

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 Appellate District Court Of Appeal,
Division Three, Santa Ana, California**

**JOINT AMICUS CURIAE BRIEF OF
INTERNATIONAL VICTIMS ACTION CENTER
AND INTERCEPT ABUSE – VOICES SET FREE
IN SUPPORT OF THE PETITION
FOR A WRIT OF CERTIORARI**

LOUIS ELIAS LOPEZ, JR., ESQ.
Counsel of Record
416 N. Stanton Dr., Ste. 400
El Paso, TX 79901
Phone: (915) 543-9800
e-mail: llopez@lelopezlaw.com

GABRIEL PEREZ, ESQ.
ORTEGA MCGLASHAN & PEREZ
609 Myrtle
El Paso, TX 79901
Phone: (915) 542-1883
e-mail: gabrielperez@omhplaw.com

*Attorneys for Amici Curiae International Victims
Action Center (IVAC) and Intercept Abuse –
Voices Set Free (IA-VSF)*

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	4
A. THE ISSUES RAISED BY THE PETITIONER ARE THE SUBJECT OF SUBSTANTIAL AND ONGOING DEBATES WHICH MUST BE RESOLVED BY THE COURT	4
B. THE IMPORTANT ISSUES RAISED BY THIS CASE REQUIRE PROMPT RESOLUTION BY THIS COURT	7
CONCLUSION.....	15

TABLE OF AUTHORITIES

	Page
CASES	
<i>Bettencourt v. Los Rios Cnty. Coll. Dist.</i> , 42 Cal. 3d 270 (1986)	5
<i>In re Robert L.</i> , 21 Cal. App. 4th 1057 (1993).....	5
<i>Noergaard v. Noergaard</i> , 244 Cal. App. 4th 76, 197 Cal. Rptr. 3d 546 (Cal. App. 4th Dist. 2015).....	6, 9, 10
U.S. CONSTITUTIONAL PROVISIONS	
Fourth, Sixth, Seventh, Eighth, Ninth and Fourteenth Amendments.....	6
RULES AND CODES	
California Evidence Code section 730	13
OTHER AUTHORITIES	
Bancroft L., Silverman J., Ritchie D. (2002), “The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics” (2nd ed.) Sage Publications.....	11
Bellew K. (2015), “Silent Suffering: Uncovering and Understanding Domestic Violence in Affluent Communities,” 26 Women’s Rts. L. Rep. 39	8
Bowermaster J.M. (1998), “Relocation Custody Disputes Involving Domestic Violence,” 46 U. Kan. L. Rev. 433.....	11

TABLE OF AUTHORITIES – Continued

	Page
Epstein D., Goodman L.A. (2018), “Discounting Credibility: Doubting the Testimony and Dismissing the Experiences of Domestic Violence Survivors and Other Women.” <i>U. Pa. L. Rev.</i> 167:61	8
Hague Convention on the Civil Aspects of International Child Abduction (or Hague Abduction Convention).....	4
Jaffe P.G., et al. (2003), “Child Custody & Domestic Violence” (1st ed.) Sage Publications.....	8, 11
Laing L. (2016), “Secondary Victimization: Domestic Violence Survivors Navigating the Family Law System.” <i>Violence Against Women.</i> 2017 Oct;23(11):1314-1335. doi: 10.1177/1077801216659942. Epub 2016 Aug 23	8
Meier J.S., Dickson S. (2017), “Mapping Gender: Shedding Empirical Light on Family Courts’ Treatment of Cases Involving Abuse and Alienation,” 35(2) <i>Law & Ineq.</i> 311	8
Miller S.L., Smolter N.L. (2011), “Paper Abuse: When All Else Fails, Batterers Use Procedural Stalking. <i>Violence Against Women,</i> May;17(5):637-50.....	8, 11
Naughton C.M., O'Donnell A.T., Greenwood R.M., Muldoon O.T. (2015), “Ordinary Decent Domestic Violence: A Discursive Analysis of Family Law Judges’ Interviews.” <i>Discourse Soc.</i> 26, no. 3 349-365. 10.1177/0957926514564738	8

