, 94 Cal. Daily Op. Service. 6238 CA 6 ("..the party opposing the motion should be given the opportunity to respond to the motion i.e., to argue that no prima facie case has been made")

[31] Since her Affirmative Defenses were Article 13 and Article 20

[32] The Supreme Court ruling in Monasky v Tagliere (US Supreme Court, 2020), authored by the late great Justice

office presented Respondent's petition, the trial court once again did not.(1/22/2019 RT App.120a-128a)

CONCLUSION

For the reasons outlined above, the Petition for a writ of certiorari should be granted.

Dated: 3/31/2021
Respectfully Submitted,

Tammy Noergaard
Petitioner , *In Propria Persona*

Ginsburg, set forth the evidentiary approach to use when determining a child's "habitual residence" and the standard for review of that issue on appeal. This ruling held that a trial court's habitual residence determination presents a mixed question of law and fact that is heavily fact laden.