TABLE OF AUTHORITIES – Continued

	Page
Pollema L.J. (2006-2007), “Beyond the Bounds of Zealous Advocacy: The Prevalence of Abusive Litigation in Family Law and the Need for Tort Remedies,” 75 UMKC L. Rev. 1107	8
Przekop M. (2011), “One More Battleground: Domestic Violence, Child Custody, and the Batterers Relentless Pursuit of their Victims Through the Courts,” 9 Seattle J. Soc. Just. 1053	3
Ptacek J. (1999), “Battered Women in the Courtroom,” Northeastern University Press	3
Rivera E.A., Sullivan C.M., Zeoli A.M. (2012), “Secondary Victimization of Abused Mothers by Family Court Mediators,” Fem Criminol. 7(3):234-252.....	8
Vollans, A. (2010), “Court-related abuse and harassment: Leaving an abuser can be harder than staying,” Vancouver: YWCA	8
Ward, D. (2016), “In Her Words: Recognizing and Preventing Abusive Litigation Against Domestic Violence Survivors,” Seattle Journal for Social Justice: Vol. 14: Iss. 2, Article 11	14

INTEREST OF *AMICI CURIAE*¹

The mission of the International Victims Action Center (IVAC) and the Intercept Abuse – Voices Set Free (IA-VSF) is to help facilitate the safety and well-being of domestic violence and sexual assault victims, with a particular focus on children who are subjected to the horrors of abuse, by assisting courts in understanding complex and important issues that frequently arise in disputes involving domestic violence, particularly with regard to the harm experienced by children who are placed with abusers.

Both the IVAC and the IA-VSF have a strong interest in the resolution of this case. In particular, both organizations are concerned with the retaliation and post separation litigation abuse against the Petitioner which occurred at the trial court level. The *Amici* both work to prevent the normalizing of bad-practice methods, tactics, and decisions that cause young abuse survivors to be subjected to manipulation by their abusers. Sealed proceedings, like the one which took place in this case, allow Judges to hide misbehavior committed by both the court and opposing counsel. When records are sealed bad practices go uncorrected.

The IVAC and VSF-IA's overall goal is to provide U.S. authorities, policymakers, courts, and the

¹ No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. Timely notice was given and all parties consent to the filing of this brief.

public, with accurate and timely information about domestic and sexual violence; as well as to advocate on behalf of battered U.S. parents and children who need protection from abuse, neglect, injury; and facilitate the freedom to escape abuse without persecution.

The VSF-IA and IVAC submit this brief on behalf of the interests of U.S. parents and children facing complex international custody issues.

SUMMARY OF THE ARGUMENT

This case sets a dangerous precedent that compounds already significant barriers to fair hearings for victims of domestic violence and/or child abduction. If left to stand, it will damage the faith Americans have in their family law judicial system. In this case, the state trial court blatantly denied the Petitioner's due process rights and in doing so, sent a warning to all victims of domestic violence and/or child abduction that at the trial level, the American legal system will not protect you. And worse, if you happen to win on appeal, expect several years of gross retaliation.

Rather than the trial court being a place where decisions are made expeditiously, fairly, and with judicial economy in mind, this case allows trial courts to delay concluding cases; turn neutral experts and *ad litem* into interested third party profiteers; and bankrupts protective parents. Furthermore, if this decision is not overturned, it sends a signal to the courts that judges can ignore rules, retroactively change minute orders,

mock and/or ignore Court of Appeal orders, close proceedings and seal records all in an effort to hide misbehavior and deform the legal system. Abuse victims and parents whose children have been abducted by opposing spouses can now expect to face several years of delays; exuberant costs; and indomitable obstacles, all of which should have no place in a fair trial. The message will be: you have no fair opportunity to examine your abuser's evidence, may not submit your evidence, and cannot cross-examine the abuser or their witnesses.

Judges with extensive experience with domestic violence cases acknowledge that no one persecutes their victims more and manipulates the legal system with the same zeal and perseverance than a domestic abuser.² In this case, the trial court responded to the 2016 *Noergaard* Court of Appeal's (COA) remand order by summarily ignoring it, thereby green lighting further abuse of the victims. This was precisely the wrong message for the legal system to send. The purpose of the Court of Appeal's remand order was to ensure due process in the trial court along with specific instructions to look into the domestic violence issue and the death threats made to the Petitioner. The trial court

² James Ptacek, "Battered Women in the Courtroom" (1999), at 85. *See also* Mary Przekop, "One More Battleground: Domestic Violence, Child Custody, and the Batterers Relentless Pursuit of their Victims through the Courts," 9 Seattle J. Soc. Just. 1053, 1065 (2011) ("Abusers will often seek custody simply to harass the survivor, not out of a genuine desire to care for the children. * * * [C]hildren simply become another weapon that batterers can use to further torture their victims.")

not only failed to follow the COA's remand instructions, but actively sought to avoid it by delaying the case for several years, thereby creating an illusion that the court was actively examining these issues. In the end, the trial court didn't even bother, going under the assumption that the Petitioner would have no effective remedy because she would be unable to appeal.

ARGUMENT

A. THE ISSUES RAISED BY THE PETITIONER ARE THE SUBJECT OF SUBSTANTIAL AND ONGOING DEBATE WHICH MUST BE RESOLVED BY THE COURT.

The *Amici* support the Petition for a *Writ of Certiorari* because this case involves several recurring issues of public importance that potentially affect the Due Process rights of many United States familial litigants by impeding their right to a fair trial. In addition, the outcome of this case affects all Hague Convention³ appeals and potentially all family court related appeals. And if left standing, the case will perpetuate continued division and confusion amongst appellate courts concerning international child custody and international parental abduction.

³ The Hague Convention on the Civil Aspects of International Child Abduction or Hague Abduction Convention is a multilateral treaty developed by the Hague Conference on Private International Law (HCCH) that provides an expeditious method to return a child internationally abducted by a parent from one member country to another.

Additionally, the Respondent and the Court of Appeal rely on clear omissions and misstatements from the trial court's Statement of Decision to create a seriously flawed Opinion – an Opinion that allows future trial courts and victim abusers to weaponize the Hague Convention and re-victimize United States citizen parents, and their children, by awarding custody of a U.S. born child to a foreign national parent who already victimized the U.S. spouse/parent, and their children, in a foreign country. “A trial court’s discretion is not ‘unfettered’ but must be ‘exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.’” *In re Robert L.*, 21 Cal. App. 4th 1057, 1067 (1993) (quoting *Bettencourt v. Los Rios Cnty. Coll. Dist.*, 42 Cal. 3d 270, 275 (1986)).

This case also involves international law. The Respondent, a Danish national, abducted the Petitioner’s children, and took refuge in Denmark. The Petitioner followed him and tried to initiate legal proceedings to obtain her children. However, the Petitioner immediately ran into a brick wall. The problems with the Danish system are well documented by International Governmental Organizations (IGOs), such as the European Union (EU) and the United Nations (UN).⁴ All the IGOs released reports indicating that the Denmark legal system is guilty of human rights violations,

⁴ Vendelbo E.J. (2013), “EU dishes scathing critique of Danish divorce,” <https://familycourtinamerica.com/family-court-reform-domestic-violence/denmark-family-law/european-parliament-working-document/danish-parental-responsibility-act/>.

and other international law violations, due to a pattern of Danish authorities helping ethnic Danish citizens violate the rights of American and other “foreign” children when one of the parents is not an ethnic Dane.⁵

The policies which contributed to the gross human rights violations noted by these IGOs were in place at the time of the *Noergaard* case, and in fact, international outrage over the *Noergaard* case, and other cases, due to the gross human rights violations, created pressure to change. Thus, Denmark revised these policies in 2019 and closed down its own court system.

The *Noergaard* case is one of many in which the Hague Convention has been abused and used as a weapon to diminish the due process rights of American men, women, and children. In this case, a Danish court unlawfully denied the Petitioner her right to hear evidence against her and to fully present her side of the case to the California Superior Court in Orange County California. It is our contention that the Petitioner’s constitutional rights were violated as to the Fourth, Sixth, Seventh, Eighth, Ninth and Fourteenth Amendments of the U.S. Constitution. These rights state in no uncertain terms that citizens born in this country have the expectation of certain rights, all of which the California Superior Court violated.

⁵ *Id.* (Danish custody law, the “Parental Responsibility Act,” prioritizes shared parenting over children’s need for protection. Children must be handed over for visitation almost regardless of the circumstances. The Danish law requires that divorced parents ‘cooperate’ even when there is a history of violence or abuse.)

Furthermore, Denmark's own domestic abuse and abduction laws are frequently jettisoned in Danish courts when foreign nationals are involved, but conversely, these same courts exercise the Hague Convention as a weapon against Americans.⁶ The United States court system should not become a party to this erosion of Due Process guaranteed by our constitution; nor should the courts allow the Hague Convention to be used as a tool to undermine the rights of abuse victims in the United States. It matters little if foreign citizens and foreign countries who violate the laws and treaties governing custodial abductions face no adverse consequences in a American courtroom.

B. THE IMPORTANT ISSUES RAISED BY THIS CASE REQUIRE PROMPT RESOLUTION BY THIS COURT.

The issues raised in the Petition exist in many cases currently pending before state and federal circuit courts; and this case will impact many more cases going forward.

It is clear from the issues and omissions cited in the Petition for a *Writ of Certiorari* and court record, that the trial court used expert and legal fees as an instrument against the Petitioner. Thus, third party participants prolonged the case as well as increased the costs of trial court and Appellate proceedings. This

⁶ *Id.*

is classic litigation abuse routinely used against domestic violence victims.⁷

Understanding how the trial court too became an instrument of abuse against the Petitioner, the Court must take a closer look at the way the Respondent, third party experts, and the trial court actually behaved in this case, before, during, and after the trial and during the Court of Appeal proceedings.⁸

The Petitioner clearly shows that the Statement of Decision and the Appellate Opinion contain facts that are not supported by the evidence; in fact, what the

⁷ See, e.g., Miller S.L., Smolter N.L. (2011), “Paper Abuse: When All Else Fails, Batterers Use Procedural Stalking,” 17 Violence Against Women 637, 642; Jaffe P.G., et al. (2003), “Child Custody & Domestic Violence” 32; Bellew K., “Silent Suffering,” 26 Women’s Rts. L. Rep. at 44 (listing the primary forms of abuse as financial abuse, psychological abuse, physical abuse, and litigation abuse); Pollema L.J. (2006-2007), “Beyond the Bounds,” 75 UMKC L. REV. at 1110.

⁸ Volland A. (2010), “Court-Related Abuse and Harassment: Leaving an Abuser can be Harder than Staying,” Vancouver; Rivera E.A., Sullivan C.M., Zeoli A.M. (2012), “Secondary victimization of abused mothers by family court mediators,” Fem. Criminal. 7 234-252; Naughton C.M., O’Donnell A.T., Greenwood R.M., Muldoon O.T. (2015), “Ordinary decent domestic violence a discursive analysis of family law judges’ interviews,” Discourse Soc. 26 349-365; Laing L. (2016), “Secondary victimization: domestic violence survivors navigating the family law system. Violence Against Women” 23 1314-1335; Meier J.S., Dickson S. (2017), “Mapping Gender: shedding empirical light on family courts’ treatment of cases involving abuse and alienation,” Law Ineq. 35 311-334; Epstein D., Goodman L.A. (2018), “Discounting credibility: doubting the testimony and dismissing the experiences of domestic violence survivors and other women,” Univ. PA Law Rev. 167:61.

Court will see upon closer examination is the trial court repeatedly denying the Petitioner her rights to challenge the errors of the trial court's findings in the Statement of Decision. This is troubling especially since the Statement of Decision (and resulting appellate opinion 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.⁹

Direct Aggression refers to actions that involve threats, harassment, stalking and/or attacks on the domestic violence victim, her counsel, her witnesses, and/or her children outside the courtroom while they are part of an ongoing case in the judicial system. This includes violence, threats, harassment, stalking and/or other types of attacks cited both in the Court of Appeal's published order and in the Petitioner's pleadings in the trial court record against the Petitioner, her children, her counsel, and her witnesses either from the workplace, the media, online, and at home.¹⁰

Procedural Harassment involves actions taken by the Respondent, with the trial court's implicit acquiesce, during various legal proceedings as described in the Petition, to negatively impact the Petitioner's due

⁹ *Noergaard. v. Noergaard*, 244 Cal. App. 4th 76, 197 Cal. Rptr. 3d 546 (Cal. App. 4th Dist. 2015).

¹⁰ This *amicus* brief cites to (1) the exhibits, pleadings, and declarations that were clearly lodged; (2) the trial court's Statement of Decision; (3) the Court of Appeal Opinion; and (3) hearing transcripts.

process rights; actions omitted from the Court of Appeal's opinion and in the trial court record.

Personal Contempt are actions taken by the court against the victim, her counsel, her witnesses, and/or others. Actions such as verbal abuse in the courtroom, intimidation, threats, bullying, name calling, spoken over, mocked, ignored, despised, and overall treated with contempt inside the courtroom.¹¹ Incredibly all of these actions took place against the Petitioner, her counsel and her witnesses as evident from the record, but were omitted from the Court of Appeal's opinion.

Manipulation of Reality refers to litigation tactics employed by judges, prosecutors, and lawyers of the opposing party to skew the facts of the case in such a way that it negatively affects the other side. This kind of manipulation includes presenting a distorted image of the case and the victim as if they were fact, exaggerating and/or even inventing negative aspects, and concealing or misrepresenting the positive aspects, turning them into negative ones. The Petition asserts that the trial court's findings, and the Statement of Decision which the appellate court relied on when drafting its own opinion, evidences reality manipulation.

Surprisingly, other third parties used the underlying litigation to harass the Petitioner by hauling her into court in two countries simultaneously; tactics used to have her imprisoned on frivolous contempt charges

¹¹ *Noergaard v. Noergaard*, 244 Cal. App. 4th 76, 197 Cal. Rptr. 3d 546 (Cal. App. 4th Dist. 2015).

for failing to appear in both courts in two different countries on the same day. These attacks are recognized as ways used to drain protective parents emotionally and financially.¹²

It is exactly these actions used by the Respondent and the trial court in retaliation for the 2016 reversal and remand order.¹³ The trial court and the other attorneys simply acted as extensions of the abuser's fists for three years after the remand; and these bad faith tactics continued through appellate proceedings. The Respondent, aggressive and well-funded, maintained regular and almost unending contact with his victim since 2016 by continually hauling her into court, using the law as a tactic to harass, threaten, and coerce her. And disturbingly, the trial court enabled such conduct in spite of the Court of Appeal's remand order which should have concluded the trial court case in the summer of 2016 under the Hague Convention.

¹² See, e.g., Jaffe P.G., et al. (2003), "Child Custody & Domestic Violence" (1st ed.) Sage Publications.

¹³ Miller S.L., Smolter N.L. (2011), "Paper Abuse: When All Else Fails, Batterers Use Procedural Stalking. Violence Against Women," May;17(5):637-50; see also Bancroft L., Silverman J. Ritchie D. (2012), "The Batterer as Parent" 2d ed. at 123-162 (describing batterers' pursuit of child custody and visitation litigation as "impeding recovery" by increasing "turmoil and division within families" and mothers' traumatic symptoms); Bowermaster, J.M. (1998), "Relocation Custody Disputes Involving Domestic Violence," 46 U. Kan. L. Rev. 433, 450-45 (examining relocation restrictions in custody disputes and demonstrating that abusers use such restrictions to control their abused spouses)).

Moreover, another Manipulation of Reality tactic is “isolation and indoctrination.” Abusers prolong court proceedings for as long as possible so that the children are cut off from support of a protective parent and child psychologists. The children have no choice but to do and say whatever the abusive parent instructs. In this case, the trial court refused to allow the primary caregiver, the Petitioner, any access to her children; no visits at all despite the fact that the Respondent admitted the children wanted to see their mother in California. To anyone who has any experience with domestic violence (DV) victims, it is abundantly clear that Respondent isolated the child from the U.S. petitioner parent in order to undermine rather than encourage a healthy relationship. Also, it is irrational to expect the child to be able to speak freely, while in the control of the Respondent, about abuse especially when the Respondent coached the child to give several different stories regarding this case in the Denmark judicial system and to the California trial court. The Court of Appeal’s opinion indicated that the appellate court had concerns that the Respondent exploited his position to manipulate M.N.’s testimony.¹⁴ The Court of Appeal’s opinion also noted that “[a]fter the [trial] court conducted its interview with M.N., the [trial] court denied mother’s renewed request for a psychologist to interview and evaluate M.N. under California Evidence Code section 730” outside the presence of the Respondent despite Petitioner’s concerns. Generally speaking, an abusers continual presence in or around an

¹⁴ *Amici* use initials as identifiers for the child.

psychiatric interview would likely adversely affect the child's statements as well as behavior.¹⁵ This is more so if the child witnessed domestic violence and was afraid of the consequences for denouncing the abusive parent.

It was also a due process violation requiring the Petitioner to pay a majority of the legal expert and counsel fees in full before the trial court would set the case for trial and/or resolve issues for trial. None of the other trial court appointed legal experts and child experts, or any other legal expert witness, made outrageous demands that the Petitioner pay large amounts of money in advance in order to begin working on the case.

In this case, the California judicial system failed the Petitioner and her children.

Therefore *Amici* support this Petition. In 2013, there were no trials in Denmark where the Petitioner could have raised the Respondent's threats and other domestic violence by proxy acts. The California trial

¹⁵ California Evidence Code Section 730 allows a trial court in a child custody dispute to order an examination of the parents. A 730 evaluation is a close assessment of the family, the children's relationships with their parents and other family members, living arrangements, and a series of professional evaluations. The judge hearing the case will typically turn to mental health professionals to determine the best interests of the children in the case, and the court may call on an evaluator to testify in court proceedings the judge may assign an approved evaluator to the case. Code 730 also allows a judge to order one or more experts to investigate and evaluate a family. Additionally, Code 730 affords either parent in a custody case the opportunity to request an evaluation.

court allowed issues into evidence that lacked factual support, were outright false, and/or lacked legal merit so as to delay the case, as well as harass, intimidate, impoverish and coerce the Petitioner; and all these due process violations are not mooted by the Hague Convention and child's age.¹⁶

The search for the truth and the delivery of justice should not be incompatible with the fair and respectful treatment of domestic violence victims in a trial court. Retaliation and judicial system abuse occurs when the lower courts chose to disregard due process, subsequent remand orders, judicial guidelines regarding domestic violence, the Hague Convention, and California law.



¹⁶ Ward, D. (2016), "In Her Words: Recognizing and Preventing Abusive Litigation Against Domestic Violence Survivors," Seattle Journal for Social Justice: Vol. 14: Iss. 2, Article 11 (collecting victims' and advocates' descriptions of the range of tactics that abusers often use in connection with court proceedings in order to control, harass, intimidate, coerce, and impoverish victims).

CONCLUSION

Therefore, *Amici* urge the Court to grant the Petitioner's Petition for a *Writ of Certiorari*.

May 5, 2021

Respectfully submitted,

LOUIS ELIAS LOPEZ, JR., ESQ.
Counsel of Record
416 N. Stanton Dr., Ste. 400
El Paso, TX 79901
Phone: (915) 543-9800
e-mail: llopez@lelopezlaw.com

GABRIEL PEREZ, ESQ.
ORTEGA McGLASHAN
& PEREZ
609 Myrtle
El Paso, TX 79901
Phone: (915) 542-1883
e-mail: gabrielperez@
omhplaw.com

Counsel for Amici Curiae